

The report of the Market Misconduct Tribunal into dealings  
in the shares of Sino Katalytics Investment Corporation  
on and between 2 January 2009 to 9 January 2009

**Part I : A report pursuant to section 252(3)(a) and (b) of the Securities and  
Futures Ordinance, Cap 571**

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Attestation to Part I of the Report

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## CHAPTER 1

### THE FINANCIAL SECRETARY'S NOTICE

1. The Tribunal was constituted in consequence of the Financial Secretary's ("FS") Notice dated 12 April 2011.

"IN THE MATTER OF THE LISTED SECURITIES  
OF SINO KATALYTICS INVESTMENT CORPORATION  
(Stock Code 2324)

NOTICE TO THE MARKET MISCONDUCT TRIBUNAL  
PURSUANT TO SECTION 252(2) AND SCHEDULE 9  
OF THE SECURITIES AND FUTURES ORDINANCE, CAP. 571  
(THE "ORDINANCE")

Whereas it appears to me that market misconduct within the meaning of Section 274 ("**False Trading**"), section 275 ("**Price Rigging**") and section 278 ("**Stock Market Manipulation**") of Part XIII of the Ordinance has or may have taken place in relation to the securities of Sino Katalytics Investment Corporation (stock code 2324)(the "**Company**"), the Market Misconduct Tribunal is hereby required to conduct proceedings and determine -

- (a) Whether any market misconduct has taken place;
- (b) The identity of any person who has engaged in the market misconduct;  
and
- (c) The amount of any profit gained or loss avoided as a result of the market misconduct.

#### **Persons Specified**

Mr Chui Tak Keung, Duncan ("**Chui**") and  
Mr Yau Chung Hong, Peter ("**Yau**").

## Statement for Institution of Proceedings

1. At all material times Chui was the Company's chairman and executive director as well as its single largest shareholder and Yau was an executive director of the Company as well as a substantial shareholder as that term is defined in the Ordinance.
2. Between July 2007 and early December 2008 the Company raised additional capital of \$121 million after expenses through two rights issues and two placements. On 16 December 2008 the Company issued bonds in the principal amount of \$8.1 million convertible into new shares representing approximately 19.48% of the then issued share capital at \$0.045 per share.
3. On and between 2 January 2009 and 9 January 2009 (the "**Specified Period**") Chui and Yau instructed their brokers to transact in the Company's shares. Yau was responsible for 100% of sales in the Company's shares on 2 January 2009, 86% of sales in the Company's shares on 5 January 2009 and 90% of sales in the Company's shares on 6 January 2009. Chui was responsible for 92% of purchases in the Company's shares on 7 January 2009 and 85% of purchases in the Company's shares on 8 January 2009. The closing price in the Company's shares was \$0.042 on each of those days other than 5 January 2009 when it was \$0.041. Between 2 January 2009 and 8 January 2009 turnover in the Company's shares averaged 2.6 million shares.
4. On 9 January 2009 turnover in the Company's shares increased to 8.85 million shares and Yau was responsible for 89% of sales, whereas Chui was responsible for 62% of purchases. Over 97% of Chui's purchases on that day came from Yau's sales and such purchases took place within 20 minutes of the market close during which time the market price rose from \$0.049 to close at \$0.055, a rise of 31% over the previous day's close.
5. Turnover in the Company's shares on 12 January 2009 fell to just 650,000 shares and the closing price dropped from \$0.055 to \$0.054. Neither Yau nor Chui transacted in the Company's shares on that day.

6. Chui and Yau did not work from the same office premises but communicated by office and mobile telephone frequently during the Specified Period.
7. In compliance with paragraph 8 of Appendix 10 to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “**Model Code**”) Yau notified Chui as the Company’s chairman of his intention to deal in the Company’s shares and obtained prior written acknowledgment. In similar compliance Chui informed Yau of his intention to deal in the Company’s shares and obtain prior written acknowledgment. In compliance with the provisions of Part XV of the Ordinance both Chui and Yau notified the Company’s corporate communications officer once they had dealt in the Company’s shares. The corporate communications officer’s duties included furnishing appropriate disclosure notices to the Stock Exchange of Hong Kong Limited and maintaining the required register of directors’ interests.
8. Chui told the Securities and Futures Commission (the “**SFC**”) in interviews that as a result of the July 2008 rights issue Yau increased his interest in the Company beyond his own, also that in August 2008 Chui negotiated to purchase 55 million shares in the Company from Yau in an off-market transaction, also that he thereafter wished to monitor Yau’s shareholding as he was concerned to remain the single largest shareholder.
9. The corporate communications officer’s duties also included furnishing Chui with copies of directors’ disclosure notices and, commencing around August 2008, maintaining in spreadsheet form a record of Yau’s interests and sending a copy to Chui whenever Yau’s interest changed.
10. By reason of the means by which they complied with the Model Code, each of Chui and Yau had advance knowledge of the other’s intention to deal in the Company’s shares. By reason of instructions given to the corporate communications officer, Chui knew when Yau had dealt in the Company’s shares.

11. On 31 December 2008 Yau complied with the Model Code and informed Chui of his intention to acquire 6 million shares in the Company at \$0.042 from 2 January 2009 to 6 January 2009. On 8 January 2009 Yau again complied with the Model Code and informed Chui of his intention to dispose of 8 million shares in the Company at \$0.050 on 9 January 2009. Chui acknowledged both notifications.
12. On 2 January 2009 Chui complied with the Model Code and informed Yau of his intention to acquire 10.5 million shares in the Company at \$0.047 from 5 January 2009 to 9 January 2009. Yau acknowledged the notification.
13. Chui told the SFC in interviews that he was pleased to learn of Yau's notification to dispose. He was prepared to pay market price in order to maintain a higher level of interest. He guessed he was buying on 9 January 2009 those shares Yau was selling.
14. Yau told the SFC in interviews that although he had seen Chui's notification to acquire he did not know if Chui had in fact purchased. That his desired selling price was set by having to meet margin calls on his account, also to have funds in advance of Chinese New Year.
15. In interviews with the SFC both Chui and Yau denied working with each other on the afternoon of 9 January 2009 to push up the Company's share price, notwithstanding that each knew of the other's intention to buy and sell from Model Code notifications.
16. Chui and Yau were in frequent telephone contact on 9 January 2009 and their transactions during the 20 minutes prior to the market close had the appearance of being coordinated.
17. On 7 January 2009 Yau approached Guoyuan Securities Brokerage (Hong Kong) Limited and discussed the prospects for a placement of the Company's shares (the "**Placement**"). Discussions continued over the weekend of 10 and 11 January 2009 and on 12 January 2009 the Company's secretary was instructed to convene a board meeting for 5:00 p.m. the same day. The Company's board resolved to proceed with the Placement in order to raise a further \$8.31 million by allotting new share

equivalent to around 20% of the Company's then issued share capital, also at \$0.045 per share. Trading in the Company's shares was suspended on 13 January 2009 at 10:42 a.m. The Placement was undersubscribed by 19% and raised \$6.76 million.

18. The transactions in most of the shares disposed of by Yau and acquired by Chui on 9 January 2009 were undertaken in a manner designed to manipulate the market in the Company's shares ahead of the Placement.
19. Accordingly, Chui and Yau engaged or may have engaged in market misconduct contrary to sections 274, 275 and 278 of the Ordinance.

Dated this 12<sup>th</sup> day of April 2011

[Signed]  
(John C. Tsang)  
Financial Secretary".



## CHAPTER 2

### THE LAW

#### *False trading*

2. Section 274(1) of the Ordinance provides that :

“(1) False trading takes place when, in Hong Kong or elsewhere, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance -

- (a) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or
- (b) with respect to the market for, or the price that dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

...

(3) False trading takes place when, in Hong Kong or elsewhere, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means or authorized automated trading services.

...

(5) Without limiting the general nature of the conduct which constitutes false trading under subsection (1) or (2), where a person -

- (a) ...
- (b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an *associate* of his has made or proposes to make, an offer to purchase the same or substantially the same number of them; or
- (c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an *associate* of his has made or proposes to make, an

offer to sell the same or substantially the same number of them,  
[Italics added.]

then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections (1) and (2), be regarded as doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance -

(i) where the securities are traded on a relevant recognized market or by means of authorized automated trading services, of active trading in securities so traded; or

(ii) ...

(6) A person shall not be regarded as having engaged in market misconduct by reason of false trading taking place through the commission of an act referred to in subsection (5)(a), (b) or (c) *if he establishes that the purpose<sup>1</sup>* for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false and misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in, securities, referred to in subsection (1) or (2) (as the case may be). [Italics added.]”.

“associate”

3. Section 245(1) of the Ordinance provides that for Part XIII, unless the context otherwise requires -

“ ‘associate’, in relation to a person, means -

- (a) the person’s spouse or reputed spouse, any person cohabiting with the person as a spouse, the person’s brother, sister, parent, step-parent, child (natural or adopted) or step-child;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) where the person is a corporation, each of its directors and its related corporations and each director or employee of any of its related corporations;

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<sup>1</sup> The burden imposed is the persuasive burden of proof, which is discharged on the balance of probabilities [see paragraph 88 of the judgment of Gleeson NPJ in the Court of Final Appeal in *Fu Kor Kuen & Another v HKSAR*, unreported, FACC No. 4/2011; 24 May 2012 to the effect that is the burden even in criminal proceedings.]

- (e) without limiting the circumstances in which paragraphs (a) to (d) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement -
  - (i) with respect to the acquisition, holding or disposal of such securities or such interest; or
  - (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;”.

“active trading”

4. In having regard to the phrase “active trading” the Tribunal is to have regard to all the material received in respect of trading in Sino Katalytics Investment Corporation (“Sino Katalytics”) shares in the Specified Period, namely on and between 2 and 9 January 2009, and is not confined only to a consideration of the number of such trades.

“likely”

5. The word “likely” means that it is more probable than not. It is not necessary that the false or misleading appearance, as particularised in section 274(1)(a) or (b), is created. Breach of the section occurs when a person does anything or causes anything to be done with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating that result. [See paragraph 42 of the judgment of Mason J in the High Court of Australia in *North v Marra Development Ltd* 4 ACLR 585 in construing section 70 of the Securities Industry Act 1970 (NSW) :

“A person shall not create or cause to be created or do anything which is calculated to create, a false and misleading appearance of active trading in

any securities on any stock market in the State, or a false or misleading appearance with respect to the market for, or the price of, any securities.”.

*“Reckless”*

6. The Chairman has directed the Tribunal in respect of the ingredient of recklessness in accordance with the judgment of Sir Anthony Mason NPJ, with whose judgment all the other judges agreed, in the Court of Final Appeal in *Sin Kam Wah v HKSAR* [2005] HKCFAR 192 at paragraph 44, page 210 D-G. A person acts recklessly in respect of a circumstance if he/she was aware of a risk which did or would exist, or in respect of a result if he was aware of a risk that it would occur, and it was, in the circumstances known to him unreasonable to take the risk. If, due to his/her age or personal characteristics, he/she genuinely did not appreciate or foresee the risks involved in his/her actions he/she is not reckless.

*Price rigging*

7. Section 275 of the Ordinance provides that :

“(1) Price rigging takes place when, in Hong Kong or elsewhere, a person -

...

(b) enters into or carries out, directly or indirectly any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing or causing fluctuations in the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services.

...

(3) For the purposes of subsections (1)(b) and (2)(b), the fact that a transaction is, or at any time was, intended to have effect according to its

terms is not conclusive in determining whether that the transaction is, or was, not fictitious or artificial.

(4) A person shall not be regarded as having engaged in market misconduct by reason of price rigging taking place through any transaction of sale or purchase of securities referred to in subsection 1(b) ... if he establishes<sup>2</sup> the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purpose for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.”.

### *Stock market manipulation*

8. Section 278 of the Ordinance provides that :

“(1) Stock market manipulation takes place when, in Hong Kong or elsewhere -

- (a) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation or of the corporation;”.

The word “likely” means that it is more probable than not.

### *The Standard of Proof*

9. Section 252(7) of Ordinance provides that :

“ ... the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.”.

10. That standard is the “balance of probabilities”. In *Solicitor (24/7) v The Law Society of Hong Kong* [2008] 2 HKLRD 576 the Court of Final Appeal

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<sup>2</sup> The persuasive burden, on the balance of possibilities.

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 at p 586 D–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.”.

11. In his judgment in the Court of Final Appeal in *Koon Wing Yee and Insider Dealing Tribunal* (unreported) FACV No. 19 of 2007 Sir Anthony Mason NPJ cited that acceptance with approval (see paragraph 89). That is the approach to the standard of proof that has been adopted by this Tribunal.

#### *Circumstantial evidence and inferences*

12. In his judgment in the Court of Final Appeal, with which all the other judges agreed, in *HKSAR v Lee Ming Tee* (2003) 6 HKCFAR 336 Sir Anthony Mason NPJ, having cited with approval the passage from the speech of Lord Nicholls quoted above, went on to address the proper approach to the drawing of inferences in circumstances of allegations of gross misconduct by senior officers of the SFC. Sir Anthony said :

“...that conclusion was not to be reached by conjecture nor, as the respondent submitted, on a mere balance of probabilities. It was to be plainly established as a matter of inference from proved facts. It is not possible to state in definitive terms the nature of the evidence which the court will require in order to be satisfied, in a civil proceeding, that a serious allegation of this kind, is made out. It would not be right to say that the requisite standard prescribes that the inference of wrongdoing is the only inference that can be drawn (cf

*Sweeney v Coote* [1907] AC 221 at 222, per Lord Loreburn) for that is the standard which applies according to the criminal standard of proof. In the particular circumstances, it was for the respondent to establish as a compelling inference that very senior officers of the SFC had deliberately and improperly terminated the investigation into Meocre Li's conduct for the ulterior purpose alleged, sufficient to overcome the inherent improbability that they would have done so (see *Aktieselskabet Dansk Skibsfinansiering v Brothers & Others* (2000) 3 HKCFAR 70 at pp. 91H, 96 G-I, per Lord Hoffmann).”.

13. Excerpts from the passage quoted above in the judgment of Sir Anthony Mason NPJ were cited with approval in the judgment of Mr Justice Ribeiro PJ (see paragraph 187) in the Court of Final Appeal in *Nina Kung alias Nina TH Wang and Wang Din Shin* (2005) 8 HKCFAR 387. In his judgment, Lord Scott of Foscote NPJ observed, in the context of allegations that Mrs Wang had procured the forgery and in a conspiracy with another was attempting to obtain probate as the will of a document she knew to have been forged, at paragraph 626 :

“The probability of these allegations being true must be judged on the evidence adduced in the case. But it must also take account of propensity. If such an allegation is made against a person with a record of involvement in forgery or fraud, the strength of the other evidence necessary to satisfy the balance of probability test is obviously less than would otherwise be required. Evidence of propensity must go into the balance ... Evidence to a very high standard of cogency indeed is necessary before the court can be justified in finding either to be dishonestly involved in a conspiracy to promote a forged will.”.

14. The Tribunal approached the drawing of inferences adverse to the Specified Persons with those considerations in mind. Mindful of the fact that the conduct alleged against the Specified Persons is of a nature that could have resulted in the bringing of serious criminal charges the Tribunal did not draw

inferences from proved primary facts that any one of the Specified Persons was culpable of the alleged misconduct unless to do so was very compelling and the evidence was of a very high standard of cogency indeed.

### *Lies*

15. The Tribunal has reminded itself in its approach to the evidence of the respective Specified Persons in the Tribunal and their statements outwith the Tribunal that a lie in itself does not prove that the maker of the lie is culpable of the misconduct alleged against that person. People innocent of wrongdoing sometimes tell lies : perhaps, as a misguided reaction to a problem, or to postpone facing up to it or to attempt to deflect ill founded suspicion, or to fortify their defence. Nevertheless, it may be a matter relevant to credibility.

### *Good character*

16. The Chairman directed the Tribunal that a Specified Person of good character is less likely than otherwise might be the case to have committed the alleged misconduct and that good character supports his credibility in respect of both his evidence in the Tribunal and in his records of interview.

### *Separate consideration*

17. The Tribunal has considered the case against and for each of the Specified Persons separately. Statements made outwith the Tribunal, inconsistent with the oral testimony of the maker in the proceedings before the Tribunal, are not evidence of the truth of the matters there asserted. Having had regard to whether or not in true context the assertion outwith the Tribunal is



inconsistent in a material particular with oral testimony and to any explanations proffered for that inconsistency, the Tribunal may have regard to the inconsistency in respect of the credibility of the witness.

## CHAPTER 3

### THE MATERIAL RECEIVED BY THE TRIBUNAL<sup>3</sup>

#### Background

18. Sino Katalytics, now known as Capital VC Limited, was incorporated in the Cayman Islands on 13 November 2002 as China Northern Enterprises Investment Fund Ltd (“China Northern”). The company’s shares were listed on the Stock Exchange of Hong Kong on 27 October 2003, when 50 million shares were placed to professional investors. Guotai Junan Securities (Hong Kong) Ltd (“Guotai”) acted as co-lead managers in the listing. Mr Peter Yau Chung Hong (“Mr Peter Yau”) was a shareholder and one of the several executive directors. Mr Ben Cheung Hung (“Mr Ben Cheung”), then an employee of Guotai, was a non-executive director of Sino Katalytics from its listing until 6 August 2004.

