REPORT OF THE
INSIDER DEALING TRIBUNAL
OF HONG KONG

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

HARBOUR RING INTERNATIONAL HOLDINGS LIMITED
(currently known as Hutchison Harbour Ring Limited)

between

29th February and 1st March 2000

and on other related questions

Introduction

By a notice pursuant to section 16 of the Securities (Insider Dealing) Ordinance Cap. 395 dated 25 September 2003 (amended by an Amendment Notice dated 15 July 2005), the Hon Mr Henry Tang, the Financial Secretary of the Hong Kong Special Administrative Region, requested the Insider Dealing Tribunal to conduct an inquiry. The amended 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, Harbour Ring International Holdings Limited (currently known as Hutchison Harbour Ring 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 –*

Fong Long, Charles Chong Wai Lee and Chong Bun Bun on 29 February 2000 and 1 March 2000; and Wong Cheung Hung on 1 March 2000;

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

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

In compliance with the notice, the Insider Dealing Tribunal, comprising of The Hon Mr Justice Saunders as Chairman and Mr Fung Kai Lin, Louis and Mr Kwan Po Chuen, Vincent as members, heard evidence and submissions from counsel for a total of 27 days, between 12 February 2007 and 18 August 2008.

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.

中華人民共和國
香港特別行政區政府
財政司 司長

The Financial Secretary
Government of the Hong Kong
Special Administrative Region
of the People's Republic of China

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, Harbour Ring International Limited (currently known as Hutchison Harbour Ring 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 -

Fong Long, Charles Chong Wai Lee and Chong Bun Bun on 29 February 2000 and 1 March 2000; and Wong Cheung Hung on 1 March 2000;

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

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

Dated this 25th day of September 2003.

(Henry Tang)
Financial Secretary

中華人民共和國
香港特別行政區政府
財政司 司長

The Financial Secretary
Government of the Hong Kong
Special Administrative Region
of the People's Republic of China

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

Amendment to Notice dated 25 September 2003
Under Section 16(2) of the
Securities (Insider Dealing) Ordinance Cap. 395

I refer to a Notice under my hand dated 25 September 2003 ("the Notice", copy attached) issued pursuant to Section 16(2) of the Securities (Insider Dealing) Ordinance, Cap. 395. It has come to my attention that there was an error in the Company's former name as stated in the Notice.

Accordingly, pursuant to Section 46 of the Interpretation and General Clauses Ordinance, Cap. 1 (and all other powers enabling me to do so) I hereby amend the Notice by replacing the former name of the company ("Harbour Ring International Limited") with its correct former name "Harbour Ring International Holdings Limited". There has been no other change to the Notice, which in all respects remains in full force and effect.

Dated this 15th day of July 2005.

(Herny Tang)
Financial Secretary

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Annexures

Chapter 1

Background[1]

1. Harbour Ring International Holdings Ltd (Harbour Ring) had been listed on the Stock Exchange of Hong Kong (SEHK) since 1 July 1972. The company was principally engaged in the manufacture of and trading in toys, and the sale and investment of property.

2. As at 30 June 1999, the bulk of the share capital in Harbour Ring was held by Reading Investment Ltd (Reading) as to 31.12%, Promising Land International Inc (Promising Land) as to 21.31% and Profit Point Ltd (Profit Point) as to 14.17%.

3. Reading was beneficially owned by Dr Luk Chung Lam, Mr Ko Yuet Ming and Mr Lewis Luk Tei. Each of those three were executive directors of Harbour Ring. Promising Land was a wholly owned subsidiary of Hutchison Whampoa Ltd (Hutchison), and Profit Point was a wholly owned subsidiary of Playmate Toys Holdings Ltd, (Playmates), a substantial international company involved in the toy industry. Effectively, the Luk family, Hutchison, and Playmates, collectively held 66.6% of the share capital in Harbour Ring, with the balance of the shares held by the public.

4. In 1999, Harbour Ring had been a stock that was infrequently traded, and traded only in small volume. Between October and December 1999, its share price had dropped 13.24% to $0.295, with an average daily

[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).

turnover of only 667,500 shares. In contrast, during the same period, the Hang Seng Index (HSI) had gained 4,086 points, an increase of 31.7%.

5. The price and trading volume of Harbour Ring shares began to rise in early January 2000, closing up 93.2% at $0.57 on 31 January 2000. The daily turnover averaged 4.18 million shares during the month, five times higher than the average of the fourth quarter of 1999. During the same period, the HSI dropped 8.4%.

6. The trend in the increase in the value of Harbour Ring shares continued in early February 2000, with the stock closing on 8 February 2000, at $0.83, up 45.61% from 31 January 2000, on a turnover of 24 million shares. In that time, the HSI gained 4.48%.

7. But between 9 and 25 February 2000, the share price of Harbour Ring dropped 25.31% to $0.62, with the turnover reducing to an average daily amount of 6.37 million. In that period, the HSI gained a further 5.99%. During February, on four days only, 2, 3, 8 & 9 February 2000, had the turnover exceeded 8.4 million shares. But between 10 & 25 February 2000, the turnover averaged only 5.3 million shares.

8. On 28 February 2000, the turnover increased substantially to 12.1 million shares, closing at $0.66. The next day, 29 February 2000, turnover again increased substantially, to 20.8 million shares, closing at $0.70, an 11.42% increase from the close on 25 February 2000.

9. During the morning session on 1 March 2000, the turnover increased even more dramatically to 140.6 million shares, with the share

price surging 90% to $1.33, before closing at $1.23 at the close of morning trading.

10. At the request of the SEHK, the directors of Harbour Ring requested a suspension of trading from 2:30 p.m. on that day, "pending an announcement concerning a possible change of the controlling shareholder of the company".

11. On 10 March 2000, Harbour Ring made an announcement stating that the company had entered into subscription agreements with Internet Capital Group (ICG), Promising Land and the Li Ka Shing Foundation (the Foundation), in relation to the subscription of 3,018,400,000 shares by ICG, 454,978,000 shares by Promising Land, and 274,400,000 shares by the Foundation, at an issue price of $0.30 per share. Following the completion of the subscription agreement, those three parties would collectively hold 82.1% in the enlarged issued share capital of Harbour Ring.

12. The company was to be renamed ICG AsiaWorks Ltd after the completion of the subscription agreements, in order to reflect the changing control of the company and the anticipated future development of the company. At all times relevant to this Inquiry, the company was known as Harbour Ring, and we shall refer to it as such.

13. ICG was an Internet company engaged in the United States of America in business-to-business e-commerce through a network of partner companies. The Foundation is a charitable foundation established by Mr Li Ka Shing, a major shareholder and chairman of Hutchison, a company at

that time having a high profile in what was then known as technology business, which included business-to-business e-commerce.

14. The introduction of ICG and the Foundation into Harbour Ring effectively made ICG and Hutchison the majority shareholders in Harbour Ring. The method by which they were introduced, a very significant increase in the share capital of a listed company, with entities other than the existing majority shareholders that listed company, is known as a "backdoor listing". It is the means by which a party, without a presence on the SEHK, may rapidly and with comparative ease, become a majority shareholder in a listed company.

15. On the resumption of trading on 10 March 2000, the Harbour Ring share price reached a high of $9.20 before closing at $7.85, up 538% from the closing price on 1 March 2000. Turnover rose to 191.3 million shares during the morning alone, a turnover which may be compared with that between 10 & 25 February 2000, when the average turnover was only 5.3 million shares. Between 29 February 2000 and 10 March 2000, the HSI increased 4.7%.

16. At Annex A is a chart showing the share price in Harbour Ring compared with the HSI between 4 January 1999 and 30 March 2000. At Annex B is a chart showing the share price in Harbour Ring and the trading volume for the same period. At Annex C is a table showing the daily movement in Harbour Ring shares for the period 4 October 1999 – 31 March 2000.

17. A senior executive in Hutchison, Sammy Tse Kwok Fai (Sammy Tse), was the Chief Executive Officer of Hutchison E-Commerce

Ltd, a wholly-owned subsidiary of Hutchison that was engaged in business-to-business e-commerce. An investigation by the SFC revealed that Sammy Tse had a network of friends and acquaintances who themselves, or persons connected with them, purchased substantial quantities of Harbour Ring shares in the two days of 29 February and 1 March 2000.

18. The network of friends and acquaintances comprised Mr Dennis Li Yat Tung (Dennis Li), Ms Debbie Ng Kit Ying (Debbie Ng), Mr Chris Wong Cheung Hung (Chris Wong), Mr Charles Chong Wai Lee (Charles Chong), and Ms Becky Chong Bun Bun (Becky Chong).

19. Following the investigation by the SFC and a report to the Financial Secretary, on 25 September 2003, a Notice, (the Notice), was issued to a Chairman of the Insider Dealing Tribunal pursuant to s 16(2) Securities (Insider Dealing) Ordinance Cap 395, (the Ordinance). That Notice appears at (iii) of this Report. An amendment made appears at (iv). Named in the Notice are Sammy Tse, Dennis Li, Debbie Ng, Chris Wong, Charles Chong, and Becky Chong.

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 from the Financial Secretary, and the steps taken by the Tribunal for the purposes of its conduct of the Inquiry undertaken by it into the matters required by its terms of reference.

The Tribunal's Terms of Reference:

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

22. In October 2004, in view of his impending retirement, Mr Justice Lugar-Mawson notified the Chief Executive that it was undesirable that he should continue to exercise his functions in relation to the Inquiry. On 30 October 2004, acting pursuant to Clause 8 of the Schedule to the Ordinance, the Chief Executive, duly appointed Mr Justice Saunders to be chairman of the Tribunal in place of Mr Justice Lugar-Mawson, with effect from 1 November 2004.

The appointment of members and counsel assisting:

23. The Chairman of the Tribunal subsequently 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 companies and persons who were connected with the subject matter of the Inquiry.

24. Following that, two lay members were appointed by the Financial Secretary to the Tribunal on 15 July 2005. Those members were Mr Louis Fung Kai Lin, and Mr Vincent Kwan Po Chuen. Mr Fung is a Solicitor, and a partner in Haldanes, Solicitors, of Hong Kong. Mr Kwan is a certified public accountant and also a practising solicitor. He is the General Manager (Legal) of Sino Land Company Limited.

25. On 14 October 2005, the Tribunal appointed Mr Nicholas Cooney, Barrister-at-Law of the Hong Kong Bar as counsel assisting the Tribunal. On 19 July 2006, the Tribunal appointed Ms Jane T C Ho, also a Barrister-at-Law of the Hong Kong Bar, as junior counsel assisting the Tribunal.

The Judicial Review proceedings:

26. On 13 September 2005, prior to the issue of Salmon letters[2], judicial review proceedings were commenced in the High Court of Hong Kong by Charles Chong and Becky Chong challenging certain steps that had been taken in a parallel Inquiry by the Insider Dealing Tribunal

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

(Number 2 Division), into alleged insider dealing in relation to a company known as Vanda Systems and Communications Holdings Ltd (Vanda). In that Inquiry Charles Chong and Becky Chong were alleged to be insider dealers. Also named as potential insider dealers in that Enquiry were Sammy Tse, Dennis Li, Debbie Ng, and Chris Wong. Upon the application of Charles Chong and Becky Chong an interim stay of this Inquiry was ordered by Mr Justice Reyes.

27. On 4 January 2006, the application for judicial review was dismissed by Mr Justice Reyes and Mr Justice Lam. On 5 January 2006, the interim stay in relation to the Harbour Ring Inquiry was lifted. However an appeal was filed in the Court of Appeal by Charles Chong and Becky Chong and consequently this Inquiry could still not proceed. The appeal was dismissed by consent on 24 March 2006, thereby clearing the way for the Inquiry to proceed.

The service of Salmon letters:

28. Following the appointment of counsel, the Tribunal was provided with the various witness statements, the documentary evidence, exhibits and records of interviews which were to form the evidence before the Tribunal. From that material, and following a meeting with counsel assisting, the Tribunal determined that six persons were implicated or concerned in the alleged insider dealing. Those persons were Sammy Tse, Dennis Li, Debbie Ng, Chris Wong, Charles Chong and Becky Chong.

29. Those six persons were subsequently served with a Salmon letter informing them that they were each to be regarded as an implicated party in the Inquiry. Shortly thereafter all statements, documentary

evidence, exhibits and records of interviews which had earlier been served on the Tribunal were served on the implicated parties, together with other documents such as the synopsis of the case which had earlier been provided to the Tribunal.

30. The Salmon letter specified a date for a preliminary hearing of matters germane to the Inquiry. That preliminary hearing took place on 17 July 2006.

31. At that preliminary hearing application was made by those implicated parties who were involved in the Vanda Inquiry that the Harbour Ring Inquiry should not proceed until such time as the Vanda Inquiry was completed. The application was made upon the basis, first, that the Vanda Inquiry was then proceeding, and those involved in it were not able, physically, to engage in two inquiries at the same time. Second, the submission was made that the outcome of the Vanda Inquiry may have an impact on the progress and extent of the Harbour Ring Inquiry.

The substantive hearing:

32. The Tribunal acceded to that request, and the hearing of the Inquiry proper began on Monday 12th of February 2007, following the completion of the evidence in the Vanda Inquiry. On the 15th day of the hearing, Friday 16 March 2007, the Tribunal was obliged to adjourn the proceedings to Tuesday 5 June 2007, the delay being occasioned by virtue of existing commitments of counsel and members of the Tribunal.

33. The Tribunal resumed on that day, when it was informed of a decision of the Court of Appeal in another matter, also involving the

interpretation of the Ordinance, 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 again adjourned, on this occasion sine die, to be brought on at seven 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) of the Ordinance, 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. The Inquiry proper resumed on Tuesday 10 June 2008. Following a further 10 days of substantive evidence, the Tribunal adjourned on Thursday 3 July 2008, to Monday 18 August 2008, to enable counsel to prepare their closing submissions. Those submissions were prepared in writing were delivered to the Tribunal in advance. On Monday 18 August 2008, counsel for the Tribunal and counsel for the implicated parties addressed the Tribunal on the written submissions.

36. In the light of the concern of the implicated parties, and arguments made in relation to the Vanda Inquiry, this Tribunal has taken particular steps to ensure that neither the Chairman nor any of the members of the Tribunal have read or considered any aspect of the Report of the Vanda Inquiry, except in so far as any part of that Report or the conclusions of the Vanda Inquiry might have been addressed in submission by counsel

in the course of this Inquiry. In Chapter 5 we will deal with the relevance of evidence from the Vanda Inquiry that was put in as part of the evidence in this Inquiry.

The witnesses:

37. Over 27 days of sitting, a total of 22 oral witnesses were called by counsel to the Tribunal, or the parties.

38. Those witnesses were (TW – Tribunal Witness), (CW – Charles Chong and Becky Chong 's witness):

Name		**General relevance to the Inquiry**
TW 1 (Day 4)	Mr Luk Tei, Lewis (Lewis Luk)	Director, Harbour Ring International Holdings Ltd. in February and March of 2000.
TW 2 (Day 5)	Ms Shirley Fung (Shirley Fung)	Managing Director, Goldman Sachs Asia Ltd. in February and March 2000. Involved in a potential deal between a company Internet Capital Group (ICG) and Hutchison Whampoa Ltd. and as an adviser to ICG.
TW 3 (Day 5)	Ms Chan Wen Mee, (Michelle Chan)	Group Business Development Manager of Hutchison Whampoa Ltd. and the Executive Director of Hutchison E-Commerce Ltd. in February and March 2000.
TW 4 (Day 6)	Mr Leung Pak To, Francis (Francis Leung)	Chief Executive Officer of BNP Paribas Peregrine Group between October 1999 and February 2001.

TW 5 (Day 7)	Mr Lai Kai Ming, Dominic (Dominic Lai)	Executive Director of Hutchison Whampoa Ltd. He worked directly under Canning Fok in February 2000.
TW 6 (Day 7)	Madam Fong Long	Housewife. Mother of Debbie Ng Kit Ying. Debbie Ng used her trading accounts at Taiwan Concord and South Capital to purchase Harbour Ring shares.
TW 7 (Day 8)	Mr Chu Tian Cho (Mr Chu)	Managing Partner of McKinsey & Co., Inc. Hong Kong in February 2000. Gave evidence as to the arrangement of meeting between Internet Capital Group (ICG) and Hutchison and the preparation of information packs relating to ICG.
TW 8 (Day 8)	Mr Sze Shing Yee (Mr Sze)	Stockbroker, Christfund Securities in February 2000. Charles Chong's account executive. Charles Chong purchased Harbour Ring shares on the account he held at Christfund.
TW 9 (Day 9)	Mr Wu Chi Chiu (Mr Wu)	Stockbroker with Taiwan Concord Capital Ltd. in February 2000. Stockbroker for Madam Fong Long who purchased Harbour Ring shares there.
TW 10 (Days 9 and 10)	Mr Shuen Wai, James (James Shuen)	General Manager of Mid-Stream Holdings Ltd., a subsidiary of Hutchison Whampoa Group, in February 2000.