19. In January 2005, Mr Duncan Chui Tak Keung (“Mr Duncan Chui”) became a shareholder and executive director of Sino Katalytics. Then, Sino Katalytics acquired a 30% interest in the shareholding of CNI Bullion Limited (“CNI Bullion”), which had been formed in March 2005 and which provided services in respect of bullion trading. In April 2005, Mr Peter Yau disposed of his shareholding in Sino Katalytics, but remained as an executive director. In November and December 2005, Mr Duncan Chui began acquiring Sino Katalytics shares, becoming its biggest shareholder, holding 26.25% of its shares in the latter month. The company changed its name to Sino Katalytics on 12 January 2006.

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<sup>3</sup> See Appendix I.

20. On 2 July 2008, Mr Peter Yau began acquiring Sino Katalytics shares in his own name and in the name of his wholly owned company, Sellwell Enterprises Ltd. At that date Mr Duncan Chui's holding of Sino Katalytics shares had fallen to 11.06% of the issued capital. By about the end of August 2008, Mr Peter Yau had increased his shareholding of Sino Katalytics shares to about 18.5% of its issued share capital, whilst that of Mr Duncan Chui remained at 11.3%. By an off-market trade on 28 August 2008 Mr Duncan Chui acquired 55 million Sino Katalytics shares from Mr Peter Yau, thereby reducing the latter's shareholding to 12.6% and increasing that of Mr Duncan Chui to 17.25% of the issued share capital of Sino Katalytics. Thereafter, Mr Duncan Chui increased his shareholding of Sino Katalytics to more than 23% by mid-November 2008. [See a schedule of their respective trading and the percentage their holdings represented of the issued share capital of Sino Katalytics at Appendix II]

*Trading in the shares of Sino Katalytics*

21. There is no dispute that at all material times Sino Katalytics was a thinly traded stock. The Stock Historical Data records for the period 1 December 2008 to 13 February 2009 illustrate the point. [see Appendix III]

*Trading in the shares of Sino Katalytics by Mr Duncan Chui and Mr Peter Yau on and between 2 to 9 January 2009*

22. *Purchases by Mr Peter Yau: volume and price per share*

2 January 2009	2,000,000 shares at 4.2 cents;
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5 January 2009	50,000 shares at 3.8 cents
	50,000 shares at 3.7 cents
	2,000,000 shares at 4.1 cents;
6 January 2009	2,050,000 shares at 4.1 cents
	700,000 shares at 4.2 cents.

23. *Sales by Mr Peter Yau: volume and price per share*

9 January 2009	2,000,000 shares at 5.0 cents-through Quam
	1,000,000 shares at 5.1 cents-through Quam
	900,000 shares at 5.5 cents-through Quam
	1,000,000 shares at 4.9 cents-through Barclays/UOB
	2,000,000 shares at 5.0 cents-through Barclays/UOB
	1,000,000 shares at 5.1 cents-through Barclays/UOB.

24. *Purchases by Mr Duncan Chui through Onshine: volume and price per share*

7 January 2009	400,000 shares at 4.2 cents
	1,950,000 shares at 4.1 cents;
8 January 2009	250,000 shares at 4.1 cents
	2,200,000 shares at 4.2 cents;
9 January 2009	850,000 shares at 5.5 cents
	100,000 shares at 5.4 cents
	1,300,000 shares at 5.1 cents
	2,200,000 shares at 5.0 cents
	1,000,000 shares at 4.9 cents.

25. 97.2% of the Sino Katalytics shares purchased by Mr Duncan Chui on 9 January 2009 were sold to him by Mr Peter Yau. Prior to their first transaction, at 15:39:14 for the purchase and sale of one million Sino Katalytics shares at 4.9 cents per share, the only two earlier purchases and sales of the shares that day were at 11:43:03, of 50,000 shares at 4.2 cents per share, and at 14:54:21 of 500,000 shares at 4.4 cents per share. The last transaction between them that day was at 15:59:52 involved the sale of 800,000 Sino Katalytics at 5.5 cents per share. That also proved to be the closing price of Sino Katalytics shares that day, it having risen from the closing price of 4.2 cents on 8 January 2009.

26. In a period on and between 15:37:43 and 15:59:22, through a combination of Quam Securities Limited (“Quam Securities”) and Barclays/UOB Kay Hian (Hong Kong) Limited (“Barclays/UOB”), Mr Peter Yau placed eight selling orders of one million Sino Katalytics shares each. In the period on and between 15:39:14 and 15:59:52, Mr Duncan Chui placed nine buying orders for a total of 5.45 million Sino Katalytics shares. The latter’s ‘Bid’ price rose from 4.9 cents to 5.5 cents.

27. The pattern of their orders and the executed orders in that period is illustrated by exhibit 11 to the witness statement of Mr Eric Cheng Kai Sum (“Mr Eric Cheng”), a Senior Director of the Surveillance Department of the Enforcement Division of the SFC. [See Appendix IV]

28. The relative dominance of the combined trading in the period 2 to 9 January 2009 of Mr Peter Yau and Mr Duncan Chui is illustrated by an extract from exhibit 9 to Mr Eric Cheng’s witness statement.

Trades conducted by CHUI and YAU in SKIC shares between 2 January 2009 and 10 February 2009  
(the Review Period)

Trading by Duncan Chui and Peter Yau						SKIC shares					
Duncan Chui		Peter Yau									
Date	Quantity	Price Range	Quantity	Price Range	Combined Dominance	Market Volume without Duncan Chui and Peter Yau	Volume	Turnover (HKD)	High	Low	Close
2/1/2009			2,000,000	\$0.042	100.0%	-	2,000,000	84,000	0.042	0.042	0.042
5/1/2009			2,100,000	\$0.037 - \$0.041	86.6%	325,000	2,425,000	98,375	0.041	0.037	0.041
6/1/2009			2,750,000	\$0.041 - \$0.042	89.9%	310,486	3,060,486	126,211	0.042	0.041	0.042
7/1/2009	2,350,000	\$0.041 - \$0.042			92.2%	200,000	2,550,000	104,650	0.042	0.039	0.042
8/1/2009	2,450,000	\$0.041 - \$0.042			84.5%	450,000	2,900,000	120,600	0.042	0.037	0.042
9/1/2009	5,450,000	\$0.049 - \$0.055	(7,900,000)	\$0.049 - \$0.055	89.3%	950,000	8,850,000	445,900	0.055	0.042	0.055

*The explanations by Mr Peter Yau and Mr Duncan Chui for their respective sales and purchases of Sino Katalytics shares on 9 January 2009*

29. Although Mr Peter Yau had brought 6,850,000 Sino Katalytics shares on and between 2 and 6 January 2009, he explained his sale of 7.9 million Sino Katalytics shares on 9 January 2009 as his response to persistent margin call made by Mr Lawrence Hung Sing Kwong (“Mr Lawrence Hung”), his broker at

Quam Securities. He said that often those calls were relayed through his secretary and that was a cause of embarrassment. In a record of interview, conducted of him by an officer of the SFC on 21 May 2009, Mr Peter Yau explained the circumstances in which he had come to sell Sino Katalytics shares on 9 January 2009 :

“... because I can remember that as the Chinese New Year was approaching in January and the margin amount of his brokerage house ... was damn tightened; well he then said that ... I owe him money; that is what I can remember and then on 8<sup>th</sup> \$50,000 was deposited on 8<sup>th</sup> ... well, and he also said, that is, the brokerage house was dunning him very hard for payment; when I was damn troublesome. But after I made the calculation (I found) that if I sold the shares at about that price, it would just be the case that there would be no need for me to make any payment ... on the contrary, I would make money ...”.

30. However, having listened to a tape recording of the telephone conversation he had with Mr Lawrence Hung on 8 January 2009 during the course of proceedings in the Tribunal, Mr Peter Yau accepted that there was nothing in the tone or language that Mr Lawrence Hung had used that was unpleasant.

31. Mr Lawrence Hung said that his colleagues in Quam Securities provided him with a ‘margin report’ each morning identifying those clients of his of whom a margin call might be made. It was as a result of such contact with Mr Peter Yau, his name having appeared in such margin reports, that payments were made by Mr Peter Yau to Quam Securities of \$8,000 on 2 January, and \$50,000 on each of 6 and 8 January 2009.

32. Mr Lawrence Hung identified his voice and that of Mr Peter Yau on audio tape recordings of conversations in which he made requests for deposits of money from Mr Peter Yau on 6 and 8 January 2009. Mr Lawrence Hung's request of Mr Peter Yau on 6 January was made in the following way :

“is it convenient for you to deposit some money into your account? ... because you now have 4 million shares of 2324 in your account.”.

The request for the deposit of \$80,000 was met with a simple agreement by Mr Peter Yau. However, as noted earlier only \$50,000 was in fact deposited.

33. Mr Lawrence Hung's request of Mr Peter Yau on 8 January was that he :

“help (me) out on your account ... deposit 80,000 bucks, is it okay?”

Mr Lawrence Hung explained, “there is a shortfall of 204,000 ...”. Then, he asked for around \$100,000. Although Mr Peter Yau responded in the affirmative to the request, in fact only \$50,000 was deposited that day in Quam Securities's bank account. Not surprisingly, in light of that dialogue, in cross-examination by counsel for Mr Peter Yau, Mr Lawrence Hung denied that there was, “some kind of urgency in the tone and in ... the words you used, for the margins to be deposited by Mr Yau”.

34. Mr Duncan Chui explained that he had bought Sino Katalytics shares on and between 7 and 9 January 2009 in part because he considered them to be good value. Also, having become aware that Mr Peter Yau was buying Sino Katalytics shares in early January he wanted him to be aware that he too was a buyer of those shares. He was motivated to send that message and to be buyer



to avoid what had happened in July and August 2008, when Mr Peter Yau had built up a sizeable holding of Sino Katalytics shares, surpassing his own holding, before he became aware of that fact. Although Mr Duncan Chui acknowledged that by 29 December 2008 their respective percentage shareholding of Sino Katalytics shares was in his favour 23.37% to Mr Peter Yau's 11.86%, he said that nevertheless he wished to send the latter the message that:

“ ... I would also be interested in maintaining or even increasing my shareholding level.”.

35. Although Sino Katalytics purported to operate the ‘Model Code for Securities Transactions by Directors and Listed Companies’, as provided for by Appendix 10 of the Listing Rules, both Mr Duncan Chui and Mr Peter Yau accepted that there was no timely compliance with its provisions. Ultimately, there was no dispute that the requisite written notices passing between directors of their intention to trade in Sino Katalytics shares, the details of those proposed trades and the signed acknowledgement of receipt were all prepared retrospectively by Ms Sarah Tsang Yin Kau (“Ms Sarah Tsang”). However, both men said that messages were sent by the one and received by the other of the fact that they intended to trade in Sino Katalytics shares.

36. Mr Duncan Chui said that in a telephone conversation on 8 January 2009 Mr Peter Yau had informed him that he intended to sell a few million Sino Katalytics shares the following day. He was given no other details. Mr Peter Yau responded to Mr Duncan Chui's enquiry as to why he was selling shares, given that he had been buying them in the previous few days, by explaining that “he needed the money”.

37. For his part, Mr Peter Yau said that to the best of his memory on 8 January 2009 he had told Mr Duncan Chui by telephone that he wished to dispose of 7 to 8 million Sino Katalytics shares. In response to his enquiry as to why he wished to do so, he had said simply that he needed money. He had hoped that Mr Duncan Chui might offer to buy his shares in a block trade, as he had bought from him in August 2008. However, no offer was forthcoming.

38. Mr Duncan Chui said that although he had checked trading activity in Sino Katalytics shares on the market service provided by ET Net in the morning of 9 January 2009 it was not until he had noticed two ‘Sell’ Orders for 1 million Sino Katalytics shares, made at 15:37 and 15:38 respectively, that he had responded with a ‘Buy’ orders at 15:39. He explained that his “biggest and main objective was to buy the shares from Mr Yau, if I could.” He went on to say that, given what he had been told the previous day, he was expecting Mr Yau to be selling. He added :

“ ... so my only motivation going into the market on that day is to look for his shares. It has nothing to do with whether the price was four cents or five cents or six cents, because in my mind, you know, the shares should have been worth ten cents, twelve cents.”.

Of his object, he said:

“...my main motivation was to protect my interests and perhaps to fight off any threat that Mr Yau was posing to me.”

39. Mr Duncan Chui accepted from the telephone records that he and Mr Yau had spoken to one another at 11:46 on 9 January 2009, shortly after the only matched transaction in Sino Katalytics shares that morning (50,000 shares at 4.2

cents), but they had not discussed trading in Sino Katalytics shares in that telephone conversation.

40. In a period of about 20 minutes following his first purchase at 15:39 at 4.9 cents per share Mr Duncan Chui brought a total of over 5 million Sino Katalytics shares, the last purchase of which was at 5.5 cents per share.

41. Of the alternative method of acquiring Mr Peter Yau's shares, namely by a 'block trade' off-market, Mr Duncan Chui said :

"I wasn't prepared to do another bought-sold note arrangement with Mr Yau after the August transaction. Second of all, I was ... I couldn't read him: he was buying on a few days and suddenly he was selling. So I could only speculate and I just did not want to get into another detailed discussion or negotiation with him."

42. Of his sale of Sino Katalytics shares on 9 January 2009, Mr Peter Yau said, that he did not know that Mr Duncan Chui was the buyer.

### *SUBSEQUENT RELEVANT EVENTS*

#### *Announcements :*

##### *13 January 2009: suspension of trading in Sino Katalytics shares*

43. At 10:42 on 13 January 2009 trading in the shares of Sino Katalytics on the Stock Exchange of Hong Kong was suspended. The market was informed by Mr Duncan Chui, on behalf of the Board, that was at the request of the company, "pending the release of an announcement in relation to a top-up placing".

*15 January 2009: placement*

44. On 15 January 2009, Sino Katalytics announced to the market that on 13 January 2009 it had entered into a placing agreement with Guoyuan in those terms. Of the placing price, it was said that it represented:

“(i) a discount of approximately 16.67% to the closing price of HK\$0.054 per Share as quoted on the Stock Exchange on the Last Trading Date; (ii) a discount of about 4.26% over the average closing price per Share of about HK\$0.047 as quoted on the Stock Exchange for the last five trading days up to and including the Last Trading Date; and (iii) a discount of about 82.53% to the unaudited net asset value per share of HK\$0.2576 as at 31 December 2008.”.

The last trading day was defined as being:

“12 January 2009, being the last trading day immediately prior to the suspension of trading in share pending the publication of this announcement.”.

Of the use of the anticipated net proceeds of the placement of approximately \$8 million it was stated:

“Depending on market conditions and availability of investment opportunities, the Board intends to apply the net proceeds for future potential investment in working capital.”.

*12 January 2009*

45. In the morning of 12 January 2009 Mr Peter Yau held discussions with Mr David Hui Lam Chiu (“Mr David Hui”) of Guoyuan Securities Brokerage (Hong Kong) Ltd (“Guoyuan”) at which the subject of Guoyuan acting as the placing agent in a placing by Sino Katalytics was discussed. Mr Ben Cheung, recently employed by Guoyuan, had suggested the meeting to Mr Peter Yau, arranged for it to take place and was present at least at some of the meeting.

46. Mr David Hui, the responsible officer of Guoyuan and in charge of its Equity and Capital Market Department, said that he met Mr Peter Yau of Sino Katalytics for the first time at a meeting on the premises of Guoyuan in the morning of 12 January 2009. The meeting was attended by Mr Ben Cheung, who had suggested a meeting for business discussions between the parties earlier that morning. At the meeting, for the first time, Mr Ben Cheung identified a placement by Sino Katalytics as being the specific business concerned. He was told it was to be a top-up placement. He could not remember which of the other men had told him that. He said Mr Ben Cheung was present in the meeting throughout. Mr Peter Yau stipulated the price of the placement shares to be 4.5 cents. He did so, “as a matter of fact”. There were no discussions. In prospect, this was to be Mr David Hui’s first placement as a placement agent.

47. A letter to Guoyuan from Sino Katalytics signed by Mr Peter Yau bearing facsimile data transmission from Guoyuan and the date and time of “12:51 12 Jan 2009” recorded the acceptance by Mr Peter Yau on behalf of Sino Katalytics of Guoyuan as the placing agent.

*12 January 2009 - trading in Sino Katalytics shares*

48. Trading in Sino Katalytics shares was very thin on 12 January 2009, turnover being only 650,000. No transactions were executed at all until 15:44:10 when a ‘Bid’ that had been made at 10:13:23 to buy 500,000 shares at 4.8 cents per share was matched by an offer to sell 100,000 shares. At 15:47:05 a second tranche of 150,000 shares was matched at 4.8 cents per share.