TW 11 (Days 11 and 12)	Mr Chui Tin Yam, Johnny (Johnny Chui)	Dealer's representative of Pacific Challenge Securities Ltd. in February 2000. He was the account executive of Charles Chong and Chong Bun Bun when Harbour Ring shares were purchased on their accounts.
TW 12 (Day 13)	Mr Victor Hwang (Victor Hwang)	CEO and Deputy Chairman of ICG Asia since June 2000. Also Managing Director of ICG in USA since March 1999.
TW 13 (Days 13 and 14)	Mr Shek Siu Yin, Tony (Tony Shek)	Stockbroker with South Capital Brokerage Ltd. in February 2000. Debbie Ng's mother's account at South Capital was used to purchase Harbour Ring shares.
TW 14 (Day 14)	Ms Fung Sau Hong, Stella (Ms Fung)	Expert Witness. Senior Manager of the Securities and Futures Commission in February 2000.
TW 15 (Day 15)	Mr Fok Kin Ning, Canning (Canning Fok)	Group Managing Director of Hutchison Whampoa Ltd. in February 2000. Hutchison Whampoa is the major shareholder of Harbour Ring Group.
TW 16 (Days 17, 18 and 19)	Mr Tse Kwok Fai, Sammy (Sammy Tse)	Implicated Party. In February 2000, a chief executive officer of Hutchison E-Commerce Resources Ltd.
TW 17 (Days 20, 21 and 22)	Mr LI Yat Tung, Dennis (Dennis Li)	Implicated Party. Director of Tranco International Limited in February 2000.

TW 18 (Days 22 and 23)	Ms Ng Kit Ying, Debbie (Debbie Ng)	Implicated Party.
TW 19 (Days 23 and 24)	Mr Wong Cheung Hung, Chris (Chris Wong)	Implicated Party.
TW 20 (Day 25)	Mr Chong Wai Lee, Charles (Charles Chong)	Implicated Party. Brother of Chong Bun Bun.
TW 21 (Days 25 and 26)	Madam Becky Chong Bun Bun (Becky Chong)	Implicated Party. Sister of Charles Chong.
CW 22 (Day 26)	Mr Shum Chun Ying, Louie (Mr Shum)	Expert Witness for Charles Chong and Becky Chong.

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

Tribunal procedure:

40. 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.

41. 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.

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

Chapter 3

The law

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

"Insider Dealing" and "connected persons":

44. 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 Harbour Ring.

45. In the context of this Inquiry the Tribunal has had regard, first, 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 had been omitted):

> "(1) A person is connected with a corporation for the purposes of section 9 if, being an individual-
>
> (c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by virtue of-

> (i) any professional or business relationship existing between himself (or his employer …..) and that 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….

In the context of this Inquiry the primary allegation was that Sammy Tse was a connected person by virtue of the provisions of s 4(1)(d), in that as an employee of Hutchison, a company which had a business relationship with Harbour Ring, he had access to relevant information in relation to Harbour Ring, who are engaged in a contemplated transaction with Hutchison.

46. Save as to a submission that Sammy Tse did not, at appropriate times, have any relevant information, there was no dispute by any of the counsel for the implicated parties that Sammy Tse constituted, in terms of the definition, a person connected with Harbour Ring.

47. There was an issue, to be considered in Chapter 9 below, as to whether or not there was, at the appropriate time, in existence any relevant information to which Sammy Tse had access. There being no real argument that Sammy Tse was not a connected person, the essential preliminary issue, to be considered in Chapter 10 below, is whether or not he was in possession of any relevant information that might have existed, and if he was, when he came to be in possession of that relevant information.

48. Second, the Tribunal has had regard to the following provisions of s 9 of the Ordinance, (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 dealing 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 ….”

49. 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:

(i) whether or not, contrary to s 9(1)(a) of the Ordinance, Sammy Tse, being a connected person, and being in possession of relevant information which he knew to be relevant information in relation to Harbour Ring, counselled or procured Dennis Li, and/or Debbie Ng, and/or Charles Chong to deal in the listed securities of Harbour Ring, he knowing or having reasonable cause to believe that Dennis Li, and/or Debbie Ng, and/or Charles Chong would deal in those securities;

(ii) whether or not, contrary to s 9(1)(c) of the Ordinance, Sammy Tse, being a connected person, and being in possession of relevant information which he knew to be relevant information in relation to Harbour Ring, disclosed, directly or indirectly, that information to Dennis Li, and/or Debbie Ng, and/or Charles Chong, he knowing or having reasonable cause to believe that Dennis Li, and/or Debbie Ng, and/or Charles Chong would make use of the information for the purpose of dealing in, or

counselling or procuring others to deal in, the listed securities of Harbour Ring;

(iii) whether or not, contrary to s 9(1)(e) of the Ordinance, Dennis Li, being a person who had information which he knew to be relevant information in relation to Harbour Ring, which he received directly from Sammy Tse, a person whom he knew was connected with Harbour Ring and whom he had reasonable cause to believe held that information by virtue of being so connected, counselled or procured Debbie Ng and/or Charles Chong to deal in the securities of Harbour Ring;

(iv) whether or not, contrary to s 9(1)(e) of the Ordinance, Debbie Ng, being a person who had information which she knew to be relevant information in relation to Harbour Ring, which she received directly from Sammy Tse, or indirectly from Sammy Tse by way of Dennis Li, she knowing Sammy Tse to be connected with Harbour Ring, and having reasonable cause to believe that he held that information by virtue of being so connected, dealt in the securities of Harbour Ring;

(v) whether or not, contrary to s 9(1)(e) of the Ordinance, Debbie Ng, being a person who had information which she knew to be relevant information in relation to Harbour Ring, which she received directly from Sammy Tse, or indirectly through Dennis Li, she knowing Sammy Tse to be a person connected with Harbour Ring, and whom she had reasonable cause to believe held that information by virtue of being so connected, counselled or procured Chris Wong to deal in the securities of Harbour Ring;

(vi) whether or not, contrary to s 9(1)(e) of the Ordinance, Charles Chong, being a person who had information which he knew to be relevant information in relation to Harbour Ring, which he received directly from Sammy Tse, or indirectly from Sammy Tse by way of Dennis Li, he knowing Sammy Tse to be connected with Harbour Ring, and having reasonable cause to believe that he held that information by virtue of being so connected, dealt in the securities of Harbour Ring;

(vii) whether or not, contrary to s 9(1)(e) of the Ordinance, Charles Chong, being a person who had information which he knew to be relevant information in relation to Harbour Ring, which he received directly from Sammy Tse, or indirectly from Sammy Tse by way of Dennis Li, he knowing Sammy Tse to be connected with Harbour Ring, and whom he had reasonable cause to believe held that information by virtue of being so connected, counselled or procured Becky Chong to deal in the securities of Harbour Ring;

(viii) whether or not, contrary to s 9(1)(e) of the Ordinance, Becky Chong, being a person who had information which she knew to be relevant information in relation to Harbour Ring, which she received indirectly from Sammy Tse by way of Charles Chong, she knowing Sammy Tse to be connected with Harbour Ring, and having reasonable cause to believe that he held that information by virtue of being so connected, dealt in the securities of Harbour Ring;

(ix) whether or not, contrary to s 9(1)(e) of the Ordinance, Chris

Wong, being a person who had information which he knew to be relevant information in relation to Harbour Ring, which he received indirectly from Sammy Tse by way of Debbie Ng, he knowing Sammy Tse to be connected with Harbour Ring, and having reasonable cause to believe that he held that information by virtue of being so connected, dealt in the securities of Harbour Ring.

Dealing in listed securities:

50. What is "dealing in listed securities" is defined by s 6 of the Ordinance as follows:

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

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

Relevant information:

51. The submission of counsel for the Tribunal was that the following comprised the relevant information:

(a) ICG and Hutchison contemplated investing in Harbour Ring and using it as a vehicle for investment or to acquire other business-to-business companies, (information A);

(b) ICG contemplated using Harbour Ring for a back-door listing on the SEHK, (information B).

52. In simple terms, the case advanced by counsel for the Tribunal, was that Sammy Tse, in the course of his employment with Hutchison, had learned of the discussions between Hutchison and ICG, and that those discussions involved the potential acquisition of, or investment in Harbour Ring, and that the information that he had learned was relevant information which he had passed on to the other implicated parties.

53. 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 8 of this Report.

General Principles of Law:

Standard of Proof:

54. 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 paragraph quoted above from the Tribunal's decision."

55. 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:

56. 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.

57. 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.

58. 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.

59. 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."

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:

60. 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.

61. The Tribunal was aware of the fact that Sammy Tse, Dennis Li, Debbie Ng, Chris Wong, Charles Chong and Becky Chong had each been found to be insider dealers in the Vanda enquiry. Mr Chiu correctly pointed out to us that, prior to the commencement of the Vanda and Harbour Ring Inquiries, the Tribunal had considered hearing both matters together. In those circumstances those persons would have come to the Tribunal with unblemished records.

62. Bearing that in mind, and the very close proximity of the impugned transactions in the Vanda and Harbour Ring, the Tribunal accepted the submission that those persons should be placed in no worse a position than if the two inquiries had been held together. We accordingly

treated them as persons of previous good character in relation to insider dealing.

Considerations of Fact & Law:

63. 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.

64. 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.

65. 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."

66. 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 cases of each implicated party considered separately:

67. The Tribunal directed itself that the role of each implicated party should be considered separately, and that a finding of culpability or is narration of one did not necessarily mean that the same finding would be arrived at in respect of the other. It should be said however, that evidence relating to one implicated person's case was in many situations, 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 statements and records of interview of the implicated persons and other witnesses:

68. 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.

69. 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;"

70. 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.

71. In relation to Mr Shum, the expert called by Charles and Becky Chong, again we bore in mind his expertise, and we noted that while an independent expert, he was employed by the Chong's advisors.

Witnesses who lie:

72. In certain instances, to which we will refer in considering the

evidence, it is plain that in the course of their evidence some of the implicated parties were not truthful, in some cases with SFC investigators, and in other cases with us. Counsel for Dennis Li correctly reminded us of 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."

73. 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.

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

75. If we have concluded, or are not sure, that there was an innocent reason for a lie, then we have disregarded that lie. 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.

The question of delay:

76. Mr Mak and Mr Chiu 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 at the end of February and the beginning of March in the year 2000. The hearing did not begin until February 2007, and in April 2007 had to be adjourned, and did not resume until July 2008, finally finishing on 18 August 2008.

77. Quite properly, both 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.

78. That said, we do note that Becky Chong and Charles Chong were interviewed by the SFC in August and September 2000, only five months after the relevant events. At that time, each of them had present with them a legal advisor. We note too that Debbie Ng was first interviewed by the SFC in February 2001, and subsequently in August and September 2001. Present with her on each occasion were her legal advisers. The interviews of the other implicated parties all began no later than March 2001, and were completed by September 2001. They too all had legal

advisers present during the course of an interview by the SFC.

79. Each of the persons 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 acquisition of Harbour Ring shares.

80. 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 taken it into account.

Chapter 4

The Law as to Relevant Information

81. 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. The case advanced by counsel assisting was that the following comprised the relevant information:

(a) ICG and Hutchison contemplated investing in Harbour Ring and using it as a vehicle for investment or to acquire other business-to-business companies, (information A);

(b) ICG contemplated using Harbour Ring for a back-door listing on the SEHK, (information B).

Before we consider the factual circumstances as to these submissions, we consider the law as to "relevant information".

82. 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."

83. 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 Harbour Ring shares; and
>
> Third, the information would, if so known be likely to have a material effect on the price of Harbour Ring shares. Information of this type has been described as "price sensitive" information.

Specific Information:

84. 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 6-13.

85. We adopt the discussion as to specific information contained in the *Asia Orient Holdings Ltd Inquiry*[3], 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

[3] 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.

the Tribunal in *Firstone International Holdings Limited*[4], which formed the basis of the submission by counsel to the Tribunal.

86. 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 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 *Firstone International Holdings Limited* Inquiry[5], and adopted by the Tribunal in both the *Chinese Estates Holdings Limited* Inquiry[6], and the *Chinney Alliance Group Limited* Inquiry[7]. 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 conjecture[8].
>
> 79. For information to be characterised as "specific

[4] Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in Firstone International Holdings Limited Inquiry dated 8 July 2004, p 58.
[5] Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in Firstone International Holdings Limited Inquiry dated 8 July 2004, p 58.
[6] 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.
[7] 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.
[8] See *Chinese Estates*, (supra fn 6), at p 39.

information", there is no requirement that the information should be precise[9]. As was said by an earlier Tribunal[10]:

> "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 basis, precise information would be narrow, exact and definitive.[11]

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.[12] 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*"[13], Ms Hannigan gives a number of examples of specific or precise information. The clearest example of specific or precise information, and one which

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[9] 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.

[10] 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 at p 236.

[11] HC Debs, Session 1992-93, Standing Committee B, 10 June 1993 Col 174, cited in " Insider Dealing", 2nd Ed, Longman, Brenda Hannigan, p 63.

[12] See "Insider Dealing" (supra fn 11), at p 64-5.

[13] Op cite 12, at p 63.

> featured in the great majority of prosecutions under the English insider dealing legislation[14], 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."

Information not generally known:

87. 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".

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

89. 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.

Contemplated transactions:

90. The Ordinance specifically recognizes, in s 4(1)(d), that the relevant information may relate to an actual or a contemplated transaction.

[14] The Company Securities (Insider Dealing) Act 1985.

If the involvement of the corporation whose shares have been dealt with has not reached the stage of contemplating a transaction, then there can be no insider dealing.

91. Mr Mak and Mr Chiu both made the submission that relevant information could not exist until matters had reached the stage where the parties had an intention to negotiate a proposal with a view to achieving an identifiable goal, because it was not until that time that the parties can realistically be said to have a proposal in contemplation. Both argued that the time the alleged disclosure of information, or the relevant share acquisitions in Harbour Ring were made, it could not be said that the walls in existence a contemplated transaction.

92. The submission was equivalent to the submission made in the *Stime Watch International Holding Ltd* Inquiry[15]. It was the equivalent of the submission made in the *Asia Orient Holdings Ltd* Inquiry, that relevant information could not exist until matters had reached the stage where the probable consequence was that agreement would be successfully concluded. We reject that proposition.

93. In so doing, we adopt the reasoning of the Tribunal set out in the *Asia Orient Holdings Ltd* Inquiry, at paras 85-98 therein. It is accordingly appropriate, although it is again extensive, to set out that passage in full.

> *"Contemplated transactions:*
>
> 85. Mr Griffiths made the submission that relevant

[15] Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in Stime Watch International Holding Limited dated 14 February 2003 at pp 85-88.

information could not exist until matters had reached the stage where the probable consequence was that agreement would be successfully concluded between AOH and the shareholders of CIL[16]. We reject that proposition. Relevant information can exist at the stage when parties are merely contemplating, or negotiating a transaction.

86. In the view of the Tribunal the following citation from the *Stime Watch International Holding Limited* Inquiry[17] sets out the correct position:

> "It has been suggested before other Tribunals in Hong Kong on occasion that before information concerning a contemplated transaction can be held to be sufficiently specific there must be demonstrated a probability that the transaction will proceed.
>
> It seems to this Tribunal that there can be no additional requirement that information, otherwise specific, which relates to a proposed transaction can only be specific if, by some objective or even subjective measure, that proposed transaction is more probable than not to proceed or come to fruition.
>
> In our respectful view such a requirement would tend to defeat the intended operation of the legislation. That is because in large part instances of insider dealing relate to transactions which are inchoate within the corporation's purview. That is, they are under negotiation and subject to final approval or agreement. In many cases, the chances as to whether or not the transaction will be finalised or agreed cannot be given anything but the broadest assessment. The probabilities of the transaction being finalised or agreed may in many cases be simply unknown or unable to be quantified or assessed in any meaningful commercial way, yet the information concerning the commercial negotiations or the commercial approach which has taken place or been made may well in some circumstances so far as the proposed transaction is concerned be quite detailed.
>
> The requirement that information be specific relates to the

[16] See "Outline of Final Argument on behalf of Mr Thomas Lau" dated 5 July 2006, at para 21, and oral submission of counsel for Mr Lau, Transcript, Day 18, p 32.6-33.13; 35.9-11.

[17] Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in Stime Watch International Holding Limited dated 14 February 2003 at pp 85-8.

characteristics and contents of the information concerning the company's affairs itself and does not logically depend on whether or not the subject matter of the information, if a proposed course of action, has any particular likelihood of fruition or success. There may be a huge number of variables extrinsic to the actual information which may have the potential to affect the likelihood of a proposed course of conduct coming to fruition.

It may well be, of course, that the lack of particularisation or specificity in information concerning a proposed transaction at a particular point of time is reflected by a correspondingly low probability, at that point of time, of the project or transaction being brought into being. But that is more to do with a commonsensical commercial reality that the more detailed and better researched a proposed transaction may come to be the correspondingly greater may be the probability of its achieving fruition.

The mere fact that a transaction is proposed, contemplated, or under negotiation, or is subject to preliminary discussions only would not and should not take it outside the provisions of s 8 of the Ordinance and therefore outside the protections our legislation gives to the investing public.

As stated by Brenda Hannigan in "Insider Dealing" (Kluwer Law 1988) at p 54:

'Will knowledge of preliminary steps be sufficiently specific? What if…. an individual is found to know of a chain of events the most probable consequence of which is a takeover bid? Will that suffice? Both instances would seem to be within the legislation, for while unfounded rumours and the vaguest hopes would not be sufficient to amount to unpublished price sensitive information, contemplated acts as well as actual events are certainly within the legislation.'

Her comments related to the English Company Securities (Insider Dealing) Act of 1985 but are germane to our considerations as section 10 of that legislation required that the "unpublished price sensitive information" with which she was concerned related to "specific" matters.

She goes on to say regarding merely contemplated

transactions:

> 'After all, the whole point of insider dealing frequently is to deal while the transaction is only contemplated, for once it has actually occurred the market is likely to be aware of it and will move to reflect that fact in the price, thereby preventing any profiting by insiders.'
>
> In this Tribunal's view the fact that a transaction or project is at merely an introductory or preliminary stage is not decisive as to whether information concerning that proposed transaction or project is or can be specific. It may well be one of the factors to be taken into account and indeed may in some cases be an important factor. Nor, logically, are the probabilities of the transaction or project coming to fruition decisive.
>
> It is the nature of the information which determines whether it is specific for the purposes of s 8 of the Ordinance, not the commercial probabilities or perceived probabilities of the subject matter reaching fruition."