The final transaction of the day occurred at 16:10:07 when a 'Bid' made at 16:06:11 to sell 400,000 shares at 5.4 cents per share was matched in respect of 350,000 shares. The closing price of Sino Katalytics shares that day was 5.4 cents per share.

49. The buyer of the 350,000 shares traded at 16:10:07 shares was Ms Chan Wai Yan, an employee and colleague of Mr Peter Yau at CNI Bullion. She had been employed as the marketing and sales manager in CNI Bullion since 2007. She described Mr Peter Yau as her "big boss". At the invitation of Mr Ben Cheung, whom she had known for some years, she had become a non-executive director of Longlife Group Limited in January 2010. In December 2008, she traded in Sino Katalytics shares in her Citic Securities account and at the end of that month held 1 million Sino Katalytics shares. Although she could not remember why it was that she had bought 350,000 Sino Katalytics shares at the end of trading on 12 January 2009, it must have been because she thought the share price would rise. She did not ask anyone at CNI Bullion about buying those shares nor did anyone make any such suggestion. Certainly, she did not discuss buying the shares with Mr Peter Yau. She did not want him to know that she was trading in shares during her working hours. Similarly, she never discussed securities with Mr Ben Cheung.

50. Ms Chan Wai Yan said that through Yahoo! Finance she thought that she had seen the price at which Sino Katalytics shares had traded in the 15-20 minutes prior to her own purchase, namely in the range 4.8-4.9 cents. She said that perhaps she had paid 5.4 cents because she was unable to buy Sino

Katalytics shares at this lower price range. Further, she said that she placed her order earlier in the day and it had been matched. However, there were no other orders at all that day by her broker.

*Sino Katalytics Board meeting*

51. A meeting of the Board of Sino Katalytics was arranged for and took place at 5 p.m. on 12 January 2009. The meeting was conducted by way of telephone conference in which Mr Alex Chow, the third executive director of the company, participated with Mr Duncan Chui and Mr Peter Yau together with non-executive directors. Mr Duncan Chui and Mr Peter Yau had separate offices in different buildings in different parts of Hong Kong. The minutes were made up several weeks later by the company secretary, Mr Kasper Chan Kwan Pak (“Mr Kasper Chan”), who was present at the meeting. They record that the board resolved to authorise a director to execute a placing agreement with Guoyuan, as placing agent, to place up to 184,850,000 new shares of the company to no fewer than six placees independent of the company at 4.5 cents per share.

52. The first draft agreements prepared by solicitors on instructions of Guoyuan and sent to Sino Katalytics on the evening of 12 January 2009 were in the form suitable for a top-up placement, not the issue of new shares *simpliciter*. Mr David Hui said that evening he had a telephone conversation with Mr Duncan Chui which he initiated but he could not recall what they discussed.

*13 January 2009*

53. At 10:15:49 an order to sell 1 million Sino Katalytics shares had been placed by Mr Lawrence Hung for the account with Quam Securities in the name of Mr Terence Hui Wai Yung (“Mr Terence Hui”), the brother-in-law of Mr Peter Yau. The order matched a buy order for 1 million Sino Katalytics shares and a sale was made, establishing the traded price that morning. Mr Terence Hui said that he had given full discretion to trade in that account to Mr Lawrence Hung. The latter denied that to be case and said that he received specific instructions for each trade. The sell order was placed immediately after Mr Lawrence Hung received a telephone call from Mr Peter Yau.

*The placement agreement*

54. By the afternoon of 13 January 2009 the new draft placement agreement called for the issue of new shares only. That agreement, dated 13 January 2009, was signed by Mr Peter Yau and Mr David Hui on behalf of Sino Katalytics and Guoyuan respectively. For its part, Guoyuan undertook to use its “best efforts” only to secure placees, rather than committing themselves as underwriting the placement. Expenses were to be borne by Sino Katalytics.

*Steps taken to place the shares with placees*

55. For his part, Mr David Hui said that he adopted a “couldn’t care less” attitude to whether or not the agreement was brought to fruition. Guoyuan bore no risk. He took no steps whatsoever for several days to secure any placees. Then, on 14/15 January 2009 he contacted Mr Ben Cheung and sought his help. He said that he did so because, although Mr Ben Cheung was a new colleague,



he understood him to have good connections with brokers in the industry. In response, Mr Ben Cheung came down to his office and wrote out in his own hand a simple schedule of brokers, account executives and account holders, providing contact details of account executives and a stipulation of the monetary size of their participation in the placement. The paper on which Mr Ben Cheung wrote out the schedule bore facsimile transmission data including the date, "2009-1-14". As far as Mr David Hui recalled, Mr Ben Cheung had not made any telephone calls before writing out the schedule, which he made in one sitting.

56. Mr David Hui testified that he had contacted the persons identified by Mr Ben Cheung in the schedule. He did not contact anybody other than persons stipulated by Mr Ben Cheung. When he contacted those persons he did not try to "sell" the placement, nor was he asked any questions about Sino Katalytics. He simply identified the company by its stock code, stipulated the placement price, namely 4.5 cents, and asked if the recipient of the call was interested. He said that he got the impression that there had already been a disclosure of information of the placement to them. That disclosure could have been before or after the announcement of the placement by the company.

57. For his part, Mr David Hui created a spreadsheet in which he replicated the information set out in the handwritten schedule made by Mr Ben Cheung and updated it to reflect the progress of commitments in the placement. On one of the copies of the spreadsheet he had written "please check the

subscribe amount and subscribe quantity for each one” and marked the document “Attn Mr Peter Yau”.

58. In the event, 150,150,000 placement shares were placed of the 184,850,000 available for subscription, raising just over \$6.5 million which was deposited by Guoyuan into the Hang Seng Bank savings account of Sino Katalytics on 10 February 2009. All of the brokers identified by Mr Ben Cheung, save for Kim Eng, participated on behalf of the account holders he stipulated for the respective brokers.

*Mr Ben Cheung*

59. Mr Ben Cheung had first met Mr Peter Yau whilst they were at university in Hong Kong in the period 1987 to 1991. Mr Ben Cheung worked as a broker for Guotai from 2001 until the autumn of 2008. He was involved in Guotai’s role in the public listing of Sino Katalytics, as China Northern in 2003. He was an executive director, as was Mr Peter Yau, of Sino Katalytics from its listing until mid-2004. Notwithstanding his resignation from the board of Sino Katalytics, Mr Ben Cheung said that he maintained his frequent social contact with Mr Peter Yau.

60. In early January 2009 Mr Ben Cheung became the Deputy Chief Executive Officer of Guoyuan. He was responsible for marketing, in particular Asset Management. He met Mr David Hui and they discussed Mr Ben Cheung introducing business to his new employers. During the weekend of 10 and 11 January 2009 he raised the subject of Sino Katalytics exploring doing business

with Guoyuan with Mr Peter Yau in a telephone conversation. In light of Mr Peter Yau's expression of interest in pursuing that course he arranged for Mr Peter Yau to come to the offices of Guoyuan on Monday 12 January 2009. He had no discussions with Mr Peter Yau in respect of the placement in their many telephone conversations in the period 1 to 9 January 2009.

61. On the morning of 12 January 2009 he made arrangements with Mr David Hui to meet Mr Peter Yau. He introduced them, but did not take part or get involved with their discussions. There was no discussion between them at which he was present in which mention was made of the price of a placement of Sino Katalytics shares, namely at 4.5 cents, or of the size of such placement, namely about 184 million shares. Mr Ben Cheung had no recollection of any discussion with Mr Peter Yau, prior to the weekend telephone conversation, about Sino Katalytics doing business with Guoyuan, in particular by placement of shares. They had not discussed that issue in their many telephone calls in the period on and between 1 and 9 January 2009. After the meeting he had spoken by telephone to both Mr David Hui and Mr Peter Yau who each made inquiries about the business of the other.

62. Initially, Mr Ben Cheung testified that he was not involved in the implementation of the placement. He had no role to play. He did not contact the placees. Those various matters were the responsibility of Mr David Hui. Further, he said that he had no contact with Mr Duncan Chui in respect of the placement.

63. On being recalled to give evidence, following the provision to the Tribunal of material from the relevant files maintained by Mr David Hui and on being confronted with the handwritten schedule in respect of the placement detailing brokers, account executives and placees, Mr Ben Cheung resiled from his earlier evidence. Now, he remembered that he had been contacted by Mr David Hui a few days after the meeting at which he had introduced Mr Peter Yau and Mr David Hui. He said that at the latter's request he had written out the schedule providing that information, in particular as to potential placees. However, he said that he was not involved in the follow-up resulting from his having given that information to Mr David Hui. Certainly, at the time that he had written up the handwritten schedule he had not contacted any of the persons named on the schedule in respect of the placement.

64. Mr Ben Cheung then said that after he had written the schedule he might have had contact with some of the persons then named in respect of issues raised by them about the placement. Acknowledging that the handwritten schedule did not contain any contact details of Mr Tommy Lui Chun Bing ("Mr Tommy Lui"), detailed as a subscriber for the placement, he accepted that he could/should have contacted him about the placement at some time after he had written the schedule.

65. The telephone records of phone calls made between telephones used by Mr Ben Cheung and Mr Peter Yau evidence regular contact between them in the period on and between 2 and 9 January 2009. On the afternoon of Monday 12 January 2009 there were no fewer than four telephone calls between them.

That pattern of regular contact between them by telephone continued in the following days.

66. Mr Ben Cheung said that he did not think that he had contacted Mr Li Yiu Keung, another of the names on the schedule, prior to writing at the schedule and had no recollection of having done so afterwards. Similarly, he said that he had not contacted Mr Louis Lui Chi Lung (“Mr Louis Lui”), another of the names on the schedule, about the placement prior to writing out the schedule but did not discount having done so afterwards. The telephone records of telephones used by Mr Ben Cheung on the one hand and Mr Li Yiu Keung and Mr Louis Lui respectively on the other hand evidence a pattern of regular contact in the period on and between 2 and 20 January 2009, the more so between Mr Ben Cheung and Mr Li Yiu Keung. The latter said that Mr Ben Cheung had drawn his attention to the placement, but he could not remember if he done that before or after the announcement made by the company.

67. In January 2009, Mr Tommy Lui worked as a consultant for Omnicorp Limited, introducing business opportunities to them. He said that he learned of the placement of Sino Katalytics shares from Mr Ben Cheung who told him that it was a good deal: a good price at the usual discount. When his attention was drawn to the telephone records of conversations on telephones that the two of them used, he said that it was probably not as early as the conversation of 2 January 2009 that he had learned of the Sino Katalytics placement. It was possible that it had been mentioned in the conversation of 6 January 2009, not as specific as a placement but as “something good coming up

-- would you be interested?" Noting that there had been three or four calls between them on each of 12 and 13 January 2009, he said that he was more sure that Mr Ben Cheung was sounding out his interest in terms of the amount of the placement he would take. Mr Tommy Lui said that being approached for interest in a prospective placement before the announcement by the company was normal practice.

68. Of the relative importance of the discounts stipulated in respect of the shares of Sino Katalytics, namely as to the last trading price, the average over the last five trading days and as to net asset value, Mr Tommy Lui said:

“all three are important, and all will be considered, but normally, of course, you need to have a reasonable discount, and then the asset value shows whether it, in theory, is a good or bad sort of value.”

69. Mr Alex Au Wai Chi (“Mr Alex Au”), the founder and managing director of Richland Capital, one of the places in the Sino Katalytics placement, said that he had had contact with Ms Icy Lau Ying (“Ms Icy Lau”) of Guotai in connection with that placement. However, he said that he was not sure whether he had been contacted in advance of contact with her, to gauge his interest in participating in the placement. In that context, he said that his original broker with Guotai had been Mr Ben Cheung. He was not sure if he had contacted him or whether that had been done before or after the announcement made by a Sino Katalytics of its prospective placement.

70. Mr Louis Lui said that Mr Ben Cheung has been his account manager at Guotai. They were in regular telephone contact in January 2009. In

January 2009 he was the person who made the decision to buy Sino Katalytics placement shares for the account of his wife. He could not remember if his attention to the fact of a placement had been drawn by the announcement itself or whether he had been contacted by someone.

#### *Placing letters*

71. Beginning on 20 January 2009 and in the following few days Guoyuan sent out placing letters to the various placees, in which confirmation was made of the oral contract between the placee and Guoyuan for the former to buy stipulated quantities of the placement shares. In response, in the following days the placees returned Forms of Acknowledgement to Guoyuan.

#### *Placement proceeds*

72. On 10 February 2009 Guoyuan transferred the net proceeds of the placement, \$6,554,000.00 odd, to the Hang Seng Bank account of Sino Katalytics, of which Mr Peter Yau was the signatory. In the several days that followed, \$5.4 million was transferred to CNI Bullion and \$1 million to a personal account of Mr Duncan Chui.

#### *The accounts of Mr Duncan Chui and Mr Peter Yau as to the genesis and development of the placement of Sino Katalytics shares*

73. Although Mr Duncan Chui acknowledged that he had frequent telephone conversations with Mr Peter Yau in the week ending Friday, 9 January 2009, he said that he first became aware of a possible placement of Sino Katalytics shares only as a result of a telephone conversation he had with Mr

Peter Yau on the evening of Sunday, 11 January 2009, in which the latter conveyed that information to him. He said that he had responded by telephone to an SMS message from Mr Peter Yau at 21:58 that evening. Mr Peter Yau told him that he wished to engage Guoyuan to do a placement exercise for Sino Katalytics.

74. In his witness statement, submitted to the Tribunal as his evidence in chief, he said that Mr Peter Yau had asked if it would be “possible to apply for suspension of trading on the following Monday”. In cross-examination by Mr Bernard Mak he said of Mr Peter Yau :

“ ... he was most concerned with the timing of the suspension of ... trading, so that was the urgency why I had to make a call to Mr Chow and Mr Chan on the evening of the 11<sup>th</sup>, to find out what was the proper procedure. And hence I replied to Mr Yau that we need to get a placement agreement signed before we can submit to the Stock Exchange for an application to suspend trading.”.

75. Mr Duncan Chui explained that he was unsuccessful in contacting Mr Alex Chow, a director of Sino Katalytics. However, he spoke by telephone to Mr Kasper Chan, the company secretary of Sino Katalytics, and was advised of the need for a signed placement agreement before an application for suspension of trading in the shares of Sino Katalytics could be made, which advice he passed on to Mr Peter Yau late that evening. Nevertheless, Mr Duncan Chui went on to agree with Mr Bernard Mak that it was possible that Mr Peter Yau’s enquiry was simply whether or not it was necessary for Sino Katalytics to seek a suspension of trading in its shares because he was about to approach a placing agent. However, in cross-examination by Presenting Officer, having been reminded that in his record of interview by the SFC he had said that Mr Peter



Yau's enquiry was whether the shares "could be suspended", Mr Duncan Chui said that the enquiry was, "whether suspension of trading was possible on Monday".

76. Mr Duncan Chui said that Mr Alex Chow finally made contact with him at 13:28 on Monday 12 January 2009. Having been informed by Mr Duncan Chui of Mr Peter Yau's proposed placement of Sino Katalytics shares, at Mr Alex Chow's insistence, a board meeting was arranged for 5 p.m. that day to discuss the matter. He was not aware at that time that Mr Peter Yau had already met Mr David Hui of Guoyuan to discuss the placement that morning.

77. Mr Peter Yau said that Mr Ben Cheung and he were long standing friends who had conducted business with one another over the years. They were in frequent contact with each other both by telephone and in person. He accepted that in the days leading up to the week ending Friday 9 January 2009 they were in frequent telephone contact with one another. Although he knew that Mr Ben Cheung had left Guotai several months earlier he did not know of his employment at Guoyuan until he was informed of that fact by Mr Ben Cheung in a telephone call on either Saturday or Sunday 10/11 January 2009. In that conversation Mr Ben Cheung raised the prospect of business being conducted between his new employer and Sino Katalytics. Since he was now employed in asset management Mr Peter Yau said that he agreed to meet Mr David Hui of Guoyuan's ECM Department on Monday morning, "to explore the chance of doing any business". He expected it to be a handshaking session. He knew nothing about Mr David Hui. In cross-examination by the Presenting

Officer, he denied that a decision to go ahead with placement had been reached prior to 11 January 2009, following detailed discussions with Mr Ben Cheung.

*11 January 2009*

78. Mr Peter Yau accepted that there were telephone records of two telephone calls initiated on his telephone to Mr Ben Cheung on the evening of 11 January 2009, respectively at 8:05 p.m. and 8:25 p.m. and one call at 9:58 p.m. to Mr Duncan Chui, the last of which calls was immediately returned by Mr Duncan Chui. Mr Peter Yau said that he had informed Mr Duncan Chui of his prospective meeting at Guoyuan the following day telling him that he proposed, “to see what can be done: it could be a placement.” He said that he had gone on to ask Mr Duncan Chui whether a suspension of trading in the shares of Sino Katalytics was necessary. He was not asking that it be suspended.