87. The two passages cited from the first edition of Ms Hannigan's book, Insider Dealing, are not repeated in the current edition. However, other cases cited in the current edition make it clear that the mere possibility of something happening can constitute specific information.

88. At p 61 of the current edition, Ms Hannigan cites *R v Naerger*[18] where a former director of WH Smith pleaded guilty[19] to dealing in securities of Martins the Newsagents at a time when he knew WH Smith was considering making a takeover bid for the company. At p 61 and 64 of the current edition, Ms Hannigan refers to the *Collier*[20] case. In that case, Collier, a merchant banker, dealt in the shares of Cadbury Schweppes while knowing that General Cinema, a client, had designs on obtaining a stake in, and possibly making a bid for, the company. This contemplated possibility came partly to fruition in November 1987 when General Cinema did launch a dawn raid on Cadbury Schweppes.

89. Both these decisions make it abundantly clear that, if

[18] Unreported, but see *The Guardian*, 30 April 1986.
[19] Under the Company Securities (Insider Dealing) Act 1985, the predecessor legislation to the Criminal Justice Act 1993 which now deals with insider dealing in England.
[20] Unreported, but see *Financial Times*, 2 July 1987.

sufficiently specific and price sensitive, information as to a contemplated transaction may constitute relevant information. In *Naerger*, the knowledge was not of the probability of a successfully included agreement, but merely that a takeover bid was under consideration. In *Collier*, the knowledge was of information at a similar level, merely "designs" and the possibility of a bid.

90. Notwithstanding the fact that the two citations are not repeated in the current edition of Ms Hannigan's work, we are satisfied that the foregoing statement in *Stime Watch*, including the citations made, correctly sets out the law in relation to the proposition that information cannot be sufficiently specific unless there is demonstrated a commercial probability that the transaction will proceed.

91. Mr Griffiths argued, relying upon the decisions of the Insider Dealing Tribunal in *Firstone*[21] and *Easy Concepts*[22], that knowledge of a possible commercial agreement was not sufficient to amount to specific information unless there existed "the probable consequence that the agreement would be successfully concluded"[23].

92. The following passage from Firstone[24] is relevant:

> "For the purposes of determining issues in the present Inquiry relating to the specific nature of information as required by s 8 of our legislation, the proposed placement whether described as under contemplation or at a preliminary stage of negotiation must, in our view, have more substance than merely being at the stage of a vague exchange of ideas or a "fishing expedition". Where negotiations or contacts have occurred, as in the present case, there must be a substantial commercial reality to such negotiations which goes beyond a mere exploratory testing of the waters and which is at a more concrete stage where the parties have an intent to negotiate with a realistic view to achieving an identifiable goal.
>
> ……
>
> In our view, there is no need to impose any additional

[21] Supra fn 5.
[22] Supra fn 3.
[23] Counsel's "Outline of Final Argument on behalf of Thomas Lau", § 21(a) & 22(a).
[24] Supra fn 5 at 60-61.

> requirement that there be any foresight that the transaction will probably all likely come to fruition before information concerning the contemplated transaction becomes sufficiently specific."

It is not without significance, that immediately following the foregoing citation, the Tribunal adopted the reasoning set out in *Stime Watch*, and cited above in para 86.

93. In *Easy Concepts*[25] the Tribunal adopted the reasoning in *Firstone*, holding that there must be a substantial commercial reality to such negotiations which goes beyond a merely exploratory testing of the waters and which is at a more concrete stage, where the parties have an intent to negotiate with a realistic view to achieving an identifiable goal. In our view that is a threshold which must be crossed before the issue of specificity can be determined.

94. In our view, the effect of Mr Griffiths' submission was to elevate the concept of "an intent to negotiate with a realistic view to achieving an identifiable goal", to the stage having been reached where there existed "a probable consequence that the agreement would be successfully concluded". In our view that proposition is incorrect as a matter of law.

95. Parties may negotiate with a realistic view to achieving an identifiable goal, but not yet have reached the stage where there will be a probable consequence that the agreement would be successfully concluded. We are satisfied that it will be sufficient for information in relation to negotiations to be specific if there is a substantial commercial reality to such negotiations, and the parties are intending to negotiate with a realistic view to achieving an identifiable goal. If a transaction, event or matter may be identified and its nature coherently described and understood, whether or not fine or precise details, or even significant issues, are yet to be negotiated, and negotiations are underway, the circumstances may be sufficiently specific for information concerning the contemplated transaction to be relevant information. Whether that is so in any case will be a matter of fact.

96. An act of insider dealing is no less insider dealing if the relevant information relates to a contemplated transaction that, for some reason, is not concluded. Mr Witts agreed with that proposition.

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[25] Supra, fn 3, p 47.

> 97. It must be remembered that an insider dealer who has advance knowledge of a contemplated transaction, should he choose to act upon that knowledge, takes a risk that in acquiring or disposing of the stock involved, the transaction will be completed. If it is, his risk is justified, and his profit, or avoidance of loss, will be achieved. It may well be that at the time the dealing takes place major commercial terms and matters, even price, are still to be negotiated.
>
> 98. But the transaction may be never concluded. That is the risk that is taken. If the transaction is not concluded, the act of purchase or sale of stock, if predicated on relevant information, is no less an act of insider dealing. If the transaction is concluded, the resultant adjustment in the share price from the conclusion of the transaction serves simply to underline the price sensitive nature of the relevant information and to assist in determining both the fact of the existence of relevant information and any profit made or loss avoided for penalty purposes"

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

94. This question is principally relevant in relation to certain of the allegations against Dennis Li and Debbie Ng and Charles Chong.

95. The law is quite clear that where a person is connected with a corporation and is in possession of relevant information in relation to that corporation, and he discloses that information to another person, knowing or having reasonable cause to believe that that other person will make use of the information for the purpose of dealing in securities of the corporation, then insider dealing contrary to s 9(1)(a), (b) or (c), has taken place on the part person who held the relevant information. For convenience, we refer to this type of disclosure as "connected person disclosure".

96. But what of a recipient of relevant information who merely discloses that information to another person, and that other person in turn

discloses that information to yet a third person. For convenience, we will refer to such disclosure as "recipient disclosure".

97. It is recipient disclosure that is alleged against Dennis Li, and also as part of the allegations against Debbie Ng and Charles Chong. The allegations of recipient disclosure against Dennis Li, Debbie Ng and Charles Chong are set out in paragraph 49 (iii), (v), and (vii) above.

98. The Ordinance draws an important distinction between connected person disclosure and recipient disclosure. In respect of connected person disclosure it is sufficient for that disclosure to constitute insider dealing if the person disclosing the relevant information knows or has reasonable cause to believe that the recipient of the information may deal in the subject listed securities: see s 9(1)(a), (b) and (c).

99. Recipient disclosure is dealt with in s 9(1)(e) and (f). We have set out s 9(1)(e) above in paragraph 48, as that is the relevant provision in these proceedings. Both s 9(1)(e) and (f) require that, in order for there to be insider dealing by the recipient of relevant information, the recipient must "counsel or procure" the person to whom he discloses the information, to deal in the securities. It is not enough that the recipient may merely know or have reasonable cause to believe that the person to whom he discloses the information will deal in the subject listed securities.

100. We accept Mr Chain's submission in relation to Dennis Li, Mr Mak's submission that in relation to Debbie Ng's alleged insider dealing by giving information to Chris Wong, and Mr Chiu's submission in relation to Charles Chong's alleged insider dealing by giving information to Becky

Chong, that case against each them in that respect, can only be a case of counselling.

101. Consequently, it is not enough for counsel to the Tribunal to establish only that both Dennis Li and Debbie Ng obtained relevant information from Sammy Tse, knowing that Sammy Tse was a connected person, and knowing that information to be relevant information, and that they disclosed that relevant information, respectively, Dennis Li to Debbie Ng and Charles Chong, Debbie Ng to Chris Wong and Charles Chong to Becky Chong. In his final submission to us, counsel to the Tribunal described the acts of Dennis Li, Debbie Ng and Charles Chong in this respect to be acts of "tipping". That is not enough. There must also be proved on the part of each of Dennis Li, Debbie Ng, and Charles Chong, an act of counselling of the particular party who dealt in the Harbour Ring shares, to deal in the shares, as a result of information received.

102. We also accept the submission that the meaning of the expression "counsel" 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."

103. Thus, it will not be sufficient to establish insider dealing on the part of Dennis Li, Debbie Ng and Charles Chong, on the allegations of recipient disclosure, if all that can be established is that they 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.

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 his connection, and acts upon that information, his action in dealing in the securities will not constitute insider dealing.

105. 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 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 relevance of the C & T and Vanda transactions

106. We have already referred to the involvement of the implicated parties in the Vanda transaction. Counsel for the Tribunal sought to put in, as part of the evidence to be considered in this Inquiry, evidence of the involvement of Sammy Tse in two transactions, Vanda, both occurring prior to Harbour Ring. In both of those transactions, Sammy Tse, in his capacity as an employee of Hutchison, was involved. The evidence put in also included evidence as to the juxtaposition between Sammy Tse's involvement in the Vanda negotiations, telephone calls between the implicated parties, and evidence as to the share dealings by the implicated parties.

107. In the first, in early January 2000, Sammy Tse was involved in negotiations between Hutchison and Computer and Technologies Holdings Ltd, (C & T), which resulted in Hutchison taking an interest in C & T in the form of convertible bonds. Sammy Tse was the principal negotiator in the transaction.

108. Following the announcement of Hutchison's involvement in C & T, the value of C & T shares rose by some 22%.

109. The second was the Vanda transaction. Again, Hutchison, and this time the Foundation, acquired 28% of the enlarged share capital of Vanda, by way of an issue of convertible bonds and share options. This transaction was announced on 21 February 2000. On 14 February 2000

Sammy Tse had attended a meeting with executives of Vanda. Prior to the meeting he was told of the general topic, that Hutchison was possibly investing in Vanda, and business opportunities would have to be identified. He was told that there would be concrete business cooperation, not just injection of capital, so both parties had to identify the areas of cooperation.

110. He attended the meeting, where he was told by a Vanda representative that the conditions that had been agreed with Canning Fok and Peregrine, (who were financial advisers in the transaction) were the same as those which had been used in the C & T transaction.

111. Between 15 February and 17 February 2000, the same period when Sammy Tse was involved in the negotiations leading to the subscription and joint-venture between Vanda and Hutchison, Debbie Ng, Chris Wong, Charles Chong, and Becky Chong, all purchased Vanda shares. During that period there were a number of telephone calls between Sammy Tse and Debbie Ng, Sammy Tse and Charles Chong, and Debbie Ng and Chris Wong.

112. Between 15 and 17 February the turnover in Vanda shares rose from 27.5 million to 37.6 million, and the price rose from $3.72 to $5.70. On 18 February 2000, trading in Vanda shares was suspended.

113. On 22 February 2000, following the announcement of the agreement between Hutchison and Vanda, upon the resumption of trading, the share price of Vanda rose 33% to a high of $8.60, before closing at $7.90, an increase of 28.9%. At the same time, the turnover increased to 81.5 million shares, an increase of 39%.

114. Counsel for the Tribunal sought to adduce evidence of the role played by Sammy Tse in the C & T transaction, the role played by Sammy Tse in the Vanda transaction, evidence of the turnover and price of Vanda shares during the relevant period of that transaction, evidence of the purchase of Vanda shares by five of the implicated parties, evidence of telephone communications amongst Sammy Tse and the five implicated parties who purchased Vanda shares during the relevant period of that transaction, and the circumstances and explanation for the purchase of Vanda shares by the five implicated parties.

115. The case for counsel for the Tribunal was that the evidence sought to be adduced was relevant the purpose of demonstrating that, having regard to the role of Sammy Tse in Hutchison, it was more likely than not that he would have been in possession of relevant information at the appropriate times. It was argued that the evidence was also relevant to the purpose of demonstrating that the implicated parties who purchased Harbour Ring shares, and who also purchased Vanda shares, did so only after, on each occasion, a time when Sammy Tse received information concerning business transactions between his employer Hutchison and the company whose shares were the subject of the dealings.

116. The evidence, it was argued further, tended to rebut any argument that it was a mere coincidence that the implicated parties had purchased Harbour Ring shares after Sammy Tse become involved in negotiations which provided him with relevant information concerning the Harbour Ring transaction.

117. The evidence also tended to rebut, it was argued, an assertion that the series of telephone calls between the relevant implicated parties

was a mere coincidence. Finally, it was argued that the evidence was admissible as evidence of a "system".

118. We were satisfied, for the reasons giving in a ruling delivered on Tuesday 27 February 2007, that the evidence sought to be admitted was relevant and admissible and we permitted that evidence to be adduced.

119. There was no dispute as to the factual matters that were adduced by the additional evidence. The argument made on behalf of the implicated parties was that there was no probative value in that evidence.

120. The evidence was essentially evidence of similar facts. For such evidence to be admissible it must have sufficient probative force. Counsel for Debbie Ng and Charles Chong and Becky Chong, argued that the prejudicial nature of the evidence outweighed its probative force.

121. In reaching our conclusion we had particular regard to the sequence of events. As far as Sammy Tse was concerned this was the third in a series of events, and as far as the other implicated parties were concerned, this was the second in a series of events. That the C & T and Vanda transactions had occurred prior to Harbour Ring, and in close proximity to Harbour Ring, were factors which weighed in favour of the admissibility of the evidence.

122. We are satisfied that to assert that it was a mere coincidence that Sammy Tse was involved in the C & T, Vanda and Harbour Ring transactions, and that consequently it was unlikely that he would be in possession of relevant information would be quite contradictory to common sense.

123. We were equally satisfied that to assert that it was a mere coincidence that following the extent of the telephone conversations given evidence between the various implicated parties, and the timing of the acquisition by the implicated parties of the shares in both Vanda and Harbour Ring, it was a mere coincidence that the implicated parties had acquired shares in both Vanda and Harbour Ring would be equally completely contradictory to common sense.

124. We were accordingly satisfied that the probative value of the evidence outweighed any prejudicial nature that might come with it. The evidence was not merely evidence of bad character on the part of the implicated parties, or any particular disposition on their part to engage in insider dealing. It was evidence which we were satisfied was capable of tending to persuade us that an informal system had developed and that consequently insider dealing may have taken place. There was such a striking similarity between the circumstances in which the acquisition of Vanda shares were made, and the circumstances in which the acquisition of Harbour Ring shares were made, that the evidence was capable of establishing a significant connection, going beyond a mere propensity or coincidence.

125. At the end of the day, when we came to weigh the evidence of the circumstances surrounding the acquisition of Harbour Ring shares, we found that the probative value and cogency of the Vanda evidence was such that there could be no other reasonable explanation for the whole of that conduct than that those involved in the acquisition of Vanda shares had also acquired Harbour Ring shares as a result of insider dealing.

126. Sensibly, no assertion was made for Sammy Tse that it would

be improbable that he would have been in receipt of relevant information. The level of his involvement in the C & T and Vanda transactions, and his plain acquisition of information that might constitute relevant information prior to the announcement of the transactions, and, in respect of Vanda, prior to the suspension of trading in the shares, and made it abundantly plain that such an assertion would have been futile.

127. The submission was made that Sammy Tse was not sufficiently involved in the transactions, at relevant times, to have been able to come into possession of relevant information. When we came to consider Sammy Tse's assertion that he did not have relevant information we weighed into the balance his involvement in the C & T and Vanda transactions, and found that that involvement made it much more likely that he would have been sufficiently involved in the transaction to be in receipt of relevant information in relation to Harbour Ring.

128. The involvement of Sammy Tse in all three transactions was of course not evidence that any of the other implicated parties had received relevant information from Sammy Tse. It was however evidence that tended to establish that Sammy Tse was in possession of relevant information, and in those circumstances it would not be open to the other implicated parties to deny that they had received relevant information from Sammy Tse on the basis that he was not in possession of relevant information. We accepted that the fact of communication had to be separately established.

129. We record that we paid careful regard to the fact that Dennis Li did not trade in Harbour Ring shares, but that the allegation against him was that he had disseminated relevant information to Debbie Ng or Charles

Chong. The Vanda evidence therefore, in his case, was limited to rebut in any suggestion that it might be a mere coincidence that following telephone conversations or meetings at relevant times between Sammy Tse and Dennis Li, there were subsequent telephone conversations between Dennis Li and Debbie Ng, or Dennis Li and Charles Chong, and that subsequently Debbie Ng purchased Harbour Ring shares.

Chapter 6

The companies and personalities primarily involved in the Inquiry

The Period of "High-Tech" Euphoria:

130. It is relevant to note that the events that are the subject of this Inquiry occurred during a phenomenon that was taking place in the months before and after January 2000, when many stock markets throughout the world, including Hong Kong, were experiencing a period of euphoria in relation to technology stocks. The period has became known as the "dot com boom", a period of stock market euphoria in which the shares of almost every company involved in internet activity gained a considerable following.

131. During this period, a number of second or third line companies announced investment in, or proposals to invest in, technology, telecommunications or Internet businesses. These businesses have collectively been styled "high-tech" businesses. Ms Fung was able to compile a list of some 34 companies who made announcements regarding proposed investments or intentions to invest in projects involving the high-tech business, or issued new shares to high-tech companies in the two month period of January and February 2000.

132. It is relevant to set out in full Ms Fung's conclusion[26], which we accept:

[26] TB 7, p. 7, para 27.

> "It can be seen that during the first two months of 2000, the investing public's euphoria towards the high-tech industry was so overwhelming that if there was a whiff of information that a listed entity was about to be involved in the high-tech business, especially if this involves the take-over of the controlling interest of the companies by high-tech company, the investing public would chase the stock in a frenzy, resulting in sharp jumps in the stock price. Thus, anyone in possession of information that a listed entity was about to be involved in the high-tech business, or about to be taken over by a high-tech company, ahead of the public announcement would most likely be ensured of huge profits by buying into that stock."

133. Mr Shum, the expert witness for Charles and Becky Chong agreed with this conclusion.

Harbour Ring International Holdings Limited:

134. Harbour Ring had been listed on the Stock Exchange of Hong Kong since 1 July 1972. The most recent annual report available, prior to the events in question, is the Interim Report for the year ended 30 June 1999[27]. The Chairman of Directors and Executive Chairman of Harbour Ring was Dr Luk Chung Lam. The Executive Managing director was Mr Ko Yuet Ming, and the Executive directors were Mr Tam Yue Man, and Mr Lewis Luk Tei, the son of Dr Luk. Mr Canning Fok Kin Ming, a senior Hutchison Whampoa executive was a non-executive director. Harbour Ring was principally engaged in manufacturing and trading children's toys, but was also engaged in property investment.

135. Harbour Ring were advised by BNP Paribas Peregrine, represented in the transaction principally by Francis Leung, and subsequently by Ms Isadora Li.

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[27] TB 7 pp 34-41, Interim Report for y/e 30.6.99.

Hutchison and ICG:

136. Hutchison is a well-known company in Hong Kong, having extensive and diverse interests. One of the business strategies of Hutchison prior to these events was, to use the expression of its Group Managing Director, Canning Fok, to "digitalise its 'bricks and mortar' business including port business, Park N Shop, property, etc into tech business".

137. Hutchison had earlier recognised the potential of high-tech business, and had established a section which was concerned with technology business. The principal company in this section was E-Commerce Resources Ltd (latterly Hutchison E-Commerce Ltd). Sammy Tse was the CEO of this company.

138. ICG, (Internet Capital Group), is an American technology company, co-founded by Mr Kenneth Fox, Mr Todd Hewlin, Mr Miko Shinoda and Mr Victor Hwang. Its managing director was Victor Hwang, who was subsequently to become the CEO and Deputy Chairman of ICG Asia Limited.

139. ICG's financial advisors were Goldman Sachs (Asia) LLC, (Goldman Sachs). The principle persons at Goldman Sachs who gave advice were Mr Timothy Dattels, and Shirley Fung.

The implicated parties:

140. The implicated parties comprise a group of people who were either friends of Sammy Tse, or friends of those friends.

141. Dennis Li was employed in the garment export business and had a close relationship with Sammy Tse. Sammy Tse described that relationship as "best friends", Dennis Li described the relationship as "quite good friends". The relationship was such that on one occasion Dennis Li borrowed $500,000 from Sammy Tse to purchase Vanda shares. Dennis Li knew that Sammy Tse was CEO of Hutchison E-Commerce.

142. Debbie Ng was 17 years old at the time of these events. She was unemployed, although she said she did part-time work giving piano lessons, and said that she earned some money dealing in shares. She said that her income was about $10,000 a month. She had met Sammy Tse in 1999, and said that she did not know him very well. Both she and Sammy Tse asserted that she did not know of Sammy Tse's involvement with Hutchison E-Commerce.

143. Dennis Li also knew Debbie Ng. They had been introduced by Sammy Tse, and became good friends. Dennis Li said that she treated him like an elder brother. Their relationship was such that in February 2000, Dennis Li had asked Debbie Ng to purchase $500,000 worth of Vanda stock, and gave her the funds, borrowed from Sammy Tse, to enable the purchase to be made.

144. Charles Chong and Sammy Tse met through the introduction of Dennis Li at around the end of 1999 or beginning of 2000. Both said that any contact between them was restricted to matters about a housing estate known as Deer Hill Bay Estate, to which Sammy Tse had recently moved, and in which both lived. Charles Chong was in the garment business. He had previously been a colleague of Dennis Li.

145. Becky Chong, Charles Chong's sister, knew Dennis Li through her brother. Becky Chong occupied a good proportion of her time in following the share market and in securities trading.

146. Chris Wong was a director of a company known as Orchid Computer Embroidery Ltd at the time of the share purchases. He was a friend of Debbie Ng, but did not know Sammy Tse. The relationship between them was such that on one occasion Chris Wong loaned Debbie Ng $1 million.

Other key personalities:

147. Fong Long is Debbie Ng's mother. At her daughter's request she opened security accounts in her own name with South Capital Brokerage Ltd, (about August 1999), and Taiwan Concorde Capital Securities (Hong Kong) Ltd, (in September 1999). These accounts were opened to enable Debbie Ng, then aged only 17, to conduct share trading. Fong Long did not place any orders herself and had no knowledge of the stocks were traded. Debbie Ng accepts that all trading conducted in Fong Long's accounts belonged to herself.

148. James Shuen, formerly a lover of Debbie Ng, held a share trading account at Masterlink Securities Limited. Debbie Ng conducted share trading through that account, with the agreement of James Shuen.

149. Central to the case for counsel for the Tribunal were the number of telephone conversations between the various implicated parties at relevant times. At Annex D is a table, in its final version, prepared by counsel for the Tribunal setting out the various telephone conversations and

calls that were evidenced by mobile telephone records. There was no dispute that this table reflected the evidence contained in the mobile telephone records, which were admitted.

Chapter 7

The events leading to the impugned share dealing

The background:

150. The most recent annual report of Harbour Ring, prior to these events, showed that for the six months ended 30 June 1999, turnover of the company had reduced compared with the previous year's corresponding period, from $616.7 million to $560 million. However the operating profit had recovered from a loss of $9.3 million for that period in the previous year, to $26.3 million profit.

151. The chairman's report noted that the Group's strength lay in being one of the largest manufacturers of toys in the world, commanding a high production capacity. The report recognised that at that time world markets were eagerly embracing anything electronic, and that "interactiveness" had become the buzzword for many types of products. With a degree of foresight, the chairman had this to say in the report about the future outlook[28]:

> "As an original equipment manufacturer, the Group has always prided itself as being able to discover and tightly adhere to market trends in order to excel. The Group will continue to diverse its product mix with a special focus on combining its niche in high-volume, mass manufacturing with electronic interactiveness.
>
> It is almost certain that the coming decade will demand both innovation and creative expertise be incorporated into toys manufacturing. The Group recognises this trend and has initiated

[28] TB, 7, p 37.

> more cooperation with research departments of local tertiary education institutes with the view of developing innovative designs and procedures in all aspects of production. At the same time, the Group will also place great emphasis in upgrading its technical skills." (sic)

152. During late 1999, a significant aspect of Hutchison's business had been directed towards the very rapidly expanding technology sector, which became the so-called dot-com boom.

153. As part of this strategy Hutchison had been successful in introducing a Japanese company, NTT DoCoMo into its mobile phone business. With the "dot-com" boom flourishing at the time Hutchison was seeking opportunities to explore business opportunities in the computer/technology area. As part of that exploration, McKinsey & Company Inc, a firm of consultants, were instructed to investigate opportunities.

Mid February 2000:

154. As a result of that investigation, a document, known as an information pack, was prepared by McKinsey, and supplied to Hutchison. Through that, Hutchison became aware of a US company, Internet Capital Group (ICG). The information pack identified ICG as a successful US company that was "seeking an Asian operating partner to hunt, hire and build successful B2B (business-to-business) companies" in the Asian region.

155. A second information pack addressed the question as to how Hutchison and ICG could work together. Although this information pack did not refer specifically to the possible acquisition of a listed company in

Hong Kong, or to any particular company, in addressing the question as to how Hutchison and ICG could work together it stated:

"Hutchison to form a JV with ICG to form 'ICG Asia'."

The expression "JV" refers to a Joint Venture, which may take a number of forms, including the issue of convertible notes, as in C & T, or Vanda, or share options, as in Vanda, or a back-door listing. All of these options were likely to lead to an increase in the value of the shares of a listed company, once the involvement of a major investor like Hutchinson or ICG became known to the investing public.

156. The information packs were received by Hutchison in mid February 2000. The contact point in Hutchison for McKinsey was Sammy Tse, and Mr Ian Wade, of A S Watson Co Ltd, another Hutchison subsidiary. Following receipt of the information packs, Sammy Tse prepared a memo dated 17 February 2000, (originally drafted for him by Mr Tian of McKinsey), addressed to Canning Fok, to enable Canning Fok to prepare for a meeting in California with ICG.

157. Subsequently in mid-debris 2000, Canning Fok went to USA, with Michelle Chan the Executive Director of E-commerce Resources Ltd where he met with Victor Hwang of ICG. Also present was Mr Timothy Dattels, of Goldman Sachs, who had arranged the meeting on behalf of Canning Fok. There was a general discussion at the meeting about the two companies working together in the technology or B2B field in Asia, and the different ways in which they could work together. It is not in dispute that in the course of this discussion, the concept of a "backdoor listing", that is

the acquisition of an existing public company as a speedy method to achieve listing on the SEHK, was discussed.

22 February 2000:

158. Canning Fok returned to Hong Kong, and on 22 February 2000, met with Francis Leung, the Group Chief Executive Officer of BNP Paribas Peregrine. In the course of the meeting Francis Leung mentioned Harbour Ring as a potential target for Hutchison to join in business with what Canning Fok had described as "USA companies". It is likely that Francis Leung mentioned other companies as well. Canning Fok asked Francis Leung to prepare a proposal in respect of a share subscription, using Harbour Ring as the target. That proposal was received by Canning Fok on 22 February 2000.

159. Francis Leung had previously met with Dr Luk and Lewis Luk on 6 January 2000, and in the course of that meeting had suggested that because Harbour Ring was not an actively traded stock, a backdoor listing by a major shareholder would benefit both Harbour Ring and its shareholders personally.

24 February 2000:

160. On 24 February 2000, Canning Fok attended an afternoon meeting together with Michelle Chan and Susan Chow, (Hutchison Deputy Group Managing Director). The meeting took place, beginning some time between 4 p.m. and 4:30 p.m. Also present at the meeting were representatives from Goldman Sachs and Dr Luk and Lewis Luk. At the

meeting Canning Fok disclosed to those present that he had just returned from the United States, having met with ICG.

161. There is an issue, to be resolved below, as to whether Sammy Tse attended this meeting.

162. Lewis Luk's evidence, which was not disputed, was that at that meeting Canning Fok discussed collaboration between Hutchison, ICG and Harbour Ring. Although the precise form of collaboration was not discussed in detail, the Luk's had already discussed the possible opportunity of a backdoor listing with Francis Leung. Lewis Luk understood that the meeting was to determine whether Harbour Ring was interested in "joining hands" with a US Internet companies such as ICG. Plainly, a backdoor listing would be one means of joining hands. The Luk's expressed interest in the matter, and Canning Fok said that there would be a meeting with the ICG people in Hong Kong in the next few days.

Was Sammy Tse present on 24 February 2000:

163. Lewis Luk subsequently prepared a list of those present at the meeting. The list did not include Sammy Tse. Michelle Chan also subsequently prepared a list of the attendees, which did not include Sammy Tse. Her subsequent evidence however was that Sammy Tse was present.

164. Sammy Tse denied being present at the meeting. His evidence was that he had left Hutchison House to go to another meeting at Exchange Square. It is clear that he was in Hutchison House, with Canning Fok, at

3:30 p.m. on that day, because he attended a meeting with Canning Fok and Sir John Swaine at that time.

165. As part of the evidence in this respect Sammy Tse's Telephone records were examined. They are inconclusive as to his whereabouts between 4:45 p.m. and 5:45 p.m. because the cell location is not recalled. He had to attend a meeting late that afternoon in Exchange Square in Central, and we are satisfied that he did attend a meeting. But for the reasons which we subsequently set out we reject the proposition that he left Hutchison House prior to the commencement of the meeting and so could not have attended the meeting.

166. The meeting in question began well prior to the meeting he was due to attend in Exchange Square and he has been unable to point to any particular reason why he might have left Hutchison House so long before the Exchange Square meeting.

167. Michelle Chan's evidence was that she attended an afternoon meeting with Canning Fok, Francis Leung, Goldman Sachs representatives and Lewis Luk, at which Sammy Tse was present. She said that she and Sammy Tse had waited outside the meeting room, in an ante-room and had been called into the meeting.

168. She was unsure of the date of that meeting, and it is plain that Francis Leung was absent from Hong Kong on 24 February 2000. But it is plain that the meeting she refers to was the meeting on the afternoon of 24 February 2000, as that was the only afternoon meeting in which she was present with both Canning Fok and Lewis Luk, and also with the representatives of Goldman Sachs. We are satisfied that her recollection of

the presence of Francis Leung at that meeting was mistaken. We are satisfied that her recollection of her own presence at the meeting, at which Canning Fok, representatives from Goldman Sachs and Lewis Luk were present, is not mistaken, and may be accepted.

169. Michelle Chan's recollection as to Sammy Tse's presence at that meeting is precise to the extent that she recalls being with him in an anteroom as they both waited to be called into the meeting. Michelle Chan's working relationship with Sammy Tse was such that she would have discussed business development, including the proposed collaboration with ICG, with him as a CEO of the e-commerce department. Their interaction involved the exploration of new business opportunities. They had had lunch together, and with others in a meeting on that day. It needs to be remembered that Sammy Tse received the information packs from McKinsey, and had been instrumental in preparing the memorandum for Canning Fok prior to his departure to the United States.

170. In the whole of those circumstances we find it inevitable, and natural, that Michelle Chan and Sammy Tse would have discussed the trip to the USA and the meeting with ICG. That discussion would inevitably have touched upon the nature of the collaboration between Hutchison and ICG.

171. Michelle Chan and Sammy Tse had a specific business reason to discuss these matters, namely their joint involvement in the development of the Hutchison e-commerce business. The relationship between them in respect of new business development was significant. It is highly unlikely in those circumstances that they would not have discussed progress on the

transaction with ICG, which inevitably would have led to discussion as to the method of financing.

172. Canning Fok did not recall Sammy Tse being present at the meeting and said that he would be surprised if Sammy Tse was present. But that opinion is inconsistent with the whole of the evidence. It is entirely logical that Sammy Tse should have been at that meeting. He had been involved from a very early stage as the "point man" between McKinsey and Hutchison in respect of the preparation of the information packs. The draft memorandum prepared for him by Mr Tian of McKinsey on 17 February 2000, had anticipated Sammy Tse's presence at meetings when ICG came to Hong Kong subsequently to meet with Hutchison. Sammy Tse was plainly deeply involved in the matter and his presence at the meeting on 24 February 2000 is not at all surprising, but instead entirely logical and probable.

173. The extent of Sammy Tse's involvement in the ICG matter may be seen from his evidence that subsequently, on 26 February, he and Michelle Chan met together with representatives of another company being considered by Hutchison as an alternative to ICG. Sammy Tse's evidence was that he preferred that company. If Sammy Tse was meeting with other companies, as alternatives to ICG, it is entirely logical that he should have met also with Harbour Ring.

174. Having weighed all the evidence we accept the evidence of Michelle Chan that Sammy Tse was present at the meeting on 24 February 2000, at which it is plain that Harbour Ring was introduced as the potential vehicle for ICG and Hutchison to work together in respect of a backdoor listing.

28 February 2000:

175. The next relevant meeting took place on the morning of 28 February 2000. There is no doubt that Sammy Tse attended this meeting. It was marked in his diary, and he admitted that he attended the meeting. Although his presence is not listed in any chronology, and was challenged by counsel for Debbie Ng in cross-examination, the evidence that he was in attendance at that meeting is overwhelming.

176. This meeting was between Canning Fok, other senior executives of Hutchison, and senior executives of ICG. Also present was Timothy Dattels and Shirley Fung of Goldman Sachs. At the meeting the parties discussed the formation of the strategic partnership that was proposed between Hutchison and ICG. Also discussed was the method of financing, mainly by way of subscription of new shares in an existing listed company, in other words a backdoor listing. Having regard to the extent which discussions are progressed with Harbour Ring, we are satisfied that it is inevitable that the name of Harbour Ring, as the existing listed company, would have been raised.

177. Sammy Tse asserted that he did not hear the name Harbour Ring during the meeting, nor was the possibility of Harbour Ring being used by way of a backdoor listing until a subsequent dinner meeting at the home of Canning Fok on 29 February 2000. He did however, in an interview with the SFC, accept that it was possible that the name had been mentioned at the morning meeting on 28 February 2000.

178. We have no doubt at all that the involvement of Harbour Ring as a vehicle for a backdoor listing was discussed at that meeting. Victor

Hwang of ICG recalled that it was discussed. Shirley Fung of Goldman Sachs recalled that it was discussed. The use of a backdoor listing had been in discussion since 18 February, when Canning Fok first met with the ICG representatives. It had been discussed again on 24 February, when Canning Fok met with the Luks from Harbour Ring and introduced them to Goldman Sachs. The meeting between Hutchison people and ICG people on 28 February was the first meeting between the two groups in Hong Kong. Sammy Tse's presence at that meeting had been anticipated in the draft memorandum prepared by McKinsey and submitted by Sammy Tse to Canning Fok.

179. In the whole of the circumstances it would be remarkable if the involvement of Harbour Ring, as the vehicle for the proposed backdoor listing, had not been mentioned or discussed in those circumstances and with those persons present.

180. We reject Sammy Tse's assertion that he did not hear, or know of, the potential involvement of Harbour Ring as a vehicle for a backdoor listing in the course of the morning meeting on 28 February 2000.