*12 January 2009*

79. Mr Peter Yau said that he met Mr David Hui at the offices of Guoyuan sometime after 10 a.m. on Monday, 12 January 2009. He did not remember Mr Ben Cheung introducing him to Mr David Hui, although he was present for a very short part of the meeting. Mr David Hui suggested that the business between them be a placement by Sino Katalytics. The only mention as to the size of the placement was that it be within the general mandate, namely 20% of the issued capital of Sino Katalytics. There was no mention of it being a top-up placement. Mr David Hui proposed that the placement price be in the middle of the range of Sino Katalytics’s share price the previous week, namely

between 4 to 5 cents. In doing so, Mr David Hui referred to a chart which he brought up on a terminal at his desk.

### *Board meeting*

80. The board meeting convened at 5 p.m. on 12 January 2009 was conducted by way of telephone, Mr Duncan Chui and Mr Peter Yau being in their respective offices. Mr Duncan Chui said that Mr Peter Yau led the discussion, informing the board that Mr Ben Cheung, who had recently moved to Guoyuan, had said that Guoyuan wanted to do a placement for Sino Katalytics. Mr Duncan Chui agreed that Sino Katalytics was “low on cash” at that time, but said that he did not think that “we had to panic because of the low working capital”. Of the issue of ‘panic’, he said that the company had outstanding loans that could be recalled and listed equities that could be liquidated.

81. Mr Duncan Chui said that there was no “specific discussion on the use of proceeds” at the board meeting. There was no dispute that on receipt of the monies in the Hang Seng bank account of Sino Katalytics in early February 2009 within days, \$5.4 million was transferred to the account of CNI Bullion and \$1 million to the account of Mr Duncan Chui. He said that, although it was not recorded in the board minutes, “... there was no objection from the directors that the money ought to be used for Bullion capital requirement”. For his part, he “asked the board ... to reimburse the money that I advanced to the company recently.”

82. For his part, Mr Peter Yau said that shortly after his meeting with Mr David Hui the latter had faxed him a letter in which Guoyuan agreed to act as placing agent for Sino Katalytics. However, no draft placing agreement was available at the board meeting held at 5 p.m. that day. There was no dispute that the board minutes, which were compiled some weeks later, were inaccurate as to the assertion to the contrary.

83. The initial draft placement agreements received by Mr Peter Yau on the evening of 12 January 2009 provided for a top-up placement in which he and Mr Duncan Chui participated in broadly similar volume of shares. He said that he did not know why it was that Mr David Hui had instructed his solicitor to draft the agreement in that form. He had not agreed to a placement in the form.

84. Mr Duncan Chui said that he had a telephone conversation with Mr David Hui that evening in which they discussed the proposed top-up placement exercise. He told Mr David Hui that he was not prepared to participate in a top-up placement. Since neither Mr Peter Yau or Mr Duncan Chui agreed to proceed with those agreements, a single new share placement agreement, which both signed, was produced on the afternoon of 13 January 2009.

85. Mr Duncan Chui said that after the single placement agreement was made:

“his involvement in the placement was limited. I left it to Sarah and Kasper to complete the process and the documentation.”.

*The securing of placees*

86. Mr Peter Yau said that he knew Mr Louis Lui, Mr Tommy Lui and Mr Li Yiu Keung, but that he had not contacted them to subscribe to the placement. There was no dispute that they were associated with the huge majority of the placed shares. Having been reminded of the evidence of Mr David Hui and Mr Ben Cheung in respect of the hand written list of placees, written out by Mr Ben Cheung and given to Mr David Hui, Mr Peter Yau responded to the suggestion that it was Mr Ben Cheung who was actually assisting in implementing the deal by saying that he had no idea what happened between Mr Ben Cheung and Mr David Hui. Of the evidence of direct contact by telephone between Mr Ben Cheung and various placees, in the period leading up to the agreement of the placees to participate in the placement, Mr Peter Yau said that it was possible that “David Hui find that he was unable to cope with it, and seek assistance from Ben Cheung”.

*Ms Chan Wai Yan*

87. Mr Peter Yau confirmed that Ms Chan Wai Yan had been employed as the marketing and sales manager of CNI Bullion since 2007. Of her purchase of 350,000 Sino Katalytics shares at 5.4 cents per share at 16:06 12 January 2009, which had the effect of raising the closing price to 5.4 cents from 5.0 cents per share, he denied having mentioned to her that Sino Katalytics was going to place shares.

## CHAPTER 4

### A CONSIDERATION OF THE MATERIAL RECEIVED

88. From the outset of the proceedings the Tribunal had been invited to examine the juxtaposition of two different events, namely trading in the shares of Sino Katalytics on 9 January 2009 between Mr Duncan Chui and Mr Peter Yau and the subsequent placement of shares by Sino Katalytics, in respect of which the company entered a placement agreement on 13 January 2009 with Guoyuan which fact was described in the company's announcement of 15 January 2009. At issue, is whether or not the two events were linked. Did the trading between the two men have the effect of creating a false or misleading appearance with respect to the price for dealing in Sino Katalytics shares? Was their trading done with that intention or were they reckless as to whether it had or was likely to have that effect? Was their purpose to facilitate an imminent placement of Sino Katalytics shares, in particular at a price of 4.5 cents per share? Or, was the juxtaposition of the two events coincidental? Most importantly, was the trading of the two men genuine trading between a genuine seller and a genuine buyer?

#### *Expert evidence*

89. Although the Tribunal received the reports and oral evidence of Mr Eric Cheng and Mr Richard Witts as expert witnesses, with no disrespect to them, they have been of limited assistance to the Tribunal in determining the material matters at issue. As is apparent from the identification of the material matters at issue in this report almost all of them are issues that lie squarely

within the domain of the Tribunal and do not require the assistance of expert evidence. There is no dispute that Sino Katalytics shares traded at a substantial discount to net asset value. Mr Duncan Chui's explanation for his trading in Sino Katalytics shares on 9 January 2009 is a matter for the Tribunal to accept or not. It is not an area in which Tribunal is assisted by expert evidence. On the other hand, the Tribunal has been assisted by the provision of statistical information, in particular as to trading in Sino Katalytics shares.

90. We regret to say that Mr Eric Cheng's report encroached on many areas outwith the province of an expert. He expressed opinions on matters that are not the business of an expert. As a result, the Tribunal was prepared to receive his report only in edited form. Inevitably, in his report Mr Richard Witts was drawn into responding to areas in which Mr Eric Cheng ought not to have expressed opinions. The observations of Gleeson NPJ as to the role of an expert in his judgment in the Court of Final Appeal in *Fu Kor Kuen Patrick & Another v HKSAR* (FACC No. 4 of 2011unreported May 2012 at paragraphs 25-27) are apposite.

91. There is no dispute that trading between Mr Duncan Chui, as buyer, and Mr Peter Yau, as seller, in the last 20 minutes or so of trading on 9 January 2009 resulted in a sharp rise in the price at which Sino Katalytics shares were bought and sold on 9 January and provided the closing price of 5.5 cents per share. There were two only previous transactions that day, namely sales of 50,000 and 500,000 Sino Katalytics shares at 4.2 cents and 4.4 cents per share. The closing price of Sino Katalytics shares on 8 January 2009 was 4.2 cents per

share. That had been the closing price on the two trading days, whereas on 5 January 2009 it had closed at 4.1 cents per share. 4.2 cents per share was the 'High' in trading on those four previous trading days.

92. As noted earlier, the huge majority of the proceeds of about \$6.5 million received by Sino Katalytics from the placement of its shares was dispersed to CNI Bullion (\$5.4 million) and Mr Duncan Chui personally (\$1 million). Although an associate company of Sino Katalytics, CNI Bullion was run by Mr Peter Yau. The payment to Mr Duncan Chui was the repayment of monies advanced by him to Sino Katalytics, whereas the monies advanced to CNI Bullion were used in its various businesses. Clearly, the placement was of mutual benefit to them.

93. There is no doubt that Mr Ben Cheung played a crucial role in the genesis of the placement and in bringing it to fruition. We are satisfied that in evidence he downplayed that role, only reluctantly accepting that he actually played a greater role when confronted by contemporary records or other evidence. He was an unreliable and untruthful witness. Although he knew and was known to both Mr Duncan Chui and Mr Peter Yau and had contact with each of them, in the material period prior to the trading between them on 9 January 2009, that day itself and in the period up until the placing agreements were signed in late January 2009 by far the greater contact was with Mr Peter Yau.



94. It is clear, and we so find, that on 12 January 2009 Mr David Hui did not negotiate the terms of a placement with Mr Peter Yau, rather he was presented with the deal by Mr Ben Cheung and Mr Peter Yau. No doubt, ultimate approval lay elsewhere within Guoyuan. Price was not negotiated, it was stipulated by Mr Peter Yau as being 4.5 cents per share. Perhaps, Mr David Hui was prepared to play that role because he was a novice in the field of placements and the deal was to be done on a ‘best efforts’, no cost basis to Guoyuan basis. The flurry of telephone calls between Mr Ben Cheung and Mr Peter Yau that day speaks eloquently as to whom were the drivers of the deal. The fact that Mr David Hui did nothing whatsoever to find placees after the signing of the placement agreement on 13 January 2009 until he approached Mr Ben Cheung for him to do so is further evidence that all concerned looked to him to bring the placement to fruition. Clearly, the benefit to Mr Ben Cheung was that at the outset of his employment he was able to demonstrate his ability to deliver business to his employer.

95. Whilst it is clear that Mr Ben Cheung played a crucial role in providing Mr David Hui on 14/15 January 2009 with the list and contact details of the persons, most of whom subscribed to or arranged for others to subscribe to the placement, and that he had contacted some of them in respect of the placement, it is unclear as to when he first sounded out those placees for their interest in participating in the placement. Certainly, there is no direct evidence that he did so on or before 9 January 2009. The fact that on 14/15 January 2009 Mr Ben Cheung was able to provide a schedule of potential placees to Mr David Hui immediately, without making any telephone call or other contacts

with people, suggests strongly that contact with those placees had been made prior to that event. However, it is to be remembered that trading in the shares of Sino Katalytics had been suspended in the morning of 13 January 2009 and the market had been informed that was pending an announcement in relation to a top-up placing.

96. Mr Duncan Chui's evidence was that he first learnt of any prospective placement of Sino Katalytics shares from Mr Peter Yau in a telephone conversation at 21:58 on Sunday, 11 January 2009. Whether or not that was the first time that he had learnt of that matter it is clear from his subsequent conduct that he sprang into action immediately: firstly, in attempting to contact Mr Alex Chow, the third executive director of Sino Katalytics and, secondly in contacting Mr Kasper Chan, the company secretary, soon thereafter at 22:31.

97. Mr Kasper Chan said that he had learned of the proposed placement from Mr Duncan Chui in this telephone conversation. Mr Duncan Chui had asked him if there was a need to apply to suspend trading in the company's shares. For his part, he had told him that it was necessary for a placing agreement to be signed before arrangements could be made for a suspension of trading in the shares. It is to be noted that there were two subsequent telephone calls from Mr Duncan Chui to Mr Kasper Chan 23:03 and 23:55. Immediately before the last telephone call between them, there were two telephone calls between Mr Duncan Chui and Mr Peter Yau.

98. The flurry of late night telephone calls on a Sunday between two of the company's directors and between one of them and the company secretary is supportive of Mr Duncan Chui's evidence that the matter required a degree of urgency in its resolution. We accept the ultimate thrust of Mr Duncan Chui's evidence, namely that the nub of Mr Peter Yau's request was aimed at the 'possibility', not the need for, having trading in the shares of Sino Katalytics suspended the following day.

99. The question posed by Mr Peter Yau was: could it be done? In context, the fact that he raised the question in that way is to be viewed against the rise in the price at which Sino Katalytics shares were traded in his sales in the last 20 minutes of 9 January 2009 and the resulting closing price of 5.5 cents. If trading in the shares was suspended before the market opened on Monday, 12 January 2009 it was beyond *per adventure* that the last trading day would be taken as 9 January 2009. If it was not suspended in that way, the possibility was that another subsequent day would be taken as the last trading day with perhaps a different closing price.

100. Although it is clear on Mr David Hui's evidence that the approach by Mr Peter Yau and Mr Ben Cheung to him, as head of ECM of Guoyuan, was not made until the morning of 12 January 2009, it is necessary to consider whether the trading between Mr Duncan Chui and Mr Peter Yau in the last 20 minutes or so of trading on 9 January 2009 was done so that the closing price of Sino Katalytics shares was inflated with the purpose that an approach could be made

then to Guoyuan for their agreement to a placement at a discount to the closing price on the last trading day, but nevertheless at 4.5 cents per share.

101. The nub of Mr Duncan Chui's explanation for his purchases of millions of Sino Katalytics shares on 9 January 2009 is twofold: first, that the shares were good value and second, that he wished to buy shares from Mr Peter Yau to increase the overall percentage of his shareholding in the company at the same time as reducing that of Mr Peter Yau.

102. One puzzling feature of Mr Duncan Chui's explanation is that, if he was motivated to purchase the shares because they were good value, in order to do so he paid a significantly higher price than Mr Peter Yau paid in his acquisition of millions of shares just a few days earlier, in the period on and between 2 to 6 January 2009. If Mr Duncan Chui thought the shares such good value why did he not buy the shares in that period? Clearly, there were ready sellers at a lower price than on 9 January 2009. Or, if he was so motivated, why had he not bought shares earlier, for example in the last week of December 2008, when over 8 million shares were sold at a much lower price than he paid on 9 January 2009? If good value of the shares was a driving force for Mr Duncan Chui's purchases on 9 January 2009, having bought 4.75 million Sino Katalytics shares on 7 and 8 January 2009 in the range of 4.1-4.2 cents per share, why was he prepared to buy Mr Peter Yau's shares in the much higher range of 4.9-5.5 cents per share?

103. Mr Duncan Chui's professed anxiety at the relationship between the percentage of his shareholding and that of Mr Peter Yau of Sino Katalytics shares is equally puzzling. On 9 January 2009, prior to buying any shares, Mr Duncan Chui held about double the number of shares than Mr Peter Yau. The percentage change in their shareholding, resulting from the purchases by the one and the sales by the other that day, was small in that Mr Peter Yau's shareholding fell from 12.60% to 11.75% and that of Mr Duncan Chui rose to 24.48% from 23.89%. Clearly, both before and after 9 January 2009, Mr Duncan Chui held a commanding shareholding of Sino Katalytics shares compared with that of Mr Peter Yau. Furthermore, since their off-market trade at the end of August 2008, when Mr Duncan Chui acquired 55 million shares from Mr Peter Yau, Mr Duncan Chui had always held substantially more shares than Mr Peter Yau's 12.6% shareholding. Thereafter, the percentage of shares held by Mr Peter Yau never varied by more than 1%.

104. In the result, we reject Mr Duncan Chui's explanation for his purchase of Sino Katalytics shares on 9 January 2009.

105. Although margin calls were made by Mr Lawrence Hung of Quam Securities of Mr Peter Yau on 6 and 8 January 2009 and earlier, nevertheless it is clear that they were polite requests for payments of modest sums of money, which he had been able to manage on a regular basis by making payments of some, rather than all, of the amounts requested. There was nothing in the demand of 8 January 2009 which was any different to earlier demands. He was not being "dunned very hard". We reject his evidence that his indebtedness to

Quam Securities, in the context of those earlier margin calls, played a part in his sale of Sino Katalytics shares in that account on 9 January 2009. That indebtedness was merely \$154,558.88. It is to be noted that as a result of purchases of Sino Katalytics shares on between 19 and 22 January 2009 his indebtedness to Quam Securities at the end of the month was about \$130,000.

106. In any event, we are satisfied that Mr Peter Yau had ready access to monies with which to satisfy the modest margin call made by Quam Securities or with which to repay all his indebtedness to them. Not only did he have monies and shares in his own accounts but we are satisfied that he had a significant interest in the account in the name of Mr Terence Hui with Quam Securities. Cheques drawn on Mr Peter Yau's bank account were used to make payment for the purchase of shares in the account in the name of Mr Terence Hui. Conversely, monies from the latter account were transferred to Mr Peter Yau's account. We accept Mr Terence Hui's evidence that he handed over control of the operation of the account in his name. We reject Mr Lawrence Hung's evidence that he received instructions from Mr Terence Hui in respect of all trades in that account. Having regard to all the evidence, in particular the fact that Mr Lawrence Hung received telephone calls from Mr Peter Yau immediately before and after the sale of 1 million Sino Katalytics shares in that account at 10:15:49 on 13 January 2009, we are satisfied that the instructions to sell came from Mr Peter Yau. Similarly, given the timing of the sale, about 30 minutes before suspension of trading in the shares, we are satisfied that the purpose of the sale was to maintain the trading price prior to suspension at 5.4 cents per share.