29 February 2000:

181. Early on the morning of the 29 February 2000, there was a meeting at Hutchison House between Canning Fok and ICG representatives including Victor Hwang. At that meeting a decision was made for the two companies to proceed together with the establishment of what was described as a "procurement portal", (a form of e-commerce), and that the vehicle to be used would be a subscription of shares, or backdoor listing, in Harbour Ring.

182. During that morning Sammy Tse was in his office which was located in Hung Hom. At short notice he was called to Hutchison House and, together with Dominic Lai, Sammy Tse attended a meeting with Victor Hwang. The evidence of the Dominic Lai, which we accept, was that the discussion concerned the potential benefits of a joint-venture between Hutchison and ICG. Although the Dominic Lai was not aware of the proposed backdoor listing or Harbour Ring, it is clear that those at the meeting were aware that steps were being taken towards a joint-venture between Hutchison and ICG.

The dinner party:

183. Somewhat at short notice, a dinner party was arranged at the home of Canning Fok on the evening of 29 February 2000. Those present included representatives of ICG and also Lewis Luk. This was the first occasion on which these two parties, ICG and Harbour Ring, had met. Also present was Sammy Tse. It was Sammy Tse's evidence that was the first occasion on which he heard the name "Harbour Ring" was at that dinner party.

1 March 2000:

184. The turnover and price movement of shares in Harbour Ring has been set out at paragraphs 4-9 above. The movement on 1 March 2000, the morning after the dinner party, with the turnover increasing from 20.8 million shares on 29 February 2000, to 140,644,000 shares, and the price surging from a close at $0.70, on 29 February 2000, to $1.33 before closing at $1.23 at the close of morning trading, led the SEHK to request the directors of Harbour Ring to suspend trading from 2:30 p.m.

185. That was done, and upon suspension an announcement was made[29] that the suspension was "pending an announcement concerning a possible change of the controlling shareholder of the company".

186. On 10 March 2000, the announcement set out in paragraph 11 above in relation to the subscription agreements with ICG, Promising Land and the Foundation was made. Trading was resumed, with the results as set out in paragraph 15 above.

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[29] TB 2, p 386

Chapter 8

The impugned share dealing

187. On 29 February 2000, Debbie Ng bought 2,392,000 shares in Harbour Ring. On 1 March 2000, she bought a further 1,500,000 shares in Harbour Ring. All of the shares were purchased through her mother, Fong Long's share trading accounts at Taiwan Concord Capital Securities (Hong Kong) Ltd, (2,600,000) and South Capital Brokerage Ltd, (1,292,000).

188. Chris Wong bought 2,600,000 shares on 1 March 2000. 500,000 shares were purchased through a share trading account belonging to Crown Regent Properties Ltd held with Dao Heng Bank Ltd, and 2,100,000 shares were purchased through a share trading account belonging to Friendly Earth Investment Ltd, with HSBC Singapore.

189. Charles Chong bought 2 million shares on 29 February 2000, and 3 million shares on 1 March 2000. The share purchase orders were placed through share trading accounts he held at Christfund Finance Ltd, and Pacific Challenge Securities Limited. The orders at Pacific Challenge were placed by his sister Becky Chong.

190. Becky Chong bought 2 million shares on 29 February 2000, and 7 million shares on 1 March 2000. All shares were bought through her own share trading account with Pacific Challenge.

191. The relationship of the date on which these share acquisitions were made, to the various telephone calls may be seen in Annex D.

Chapter 9

Relevant Information – the evidence

192. As set out in paragraph 82 above, the case advanced by Counsel for the Tribunal was that the relevant information comprise the following:

(i) ICG and Hutchison contemplated investing in Harbour Ring and using it as a vehicle to invest or require other business-to-business companies (Information A) and;

(ii) ICG contemplated using Harbour Ring for a back-door listing (Information B).

Is the information specific?

193. Integral with this question is the question as to when the relevant information came into existence.

194. Whether Information A or Information B is considered, we have no doubt at all that the information was specific. In respect of both Information A and Information B it may be properly said that there was a substantial commercial reality to the negotiations, and the parties were negotiating with a realistic view to achieving an identifiable goal. We are in no doubt at all that the specific information related to a contemplated transaction.

195. We accept the submission of Counsel for the Tribunal, (also accepted by Counsel for Dennis Li), that on the afternoon of 24 February 2000, when Canning Fok and senior executives of Hutchison met with Dr Luk and Lewis Luk, and with personnel from ICG's adviser, Goldman Sachs, that Information B then came into existence. A subscription proposal, using Harbour Ring as the potential vehicle, had been proposed by BNP Paribas.

196. It is right that matters such as price or the formal content of collaboration were not decided at that meeting. But it is plain that the proposal that there should be collaboration had gone beyond a mere proposal and had become a contemplated transaction. Representatives of all three relevant parties were present, Canning Fok and others from Hutchison, Dr Luk and Lewis Luk from Harbour Ring, and ICG's financial advisers, Goldman Sachs. We are satisfied that on that afternoon a contemplated transaction was in existence, in the terms in which we have understood the law as set out in paragraphs 90-93 above, and that information as to that contemplated transaction constituted relevant information.

197. None of the counsel for the implicated parties challenged the proposition that Information A was relevant information, and that that information came into existence on the morning of 28 February 2000, when senior executives of Hutchison met with senior executives and financial advisers of ICG at Hutchison House.

198. It is right that representatives of Harbour Ring were not present on that occasion, but their willingness to cooperate, if terms could be reached, had already been achieved by Hutchison on 24 February 2000.

Shirley Fung described the meeting of 28 February 2000 in the following terms:

> "During this meeting, ICG primarily focused on the scope and objectives of a potential broad strategic partnership with Hutchison whereas Hutchison focused much more narrowly on the backdoor listing concept."

199. In his statement to the SFC, Victor Hwang described the position in the following way:

> "Q. What was discussed on the 28/2/00 breakfast meeting?
>
> A. It started at a general level. We did talk a little bit about Harbour Ring specifically because Goldman Sachs had briefed us.
>
> Q. In what context did you talk about Harbour Ring?
>
> A. The idea was to have Hutchison and ICG invest in Harbour Ring and use it as a vehicle to help invest or acquire other business to business ("B2B") companies.
>
> Q. There was talk about E-procurement portal joint-venture?
>
> A. I believe the joint-venture discussion about procurement portal began more seriously on the next morning. The 28/2/00 discussion was more general on how to work together and discussion about Harbour Ring."

200. It is correct that in her statement to the SFC, Shirley Fung said that she was pessimistic as to the prospects of a deal between the two parties emerging. But that pessimism does not detract in anyway from the fact that at that time the parties were contemplating a transaction together.

201. That they may have still been far apart on the precise terms is beside the point. There is always a risk in insider dealing. Inevitably, at

the time relevant information comes into existence, a contemplated transaction will not yet be consummated. In those circumstances the insider dealer takes a risk that, being in possession of information parties are in discussion, they will reach agreement. If they do not reach agreement, his action on the information received is no less insider dealing.

Information not generally known:

202. There was no suggestion at all in the submissions of counsel, nor any evidence to suggest, that either Information A or Information B was generally known by the investing public. Plainly, the parties were in confidential discussion, with the information necessarily being confined to those engaged in the discussions.

203. The evidence of Ms Stella Fung, the expert witness called by the SFC, was that Information A and Information B were essentially the same as that contained in the announcement published on 10 March 2000, in which it was announced that Hutchison and ICG were subscribing to shares in Harbour Ring.

204. Mr Shum, the expert witness called by Charles and Becky Chong, did not challenge the proposition that either Information A or Information B constituted relevant information that was price sensitive.

205. The very price sensitive nature of the information is demonstrated by the increase in Harbour Ring share price on that day: 538.21%. That was an increase that occurred plainly as a result of the publication of the announcement containing Information A and Information B.

206. We are accordingly satisfied that Information B came into existence on the afternoon of 24 February 2000, and that Information A came into existence on the morning of 28 February 2000. We are further satisfied that that information was specific information, that was not known to the general public, and that was price sensitive.

Chapter 10

The Possession of Relevant Information by Sammy Tse

207. The case for counsel for the Tribunal against Sammy Tse is set out in paragraph 49(i) and (ii) above.

208. To make the case against Sammy Tse, the following matters must be established:

(i) he was a person connected with Hutchison; and

(ii) he was in possession of relevant information; and

(iii) he counselled or procured Debbie Ng and/or Charles Chong to deal in Harbour Ring shares, knowing or having reasonable cause to believe that they would deal in them; [s 9(1)(a)] or

(iv) he disclosed the relevant information to Dennis Li, Debbie Ng and/or Charles Chong knowing or having reasonable cause to believe that they would make use of the information to deal in Harbour Ring shares or to counsel others to deal in Harbour Ring shares; [s 9(1)(c)].

A connected person:

209. The definition of "connected with a corporation" is contained in s 4 of the Ordinance. There was no dispute at all that Sammy Tse, as an employee of Hutchison, fell within that definition.

210. We are satisfied that Sammy Tse knew that a subscription of Harbour Ring shares by Hutchison and ICG would be price sensitive information. He acknowledged that upon interview by the SFC officers, and confirmed it in evidence.

Possession of relevant information:

211. In paragraphs 154-186 we have set out our findings as to the events that occurred between mid-February 2000 and 29 February 2000.

212. Sammy Tse, having attended the dinner meeting at Canning Fok's home on the evening of 29 February 2000, contended that he knew nothing of Harbour Ring until that dinner. So there was no doubt that by the time he returned home on the 29 February 2000, Sammy Tse was in possession of the relevant information. The central question in relation to Sammy Tse in this respect was whether he learned of Information A or Information B prior to that occasion.

213. For the reasons that we set out in paragraphs 163-174 above, we are satisfied, to the appropriate standard of proof, that notwithstanding his denial thereto, Sammy Tse was present at the afternoon meeting on 24 February 2000. The following matters reinforce that conclusion.

214. Together with Sammy Tse there were present, Canning Fok, and Michelle Chan of Hutchison, Alex Ko and Isadora Li of BNP Parisbas, financial advisers to Hutchison, Shirley Fung of Goldman Sachs, financial adviser to ICG, and Dr Luk and Lewis Luk, of Harbour Ring. At that meeting Hutchison introduced Harbour Ring as the potential vehicle for ICG's backdoor listing. That was the central theme of the meeting, and Sammy Tse could have been left in no doubt at all that ICG were contemplating a transaction involving a Harbour Ring, a listed company.

215. In his second record of interview Sammy Tse asserted (Q-A 8), that the name of the company, Harbour Ring, was not mentioned in the subsequent morning meeting on 28 February 2000. But he acknowledged that he knew that prior to that meeting that ICG and Hutchison had discussed the issue of buying into Harbour Ring. Responding to a question from the interviewer, Sammy Tse asserted that his knowledge of the name Harbour Ring could be regarded as guesswork.

216. Sammy Tse offered no basis, either at interview or subsequently in evidence, upon which he might have made such a guess. There was in fact no basis for a guess. In fact, if, as he asserted, he had never heard the name Harbour Ring, that he should have guessed the name would have been truly remarkable, having regard to the number of companies listed on the SEHK, who might have been the subject for a backdoor listing.

217. The true basis of his knowledge, we are satisfied, was his presence at the meeting on 24 February 2000, when Harbour Ring was introduced to ICG and he learned of the involvement of Harbour Ring in the contemplated transaction.

218. Having regard to the extent of Sammy Tse's involvement on behalf of Hutchinson in both C & T and Vanda at the time at which he acquired relevant information in those transactions, it is entirely consistent with common sense that Sammy Tse would have been present at the meeting on 24 February 2000 when Hutchison introduced to Harbour Ring executives the notion that they should join together in a transaction.

219. We are equally satisfied that the proposal that Hutchison and ICG should use Harbour Ring for a backdoor listing was discussed in the morning meeting on 28 February 2000, at which Sammy Tse was present. We reject his denial that he heard any discussion of the matter as simply unbelievable.

220. The suggestion that Harbour Ring, and a joint subscription by Hutchison and ICG in Harbour Ring, was not mentioned in that meeting is simply unbelievable. Victor Hwang recalled the matter was discussed, and Shirley Fung considered that Hutchison focused on the backdoor listing concept. This meeting was the first meeting in Hong Kong between representatives of Hutchison and ICG. Canning Fok had discussed the prospect of a backdoor listing with ICG 10 days earlier and had met with the Luk's four days earlier, when they had given their agreement in principle to cooperation.

221. While it may well be that Hutchison were considering other vehicles, it is unbelievable that Harbour Ring, a company in which Hutchison already had a 20% stake would not have been discussed.

222. We note too, that as early as 17 February 2000, Sammy Tse prepared a memorandum for Canning Fok setting out the background of

ICG. The attached information pack prepared by McKinsey, made it quite plain that ICG was looking for partners in Asia. Sammy Tse must have understood that Hutchison were to be a partner, in some form of cooperation involving a company already listed on the HKSE, which would be a potential vehicle for ICG's entry into Asia.

223. In order to distance himself from the suggestion that he knew of the involvement of Harbour Ring, Sammy Tse went so far as to assert that if the name of Harbour Ring had been mentioned in the morning meeting on 28 February he would not have been able to relate it to anything. The suggestion is simply incredible. He was the CEO of Hutchison E-Commerce and was responsible for daily operations. He had himself been involved for that company, and Hutchison in both the C & T and Vanda transactions. In both of those companies Hutchison had invested through the device of convertible bonds. It is simply unbelievable that he would have been so ignorant as to not understand what was being discussed.

224. Consequently, the knowledge received by Sammy Tse of the potential involvement of Harbour Ring with Hutchison, was knowledge received in the context of previous experience of Hutchison involvement with public listed companies, the shares of which have increased substantially in value when the involvement of Hutchison became known to the public.

225. Finally, in cross-examination it was put to Sammy Tse that he must have understood the concept of a joint subscription in Harbour Ring by Hutchison and ICG. We accept the submission of counsel for the Tribunal that his responses in cross-examination in this respect were

evasive[30]. For these reasons we are satisfied that on the afternoon of 24 February 2000, Sammy Tse was in possession of Information B, and on the morning of 28 February 2000, he was in possession of Information A.

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[30] See Transcript Day 19 pp 2 l. 6 – 5 l. 9

Chapter 11

The Dissemination of the Relevant Information by Sammy Tse

226. The meeting at which officers of Hutchison, BNP Parisbas, Dr Luk and Lewis Luk were all present, and at which we are satisfied Sammy Tse was present, and at which Harbour Ring was introduced as the potential vehicle for a backdoor listing, took place between 4 p.m. and 4:30 p.m. on Thursday 24 February 2000.

227. Sammy Tse was already aware of the discussions between Hutchison and ICG, and was aware also that those discussions might well result in some form of enterprise between the two companies which would involve a listed public company in Hong Kong as the vehicle for cooperation.

228. Prior to the 4 p.m. meeting, there were seven telephone calls between Sammy Tse and Dennis Li. These began shortly after midnight, with four calls between 00.09.34 a.m. and 01.15.23 a.m. The telephone records show that at that time Dennis Li was at home. The calls were brief, two of only 0.1 minutes, in which contact was probably not made, but voice messages were likely to have been left. In the first, Sammy Tse called Dennis Li's mobile, and almost immediate thereafter called him at home, this latter call of 0.8 minutes, in which a conversation plainly took place. Less than two minutes later, Dennis Li called Sammy Tse's mobile, a 0.1 minute duration call in which it is likely that a voice message was left. Sammy Tse returned the call to Dennis Li at his home at 1:15:23 a.m., and a conversation of 0.3 minutes in duration took place.

229. During the morning between 10 a.m. and 11:45 a.m., Sammy Tse made three calls to Debbie Ng, respectively, 2.6 minutes, 2.7 minutes and 1.9 minutes in duration. At around 11 a.m. to Sammy Tse made two calls to Dennis Li, both very short in duration. It is unlikely that contact was made that time. That evening, Dennis Li called Debbie Ng at 7:47 p.m., a call that lasted 4.6 minutes.

230. The next morning, Friday 25 February 2000, at which stage we have found he was in possession of Information B, Sammy Tse called Debbie Ng at 9:22 a.m., a 3.2 minute call, and Dennis Li at 9:29 a.m., a 4.5 minute call. Those calls were followed by two calls between Dennis Li and Debbie Ng. Between 12:48 p.m. and 2:21 p.m. Sammy Tse made three more calls to Dennis Li and one to Debbie Ng.

231. On Friday 25 February 2000 there were a total of 31 mobile telephone calls between Sammy Tse and Dennis Li, Dennis Li and Debbie Ng, and Debbie Ng and Sammy Tse. We acknowledge that a number of these calls were very brief, some lasting only 0.1 minutes, (six seconds), and the plain inference from those short calls is that no contact was made, and nothing discussed. But that said, there can be no doubt that that is an extraordinary number of telephone calls to take place between the three people, who when they gave their evidence, were at pains to distance themselves from each other and diminish the extent of their into relating relationship.

232. There can be no doubt whatsoever that Sammy Tse had ample opportunity, when in possession of Information A to disseminate that information to both Dennis Li and Debbie Ng.

233. At 7:30 a.m. on Monday 28 February 2000, the breakfast meeting took place at which Sammy Tse was present, he became in possession of Information A.

234. That afternoon and evening Sammy Tse made four phone calls to Dennis Li, Dennis Li called Debbie Ng, and Debbie Ng called Sammy Tse. Two of the calls from Sammy Tse to Dennis Li, at around 7 p.m. were for a total of 5.7 minutes. At 10 p.m. that evening Charles Chong called Dennis, a call that lasted nearly 6 minutes. Also, at 11:24 p.m. Sammy Tse called Debbie Ng, a 1.5 minute call, and as 11:53 p.m. Debbie Ng called Sammy Tse, a 5.9 minute call.