107. We do not accept that Ms Chan Wai Yan's purchase of 350,000 Sino Katalytics shares at 5.4 cents per share just prior to the close of trading on 12 January 2009 was coincidental or unrelated to the fact that Mr Peter Yau was her 'boss'. Her evidence that she had placed that order earlier in the day and that it was matched after 4:00 p.m. was untrue. Her purchase lifted the price of the last trade from 4.9 cents to 5.4 cents, which price was the closing price. We reject her evidence that her trade was not known or disclosed to Mr Peter Yau. We are satisfied that Mr Peter Yau had a hand in her purchase, in particular that he was instrumental in causing her to make that purchase.

108. Having rejected the accounts of both Mr Duncan Chui and Mr Peter Yau in respect of their respective purchases and sales of Sino Katalytics shares on 9 January 2009 we turn to consider why those trades occurred. Was it coincidence that 97.2% of the Sino Katalytics shares bought by Mr Duncan Chui were sold to him by Mr Peter Yau? Was it significant that those trades occurred in the last 20 minutes or so trading that day? Why did Mr Duncan Chui buy those shares at such a significantly increased price than he had bought shares in the previous two days? Was the fact that the trading between the two men raised the closing price of Sino Katalytics shares 30.95% above its closing price on 8 January 2009 connected with the suspension of trading in their shares pending a placement announced by Sino Katalytics on 13 January 2009?

109. For his part, Mr Duncan Chui accepted that he guessed or understood that the seller from whom he bought shares in that period of trading at the end of

9 January 2009 was Mr Peter Yau. Indeed, he said that was one of the two driving motives for those purchases. Not only was he buying good value shares but also he was buying from Mr Peter Yau and therefore increasing the difference between the percentage shareholding each had in the company in his favour. Mr Peter Yau said that he did not know to whom he was selling. We reject that evidence. We are satisfied that each knew with whom he was trading. Each was trying to trade with the other. Similarly, we are satisfied that the sharp increase in the price in which shares were traded between them and the only earlier trade (4.2 cents per share) and their initial trade (4.9 cents per share) and their final trade (5.5 cents per share) was because it was arranged between them that they would drive up the price at which Sino Katalytics shares were traded so that the closing price would be increased, as it was. That is why they traded in the last 20 minutes or so of the trading day. Similarly, that is why the trading occurred in the last 20 minutes of the last trading day of the week. Having secured the desired increase in the closing price of Sino Katalytics shares the weekend afforded a period of time in which the closing price would remain unchanged in which arrangements could be pursued in respect of the placement that was announced the following trading week. They were not trading as genuine buyers and sellers.

*False trading: section 274*

110. We are satisfied that each of them intended that their trading in Sino Katalytics shares in the last 20 minutes or so of trading on 9 January 2009 have the effect of creating a false or misleading appearance with respect to the price for dealing in Sino Katalytics shares. Alternatively, each of them was reckless



as to whether it had or was likely to have that effect. Furthermore, we are satisfied that each of them took part in that trading with the intention of creating an artificial price for dealings in Sino Katalytics shares, namely the price set by the forces of genuine demand and supply. Alternatively, each of them was reckless as to whether their trading had the effect of creating an artificial price for dealings in Sino Katalytics shares. Accordingly, we are satisfied that they are each culpable of false trading, contrary to section 274(1)(b) and (3) of the Ordinance.

*Price rigging: section 275*

111. In reaching that determination, the Tribunal has not had regard to or relied on section 274(5) of the Ordinance. The Chairman accepted Mr Bernard Mak's submission, made on behalf of Mr Peter Yau, and directed the Tribunal that neither he nor Mr Peter Yau were 'associates' of each other, as defined in section 245(1) of the Ordinance.

112. We are satisfied that in trading with each other in the material period on 9 January 2009 Mr Duncan Chui and Mr Peter Yau entered into and carried out artificial transactions with the intention that the trading had the effect of increasing the price of Sino Katalytics shares traded on the Stock Exchange of Hong Kong. The trading constituted artificial transactions because they were not genuine buyers and sellers in that the resulting increase price of Sino Katalytics shares did not reflect the forces of genuine supply and demand. Alternatively, each of them was reckless as to whether it had that effect. In reaching that determination, we had regard to the provisions of section 275(4),

and were satisfied that neither of them had established that the purpose for which they bought and sold Sino Katalytics shares respectively was not or did not include the purpose of creating a false or misleading appearance with respect to the price of Sino Katalytics shares.

113. Accordingly, we are satisfied that each of them was culpable of price rigging, contrary to section 275(1)(b) of the Ordinance.

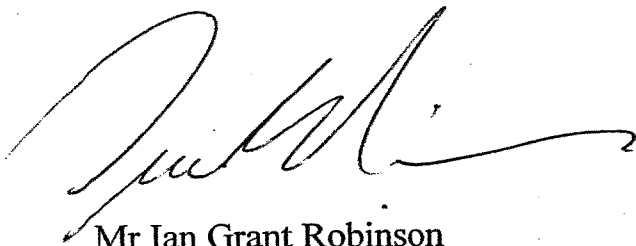
*Stock market manipulation: section 278*

114. As noted earlier, in the period of around 20 minutes at the end of the trading day on 9 January 2009 no less than eight transactions, purchases and sales of tranches of Sino Katalytics shares, were made between Mr Duncan Chui and Mr Peter Yau. Having begun with a trade of 1 million shares at 4.9 cents per share, they concluded with a sale of 800,000 shares at 5.5 cents per share. They intended to trade with each other. Clearly, the trading had the effect of increasing the price at which those shares were traded on the stock market. As noted earlier, we have found that it was their intention to increase the price of Sino Katalytics shares by their trading, in particular to achieve a higher closing price than had obtained the previous day or in that day of trading. They pursued that pattern of trading intending by its success to launch a placement of Sino Katalytics shares in the market. Their intention, in so trading with each other with the effect of increasing the price at which the shares were traded, was to induce others to subscribe in the placement of those shares. They knew and anticipated that the placement shares would be offered at a discount to the last traded price. Accordingly, we are satisfied that Mr Duncan Chui and Mr Peter

Yau are culpable of stock market manipulation, contrary to section 278(1)(a) of the Ordinance.



The Hon Mr Justice Lunn  
(Chairman)



Mr Ian Grant Robinson  
(Member)



Mr LI Chiu-wah, Joseph  
(Member)

Dated 9 July 2012

The report of the Market Misconduct Tribunal into dealings  
in the shares of Sino Katalytics Investment Corporation  
on and between 2 January 2009 to 9 January 2009

**Part II : The determination of the profit gained, pursuant to section  
252(3)(c), and the orders of the Tribunal pursuant to section 257(1)  
and 262(2)(b)(v) of the Securities and Futures Ordinance, Cap 571**

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## CHAPTER 5

### A DETERMINATION OF THE PROFIT GAINED AS A RESULT OF THE MARKET MISCONDUCT

115. As required by the Financial Secretary's Notice dated 12 April 2011 and pursuant to section 252(3)(c) of the Ordinance, having found Mr Duncan Chui and Mr Peter Yau culpable of market misconduct, namely false trading, price rigging and stock market manipulation, the Tribunal went on to determine the amount of profit gained or loss avoided by them as a result of the market misconduct.

116. The Tribunal is satisfied that the misconduct to which regard is to be had in addressing the issue is the trading in the shares of Sino Katalytics by both of them in the last 20 minutes or so of 9 January 2009. In that trading, Mr Duncan Chui was a buyer of those shares and Mr Peter Yau a seller. The Tribunal has found, inter alia, that each of them took part in that trading with the intention of creating an artificial price for dealings in those shares, in particular intending that the trading have the effect of increasing the price of the shares traded on the Stock Exchange of Hong Kong. Further, that it was their intention to trade with each other. Clearly, that conduct was a joint enterprise. Accordingly, the fact that Mr Duncan Chui bought Sino Katalytics shares from Mr Peter Yau at a price greater than the market price, namely that set by the forces of genuine buyers and sellers, and that Mr Peter Yau sold those shares to Mr Duncan Chui at a price greater than the market price does not fall to be considered as profit gained by Mr Peter Yau. In the context of the joint enterprise, there was no profit gained in the trading between each other.

117. By contrast, the four sales by Mr Peter Yau to buyers other than Mr Duncan Chui after the trading between the two of them had the effect of artificially increasing the price at which Sino Katalytics shares were traded, is relevant to a consideration of the profit gained by Mr Peter Yau. Prior to the trading between Mr Peter Yau and Mr Duncan Chui, which began at 15:39:14, there were only two other trades in Sino Katalytics shares that day, namely a trade of 50,000 shares at 4.2 cents per share at 11:43 and one of 500,000 shares at 4.4 cents per share at 14:54. Trading between Mr Peter Yau and Mr Duncan Chui began at 15:39 with a trade of 1 million Sino Katalytics shares at 4.9 cents per share. There followed two further trades of one million shares each for 5.0 cents per share at 15:41 and 15:50. In the period from 15:51 to the close of trading Mr Peter Yau sold four tranches of Sino Katalytics shares to buyers other than Mr Duncan Chui, the details of which are set out in Appendix V. The first of those sales was at 5.0 cents per share and the last at 5.5 cents per share. Interspersed between those trades, were further trades between Mr Peter Yau and Mr Duncan Chui culminating with their final trade between each other that day at 15:59:52 of 800,000 shares at 5.5 cents per share. The Tribunal is satisfied that the four sales by Mr Peter Yau to buyers other than Mr Duncan Chui are sales in which a profit was gained by Mr Peter Yau.

118. In the course of the hearing on 20 July 2012, in face of suggestions made in written submissions that the Tribunal receive expert evidence on the issue of whether or not a profit was gained, the Tribunal indicated that it felt able to address the issue without the need for or expense of expert testimony. In the result, none of the parties pressed their earlier suggestion that expert evidence be adduced.

### *Market price*

119. In respect of the issue of the determination of the market price to be taken in calculating the profit made by Mr Peter Yau in the four sales to buyers other than Mr Duncan Chui, Mr Bernard Mak submitted that the market price was greater than the last traded price of 4.4 cents per share, prior to trading between Mr Duncan Chui and Mr Peter Yau. He pointed to the wide spreads between 'Asks' and 'Bids' in the period after trading had begun between Mr Duncan Chui and Mr Peter Yau, in particular that at 15:55 there was an 'Ask' by a broker other than one acting for the two men for 6.0 cents per share. He said that evidenced a sellers market that was becoming aggressive. He submitted that Mr Peter Yau could have achieved sales for his other 'Ask' orders at 4.8 cents or even 5.0 cents per share.

120. For its part, taking a necessarily broad approach to the matter, the Tribunal is satisfied that the appropriate market price to be stipulated for this purpose was the last traded price of Sino Katalytics shares prior to the trading between Mr Peter Yau and Mr Duncan Chui, namely 4.4 cents per share.

121. Accordingly, the profit gained by Mr Peter Yau is to be calculated by the difference between the price per share at which he sold those four tranches of Sino Katalytics shares and 4.4 cents per share. (See Appendix VI) The gross profit gained by Mr Peter Yau was \$16,800.00. The transaction costs of the sales are to be deducted from the gross profit. Having regard to the transaction costs<sup>4</sup>, discernible on the statements of account of Mr Peter Yau, we are satisfied that the profit gained by Mr Peter Yau was \$16,200.00.

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<sup>4</sup> Broker commission, stamp duty and transaction levy.



## CHAPTER 6

### ORDERS

122. As requested, the Tribunal was provided with written submissions by all the parties prior to the hearing of 20 July 2012, *inter alia*, as to the orders that it ought to make pursuant to section 257 of the Ordinance. Further oral submissions were advanced at the hearing by Mr Chiu, of Chiu & Partners, who appeared for Mr Duncan Chui, and by Mr Bernard Mak on behalf of Mr Peter Yau.

123. In those submissions the Tribunal was referred to the orders made against persons found to be culpable of various forms of market misconduct by differently constituted Tribunals. Indeed, submissions were made on behalf of Mr Duncan Chui and Mr Peter Yau by reference to such orders that, were the Tribunal minded to make a particular order in the instant case, the duration of the order ought to be less than that to which reference was made. However, each case has its own distinctive features. In determining the appropriate orders to be imposed on those found culpable of market misconduct the Tribunal must have particular regard to the specific facts and circumstances of the case.

124. At the time of the commission of the conduct in respect of which Mr Duncan Chui and Mr Peter Yau have been found culpable of market misconduct, namely 9 January 2009, each of them was an executive director of Sino Katalytics and Mr Duncan Chui its Chairman. Each had a substantial shareholding in Sino Katalytics. As noted earlier, the Tribunal has found that they intended by the impugned trading in shares of Sino Katalytics to artificially increase the price at which the shares were traded, so that they could induce others to subscribe for a placement of Sino Katalytics shares, which would be

offered at a discount to its last traded price. Each of them participated in the decision of the Board of Directors of Sino Katalytics to enter into the agreement with Guoyuan to place Sino Katalytics shares. Clearly, in the pursuit of their joint enterprise their trading in their own holdings of Sino Katalytics shares was intimately linked to their position as directors of Sino Katalytics, in consequence of which they were able to achieve the ultimate objective of making a placement of Sino Katalytics shares.

*Section 257(1)(a): an order that a person shall not act as a director or take part in the management of a listed corporation*

125. Having regard to all the circumstances which led this Tribunal to determine that Mr Duncan Chui and Mr Peter Yau were culpable of market misconduct, we are satisfied that it is appropriate that the Tribunal make orders in respect of each of them that they shall not act as a director or take part in the management of a listed company for a period of two years.

*Section 257(1)(b): cold shoulder order*

126. The Tribunal is satisfied, given all the circumstances of the commission of the market misconduct, that it is appropriate to make a ‘cold shoulder’ order against both Mr Duncan Chui and Mr Peter Yau for a period of two years, namely that they shall not, without the leave of the Court of First Instance, in Hong Kong directly or indirectly in any way acquire, dispose of or otherwise deal in any securities.

127. Mr Mak informed the Tribunal that Mr Peter Yau is currently the subject of a ‘cold shoulder’ order imposed by the SFC for breach of the Code on Takeovers and Mergers (“Takeovers Code”). That order is for a duration of 18 months and came into effect on 23 May 2012. Accordingly, it expires on 22 November 2013. These circumstances in which the Executive Director of the

Corporate Finance Division of the SFC (“the Executive”) came to impose that order are set out in his statement of 22 May 2012 (see Appendix VII). On 10 June 2011, the collective shareholding of Mr Peter Yau and Capital VC Limited in Longlife Group Holdings Limited (“Longlife”) exceeded 30%, being 30.19%, thereby triggering a mandatory general offer obligation under the Takeovers Code. At the material time, Mr Peter Yau was an executive director and substantial shareholder of Capital VC Limited. He managed two investment accounts, one for Capital VC Limited and the other for his personal investments. Notwithstanding the fact that they had been reminded by the SFC of the mandatory general offer requirement of the Takeovers Code, Capital VC Limited and Mr Peter Yau failed to comply with the obligation, announcing on 17 August 2011 that they would not make a general offer for Longlife. Having determined that the failure “ ... constituted a serious breach of one of the most fundamental provisions of the Takeovers Code which merits strong disciplinary action”, the Executive imposed the ‘cold shoulder’ order on Mr Peter Yau pursuant to section 12.2(c) of the Introduction to the Takeovers Code and publicly censured both Capital VC Limited and Mr Peter Yau pursuant to section 12.2(b) of the Introduction to the Takeovers Code.

128. Of Mr Peter Yau’s explanation, that the collective shareholding of Capital VC Limited and himself had reached 30.19% because he had acquired the shares of Longlife having wrongly calculated the collective shareholding, the Executive determined of Mr Peter Yau that he had not “ ... made any serious efforts to put in place compliance procedures which could have helped to avoid such a serious breach of the Takeovers Code”.

129. The Tribunal is conscious that the conduct, which resulted in the Executive imposing a ‘cold shoulder’ order on Mr Peter Yau, occurred about 2 1/2 years after the market misconduct of which the Tribunal has determined Mr

Peter Yau to be culpable. Nevertheless, the Tribunal is satisfied that it is appropriate that the sanction imposed under section 257(1)(b) of the Ordinance be effective in its own right in reflecting disapproval of Mr Peter Yau's market misconduct. Accordingly, pursuant to section 257(8) of the Ordinance, the Tribunal orders that the 'cold shoulder' order imposed upon Mr Peter Yau take effect on 23 May 2013.

*Section 257(1)(d): disgorgement of profit gained*

130. Given our earlier finding that Mr Peter Yau gained a profit as a result of his market misconduct on 9 January 2009 of \$16,200.00 we are satisfied that it is appropriate that the Tribunal make an order that he pay that amount of money to the Government.

*Section 257(1)(e) and (f): an order in respect of the costs and expenses of the Government and the SFC*

131. Section 257(1)(e) and (f) of the Ordinance provide that the Tribunal may make an order in respect of the costs and expenses reasonably incurred by the Government and the SFC respectively in relation or incidental to the investigation of the conduct of a person determined to be culpable of market misconduct and in respect of the proceedings before the Tribunal.