235. On Tuesday 29 February 2000, Sammy Tse called Dennis at 9:17 a.m., a call that lasted 1.7 minutes. At 10 a.m., the meeting, (at which we are satisfied Sammy Tse was present), took place between senior executives of Hutchison and ICG, at which it was agreed to proceed with negotiations for the procurement portal joint-venture, and subscription in new shares of Harbour Ring. Sammy Tse went on to take part in a further meeting thereafter, that meeting primarily concerned with the e-commerce business.

236. At 10:59 a.m., Sammy Tse called Dennis, a conversation which lasted 30 seconds.

237. At 11:20 a.m. on that day Charles Chong, through his Christfund account began to purchase Harbour Ring shares, procuring 1 million shares, with the orders being executed between 11:20:57 a.m. and 3:49:15 p.m. An order for a further 1 million shares was placed by Charles Chong at 11:38 a.m., this time with his Pacific Challenge Count, the order

being executed between prior to 12:20 p.m. Becky Chong placed an order for 2 million Harbour Ring shares through her Pacific Challenge account, was the order being executed between 11:38 a.m. and 11:57 a.m.

238. Debbie Ng had spoken to James Shuen, from whom she borrowed money from time to time, twice, at 10:02 a.m. and 10:34 a.m. that morning. At 2:34 p.m. Debbie Ng purchased 2 million Harbour Ring shares through her mother's account at Taiwan Concord, the orders being executed between 2:34 p.m. and 3:32 p.m. At 2:56 p.m., following an order through her mother's account at South Capital, a further 92,000 and 300,000 Harbour Ring shares were purchased, at 2:56 p.m. and 3:56 p.m. respectively.

239. That evening, the dinner meeting took place at the home of Canning Fok. For the reasons we have given we are left in no doubt at all that Sammy Tse was present. We are left in no doubt at all that a topic of conversation, of which Sammy Tse was fully aware, was the proposed involvement of Hutchison and ICG in the subscription for shares in Harbour Ring. If any confirmation of Information A or Information B was required, (and following the 10 a.m. meeting that day, no confirmation was required), it was now plain that the proposal would be likely to proceed.

240. When he returned home that evening, at 11.07 p.m., Sammy Tse called Dennis Li, a conversation lasted for 4.8 minutes.

241. Next day, Wednesday 30 February 2000, at 10 a.m., Debbie Ng began to purchase Harbour Ring shares through the South Capital account, acquiring 900,000 shares between 10:05 a.m. and 11 a.m. She

purchased a further 600,000 shares through the Taiwan Concord account between 10:31 a.m. and 10:54 a.m.

242. There were numerous telephone calls between Chris Wong and Debbie Ng, between 17 February 2001 March 2000. These are set out in more detail in paragraphs 327-329 below. The final call in evidence was 9:57 a.m. on 1 March 2000, when Chris Wong called Debbie Ng, a conversation lasting 32 seconds.

243. At 10:05 a.m. on 1 March 2000, Chris Wong made his first purchases, acquiring 100,000 shares and then 400,000 shares through the account held by Crown Regent, at 10:05 a.m. and 11:04 a.m. respectively. At 10:31 a.m. Chris Wong purchased a further 2.1 million Harbour Ring shares through the account held with Friendly Earth Investments with HSBC Singapore, the orders being placed between 10:31 a.m. and 11:10 a.m.

244. At 10:26 a.m. Charles Chong bought 3 million Harbour Ring shares, and Becky Chong bought 7 million Harbour Ring shares through their Pacific Challenge accounts, with the orders being executed between 10:26 a.m. and 12:20 p.m.

245. At 2:30 p.m., in response to a request from the SEHK, trading in Harbour Ring shares was suspended.

The relevance of the relationships between the parties:

246. It is appropriate in considering whether or not Sammy Tse disseminated information, and those who received the information further

disseminated that information, to examine in more detail the various relationships. If parties are have a close relationship, then the inference that one has given information to another maybe more readily drawn. If the relationship is remote it will be more difficult to draw the inference.

Sammy Tse and Dennis Li:

247. Sammy Tse met Dennis Li in about 1998 or 1999. Dennis Li's recollection was that their meeting was through a person named Peter Tsang Wing Hong who worked at Hong Kong Telecom. At that time Sammy Tse had just joined Hutchison Telecom to take charge of fixed telephone lines. They became good friends and joined together regularly for dining and karaoke.

248. The relationship was such that Dennis Li frequently borrowed money from Sammy Tse, the sums ranging from several hundred dollars to a thousand dollars. Both agreed that on one occasion Dennis Li borrowed $500,000 from Sammy Tse. Dennis Li said he told Sammy Tse that it was borrowed for working capital. Sammy Tse said that Dennis Li asked for the money to ease cash flow. In fact the sum was used for the purchase of shares in Vanda. The sum was repaid relatively quickly.

249. Both asserted that they rarely spoke about business. Both accepted that they spoke almost daily on the telephone, sometimes several times a day. They would meet regularly only on social occasions.

250. We are satisfied that the statements of both Sammy Tse and Dennis Li as to the purpose for which the $500,000 was borrowed were lies. The relationship between the two men was such that we are left in no doubt

that the true purpose of the loan would have been discussed between them. We are satisfied that both must have known that the money was used to buy Vanda shares. The only reason they could have had for lying about the circumstances were to conceal the truth from the Tribunal.

Sammy Tse and Debbie Ng:

251. Sammy Tse and Debbie Ng both said that they had met during an "Outstanding Persons" event in about 1999. They exchanged telephone numbers, and would meet occasionally on social events. Debbie Ng was a friend of Dennis Li, and the social events often involved Dennis Li.

252. When first interviewed by the SFC, Sammy Tse endeavoured to distance himself from Debbie Ng, asserting that he rarely had contact or dealings with her in 2000. In his second interview, he, plainly realising the falsity of that statement when compared with telephone records, asserted that he was referring to the year 2001. He maintained that position in cross-examination.

253. We accept the submission of counsel to the Tribunal that this explanation is not truthful. He was first interviewed in February 2001, about events that have happened in January February and March 2000, and could not possibly have thought that he was talking about 2001. We are satisfied that in this interview Sammy Tse deliberately sought to conceal the extent of the telephone calls that had taken place, and that he did so in order to conceal the fact that he had passed relevant information to Debbie Ng concerning Harbour Ring. There is no other reason why Sammy Tse should lie about the extent of the telephone conversations between himself and Debbie Ng.

254. There were no direct money dealings between Sammy Tse and Debbie Ng, although they had regular telephone conversations. When presented by the SFC with evidence as to her numerous telephone conversations with Sammy Tse, Debbie Ng said that it was impossible for her to remember in which month she had more contact with him. Sammy Tse said that the telephone conversations were concerning asking her out for entertainment or fixing the time and place for entertainment. Sammy Tse believed that Debbie Ng knew that he dealt with technology matters at Hutchison, although Debbie Ng asserted that she did not know where he worked.

255. When Sammy Tse was asked about his telephone calls on 25 February 2000 with Dennis Li and Debbie Ng, he denied that there was any discussion at all concerning Harbour Ring, or ICG. His evidence was that the calls were likely to be about going to have fun, to be merry, and gossip.

256. On that day, there were 10 calls between Sammy Tse and Dennis Li, and 17 between Sammy Tse and Debbie Ng. Dennis Li and Debbie Ng had, only shortly before 25 February 2000, made substantial profits in dealing in Vanda shares, in circumstances that directly paralleled the circumstances of Harbour Ring.

257. We find it simply unbelievable, with that background, that the Harbour Ring transaction would not have been disclosed to Dennis Li and Debbie Ng by Sammy Tse. That is especially so when regard is had to the fact of the very substantial profits so recently made by both Dennis Li and Debbie Ng, as a result of being in receipt of inside information from Sammy Tse in respect of Vanda. Debbie Ng's evidence, which we accepted, was that Sammy Tse was a person who would boast of his

position at Hutchison. It is entirely consistent with such an attitude that such a person would tell others of important transactions he was involved.

Dennis Li and Debbie Ng:

258. Dennis Li described his relationship with Debbie Ng as one in which she treated him as an elder brother, respected his advice, and would contact him whether she was happy or crying. Debbie Ng gave a similar description, saying that they were very good friends and that the relationship was as good as a brother and sister.

259. Dennis understood that Debbie Ng earned some money trading shares. He believed that she was very knowledgeable in relation to share trading. He said that she sometimes made suggestions about buying shares, to which he did not respond.

260. In interview with the SFC, Debbie Ng however said first that they seldom talked about stocks although he once asked in which stock was worth purchasing. She later said however that he always asked which stock was worth speculation, using the stock code numbers.

261. Dennis Li had borrowed $500,000 from Sammy Tse. Debbie Ng's evidence was that he gave this money to her and requested her to buy stock of listing code 757, (Vanda). The shares were subsequently sold for $1.49 million. Debbie Ng explained this by saying that Dennis Li wanted to buy shares but had no stock account, and consequently used the account opened by Debbie Ng in her mother's name. Debbie Ng gave a detailed explanation of the discussion in relation to this stock, involving a comparison of the stock with China Aerospace, and an assertion by Dennis

Li that he had business with some mainlanders and learned that "757" would have deals with a telecommunications company.

262. Although there were no direct money dealings between Sammy Tse and Debbie Ng, Dennis Li borrowed $500,000 from Sammy Tse and gave that money to Debbie Ng so that he could purchase Vanda shares for him. A profit of nearly one million dollars was made on the sale of the shares. It would be extraordinary, and simply unbelievable, that such a result would not be discussed between these three people in these circumstances. Sammy Tse was directly involved in the events that caused the Vanda shares to rise in value. Sammy Tse loaned the money to Dennis Li to make a purchase, and Debbie Ng, a good friend of Sammy Tse, had carried out the purchase. We are left in no doubt at all that the transaction was discussed between them.

263. All of this evidence means that we are left in no doubt that stock trading formed a regular part of the conversation between Dennis Li and Debbie Ng.

Sammy Tse and Charles Chong:

264. Both Sammy Tse and Charles Chong said that they were introduced through Dennis Li around the end of 1999 or beginning of 2000. At that time Charles Chong lived in Deer Hill Bay, and Sammy Tse moved to live there. Sammy Tse said that the telephone conversations in early 2000 related to advice he sought about Deer Hill Bay, and finding a domestic helper. Charles Chong said that there were seldom private telephone calls between them, and that if they were they were questions about Deer Hill Bay.

265. Charles Chong said he did not know of Sammy Tse's employment, and that when they met together Sammy Tse was always in the company of Dennis Li. He said that whenever one of them would arrive, the other would leave. We found that to be extraordinary, and unbelievable. Charles Chong offered no reason as to why he would leave the company of Dennis Li, on the arrival of Sammy Tse, or any reason why Dennis Li should leave the his company if Sammy Tse arrived. The assertion was palpably false designed to conceal the extent of the involvement between the three men.

266. There is no doubt that Sammy Tse was impressed by Charles Chong, and that he was seeking to establish a friendship, perhaps with an eye to future business opportunities, with Charles Chong. Charles Chong knew that Sammy Tse worked for Hutchison, and had made profits from transactions in Vanda.

267. Both asserted that their only contacts were in relation to Sammy Tse's intention to employ a domestic helper at Deer Hill Bay. There were 14 telephone calls between Sammy Tse and Charles Chong between 1 February 2000, and 1 March 2000. We accept that it might be realistic to suppose that when Sammy Tse moved to Deer Hill Bay, having been introduced to Charles Chong, he might have enquired from Charles Chong in respect of finding a domestic helper.

268. But we were quite unable to see how it could be necessary for there to be 14 telephone calls, when all that Sammy Tse was seeking with advice as to where he might find a domestic helper in the Deer Hill Bay complex. There was no suggestion that Charles Chong might have been in a special position to give assistance in finding a domestic helper, or that

Sammy Tse gained any assistance from Charles Chong in that respect. The whole notion was in fact farcical. We reject this explanation for the telephone calls between Sammy Tse and Charles Chong.

269. We accept the submission of counsel for the Tribunal that the suggestion that it was no mere coincidence that not a single one of the three good friends of Sammy Tse, Dennis Li, Debbie Ng, and Charles Chong, with all of whom he had contacted during February, and all of whom knew he worked for Hutchison, would not have spoken with him about the remarkable success in share trading they had had in companies in which Hutchison had invested.

270. Having regard to the relationships between the parties and the remarkable success in share trading that Dennis Li, Debbie Ng, and Charles Chong have all had with a company associated with Sammy Tse's employer, Hutchison we are satisfied that it is more likely than not that each would have spoken with him about that success.

271. Finally, we have weighed into the balance, the fact that during January 2000, and up to 9 February 2000, there had been daily increases of 10% or more in Harbour Ring shares. The daily increase had, on one occasion reached 23.91%. There had been substantial increases in the volume of shares traded on each day. Yet despite those indicators none of the implicated persons bought shares in Harbour Ring before 29 February 2000.

272. We are satisfied, to the appropriate standard, bearing in mind the prior involvement of Sammy Tse in Hutchison, and profits made by Charles Chong through C & T and Vanda, that it is more likely than not

that the discussions included Sammy Tse telling Charles Chong of the impending involvement of Hutchison with Harbour Ring.

Conclusions:

273. In the whole of the circumstances we are satisfied, to the appropriate standard, that it was more likely than not, that Sammy Tse passed both Information A and Information B to Dennis Li, Debbie Ng, and Charles Chong, prior to the purchase of Harbour Ring shares by either the Debbie Ng or Charles Chong.

274. We are equally satisfied that when Sammy Tse did pass the information he had concerning Hutchison and ICG's proposed involvement in Harbour Ring, to Dennis Li, Debbie Ng and Charles Chong, Sammy Tse had reasonable cause to believe that Debbie Ng and Charles Chong would deal in Harbour Ring shares. He knew that they had dealt in Vanda shares and had made substantial profits with those shares. The very purpose of passing the information to them was to enable them to deal in the shares, as insider dealers.

275. We accept too, upon the same basis, that when Sammy Tse passed the information he had concerning Hutchison and ICG's proposed involvement with Harbour Ring, he had reasonable cause to believe that Debbie Ng and Charles Chong would pass that information onto others to enable them to deal in Harbour Ring.

Finding:

276. We accordingly conclude that Sammy Tse is liable for insider

dealing by virtue of his disseminating relevant information contrary to s 9(1)(c) of the Ordnance.

277. There is no evidence that Dennis Li bought Harbour Ring shares. In those circumstances Sammy Tse's dissemination of relevant information to Dennis Li cannot constitute insider dealing.

Chapter 12

The share acquisitions by Debbie Ng, and Charles Chong

Debbie Ng:

278. We did not find Debbie Ng to be a credible witness. Although she was only 17 years old at the time the acquisitions of shares were made, 19 years old when she was interviewed by the SFC, and 25 years old at the time of the trial, we are quite satisfied that all times she was knowledgeable, sophisticated, and understood precisely what she was doing.

279. Mr Mak suggested that Debbie Ng might not want to face questions which would expose her as a gold-digger, or Jezebel. We did not find her to be embarrassed at the situation that she was in. Her primary concern was making money and protecting the source of that money. That she concealed her relationships with men or sought to distance himself from them when interviewed by the SFC would not, in our view, because she was embarrassed at exposing herself, but because she wished to hide the fact of her insider dealing.

280. When first interviewed she was shown a list of names including that of Chris Wong, whom she failed to identify. In a second interview she said:

> "After the [first] interview, I thought it over again and considered by probably know [Jacky Cheung] and [Chris Wong]."

In the second interview she described Chris Wong as "an ordinary friend".

281. Her statements might, at best, be described as entirely disingenuous. But we are satisfied that she was deliberately seeking to mislead the SFC. Chris Wong had courted her, and we think it more likely than not that their relationship became intimate. He had lent her $1 million on 6 April 2000.

282. Further, she had introduced Chris Wong to South China Capital to open a share trading account but failed to tell that to the SFC when asked directly about introducing people to China Capital. In cross-examination she said that she had forgotten to mention Chris Wong because she was upset with the bad attitude of the SFC officers, notwithstanding that her solicitor and counsel were present during interview.

283. We are satisfied that counsel to the Tribunal was entirely justified in saying that the obvious scheme behind what can only be categorised as the lies in this respect on the part of Debbie Ng to the SFC officers, was an effort to disassociate herself from Sammy Tse, Dennis Li, and Chris Wong, in order to hide insider dealing in Harbour Ring shares. Counsel was equally right to say that she is simply a person who will say whatever is required to suit her needs, as is demonstrated by her admission in evidence that if she wanted money, she would tell people she had secret information, even if she did not have such information.

284. We reject entirely the impression the Debbie Ng endeavoured to give the SFC officers that she bought Harbour Ring shares only after research, assessment and the decision as to when to sell. We reject the proposition that she either looked at charts, newspaper reports or websites. The impression she sought to give the SFC was entirely opposite to the

impression she sought to give to the Tribunal, namely that she acted recklessly and on instinct. Her assertion that the two different impressions might be explained by being interviewed when she was young, bears all the hallmarks of a witness caught between two false stories, and struggling to find an escape route.

285. The remarks made paragraph 272 above are equally applicable in respect of Debbie Ng, perhaps more so, because at times she asserted to being a person who studied charts and figures in relation to stocks in which she might invest.

286. We have no hesitation at all in finding that Debbie Ng made her purchases of Harbour Ring shares in reliance upon relevant information supplied to her by Sammy Tse, she knowing that Sammy Tse was a connected person, and Dennis Li, she knowing that Dennis Li had obtained that information from Sammy Tse.

Charles Chong:

287. We found Charles Chong to be a man who was quite unworthy of any credit.

288. When interviewed by the SFC Charles Chong tried to give the investigators the impression that there was little relationship between himself and Dennis Li. Yet during February 2000 alone, there were 35 mobile telephone calls between the two of them. It is right that not on every occasion was contact made, instead voicemail is left, but even allowing for that, they were plainly in regular contact.

289. Charles Chong endeavoured to give the SFC investigators the impression that he knew little of TradingGuru.com. He sought in his evidence to explain his answers to the SFC by saying that he was not sure whether TradingGuru.com was a company in which he had invested, because the company name had been changed.

290. We are satisfied that he endeavoured to deceive the SFC, and that he lied to us in his explanation. Only six months prior to his interview with the SFC Charles Chong had invested $3 million in TradingGuru.com. He had signed a cashier's order for $3 million, which he acknowledged he read before signing that had the name "TradingGuru.com" on it. In the light of those recent circumstances his attempts to distance himself from TradingGuru.com were simply unbelievable.

291. Charles Chong's attempts to explain his loss of memory in respect of TradingGuru.com was unbelievable. His assertion that he was not sure whether it was a company in which he had invested because the name was changed is remarkable considering that he had invested $3 million in the company only six months prior to the interview.

292. Charles Chong's investment in TradingGuru.com was concealed by Charles Chong, by using a BVI company, Billion Earning Ltd to hold the investment on his behalf. That BVI company is owned by Charles Chong, his wife and Becky Chong.

293. It is right that he did not personally participate in the negotiation with the other investors, that activity having been undertaken by Dennis Li on Charles Chong's behalf. But his distancing of himself from TradingGuru.com with the SFC stood in marked distinction from this

assertion to us that in February 2000 all of his telephone conversations with Dennis Li related to TradingGuru.com.

294. On 2 June 2000, Dennis Li had made a declaration to the SEHK that he was the sole beneficial shareholder in Billion Earning. That statement was false. The case for Charles Chong was that although he knew that Dennis Li had represented himself to the other partners in TradingGuru.com as the shareholder of Billion Earning, thereby concealing Charles Chong's involvement from those partners, he did not know that Dennis Li had made a false declaration to the SEHK.

295. This assertion was led from Charles Chong in evidence in chief by his counsel. But the assertion, and the reason he subsequently gave in evidence for it, did not form part of his witness statement. The consequence of that, is that neither the assertion will the reason for the assertion had been known to counsel for the Tribunal when Dennis Li was being cross-examined, nor was it known to counsel for the Tribunal before Charles Chong was called to give evidence.

296. In order to complete the declaration Dennis Li was required to endorse upon it the company chop of Billion Earning. Charles Chong accepted that he had possession of that chop, but said that as he was away from 28 May to 20 June 2000, he did not know that Dennis Li had made that false declaration. We reject that evidence.

297. We are quite sure that Charles Chong, a careful man and man who was secretive about his affairs, would not have allowed the Dennis Li to make a declaration on behalf of Billion Earning without knowing the content of that declaration. The chop was kept at Charles Chong's office

and there is no suggestion in the evidence, other than an unsubstantiated assertion by Charles Chong, that while he was away some other member of his family might have given the chop to Dennis Li. We find this explanation quite unlikely. Charles Chong accepted that he provided Dennis Li with the copy of the certificate of and Corporation for Billion Earning. The only reason Dennis Li could seek to obtain that is to attach it to the false declaration. We are satisfied that Charles Chong provided Dennis Li with the chop at the same time, and that both knew that the declaration was false.

298. We note further that at all times Dennis Li was merely a "front man" for Charles Chong in relation to Billion Earning, and there was no reason why Dennis Li would undertake any activities in relation to Billion Earning without Charles Chong's approval.

299. Mr Chiu suggested to us that any deception on the part of Charles Chong in relation to Tradingguru.com was irrelevant as it was a totally separate matter. We reject that proposition. It is a matter that went to demonstrate at Charles Chong's lack of credibility. It was relevant and admissible and counsel for the Tribunal were perfectly entitled to rely on it as they did.

300. We are satisfied, to the appropriate standard, that Charles Chong's attempted to mislead the SFC officers and his lies to us about the circumstances of the false declaration were because he wished to distance himself from Dennis Li, a person whom he knew had been in receipt of relevant information in relation to Harbour Ring, and who had passed that information on to Charles Chong.

301. Apart from his acquisition of Harbour Ring shares, the largest purchase of shares made by Charles Chong had been in Vanda. His investment in Harbour Ring was enormous on any terms, over $4.5 million. When interviewed by the SFC officers he said that he had bought a "small amount" at first, and the next day when he noticed the share price rising he bought again.

302. On 29 February 2000, Charles Chong purchased one million Harbour Ring shares at a total cost of $678,044.50 through his Christfund trading account. On the same day he bought one million Harbour Ring shares at a total cost of $687,137.18 through his Pacific Challenge account. In one day he had purchased 2 million Harbour Ring shares at a total cost in excess of $1.3 million. While for investors like Mr Li Ka Shing, or Mr Bill Gates, it might be appropriate to describe this investment as a "small amount", there was nothing in the evidence to establish circumstances in which Charles Chong's acquisitions of Harbour Ring shares could be described as a "small amount".

303. His assertion to the SFC that he had bought a "small amount" of Harbour Ring shares "at first" was a lie, we are satisfied, made in the knowledge that he had bought the shares as a result of inside information from a connected person. The only purpose to lie in this respect is to conceal from the SFC very substantial extent of the investment he had made.

304. We have also had regard to the circumstances of Charles Chong's acquisition of shares in Vanda. The acquisitions of shares in Harbour Ring follow precisely the same pattern as in Vanda. He refused to acknowledge any similarity between the Vanda and Harbour Ring

transactions, a refusal which was quite unjustified in the face of the evidence. His explanation that the shares were purchased whilst he was in Japan simply avoids the point. It is nothing to the point that he might have been in Japan, having regard to modern communications methods.

305. We reject Charles Chong's assertions as to the basis upon which he made his acquisition in Harbour Ring shares. We are satisfied to the appropriate standard of proof that he learnt of the potential involvement of Hutchison and ICG in Harbour Ring from Sammy Tse or Dennis Li. If he learnt of the information from Dennis Li he must have known that came from Sammy Tse. In any event he knew that Sammy Tse was a connected person.

306. We accordingly conclude that both Debbie Ng and Charles Chong are liable for insider dealing contrary to s 9(1)(e) of the Ordinance.

Chapter 13

The share purchases by Becky Chong

307. Charles Chong and Becky Chong had both acquired shares in Vanda consequent upon the Charles Chong receiving relevant information from Sammy Tse. Charles Chong and Becky Chong are brother and sister, and plainly have a close relationship. We think it more likely than not that that relationship is even closer following the unfortunate death of Becky Chong's a husband.

308. There is no doubt at all that both were very interested in share trading and that this was a topic they from time to time discussed. Having regard to the very substantial investment and profits they had made, both at the same time although not jointly, in Vanda, we have no doubt at all that they would have discussed between themselves the outcome of the investment and the reason for the profit. The outcome was a substantial profit for each, the reason for the profit was that Charles Chong had received, from a reliable source, inside information.

309. Bearing in mind the extent to which both Charles Chong and Becky Chong were willing to invest in Harbour Ring, for each, huge investments compared to any previous investment they had made, we find the inference that Charles Chong told Becky Chong both the nature and source of the information that he had received, namely Sammy Tse, a person employed by Hutchison who are involved in the transaction, to be overwhelming.

310. The remarks made paragraph 272 above are equally applicable in respect of Becky Chong. Again in her case it is perhaps more so, because at times she gave evidence as to paying particular attention to stock information in newspapers, in keeping the television on to a stock exchange information channel while she was at home.

311. Part of the case and Becky Chong involved in assertion that she made the purchases as a result of visits to the God, Kwan Yin. We placed no weight upon this evidence at all for two reasons. First, there was nothing in the evidence to suggest that in, "opening the treasury", there were specific references to either Vanda, or Harbour Ring. There is simply insufficient connection between the visit and the share requisitions in either case.

312. Second, the witness who supported this evidence was the dealer's representative at Pacific Challenge Securities, Mr Johnny Chiu. The evidence plainly established that he had been rat-trading on Becky Chong's account in relation to both Vanda and Harbour Ring share purchases. It is nothing to the point that Becky Chong continued to employ him after learning of his misconduct in respect of her account. He was prepared to support her evidence. His conduct rendered him a man of doubtful credit.

313. We found nothing to justify Becky Chong's assertion that she came to invest in Harbour Ring as a result of information she had learned in newspapers. She was quite unable to adequately explain why, if she was relying on newspaper reports in Apple Daily on 22 February 2000, she should wait until late in the morning on 29 February 2000, before making her share purchases.

314. In those circumstances we are satisfied to the appropriate standard of proof that Becky Chong received information which she knew to be relevant information indirectly, (that is through Charles Chong), from a person whom she knew was connected with Harbour Ring, namely Sammy Tse, and that he had that information by virtue of being so connected.

315. We are accordingly satisfied that Becky Chong is liable for insider dealing pursuant to s 9(1)(e) of the Ordinance.

Chapter 14

Dissemination of Relevant Information by Dennis Li, Debbie Ng, and Charles Chong

316. We have no doubt at all that Dennis Li, as well as Sammy Tse, passed information to Debbie Ng concerning the Hutchison and ICG involvement in Harbour Ring. That information was passed was entirely consistent with their conduct in relation to the Vanda shares. Debbie Ng in evidence acknowledged that Dennis Li had mentioned Harbour Ring to her.

317. We are quite satisfied that Dennis Li, Debbie Ng and Charles Chong all knew that the information they had received from Sammy Tse was relevant information. There is nothing in the evidence to suggest otherwise.

318. The first purchase of shares in Harbour Ring by Debbie Ng was at exactly the same time as Chris Wong bought Harbour Ring shares for the first time, the purchase being the largest ever purchase Chris Wong had made in respect of shares. Debbie Ng had used Chris Wong's share trading account at China Capital, but initially concealed that fact. She knew that Chris Wong admired her, we think it more likely than not that the relationship extended to intimacy.

319. We are quite satisfied, to the appropriate standard, that Debbie Ng, at least, told Chris Wong that she had information in respect of Harbour Ring that would enable trading to be done profitably in the shares.

320. But while we are in no difficulty at all in drawing that inference from the whole of the evidence and circumstances before us and we cannot say, to the appropriate standard of proof, that Debbie Ng went so far as to actively encourage Chris Wong to make purchases of Harbour Ring shares.

321. We find ourselves in the same position in relation to the allegation that Dennis Li counselled or procured Debbie Ng or Charles Chong to make purchases of Harbour Ring shares. We have little difficulty in determining that he disseminated the information to them, but we are unable to say, to the appropriate standard of proof, that Dennis Li engaged in active counselling or encouragement to them to make sure acquisitions in Harbour Ring.

322. In so far as Counsel for the Tribunal has contended that Dennis Li or Debbie Ng are liable to be found insider dealers pursuant to s 9(1)(e) we reject the contention.

323. Again, while we are satisfied that Charles Chong passed the information that he had received from Sammy Tse to his sister Becky Chong, we are unable to say, to the appropriate standard of proof, that in passing that information to Becky Chong, Charles Chong actively encouraged her to make purchases of Harbour Ring shares. On the evidence the inference is equally open that he merely supplied the information to her, together with its source, and let her made her own decision as to whether or not she would invest in Harbour Ring.

324. In so far as counsel for the Tribunal has contended that Charles Chong is liable to be found an insider dealer pursuant to s 9(1)(e) we reject the contention.

325. In the case of all three, we find the inference that the information, and the source of the information, namely Sammy Tse was passed on, to be an overwhelming inference in the circumstances. However, we cannot dispel the inference that that was all that was said, and that in the case of Debbie Ng, Chris Wong, and Becky Chong, each was left to make their own decisions as to the investment simply upon the basis of the information that had been given and received.

Chapter 15

Chris Wong

326. There is no evidence at all to establish that Chris Wong ever met Sammy Tse, or knew who he was. Unless he was told by Debbie Ng the source of her information he was in a position where he was merely in receipt of a rumour without knowing the source of that rumour.

327. The record of telephone calls shows Chris Wong first making two calls to Debbie Ng mid-afternoon on 17 February 2000. Between 10:30 a.m. and 3:20 p.m. on 18 February 2000, there were seven calls between Chris Wong and Debbie Ng, three instituted by Debbie Ng, and four by Chris Wong. On 20 February 2000, Chris Wong made two calls on 21 February 2000 he made five calls to her. 22 February 2000 he made one call to her in the early evening to Debbie Ng.

328. On 23 February 2000, Chris Wong called Debbie Ng on four occasions, two of the calls, at 11:7:22 p.m. for 1.6 minutes, and 11:40:42 p.m. to 6.7 minutes. At 10 a.m. on 24 February 2000, Chris Wong called Debbie Ng, and they spoke 2.6 minutes. On 26 February 2000, Debbie Ng called Chris Wong twice, calls lasting 2.4 minutes and 2.1 minutes, the last called being as 11:48 p.m.

329. At 12:48 p.m. on 28 February 2000, Debbie Ng called Chris Wong. On 29 February 2000, Chris Wong called Debbie Ng twice at about 9:50 a.m., and Chris Wong called Debbie Ng at 10:10 a.m. Finally, on 1 March 2000 at 9:57 a.m. Chris Wong called Debbie Ng. They spoke again,

Debbie Ng calling Chris Wong 8:45 p.m. to 2.5 minutes, and 10:48 p.m., three minutes.

330. We find the inference that Debbie Ng told Chris Wong the source of the information to be Sammy Tse, and that he was so associated with the transaction as to be a reliable source of information to be open on the evidence, but not the only inference that could be drawn. We are unable to say that it is more likely than not that Debbie Ng gave the additional information of the source and the nature of the source to Chris Wong, as well as the information of the impending transaction.

331. Unlike the close relation of brother and sister that existed between Charles Chong and Becky Chong, the relationship between Debbie Ng and Chris Wong was, in so far as Debbie Ng was concerned one of a relationship was one of a number of men with whom she carried on an intimate relationship. She was plainly a person who was capable of playing one man in her life of against another. As Mr Mak put it: "she was probably good at expressing her feminine characteristics in return for pecuniary advantages".

332. It may well have been that she did disclose the source of the information and his relationship to the transaction to Chris Wong. But it is equally likely, bearing in mind the nature of their relationship, that she kept the information to herself, and preferred to display herself in a more important light, that of the source of the information.

333. It is an essential feature of insider dealing pursuant to s 9(1)(e), that the recipient of the information must know that it has come, either directly or indirectly from a connected person. While we find the

circumstances extremely suspicious, we are unable to say, to the appropriate standard of proof, that that knowledge has been established in respect of Chris Wong.

334. We accordingly find Chris Wong not liable for insider dealing.

Chapter 16

Findings as to Insider Dealing

335. For the foregoing reasons, we are satisfied, to the appropriate standard of proof that the following conclusions constitute our findings as to insider dealing. These conclusions may be compared with the basis of the allegations set out in paragraph 49 above.

336. Contrary to s 9(1)(c) of the Ordinance Sammy Tse, being a connected person, and being in possession of relevant information which he knew to be relevant information in relation to Harbour Ring, disclosed directly that information to Debbie Ng and Charles Chong he knowing or having reasonable cause to believe that Debbie Ng and Charles Chong would make use of the information for the purpose of dealing in, or counselling or procuring others to dealing, the listed securities of Harbour Ring.

337. Contrary to s 9(1)(e) of the Ordinance, Debbie Ng, being a person who had information which she knew to be relevant information in relation to Harbour Ring, which she received directly from Sammy Tse, and indirectly from Sammy Tse by way of Dennis Li, she knowing Sammy Tse to be connected with Harbour Ring, and having reasonable cause to believe that Sammy Tse held that information by virtue of being so connected, dealt in the securities of Harbour Ring.

338. Contrary to s 9(1)(e) of the Ordinance, Charles Chong, being a person who had information which he knew to be relevant information in relation to Harbour Ring, which he received directly from Sammy Tse, and

indirectly from Sammy Tse by way of Dennis Li, he knowing Sammy Tse to be connected with Harbour Ring, and having reasonable cause to believe that Sammy Tse held that information by virtue of being so connected, dealt in the securities of Harbour Ring.

339. Contrary to s 9(1)(e) of the Ordinance, Becky Chong, being a person who had information which she knew to be relevant information in relation to Harbour Ring, which she received directly from Sammy Tse, and indirectly from Sammy Tse by way of Charles Chong, she knowing Sammy Tse to be connected with Harbour Ring, and having reasonable cause to believe that Sammy Tse held that information by virtue of being so connected, dealt in the securities of Harbour Ring.

340. The evidence was not sufficient to establish the following:

(i) that contrary to s 9(1)(a) of the Ordinance, Sammy Tse counselled or procured Dennis Li, Debbie Ng or Charles Chong to deal in the listed securities of Harbour Ring;

(ii) that contrary to s 9(1)(e) of the Ordinance, that Dennis Li counselled or procured Debbie Ng to deal in the listed securities of Harbour Ring;

(iii) that contrary to s 9(1)(e) of the Ordinance, that Debbie Ng counselled or procured Chris Wong to deal in the listed securities of Harbour Ring;

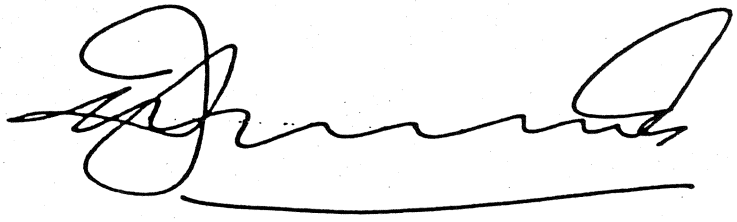
(iv) that contrary to s 9(1)(e) of the Ordinance, that Charles Chong counselled or procured Becky Chong to deal in the listed securities of Harbour Ring;

(v) that contrary to s 9(1)(e) of the Ordinance, that Chris Wong dealt in the listed securities of Harbour Ring.