132. The Tribunal has received a claim from the SFC in respect of the costs and expenses of the SFC in respect of the investigation of Mr Duncan Chui and Mr Peter Yau and from the SFC and the Department of Justice in respect of the costs and expenses of the SFC and the Government in relation to or incidental to the proceedings before the Tribunal (see a summary at Appendix VIII). The Tribunal's own costs and expenses of the proceedings are to be included in the total costs and expenses of the Government (see a summary at Appendix IX).

133. It was submitted on behalf of both Mr Duncan Chui and Mr Peter Yau that in determining the appropriate orders to make in respect of the costs and expenses of the SFC and the Government the Tribunal ought to afford them a discount from the amounts claimed on behalf of the SFC and the Government to reflect the former's conduct in the investigation which impacted on the length of time taken up in the proceedings themselves, in particular, that no inquiries were made in the investigation period of the placees in the placement. Those inquiries were made during the proceedings themselves at the direction of the Tribunal. Further, that the primary evidence relating to the placing of orders to trade in Sino Katalytics shares by Mr Peter Yau was obtained only during the proceedings and at the direction of the Tribunal. Also, complaint was made that the SFC had failed to make full disclosure prior to proceedings of all relevant unused material.

134. Contrary submissions were made on behalf of Mr Duncan Chui and Mr Peter Yau as to the proportion of such costs and expenses of the SFC and the government in relation to the proceedings, as were reasonably incurred, that the respective parties ought to be ordered to bear respectively. It was submitted on behalf of Mr Duncan Chui, that only a small proportion of the time spent in the proceedings was concerned directly with his conduct, whereas considerably more time in the proceedings was spent addressing issues relevant, directly and indirectly, to the conduct of Mr Peter Yau. The Tribunal was invited to apportion any orders as to costs and expenses reasonably incurred by the Government and the SFC in the proportion of 90% against Mr Peter Yau and 10% against Mr Duncan Chui.

135. It was submitted on behalf of Mr Peter Yau that there was no basis to distinguish between the two men in apportioning orders as to costs and expenses reasonably incurred by the Government and the SFC.

136. There is no dispute that there was incomplete disclosure of unused material by the SFC to the Presenting Officer and thereby to the Specified Persons at the time of the Directions hearing on 3 October 2011. As a result, on 19 October 2011, the first day of the substantive hearing, counsel for the Specified Persons were served with a new list of unused material, copies of which were made available to counsel to inspect there and then. Some of the material related to telephone conversations that had been recorded between Mr Duncan Chui and Mr Peter Yau and their respective brokers. In consequence, the proceedings were interrupted whilst counsel made a preliminary assessment of the size of the task of considering that material. Eventually, the proceedings were adjourned to enable counsel to read, listen to and consider the new material. In light of the material now disclosed the Tribunal made orders pursuant to section 254 of the Ordinance directed at the SFC, requiring them to obtain further relevant related material.

137. Clearly, the impact of the tardy disclosure of unused material was on the proceedings themselves. In the result, approaching the matter broadly in our judgment in consequence the amounts claimed by the SFC and the Government in respect of the proceedings are to be discounted by 5%.

138. It was the Tribunal which determined to exercise its powers under sections 253 and 254 to obtain material in respect of the placees and to require them to give oral testimony. There is no doubt that in large part those inquiries concerned the role of Mr Ben Cheung and his relationship with Mr Peter Yau. They were not concerned directly with Mr Duncan Chui.

139. An element of the costs and expenses of the SFC claimed in relation or incidental to the proceedings of is in respect of Mr Eric Cheng. That claim is for

a total of \$171,374.00. As we noted in Part I of our report (paragraph 89) his evidence, and for that matter the evidence of Mr Richard Witts called on behalf of Mr Duncan Chui, was of limited assistance to the Tribunal since in its view the material matters for determination lay squarely within the Tribunal's remit, so that in large part the Tribunal was not assisted by expert evidence. However, the Tribunal went on to observe (paragraph 90) that in his report Mr Cheng had encroached on many areas outwith the province of an expert, so that his report had been received in edited form only. However, the Tribunal went on to note that the statistical information he provided was of assistance to the Tribunal.

140. Taking a broad view of the matter, in the judgment of the Tribunal only 50% of the costs and expenses of the SFC claimed in respect of Mr Eric Cheng were reasonably incurred.

*The respective proportion of the costs and expenses to be borne by Mr Duncan Chui and Mr Peter Yau*

141. Although the market misconduct of which Mr Duncan Chui and Mr Peter Yau have been found culpable occurred on 9 January 2009 only, it was necessary for the Tribunal to receive material relevant to events that occurred both before and after that date to put that conduct in context. Notwithstanding our finding that their conduct evidenced a joint enterprise, not only as to trading in Sino Katalytics shares on 9 January 2009 but also as to the ultimate objective of a placement of Sino Katalytics shares, it is clear that material that the Tribunal sought and received in respect of events subsequent to 9 January 2009 concerned Mr Peter Yau more than it did Mr Duncan Chui. As we noted at paragraph 93 of our report, Mr Ben Cheung played a crucial role in the genesis of the placement and bringing it to fruition. It was his relationship and contact with Mr Peter Yau that concerned much of the inquiries of events subsequent to 9 January 2009.

142. In the result, in our judgment those matters are to be reflected in the proportion of costs and expenses of the SFC and the Government each of them is to bear in respect of the proceedings. Accordingly, again taking a broader approach to the matter, we order that, of the costs and expenses reasonably incurred, Mr Duncan Chui bear one third and Mr Peter Yau two thirds.

*Section 257(1)(g) of the Ordinance: a recommendation that disciplinary action be taken*

143. Having been informed, at the Tribunal's direction, by those representing Mr Peter Yau that he is a member of the Association of Chartered Certified Accountants, but no other professional bodies, we recommend to them that they take disciplinary action against him. Pursuant to section 262(2)(b)(v) of the Ordinance, we order that the Association of Chartered Certified Accountants be provided with a copy of our report, Parts I and II.

*Orders*

144. Accordingly, the Tribunal makes the following orders under the Ordinance :

As to Mr Duncan Chui

- (i) pursuant to section 257(1)(a) that, without the leave of the Court of First Instance, he shall not act as a director or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company for the period of 2 years from 20 August 2012;
- (ii) pursuant to section 257(1)(b) that, without the leave of the Court of First Instance, in Hong Kong he shall not, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities for the period of 2 years from 20 August 2012;

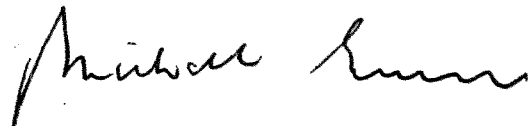


- (iii) pursuant to section 257(1)(e) that he shall pay the Government the sum of \$1,261,679.00; and
- (iv) pursuant to section 257(1)(f) that he shall pay the Securities and Futures Commission the sum of \$65,761.00.

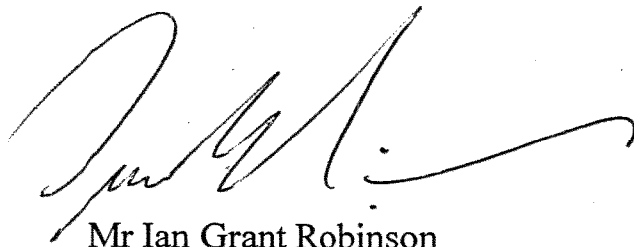
As to Mr Peter Yau

- (i) pursuant to section 257(1)(a) that, without the leave of the Court of First Instance, he shall not act as a director or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company for the period of 2 years from 20 August 2012;
- (ii) pursuant to section 257(1)(b) that, without the leave of the Court of First Instance, in Hong Kong he shall not, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities for the period of 2 years from 23 May 2013;
- (iii) pursuant to section 257(1)(d) that he shall pay to the Government the sum of \$16,200.00, being the profit he gained as a result of his market misconduct;
- (iv) pursuant to section 257(1)(e) that he shall pay the Government the sum of \$2,523,359.00;
- (v) pursuant to section 257(1)(f) that he shall pay the Securities and Futures Commission the sum of \$131,522.00

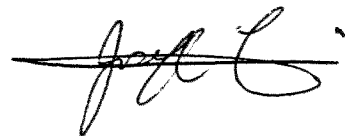
- (vi) pursuant to section 257(1)(g) that the Association of the Chartered Certified Accountant, be recommended to take disciplinary action against Mr Peter Yau; and
  
- (vii) pursuant to section 262(2)(b)(v) that a copy of the whole report of the Tribunal be provided to the Association of Chartered Certified Accountants.



The Hon Mr Justice Lunn  
(Chairman)



Mr Ian Grant Robinson  
(Member)



Mr LI Chiu-wah, Joseph  
(Member)

Dated 16 August 2012

THE MATERIAL RECEIVED BY THE TRIBUNAL

(I) Correspondence and documentary records received in reply/response to SFC demands made prior to the proceedings

1.

<b>Parties of whom a request was made for the provision of information and/or documents</b>	<b>Date of Reply from the relevant parties</b>
Sino Katalytics Investment Corporation	13 February 2009
Guoyuan Securities Brokerage (Hong Kong) Limited	6 February 2009
Onshine Securities Limited	20 February, 24 March and 14 April 2009
Quam Securities Company Limited	30 January, 20 February, 23 March, 9 April and 21 October 2009
CSL Limited	16 April and 15 October 2009
Hutchison Telecommunications Hong Kong Limited	26 November 2009
Smartone Mobile Communications Limited	9 November 2009
UOB Kay Hian (Hong Kong) Limited	2 February 2009
Barclays Bank Plc	2 & 10 February, 25 March and 14 & 20 April 2009

(II) Correspondence and documentary records received by the Tribunal pursuant to Notices issued by the Tribunal pursuant to section 254(2) of the Ordinance

2.

<b>Parties of whom a request was made for the provision of information and/or documents</b>	<b>Date of Notice</b>	<b>Date of Response from the relevant parties</b>
Quam Securities Company Limited	20 & 21 October, 7 November 2011 and 13 & 26 January 2012	21 & 26 October, 8 November 2011 and 16 & 27 January 2012

<b>Parties of whom a request was made for the provision of information and/or documents</b>	<b>Date of Notice</b>	<b>Date of Response from the relevant parties</b>
Kim Eng Securities Pte Ltd	24 & 27 October 2011	27 October 2011
KGI Asia Limited	24 & 25 October 2011	26 October 2011
Christfund Securities Limited	24 & 25 October 2011	26 & 28 October 2011
Guotai Junan Securities (HK) Limited	24 & 25 October 2011	27 & 28 October 2011
Mr Li Yiu Keung	25 October 2011	27 October 2011
Richland Capital Management Limited	25 October 2011	26 October 2011
Ms Lau Wing Lin	25 October 2011	27 October 2011
Omnicon Limited	25 October 2011	27 October 2011
Hutchison Telecommunications (Hong Kong) Limited	1 November 2011	1 November 2011
Mr Chan Ka Yin, Henry	3 & 14 November 2011	4 & 25 November 2011
Mr Chan Kwan Pak, Kasper	3 November 2011	3 November 2011
CITIC Securities Brokerage (HK) Limited	7 & 14 November 2011	8 & 23 November 2011
Bright Smart Securities	7 November 2011	8 November 2011
Bank of China (Hong Kong) Limited	7 November 2011	8 November 2011
Nanyang Commercial Bank Limited	7 November 2011	8 November 2011
Chief Securities Limited	7 November 2011	8 November 2011
Hang Seng Bank	14 November 2011 and 13 January 2012	19 November 2011 and 16 January 2012
HSBC	14 November 2011	19 November 2011

<b>Parties of whom a request was made for the provision of information and/or documents</b>	<b>Date of Notice</b>	<b>Date of Response from the relevant parties</b>
CNI Bullion Limited	14 November 2011	25 November 2011
Mr Yau Chung Hong, Peter	14 November 2011 and 12 & 18 January 2012	29 November 2011 and 16 & 20 January 2012
SmarTone Mobile Communications Limited	13 and 19 January 2012	17 and 19 January 2012

(III) Witness statements and/or records of interview from persons who also gave oral testimony

3.

<b>Name</b>	<b>General Relevance to the Proceedings</b>	<b>Date of Record of Interview / Statement / Oral Testimony</b>
Ms Tsang Yin Kau, Sarah	Corporate Communication Manager of Sino Katalytics Investment Corporation	19 October 2011 (Oral Testimony)  5 November 2011 (Statement)
Mr Wong Hon Kit	Responsible Officer, Onshine Securities Limited	16 April 2009 (Record of Interview)  20 October 2011 (Oral Testimony)
Mr Hung Sing Kwong, Lawrence	Associate Director, Quam Securities Limited	17 April and 29 October 2009 (Record of Interviews)  20 & 21 October 2011 and 13 January 2012 (Oral Testimony)
Mr Hui Lam Chiu, David	Responsible Officer, Guoyuan Securities Brokerage (Hong Kong) Limited	3 December 2009 (Record of Interview)  21, 24 & 26 October 2011 (Oral Testimony)

<b>Name</b>	<b>General Relevance to the Proceedings</b>	<b>Date of Record of Interview / Statement / Oral Testimony</b>
Mr Wong Wai Ho, Michael	Associate Director for Private Clients of Barclays Bank Plc	16 April 2009 (Record of Interview)  14 October 2011 (Statement)  24 October 2011 (Oral Testimony)
Mr Cheung Hung, Ben	Deputy Chief Executive Officer, Guoyuan Securities Brokerage (Hong Kong) Limited	6 July and 2 December 2009 (Record of Interviews)  25 October and 4 November 2011 (Oral Testimony)
Mr Chan Kwan Pak, Kasper	Company Secretary, Sino Katalytics Investment Corporation	28 October and 2 & 3 November 2011 (Oral Testimony)  3 November 2011 (Statement)
Mr Richard Arthur Witts	Expert Witness called by counsel for Mr Chui Tak Keung	13 October 2011 (Statement)  28 October 2011 (Oral Testimony)
Mr Li Yiu Keung	Owner, Second Hand Cars Dealing Company	27 October 2011 (Statement)  2 November 2011 (Oral Testimony)
Mr Cheng Kai Sum, Eric	Expert Witness for by the Presenting Officer	26 May and 8 November 2011 (Statements)  7 November 2011 (Oral Testimony)

<b>Name</b>	<b>General Relevance to the Proceedings</b>	<b>Date of Record of Interview / Statement / Oral Testimony</b>
Mr Chui Tak Keung, Duncan	Specified Person	12 May and 1 December 2009 (Record of Interviews)  7 November 2011 (Statement)  8 & 9 November and 19 December 2011 (Oral Testimony)
Mr Yau Chung Hong, Peter	Specified Person	21 May and 7 December 2009 (Record of Interviews)  8 November 2011 (Statement)  19 & 20 December 2011 10, 11, 13, 18, 20 January 2012 (Oral Testimony)

(IV) Witness statements and/or records of interview from persons who did not give oral testimony

4.

<b>Name</b>	<b>General Relevance to the Proceedings</b>	<b>Date of Record of Interview / Statement</b>
Mr Lo Luk Chun, Perla	Senior Credit Control Officer, CSL Limited	8 November 2011 (Statement)
Mr Leung Wai Hung	Assistant Investigation Manager, Hutchison Telecommunications (HK) Limited	9 November 2011 (Statement)



(V) Persons who gave oral testimony who had not been interviewed by SFC or given any witness statement

5.

<b>Name</b>	<b>General Relevance to the Proceedings</b>	<b>Date of Oral Testimony to Tribunal</b>
Ms Lau Ying, Icy	Sales, Guotai Junan Securities Hong Kong Limited	27 October 2011 (Oral Testimony)
Mr Au Wai Chi, Alex	Managing Director, Richland Capital Management Limited	27 October 2011 (Oral Testimony)
Mr Lam Ka Hing, Simon	Responsible Officer, Christfund Securities Limited	28 October 2011 (Oral Testimony)
Mr Lui Chi Lung, Louis	Client Relationship Officer, EFG	28 October 2011 & 1 November 2011 (Oral Testimony)
Mr Lam Chung Leung, Frank	Associate Director, Kim Eng Securities Hong Kong Limited	1 November 2011 (Oral Testimony)
Ms Tse Nga Ying, Daphne	Chief Financial Officer, Omnicorp Limited	1 November 2011 (Oral Testimony)
Mr Lui Chun Bing, Tommy	Consultant, Omnicorp Limited	1 & 2 November 2011 (Oral Testimony)
Mr Yeung Hong Sang	Proprietor & Dealer, Electronic Metals Company	7 November 2011 (Oral Testimony)
Ms Chan Wai Yan	Head of Sales, CNI Bullion Limited	8 November 2011 (Oral Testimony)
Mr Chan Ka Yin, Henry	Financial Controller, Capital VC Limited	8 November 2011 (Oral Testimony)
Mr Hui Wai Yung, Terence	Owner, TNY Consultant Company	18 January 2012 (Oral Testimony)

(VI) The Hearings conducted by the Tribunal

6. The Tribunal conducted hearings on the following dates -

Preliminary Chairman's Conferences : 12 May and 9 June 2011.

Directions Hearing : 3 October 2011.

Substantive Hearings : 19 to 21, 24 to 28 October; 1 to 4, 7 to 9 November; 19 to 20 December 2011; 10, 11, 13, 18 & 20 January and 7 February 2012.

Date	Chui					Yau				
	No of Shares	Avg Price	Total Cost	Total Holding	% Interest	No of Shares	Avg Price	Total Cost	Total Holding	% Interest
26-Feb-08	22,200,000	0.114	2,530,800	114,000,000	9.25					
27-Feb-08	14,700,000	0.104	1,528,800	128,700,000	10.44					
31-Mar-08	7,600,000	0.071	539,600	136,300,000	11.06					
2-Jul-08						15,700,000	0.060	942,000	15,700,000	1.27
3-Jul-08						1,200,000	0.057	68,400	16,900,000	1.37
4-Jul-08						7,900,000	0.061	481,900	24,800,000	2.01
7-Jul-08						1,100,000	0.063	69,300	25,900,000	2.10
8-Jul-08						2,400,000	0.061	146,400	28,300,000	2.30
9-Jul-08						10,800,000	0.062	669,600	39,100,000	3.17
10-Jul-08						2,400,000	0.061	146,400	41,500,000	3.37
11-Jul-08						8,000,000	0.060	480,000	49,500,000	4.02
16-Jul-08						2,100,000	0.059	123,900	51,600,000	4.19
18-Jul-08						4,000,000	0.057	228,000	55,600,000	4.51
21-Jul-08						2,400,000	0.059	141,600	58,000,000	4.71
23-Jul-08						5,000,000	0.059	295,000	63,000,000	5.11
24-Jul-08						6,100,000	0.061	372,100	69,100,000	5.61
25-Jul-08						2,700,000	0.059	159,300	71,800,000	5.83
25-Jul-08						10,000,000	0.010	100,000	Purchase of Rights	
28-Jul-08						3,800,000	0.055	209,000	75,600,000	6.14
29-Jul-08						19,700,000	0.059	1,162,300	95,300,000	7.73
30-Jul-08						14,200,000	0.072	1,022,400	109,500,000	8.89
30-Jul-08						20,800,000	0.011	228,800	Purchase of Rights	
31-Jul-08						8,100,000	0.073	591,300	117,600,000	9.54
31-Jul-08						11,000,000	0.012	132,000	Purchase of Rights	
1-Aug-08						11,100,000	0.070	777,000	128,700,000	10.44
1-Aug-08						15,400,000	0.011	169,400	Purchase of Rights	
4-Aug-08						16,600,000	0.064	1,062,400	145,300,000	11.79
4-Aug-08						32,800,000	0.010	328,000	Purchase of Rights	
5-Aug-08						2,800,000	0.063	176,400	148,100,000	12.02
7-Aug-08						29,700,000	0.070	2,079,000	177,800,000	14.43
7-Aug-08						14,150,000			Rights Entitlement	
7-Aug-08	68,150,000	0.050	3,407,500	204,450,000	11.06	104,150,000	0.050	5,207,500	281,950,000	15.25
12-Aug-08						5,600,000	0.056	313,600	287,550,000	15.56
12-Aug-08						2,000,000	0.055	110,000	289,550,000	15.66
13-Aug-08						6,600,000	0.049	323,400	296,150,000	16.02
14-Aug-08						5,300,000	0.046	243,800	301,450,000	16.31
14-Aug-08						22,900,000	0.047	1,076,300	324,350,000	17.55
15-Aug-08						2,000,000	0.045	90,000	326,350,000	17.65
	Share consolidation 1 for 2			102,225,000	11.06	Share consolidation 1 for 2			163,175,000	17.65
18-Aug-08	1,000,000	0.089	89,000	103,225,000	11.17	3,900,000	0.089	347,100	167,075,000	18.08
18-Aug-08						600,000	0.085	51,000	167,675,000	18.14
19-Aug-08	550,000	0.081	44,550	103,775,000	11.23					
20-Aug-08						300,000	0.091	27,300	167,975,000	18.17

21-Aug-08	400,000	0.081	32,400	104,175,000	11.27						
25-Aug-08	250,000	0.080	20,000	104,425,000	11.30	100,000	0.079	7,900	168,075,000	18.19	
26-Aug-08						1,300,000	0.083	107,900	169,375,000	18.33	
27-Aug-08						450,000	0.086	38,700	169,825,000	18.37	
28-Aug-08	55,000,000	0.120	6,600,000	159,425,000	17.25	500,000	0.085	42,500	170,325,000	18.43	
29-Aug-08						350,000	0.082	28,700	170,675,000	18.47	
2-Sep-08						350,000	0.086	30,100	171,025,000	18.50	
2-Sep-08						450,000	0.082	36,900	171,475,000	18.55	
3-Sep-08						(55,000,000)	0.120	(6,600,000)	116,475,000	12.60	
5-Sep-08						200,000	0.073	14,600	116,675,000	12.62	
8-Sep-08						350,000	0.075	26,250	117,025,000	12.66	
9-Sep-08						250,000	0.079	19,750	117,275,000	12.69	
11-Sep-08						100,000	0.066	6,600	117,375,000	12.70	
17-Sep-08						1,300,000	0.048	62,400	118,675,000	12.84	
18-Sep-08						2,600,000	0.050	130,000	121,275,000	13.12	
22-Sep-08						200,000	0.055	11,000	121,475,000	13.14	
23-Sep-08						800,000	0.057	45,600	122,275,000	13.23	
31-Oct-08						400,000	0.044	17,600	122,675,000	13.27	
7-Nov-08						700,000	0.040	28,000	123,375,000	13.35	
14-Nov-08	43,500,000	0.049	2,131,500	204,725,000	22.15						
17-Nov-08						(4,200,000)	0.051	(214,200)	119,175,000	12.90	
18-Nov-08	10,750,000	0.051	548,250	215,475,000	23.31						
20-Nov-08	300,000	0.048	14,400	215,775,000	23.35						
21-Nov-08	200,000	0.049	9,800	215,975,000	23.37						
27-Nov-08	50,000	0.046	2,300	216,025,000	23.37						
16-Dec-08						250,000	0.041	10,250	119,425,000	12.94	
22-Dec-08						(10,000,000)	0.043	(430,000)	109,425,000	11.84	
29-Dec-08						200,000	0.039	7,800	109,625,000	11.86	
2-Jan-09						2,000,000	0.042	84,000	111,625,000	12.08	
5-Jan-09						2,100,000	0.041	86,100	113,725,000	12.30	
6-Jan-09						2,050,000	0.041	84,050	115,775,000	12.53	
6-Jan-09						700,000	0.042	29,400	116,475,000	12.60	
7-Jan-09	2,350,000	0.041	96,350	218,375,000	23.63						
8-Jan-09	2,450,000	0.042	102,900	220,825,000	23.89						
9-Jan-09	5,450,000	0.051	277,950	226,275,000	24.48	(7,900,000)	0.055	(434,500)	108,575,000	11.75	
19-Jan-09						250,000	0.040	10,000	108,825,000	11.77	
20-Jan-09						1,800,000	0.040	72,000	110,625,000	11.97	
21-Jan-09						400,000	0.040	16,000	111,025,000	12.01	
22-Jan-09	1,550,000	0.041	63,550	227,825,000	24.65	800,000	0.040	32,000	111,825,000	12.10	
30-Jan-09						500,000	0.037	18,500	112,325,000	12.15	
2-Feb-09						1,100,000	0.042	46,200	113,425,000	12.27	
3-Feb-09						400,000	0.046	18,400	113,825,000	12.32	
10-Feb-09				227,825,000	21.20				Dilution of interest following placement	113,825,000	10.59
10-Feb-09				45,565,000	21.20				Share consolidation 1 for 5	22,765,000	10.59
17-Feb-09	310,000	0.233	72,230	45,875,000	21.35	140,000	0.232	32,480	22,905,000	10.66	

## Stock Historical Data

Stock	02324 - SINO KATALYTICS		
Date (dd/mm/yyyy)	01/12/2008 - 13/02/2009		
Max / Min Closing Price	0.055 / 0.035	Total Volume	95,797,986 shares
Max / Min Price	0.055 / 0.03	Daily Average	1,955,061 shares
Weighted Average Price	0.043	Total Turnover (HKD)	4,135,636
		Average Turnover (HKD)	84,401

Date	Volume	Turnover (HKD)	High	Low	Close	%Change	HSI Close
01/12/2008	100,000	4,300	0.044	0.042	0.044	4.76	14,108.84
02/12/2008	1,500,000	51,950	0.040	0.030	0.037	-15.91	13,405.85
03/12/2008	200,000	7,800	0.039	0.039	0.043	16.22	13,588.66
04/12/2008	0	0	--	--	0.043	0.00	13,509.78
05/12/2008	0	0	--	--	0.043	0.00	13,846.09
08/12/2008	0	0	--	--	0.043	0.00	15,044.87
09/12/2008	450,000	20,250	0.045	0.045	0.045	4.65	14,753.22
10/12/2008	500,000	21,500	0.043	0.043	0.043	-4.44	15,577.74
11/12/2008	550,000	24,050	0.045	0.043	0.045	4.65	15,613.90
12/12/2008	550,000	23,250	0.044	0.041	0.041	-8.89	14,758.39
15/12/2008	950,000	40,400	0.043	0.041	0.042	2.44	15,046.95
16/12/2008	1,300,000	54,000	0.042	0.040	0.040	-4.76	15,130.21
17/12/2008	0	0	--	--	0.040	0.00	15,460.52
18/12/2008	250,000	10,000	0.040	0.040	0.040	0.00	15,497.81
19/12/2008	10,100,000	434,400	0.044	0.043	0.043	7.50	15,127.51
22/12/2008	1,000,000	41,000	0.041	0.041	0.041	-4.65	14,622.39
23/12/2008	3,000,000	120,000	0.040	0.040	0.040	-2.44	14,220.79
24/12/2008	0	0	--	--	0.040	0.00	14,184.14
29/12/2008	4,350,000	164,300	0.039	0.030	0.038	-5.00	14,328.48
30/12/2008	0	0	--	--	0.038	0.00	14,235.50
31/12/2008	2,150,000	92,300	0.043	0.042	0.043	13.16	14,387.48
02/01/2009	2,000,000	84,000	0.042	0.042	0.042	-2.33	15,042.81
05/01/2009	2,425,000	98,375	0.041	0.037	0.041	-2.38	15,563.31
06/01/2009	3,060,486	126,211	0.042	0.041	0.042	2.44	15,509.51
07/01/2009	2,550,000	104,650	0.042	0.039	0.042	0.00	14,987.46
08/01/2009	2,900,000	120,600	0.042	0.037	0.042	0.00	14,415.91
09/01/2009	8,850,000	445,900	0.055	0.042	0.055	30.95	14,377.44
12/01/2009	650,000	33,350	0.054	0.048	0.054	-1.82	13,971.00
13/01/2009	1,200,000	64,800	0.054	0.054	0.054	0.00	13,668.05
14/01/2009	0	0	--	--	0.054	0.00	13,704.61
15/01/2009	0	0	--	--	0.054	0.00	13,242.96
16/01/2009	1,400,000	62,950	0.046	0.044	0.045	-16.67	13,255.51
19/01/2009	3,937,500	164,925	0.045	0.038	0.041	-8.89	13,339.99
20/01/2009	2,800,000	112,250	0.043	0.040	0.040	-2.44	12,959.77
21/01/2009	500,000	19,450	0.040	0.037	0.040	0.00	12,583.63
22/01/2009	3,875,000	154,475	0.044	0.039	0.044	10.00	12,657.99
23/01/2009	1,300,000	47,950	0.037	0.036	0.037	-15.91	12,578.60

**Appendix III (P. 2 of 2)**

29/01/2009	50,000	1,600	0.032	0.032	0.035	-5.41	13,154.43
30/01/2009	900,000	33,700	0.039	0.036	0.037	5.71	13,278.21
02/02/2009	1,100,000	46,500	0.045	0.037	0.045	21.62	12,861.49
03/02/2009	500,000	22,700	0.047	0.045	0.047	4.44	12,776.89
04/02/2009	2,475,000	113,250	0.048	0.044	0.048	2.13	13,063.89
05/02/2009	4,250,000	194,500	0.049	0.044	0.048	0.00	13,178.90
06/02/2009	2,375,000	112,800	0.049	0.046	0.046	-4.17	13,655.04
09/02/2009	3,700,000	166,200	0.045	0.043	0.045	-2.17	13,769.06
10/02/2009	5,075,000	220,675	0.046	0.041	0.045	0.00	13,880.64
11/02/2009	3,600,000	158,400	0.045	0.043	0.045	0.00	13,539.21
12/02/2009	3,950,000	170,750	0.045	0.043	0.043	-4.44	13,228.30
13/02/2009	3,425,000	145,175	0.044	0.041	0.043	0.00	13,554.67

Orders and Trades executed for Duncan Chul (via Onshine) and Peter Yau (via Quam and UOB Kay Hian) in SKIC shares on 9 January 2009

Date	Time	Broker Name	Market Information					Order & Trade Information				Corresponding Broker Name	Trade Type
			Previous Nominal Price	Nominal Price (after)	Change in Nominal Price	Best Bid Price (before)	Best Ask Price (before)	Bid Price	Ask Price	Sale Price	Quantity		
09/01/2009	15:37:43	UOB KAY HIAN (HONG KONG) LTD.	0.045	0.045	-	0.045	0.055	-	0.050	-	1,000,000		
09/01/2009	15:38:15	UOB KAY HIAN (HONG KONG) LTD.	0.045	0.045	-	0.045	0.050	-	0.049	-	1,000,000		
09/01/2009	15:39:14	ONSHINE SECURITIES LTD.	0.045	0.049	8.9%	0.045	0.049	0.049	-	-	1,000,000	UOB KAY HIAN (HONG KONG) LTD.	A
09/01/2009	15:39:14	ONSHINE SECURITIES LTD.								0.049	1,000,000		
09/01/2009	15:41:38	ONSHINE SECURITIES LTD.	0.049	0.050	2.0%	0.045	0.050	0.050	-	-	1,000,000	UOB KAY HIAN (HONG KONG) LTD.	A
09/01/2009	15:41:38	ONSHINE SECURITIES LTD.								0.050	1,000,000		
09/01/2009	15:50:08	QUAM SECURITIES CO. LTD.	0.050	0.050	-	0.048	0.054	-	0.050	-	1,000,000		
09/01/2009	15:50:11	QUAM SECURITIES CO. LTD.	0.050	0.050	-	0.048	0.050	-	0.051	-	1,000,000		
09/01/2009	15:50:36	ONSHINE SECURITIES LTD.	0.050	0.050	-	0.048	0.050	0.050	-	-	1,000,000	QUAM SECURITIES CO. LTD.	A
09/01/2009	15:50:36	ONSHINE SECURITIES LTD.								0.050	1,000,000		
09/01/2009	15:51:13	UOB KAY HIAN (HONG KONG) LTD.	0.050	0.050	-	0.048	0.051	-	0.050	-	1,000,000		
09/01/2009	15:51:29	UOB KAY HIAN (HONG KONG) LTD.	0.050	0.050	-	0.048	0.050	-	0.051	-	1,000,000		
09/01/2009	15:51:46	WING HANG SHARES BRO. CO. LTD.								0.050	800,000	UOB KAY HIAN (HONG KONG) LTD.	A
09/01/2009	15:51:56	ONSHINE SECURITIES LTD.	0.050	0.050	-	0.048	0.050	0.050	-	-	200,000		
09/01/2009	15:51:56	ONSHINE SECURITIES LTD.								0.050	200,000	UOB KAY HIAN (HONG KONG) LTD.	A
09/01/2009	15:52:21	ONSHINE SECURITIES LTD.	0.050	0.051	2.0%	0.048	0.051	0.051	-	-	800,000		
09/01/2009	15:52:21	ONSHINE SECURITIES LTD.								0.051	800,000	QUAM SECURITIES CO. LTD.	A
09/01/2009	15:52:21	ONSHINE SECURITIES LTD.								-	500,000		
09/01/2009	15:54:25	ONSHINE SECURITIES LTD.	0.051	0.051	-	0.048	0.051	0.051	-	-	200,000	QUAM SECURITIES CO. LTD.	A
09/01/2009	15:54:25	ONSHINE SECURITIES LTD.								0.051	200,000	QUAM SECURITIES CO. LTD.	A
09/01/2009	15:54:25	ONSHINE SECURITIES LTD.								0.051	300,000	UOB KAY HIAN (HONG KONG) LTD.	A
09/01/2009	15:54:25	ONSHINE SECURITIES LTD.								0.051	300,000	UOB KAY HIAN (HONG KONG) LTD.	A
09/01/2009	15:55:42	QUAM SECURITIES CO. LTD.	0.051	0.050	(2.0%)	0.048	0.051	-	0.050	-	1,000,000	QUAM SECURITIES CO. LTD.	A
09/01/2009	15:55:42	QUAM SECURITIES CO. LTD.								0.050	1,000,000	QUAM SECURITIES CO. LTD.	A
09/01/2009	15:56:09	TAIFOOK SECURITIES CO LTD								0.051	700,000	UOB KAY HIAN (HONG KONG) LTD.	A
09/01/2009	15:56:19	TAIFOOK SECURITIES CO LTD								-	100,000		
09/01/2009	15:56:19	TAIFOOK SECURITIES CO LTD								0.054	100,000		
09/01/2009	15:58:02	ONSHINE SECURITIES LTD.	0.051	0.054	5.9%	0.048	0.054	0.054	-	-	100,000	CHEUNG'S SEC. BROKERS LTD.	A
09/01/2009	15:58:02	ONSHINE SECURITIES LTD.								0.054	100,000	CHEUNG'S SEC. BROKERS LTD.	A
09/01/2009	15:58:04	ONSHINE SECURITIES LTD.	0.054	0.055	1.9%	0.048	0.055	0.055	-	-	50,000		
09/01/2009	15:58:04	ONSHINE SECURITIES LTD.								0.055	50,000	GOOD HARVEST SECURITIES CO LTD	A
09/01/2009	15:58:04	ONSHINE SECURITIES LTD.								0.055	50,000	GOOD HARVEST SECURITIES CO LTD	A
09/01/2009	15:59:22	QUAM SECURITIES CO. LTD.	0.055	0.055	-	0.048	0.059	-	0.055	-	1,000,000		
09/01/2009	15:59:22	QUAM SECURITIES CO. LTD.								0.055	800,000		
09/01/2009	15:59:52	ONSHINE SECURITIES LTD.	0.055	0.055	-	0.048	0.055	0.055	-	-	800,000	QUAM SECURITIES CO. LTD.	A
09/01/2009	15:59:52	ONSHINE SECURITIES LTD.								0.055	800,000	QUAM SECURITIES CO. LTD.	A
09/01/2009	15:59:52	ONSHINE SECURITIES LTD.								0.055	100,000	QUAM SECURITIES CO. LTD.	U
09/01/2009	16:10:07	KGI SECURITIES (H.K.) LTD.								0.055	100,000	QUAM SECURITIES CO. LTD.	U