341. Chapters 1-16 are now forwarded to the Financial Secretary in response to the questions raised by his Notice, in sub-paragraphs (a) and (b) thereof.

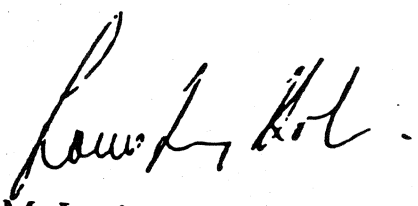
342. In due course, after hearing from counsel assisting the Tribunal, and counsel representing those persons found to be insider dealers, we will provide a response to sub-paragraph (c) of the Notice, and set out the terms of any orders made by us.

343. We propose to resume sitting on 26 August at 4.30 p.m., in order to hear from counsel as to any procedural matters in relation to the determination of the issues raised by sub-paragraph (c) of the Notice, and to fix dates for the hearing of those issues.



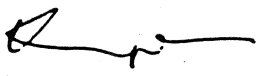
The Honourable Mr Justice Saunders

Chairman



Mr Louis Fung Kai Lin

Member



Mr Vincent Kwan Po Chuen

Member

Dated 6th August 2009

Introduction

We now submit the second part of the Report of our findings in relation to the Financial Secretary's notice pursuant to section 16 of the Securities (Insider Dealing) Ordinance Cap 395, (the Ordinance), dated 25 September 2003 (amended by an amendment notice dated 15 July 2005), requesting the Insider Dealing Tribunal to conduct an inquiry into certain dealings in the listed securities of Harbour Ring International Holdings Limited, (the company), between 29 February and 1 March 2000, (the Notice).

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

With this second part of the Report are the orders we have made under sections 23 and 27 of the Ordinance.

As subsection 23(2) of the Ordinance provides that the Tribunal shall not make an order in respect of any person under subsection 23(1) without first giving that person an opportunity to be heard, we sat on Wednesday, 16 September 2009, to hear submissions from the persons identified as insider dealers, and Counsel to the Tribunal relating to:

1. the calculation of any profit gained as a result of the insider dealing we found proved;

2. the appropriate orders under s 23 of the Ordinance consequent upon findings of insider dealing;

3. what orders, if any, should be made under s 27 of the Ordinance.

Save where the context otherwise requires it, the same terms and abbreviations in the first part of the Report are used in this second part.

Chapter 17

Orders

344. On Thursday 16 September 2009, we heard from counsel for the Tribunal, counsel for Sammy Tse, counsel for Debbie Ng, and the solicitor for Charles Chong and Becky Chong, as to the orders that should be made consequent upon the findings contained in this Report.

Adjustment for delay:

345. All of the insider dealers in this matter, indeed all of the implicated parties before the Tribunal, were found to be implicated in insider dealing in the Vanda Inquiry. In that Inquiry the Tribunal reduced the financial orders that were made as to disgorgement by 25%, and costs by 10%. The basis of that reduction appears to have been the delay between the original events and the proceedings before the Tribunal.

346. It was pressed upon us by counsel for the implicated parties that the same discount should be given by this Tribunal. Counsel submitted that having regard to the very long delay the insider dealers had a real sense of grievance having been involved in the proceedings. It was said also that they would have been entitled to freely able to undertake financial planning more than three or four years after the events, upon the basis that their conduct had not come under challenge. Finally, it was said that they may have spent any profits achieved from the insider dealing.

347. We note firstly that none of the insider dealers chose to give

evidence before us as to any of these matters. Even allowing for the delay between the time of the events, and the Salmon letters, (about five years), we do not see any basis for an implicated person to say that they have a sense of grievance if their wrongdoing was not challenged for a period of time. The law simply does not operate upon the basis that if a person "gets away with" illegal behaviour for a period of time he is somehow absolved from that behaviour.

348. Second, in the absence of any evidence as to any steps in relation to financial planning based upon any profits made from the insider dealing we are unable to say that this forms a basis for a discount. That applies equally to the expenditure of profits from the insider dealing.

349. That said, we recognise that the delay was long and although contributed to, to an extent, by the implicated parties themselves, there is no doubt at all that these proceedings ought to have been concluded much earlier. Further we recognise the steps actually taken by the Tribunal in the Vanda Inquiry.

350. We note Mr Cooney's submission that having regard to the very substantial profits made by the insider dealers in this matter a discount of 25% seems extraordinarily generous. We agree that is generous, but in the circumstances feel that it is appropriate that we should follow the position taken by the Tribunal in the Vanda Inquiry.

351. We propose to give the same discount of 25% in respect of disgorgement orders. We see no basis upon which there ought to be a reduction in costs.

Calculation of profit:

352. The principles to be applied in the calculation of profit have been established by the Court of Final Appeal in *Insider Dealing Tribunal v Shek Mei Ling* (1999) 2 HKCFAR 205. Those principles are as follows:

(i) if sale was before publication of relevant information, actual realised profits;

(ii) if sale was after publication of relevant information but before full dissemination, actual realised profits;

(iii) if there was no sale and/or sale after full dissemination or publication of relevant information, notional profit. Notional profit is the difference between the purchase price of the share and the value of the share as measured by the re-rated trading price of the share for a reasonable period after public dissemination of relevant information; and

(iv) transaction costs, if any, are deducted from the gross profit gained.

353. No exception was taken by counsel to these principles. The only issue that arose was as to the period over which the share price had been re-rated following the dissemination of the relevant information and its absorption by the public. The relevant principle was expressed in *Shek Mei Ling*, at p 211 by Lord Nicholls of Birkenhead NPJ, in the following terms:

> "The approach adopted by the Tribunal of this type of situation, in my view correctly, is to treat the relevant profit as that gained by the insider dealer when the information was made public and the market had had a reasonable opportunity to digest the information."

354. Mr Mak argued that a period of four trading days ought to be taken as the period over which the share price was re-rated to determine the notional profit. Consequently, he said that all trading up to and including 15 March 2000, should be taken into the calculation.

355. The expert witness called by counsel to the Tribunal, Ms Stella Fung, expressed the view that in this particular case, the information, having been released to the public on the morning of Friday 10 March 2000, had been appropriately digested by the public by the close of trading on Monday 13 March 2000.

356. To support this opinion Ms Fung pointed to the very substantial turnover on Friday 10 March 2000, of 1,465 million shares, reducing by 50% to 679 million on Monday 13 March 2000. Stabilisation was shown by the fact that on 14 March 2000, the turnover was 399 million shares, on 15 March 2000, 324 million shares, and 16 March 2000, 280 million shares. Ms Fung pointed also to the fact that the information, when published, excited 17 newspaper reports, 8 on Friday 10 March 2000, 7 on Saturday 11 March 2000, and 2 on 13 March 2000. Thereafter, the matter ceased to attract newspaper report attention. Ms Fung acknowledged that the two days of the weekend would have given the investing public additional time to digest the relevant information.

357. Having regard to the matters relied upon by Ms Fung we are satisfied that in this particular case, particularly bearing in mind the

weekend, two days trading, (in fact a four-day period), is appropriate to determine the re-rated share price.

358. On that basis we fix the notional profit gained in respect of shares held by the insider dealers after Monday 13 March 2000, to be based upon a re-rated share value of $7.708 per share.

Section 27 costs:

359. There was no dispute as to the calculation of the total costs of the enquiry. The costs and expenses total $2,648,589.21. The details of those costs are set out in Annex E attached hereto.

360. Submissions were made to us that, as in the Vanda Inquiry, the apportionment of costs ought to take into account the particular involvement of the various parties. In the Vanda Inquiry that resulted in different proportions of costs being imposed on different parties. With respect to that Tribunal, we take the view that in this Inquiry it is preferable to take a broader view of the position. We have concluded that each of the implicated parties, they all having been interlinked through the various personalities involved, ought to share equally in the costs of the proceedings. Consequently, each implicated party found to be an insider dealer will be liable for 1/6 of the costs of the proceedings.

361. Consequently, each insider dealer must pay the sum of $441,431.50 as their share of the costs and expenses of the proceedings.

Concurrent or consecutive orders:

362. An issue arose at the commencement of the Inquiries into Vanda and Harbour Ring as to whether or not they could be heard together. Principally upon the submission of the implicated parties it was determined that the Inquiries should be heard separately. In mitigation the submission was made that we should have regard to the fact that the events arose at virtually the same time and that had they been heard together it is likely that concurrent orders would have been made.

363. We think there is some merit in the submission and have reflected the situation in the orders we have made.

364. Bearing in mind the foregoing matters of principle, we turn now to the specific orders imposed on each of the individual insider dealers.

Sammy Tse Kwok Fai:

365. We noted by way of mitigation that as a result of his insider dealing in both Vanda and Harbour Ring Sammy Tse has lost a very high paying job with Hutchison, and has subsequently been declared bankrupt. That bankruptcy has now been discharged.

366. Sammy Tse was a central figure in this insider dealing, without him there would have been no unlawful conduct. The Vanda Tribunal disqualified him from being a director of or manager in a listed company for a period of three years from 26 March 2007. That disqualification is due to expire on 26 March 2010. Having regard to the extent of that disqualification and the matters raised in paragraphs 362-3 above, we have

concluded that an appropriate period of disqualification will be six months from the date of this Report.

Order: Pursuant to s 23(1)(a) of the Ordinance, Sammy Tse Kwok Fai is disqualified from being a director of or a manager in a listed company for a period of six months from the date of this Report.

367. We have had regard to the fact that Sammy Tse is now unemployed, and we note that he is now discharged from bankruptcy. It would however be unfair to the other implicated parties and to the community of Hong Kong, were he not to bear his share of the costs of the proceedings.

Order: Pursuant to s 27 of the Ordinance, Sammy Tse Kwok Fai is to pay the sum of $441,431.50 to the Government of the Hong Kong Special Administrative Region as his share of the expenses of and incidental to the Inquiry.

Debbie Ng Kit Ying:

368. Mr Mak pressed upon us that Debbie Ng was only 17 years old at the time of these events. That is right. But she could not in any way be described as an unsophisticated person. Despite her age she was a very experienced share trader and knew precisely what she was doing at all times. There was nothing naive about her conduct. We agree with the Vanda Tribunal when it said that she was engaged in a cynical scheme of

insider dealing whereby her mother's share trading accounts were used to distance her from the source of the insider information[31].

369. The Vanda Tribunal disqualified Debbie Ng from being a director of or a manager in a listed company for a period of two years. That term has now expired. We think that, realistically, Debbie Ng will never be invited to be a director of a listed company, but are of the view that a disqualification is still appropriate in order to reflect the seriousness of her insider dealing.

Order: Pursuant to s 23(1)(a) of the Ordinance, Debbie Ng Kit Ying is disqualified from being a director of or a manager in a listed company for a period of six months from the date of this Report.

370. No reason was advanced to us why Debbie Ng should not pay a share of the costs.

Order: Pursuant to s 27 of the Ordinance, Debbie Ng Kit Ying is to pay the sum of $441,431.50 to the Government of the Hong Kong Special Administrative Region as her share of the expenses of and incidental to the Inquiry.

371. Debbie Ng acquired a total of 3,892,000 shares in Harbour Ring when in possession of relevant information. She disposed of 892,000 shares during the re-rating period, realising a profit of $6,441,434. The calculation of Ms Stella Fung demonstrates that her notional profit on the remaining shares amounts to $20,714,543, a total profit of $27,155,977.

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[31] Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Vanda Systems and Communications Holdings Ltd dated 26 March 2007, at p 221.

For the reasons contained in paragraphs 352-358 above, we allow a 25% discount on that sum, reducing the amount due to $20,366,982.

Order: Pursuant to s 23(1)(b) of the Ordinance, Debbie Ng Kit Ying is ordered to pay to the government of the Hong Kong Special Administrative Region the amount of $20,366,982.

Charles Chong Wai Lee:

372. No evidence was put before us as to Charles Chong's present financial position, or his occupation. In the course of the hearing we learned that he was a director of a substantial company but we do not understand that to be a listed company.

373. He was disqualified by the Vanda Tribunal for a period of two years and six months, which is about to expire. We believe that had the two Inquiries been heard together it is likely that his period of disqualification in relation to the two events of insider dealing would have been concurrent. But we believe also that we must reflect the seriousness of insider dealing with a period of disqualification. It is necessary also to reflect the fact that not only did Charles Chong buy shares as a result of inside information, he also passed the information to his sister. We do not accept that brotherly love and affection provides any excuse nor mitigation in relation to insider dealing.

374. In the circumstances we have concluded that a three-month disqualification will appropriately reflect the seriousness of Charles Chong's insider dealing.

Order: Pursuant to s 23(1)(a) of the Ordinance, Charles Chong Wai Lee is disqualified from being a director of or a manager in a listed company for a period of three months from the date of this Report.

375. It was not suggested that it would not be appropriate that Charles Chong should pay a share of the costs of the Inquiry.

Order: Pursuant to s 27 of the Ordinance, Charles Chong Wai Lee is to pay the sum of $441,431.50 to the Government of the Hong Kong Special Administrative Region as his share of the expenses of and incidental to the Inquiry.

376. Charles Chong acquired a total of 5 million Harbour Ring shares when in possession of the relevant information. He disposed of 2,300,000 of those shares during the re-rating period, realising a profit of $16,249,379. The calculation of Ms Stella Fung demonstrates that his notional profit on the remaining shares amounts to $17,831,252, giving a total profit of $34,080,631. For the reasons contained in paragraphs 352-358 above, we allow a 25% discount on that sum, reducing the amount due to $25,560,473.

Order: Pursuant to s 23(1)(b) of the Ordinance, Charles Chong Wai Lee is ordered to pay to the Government of the Hong Kong Special Administrative Region the amount of $25,560,473.

Becky Chong Bun Bun:

377. Nothing was put before us as to Becky Chong's financial or personal situation. We know from evidence in the Inquiry that she is a

widow. It is plain also from that evidence that she is a seasoned investor in the share market. On the whole of the circumstances we are satisfied, bearing in mind her disqualification for a period of one year by the Vanda Tribunal, that a further disqualification for a period of three months appropriately reflects her insider dealing.

Order: Pursuant to s 23(1)(a) of the Ordinance, Becky Chong Bun Bun is disqualified from being a director of or a manager in a listed company for a period of three months from the date of this Report.

378. It was not suggested that it would not be appropriate that Becky Chong should pay a share of the costs of the Inquiry.

Order: Pursuant to s 27 of the Ordinance, Becky Chong Bun Bun is to pay the sum of $441,431.50 to the Government of the Hong Kong Special Administrative Region as her share of the expenses of and incidental to the Inquiry.

379. Becky Chong acquired a total of 9 million Harbour Ring shares when in possession of the relevant information. She disposed of 3,496,000 of those shares during the re-rating period, realising a profit of $22,956,164. The calculation of Ms Stella Fung demonstrates that Becky Chong's notional profit on the remaining shares amounts to $36,106,377 giving a total profit of $59,062,541. For the reasons contained in paragraphs 352-358 above, we allow a 25% discount on that sum, reducing the amount due to $44,296,905.

Order: Pursuant to s 23(1)(b) of the Ordinance, Becky Chong Bun Bun is ordered to pay to the Government of the Hong Kong Special Administrative Region the amount of $44,296,905.

Time for payment:

380. A long period of time has elapsed since these events, and the proceedings have extended over a protracted period of time. In those circumstances it is appropriate that the insider dealers should have an extension of time in which to make payment of the financial orders made against them.

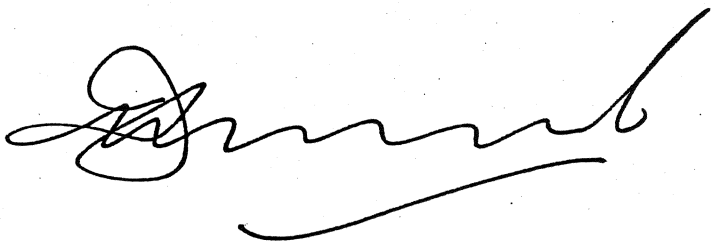
381. We accordingly order that each of Sammy Tse, Debbie Ng, Charles Chong and Becky Chong, shall have a period of six months from the date of this Report in which to make payment of the financial orders made pursuant to s 23(1)(b) and s 27 of the Ordinance.

The other implicated parties:

382. Dennis Li Yat Tung and Chris Wong Cheung Hung were both found by us not to be insider dealers. Despite having notice of this hearing neither appeared before us on 16 September 2009. We have accordingly drawn the inference that neither intended to make any application for costs. Accordingly we order that neither Dennis Li Yat Tung nor Chris Wong Cheung Hung shall be entitled to costs consequent upon the finding that they were not insider dealers.

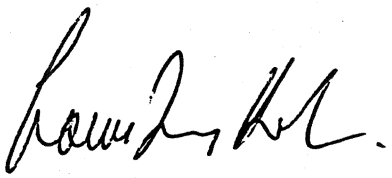
Conclusion:

383. The Tribunal, having completed its Inquiry, now submits this Report to the Financial Secretary.



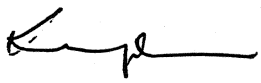
The Honourable Mr Justice Saunders

Chairman



Mr Louis Fung Kai Lin

Member



Mr Vincent Kwan Po Chuen

Member

Dated 20th October 2009