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**Appendix V**

**Sales by Mr Peter Yau to Buyers Other Than Mr Duncan Chui**

<b>Time</b>	<b>Buyer</b>	<b>Seller (Mr Peter Yau)</b>	<b>Price</b>	<b>Quantity</b>
15:51:46	Wing Hang Shares Bro.	UOB Kay Hian (Hong Kong)	\$0.050	800,000
15:56:09	Taifook Securities Co Ltd	Quam Securities Co Ltd	\$0.050	1,000,000
15:56:19	Taifook Securities Co Ltd.	UOB Kay Hian (Hong Kong)	\$0.051	700,000
16:10:07	KGI Securities (HK) Ltd	Quam Securities Co Ltd	\$0.055	100,000



Appendix VI

Profit Gained by Mr Peter Yau

<b>Time</b>	<b>Buyer</b>	<b>Seller (Mr Peter Yau)</b>	<b>Price</b>	<b>Quantity</b>	<b>Profit gained*</b>
15:51:46	Wing Hang Shares Bro.	UOB Kay Hian (Hong Kong)	\$0.050	800,000	\$4,800
15:56:09	Taifook Securities Co Ltd	Quam Securities Co Ltd	\$0.050	1,000,000	\$6,000
15:56:19	Taifook Securities Co Ltd	UOB Kay Hian (Hong Kong)	\$0.051	700,000	\$4,900
16:10:07	KGI Securities (HK) Ltd	Quam Securities Co Ltd	\$0.055	100,000	\$1,100
<b>Total Profit Gained</b>					<b>\$16,800</b>

## Executive Statement

22 May 2012

SFC publicly censures Capital VC Limited and Yau Chung Hong in relation to a breach of the mandatory offer obligation in the Takeovers Code in respect of Longlife Group Holdings Limited. The SFC has also imposed a cold shoulder order against Mr Yau for a period of 18 months.

### Sanctions

1. The SFC announces today that the following disciplinary action has been taken against Capital VC Limited (“Capital VC”) and Mr Yau Chung Hong (“Mr Yau”) in relation to a breach of the mandatory offer obligation requirements in the Code on Takeovers and Mergers (“Takeovers Code”):
  - (a) The Takeovers Executive has imposed an order denying Mr Yau direct or indirect access to the Hong Kong securities markets (a “Cold Shoulder Order”) for a period of 18 months commencing on 23 May 2012 to 22 November 2013.
  - (b) The Executive also publicly censures Capital VC and Mr Yau in relation to their conduct in this matter.

### Background and key facts

2. Capital VC (stock code: 2324) is an investment company under Chapter 21 of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (“Listing Rules”). The principal business of Capital VC is investments in listed and unlisted companies in Hong Kong and the People’s Republic of China. At all relevant times Mr Yau was an executive director<sup>1</sup> and a substantial shareholder of Capital VC. Mr Yau was a member of Capital VC’s Investment Committee which comprised all the executive directors of Capital VC. The Investment Committee was responsible for considering and approving all investments on behalf of Capital VC including investments in Longlife Group Holdings Ltd (“Longlife”), a GEM board listed company. Once the Investment Committee had approved Capital VC’s investment in Longlife Mr Yau was responsible for managing the investment on a discretionary basis.
3. In a meeting of the Investment Committee held on 11 December 2009 Mr Yau recommended that Capital VC invest in Longlife and informed the Investment Committee that he also intended to invest on a personal basis in Longlife. Capital VC has explained that Mr Yau had an agreement or mutual understanding with the Investment Committee that he would ensure his holding and/or dealing in the shares of Longlife would not result in Capital VC and him collectively holding more than 30% of the voting rights in Longlife. Mr Yau also agreed to report the shareholding position of Capital VC and Mr Yau’s personal holding to the Investment Committee from time to time. On this basis, Mr Yau was authorised by the Investment Committee to execute trades in Longlife shares on behalf of Capital VC on a discretionary basis and for his own account.

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<sup>1</sup> Mr Yau resigned as an executive director of Capital VC on 12 March 2012.

4. At all material times Mr Yau managed two investment accounts, one for Capital VC and one for his personal investments. He was the sole decision-maker in executing trades in Longlife shares for Capital VC's and for his own account.
5. On 10 June 2011, Mr Yau and Capital VC increased their collective shareholding in Longlife to 30.19% thereby triggering a mandatory general offer obligation under the Takeovers Code. Upon becoming aware of the fact that Mr Yau and Capital VC collectively held an interest of 30% or more of Longlife the Executive reminded the parties of the mandatory general offer requirement under Rule 26.1 of the Takeovers Code and urged Capital VC and Mr Yau to comply with the Takeovers Code forthwith. In a clarification announcement issued by Capital VC on 17 August 2011, Mr Yau and Capital VC confirmed, among other things, that they would not make a general offer for Longlife.

**Relevant provisions of the Takeovers Code and discussion**

6. The Takeovers Code defines persons acting in concert as follows:

*"Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate to obtain or consolidate "control" ... of a company through the acquisition by any of them of voting rights of the company."*

7. The definition of acting in concert also sets out nine classes of person who are presumed to be acting in concert with others in the same class unless the contrary is established. Class 2 of the definition of acting in concert presumes the following persons to be acting in concert unless the contrary is established:

*"a company with any directors (together with their close relatives, related trusts and companies controlled<sup>#</sup> by any of the directors, their close relatives or related trusts) of it or of its parent;"*

*<sup>#</sup> "Control: The normal test for whether a person controls, is controlled by or is under the same control as another person, is by reference to the definition of control, that is by reference to holding 30% or more of the voting rights of a company. In cases of doubt, the Executive should be consulted."*

8. At all material times Mr Yau was, as a director of Capital VC, presumed to be acting in concert with Capital VC for the purpose of the Takeovers Code. This is important as the Takeovers Code treats persons acting in concert as being the equivalent of a single person and aggregates their shareholdings.

9. Rule 26.1 of the Takeovers Code provides:

*"Subject to the granting of a waiver by the Executive, when ...*

- (b) two or more persons are acting in concert, and they collectively hold less than 30% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 30% or more of the voting rights of the company;*

*...*

*that person shall extend offers, on the basis set out in this Rule 26, to the holders of each class of equity share capital of the company, whether the class*

*carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares ...”*

10. It follows that a mandatory offer obligation was incurred on 10 June 2011 when Mr Yau and Capital VC's collective shareholding in Longlife increased to 30.19%. No general offer has been made.

**Sanctions against Mr Yau and Capital VC**

11. In reaching a decision on sanctions, the Executive has taken into account the level and nature of sanctions imposed in previous decisions involving a breach of Rule 26.1 of the Takeovers Code. While such decisions are of persuasive effect they are not binding precedents. Each case has its own distinguishing features and has to be determined on a case by case basis. It follows that the Executive's decision on sanctions is determined by the specific facts and circumstances of each case having had regard to relevant past decisions on sanctions.
12. The Executive has carefully considered the evidence in this case including the representations of Capital VC and Mr Yau. Both Mr Yau and Capital VC accept that they have breached Rule 26.1 of the Takeovers Code as described and accordingly that shareholders of Longlife have been deprived of the right to receive a general offer for their shares. Both the Investment Committee and Mr Yau were fully aware of the possible general offer implications of purchases of Longlife shares under the Takeovers Code and yet put in place wholly inadequate measures to ensure compliance. The failure to make a general offer constitutes a serious breach of one of the most fundamental provisions of the Takeovers Code which merits strong disciplinary action. Mr Yau and Capital VC have agreed to the disciplinary action taken against them under section 12.3 of the Introduction to the Takeovers Code.
13. In respect of Mr Yau, the Executive pursuant to section 12.2(c) of the Introduction to the Takeovers Code hereby requires that all licensed corporations, licensed representatives, registered institutions, or relevant individuals, shall not, without the prior consent of the Executive in writing, act or continue to act directly or indirectly in their capacity as licensed corporations, licensed representatives and registered institutions or relevant individuals for Mr Yau or any corporation controlled by him for a period of 18 months commencing on 23 May 2012 and ending on 22 November 2013.
14. The Executive also publicly censures Mr Yau pursuant to section 12.2(b) of the Introduction to the Takeovers Code.
15. In reaching its decision to impose sanctions against Mr Yau the Executive has paid particular regard to Mr Yau's overall role in causing the breach of Rule 26.1 of the Takeovers Code and to the standards of behaviour and integrity that might reasonably be expected of a director of an investment company subject to Chapter 21 of the Listing Rules. Mr Yau's actions directly led to the breach of Rule 26.1 of the Takeovers Code.
16. Mr Yau was a director and a member of the Investment Committee who managed Capital VC's investments in Longlife. Accordingly, Mr Yau had a direct and clear responsibility for the proper management of Longlife shares on behalf of Capital VC both in terms of investment decisions and regulatory compliance.

17. Mr Yau accepts that he was aware of the need to keep the collective shareholding of Capital VC and himself below 30% and has suggested that he had acquired shares of Longlife because of wrong calculations on his own part. In this regard the Executive has not been provided with evidence of any safeguards implemented by Mr Yau in order to ensure compliance with the Takeovers Code. In the circumstances the Executive does not consider Mr Yau to have made any serious efforts to put in place compliance procedures which could have helped to avoid such a serious breach of the Takeovers Code.
18. In respect of Capital VC, the Executive publicly censures Capital VC pursuant to section 12.2(b) of the Introduction to the Takeovers Code.
19. In reaching the decision to impose sanctions against Capital VC the Executive notes that Capital VC and its Investment Committee relied solely on Mr Yau to monitor his and Capital VC's relevant holdings in Longlife. No additional safeguards were put in place by the Investment Committee to monitor or ensure compliance with the Takeovers Code. There were no internal control procedures to enable the Investment Committee to exercise adequate supervision over Mr Yau's dealings and to ensure compliance with the 30% restriction imposed by the Investment Committee when the investment in Longlife was approved. Capital VC's internal policies and procedures to ensure compliance with applicable regulatory requirements including the Takeovers Codes were wholly inadequate. Capital VC accepts that this was a serious oversight on its part.
20. The Executive believes that Capital VC must also bear responsibility for Mr Yau's action and the consequent breach of the Takeovers Code.
21. The Executive has also taken into account the following mitigating circumstances of this case:
  - (a) Mr Yau and Capital VC subsequently reduced their holding in Longlife to below 30% through a number of disposal transactions. According to the latest disclosure of notice filed by the parties, Mr Yau was interested in 0.34% of Longlife as at 26 August 2011 and Capital VC was interested in 9.26% of Longlife as at 15 September 2011.
  - (b) Mr Yau resigned as director of Capital VC on 12 March 2012 and ceased to act as a member of the Investment Committee on the same day.
  - (c) Capital VC has undertaken to put in place additional procedures to improve its internal controls and to ensure it complies with all relevant regulatory requirements.
22. Finally the Executive wishes to take this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers and mergers in accordance with the Takeovers Code. If they do not, they may find by way of sanction, that the facilities of such markets are withheld in order to protect those who participate in Hong Kong's securities markets.

Ends

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**SECURITIES AND FUTURES COMMISSION**

**Order pursuant to section 12 of the Introduction to the Hong Kong Codes on  
Takeovers and Mergers and Share Repurchases**

**Mr Yau Chung Hong**

The Executive Director of the Corporate Finance Division of the SFC ("Executive Director") hereby **REQUIRES** that all licensed corporations, licensed representatives and registered institutions within the meaning of the Securities and Futures Ordinance (Cap. 571) and relevant individuals within the meaning of section 20(10) of the Banking Ordinance (Cap. 155) shall not, without the prior consent of the Executive in writing:

- act or continue to act directly or indirectly in their capacity as licensed corporations, licensed representatives and registered institutions or relevant individuals for Mr Yau Chung Hong or any corporation controlled by him (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Repurchases); or
- knowingly assist directly or indirectly in a breach of this Order;

during the period commencing on 23 May 2012 and ending on 22 November 2013.

BY ORDER

Brian Ho

Executive Director

22 May 2012

Statement of Costs  
Market Misconduct Tribunal Proceedings-  
Sino Katalytics Investment Corporation  
(As at 24.07.2012)

(HK\$)

A.	Manual Work :	
	1 Photocopying Charge	
	2 Attendance by Law Clerk	
		Sub-total: <u>62,658.00</u>
B.	Communications by solicitor, including letters, memos and emails :	
	1 Attendance on Securities and Futures Commission;	
	2 Attendance on Presenting Officer;	
	3 Attendance on the persons specified;	
	4 Attendance on witnesses; and	
	5 Attendance on Tribunal	
		Sub-total: <u>413,466.70</u>
C.	Professional Work	
	1 Preparation of documents;	
	2 Perusal of documents;	
	3 Preparation for hearing; and	
	4 Hearings including preliminary conferences	
		Sub-total: <u>748,800.00</u>
D.	Disbursements, including counsel's fees	
		Sub-total: <u>666,150.00</u>
E.	Costs of Assessment	
		Sub-total: <u>51,200.00</u>
		<b>Total: 1,942,274.70</b>

**SFC Costs- Sino Katalytics Investment Corporation (508/EN/1795)**

	HK\$	
<b>Investigation</b>		
Staff Costs	\$	88,215
Overhead	\$	26,654
sub-total	\$	114,869 (a)

<b>Expert Cost</b>		
Staff Costs	\$	151,638
Overhead	\$	19,736
sub-total	\$	171,374 (b)

**Total SFC Costs (a+b) \$ 286,243**

Before the substantive hearings		After the substantive hearings (From 19 Oct 2011)	
Overhead Cost	\$ 15,149	Overhead Cost	\$ 11,505
Overhead Cost of Expert	\$ 15,467	Overhead Cost of Expert	\$ 4,269
Staff Cost of Expert	\$ 116,225	Staff Cost of Expert	\$ 35,413
Staff Cost	\$ 54,105	Staff Cost	\$ 34,110
<b>Total</b>	<b>\$ 200,946</b>	<b>Total</b>	<b>\$ 85,297</b>



**Market Misconduct Tribunal Proceedings**  
**Sino Katalytics Investment Corporation**

**Tribunal's Costs and Expenses in respect of and incidental to the  
proceedings before the Tribunal**

<b>Item</b>	<b>Cost (\$)</b>
1. Costs and expenses for Chairman, Members and Secretariat	1,807,489.29
2. Disbursements: Interpreters, Reporters and Miscellaneous	234,487.15
<b>Total :</b>	<b>2,041,976.44</b>