

# SFC commences proceedings in Market Misconduct Tribunal against CMBC Capital Holdings Limited and its former directors for late disclosure of inside information

18 Dec 2018

The Securities and Futures Commission (SFC) has commenced proceedings in the Market Misconduct Tribunal (MMT) against CMBC Capital Holdings Limited (CMBC Capital) for failing to disclose inside information as soon as reasonably practicable.

CMBC Capital was known as Mission Capital Holdings Limited (Mission Capital) when the alleged breach of the statutory corporate disclosure requirements occurred (Note 1).

The SFC has also commenced proceedings in the MMT against six former directors of Mission Capital for their reckless or negligent conduct causing the company's alleged breach of the provisions of the corporate disclosure regime and for failing to take all reasonable measures to ensure that proper safeguards exist at the material time to prevent the alleged breach.

The six former directors of Mission Capital at the material time include Mr Philip Suen Yick Lun, former Chief Executive Officer and Company Secretary, Mr Paul Suen Cho Hung, former Chairman, Mr Lau King Hang, former Executive Director, as well as three former Independent Non-Executive Directors, Mr Huang Zhencheng, Mr Weng Yixiang and Mr Wong Kwok Tai (Directors).

The SFC found that on 13 October 2014, the Directors received through email the unaudited consolidated management accounts of Mission Capital for the five months ended 31 August 2014 (August Management Accounts). The August Management Accounts revealed that Mission Capital made a cumulative profit for the five months ended 31 August 2014 of \$838 million, representing a significant improvement in financial performance against an interim loss of \$12 million for the six months ended 30 September 2013 and an annual profit of \$417 million for the 12 months ended 31 March 2014.

The improvement in financial performance was not made public until 7 November 2014 when Mission Capital issued a profit alert announcement in relation to its financial performance for the six months ended 30 September 2014.

The SFC alleges that the information relating to the financial performance of Mission Capital for the first five months ended 31 August 2014 as contained in the August Management Accounts constituted inside information, and as such, the information should have been disclosed as soon as reasonably practicable after it was available to the Directors on 13 October 2014.

End

Notes:

1. Mission Capital was listed on the Main Board of The Stock Exchange of Hong Kong Limited on 12 March 1998.
2. A copy of the SFC's Notice commencing the MMT proceedings is available on the MMT's website ([www.mmt.gov.hk](http://www.mmt.gov.hk)).

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**IN THE MATTER OF THE LISTED SECURITIES OF  
CMBC CAPITAL HOLDINGS LIMITED  
(FORMERLY KNOWN AS MISSION CAPITAL HOLDINGS LIMITED)  
(STOCK CODE: 1141)**

**NOTICE TO THE MARKET MISCONDUCT TRIBUNAL  
PURSUANT TO SECTION 307I(2) OF AND SCHEDULE 9 TO THE  
SECURITIES AND FUTURES ORDINANCE (CAP 571)  
(THE “ORDINANCE”)**

Whereas it appears to the Securities and Futures Commission (the “**Commission**”) that a breach of the disclosure requirement within the meaning of sections 307B and 307G of Part XIVA of the Ordinance has or may have taken place in relation to the securities of CMBC Capital Holdings Limited listed on the Stock Exchange of Hong Kong Limited (“**SEHK**”), the Market Misconduct Tribunal is hereby required to conduct proceedings and determine:-

- (a) whether a breach of a disclosure requirement has taken place; and
- (b) the identity of any person who is in breach of the disclosure requirement.

**Persons and/or corporate bodies appearing to the Commission to have breached or may have breached a disclosure requirement**

- (i) CMBC Capital Holdings Limited (formerly known as Mission Capital Holdings Limited) (the “**Company**”)
- (ii) Suen Yick Lun Philip (“**Philip Suen**”)
- (iii) Suen Cho Hung Paul (“**Paul Suen**”)
- (iv) Lau King Hang (“**Lau**”)
- (v) Huang Zhencheng (“**Huang**”)
- (vi) Weng Yixiang (“**Weng**”)
- (vii) Wong Kwok Tai (“**Wong**”)

(each a “**Specified Person**” and collectively, the “**Specified Persons**”)

## Statement for Institution of Proceedings

### A. PARTIES

1. The Company (the 1<sup>st</sup> Specified Person) is incorporated in Bermuda. At the material time, the Company and its subsidiaries (together the “**Group**”) were principally engaged in the business of securities investment (the “**Securities Investment Segment**”), supply and procurement of metal minerals, recyclable materials and timber logs, and provision of short-term loan financing.
2. The Company’s shares have been listed on the Main Board of SEHK since 12 March 1998 (stock code: 1141).
3. At all material times:-
  - (1) Philip Suen (the 2<sup>nd</sup> Specified Person) was the Chief Executive Officer (from 31 October 2014), Company Secretary (from 2 July 2014), and an executive director (from 2 July 2014) of the Company. Philip Suen was the person responsible for the Securities Investment Segment of the Company.
  - (2) Paul Suen (the 3<sup>rd</sup> Specified Person) was the Chairman and an executive director of the Company.
  - (3) Lau (the 4<sup>th</sup> Specified Person) was an executive director of the Company.
  - (4) Huang (the 5<sup>th</sup> Specified Person), Weng (the 6<sup>th</sup> Specified Person), and Wong (the 7<sup>th</sup> Specified Person) were independent non-executive directors of the Company.
4. Each of the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons was at all material times an “*officer*” of the Company as defined in section 1, Part 1 of Schedule 1 to the Ordinance.

**B. THE COMPANY'S FINANCIAL RESULTS AND THE PROFIT ALERT**

5. On 28 November 2013, the Company, then known as Poly Capital Holdings Limited, announced its interim results for the six months ended 30 September 2013 (the “**Interim Results 2013**”). The Company recorded a segment loss of HK\$14,347,000 in its Securities Investment Segment and a loss before taxation of HK\$12,030,000 for the six months ended 30 September 2013.
6. On 26 June 2014, the Company announced its annual results for the year ended 31 March 2014 (the “**Annual Results 2014**”). The Company recorded a segment profit of HK\$417,282,000 in its Securities Investment Segment and a profit before taxation of HK\$417,153,000 for the year ended 31 March 2014.
7. On 23 September 2014, Suki Leung of the Company Secretarial Department of the Company sent an email to all members of the board of directors of the Company, including the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons, attaching the unaudited consolidated management accounts of the Company for the four months ended 31 July 2014. The said management accounts recorded a significant increase in profit of the Company and revealed that:-
  - (1) The Company made a profit of HK\$345,772,000 in the month of July 2014.
  - (2) Cumulative profit for the four months from 1 April 2014 to 31 July 2014 amounted to HK\$372,952,000.
  - (3) Cumulative profit for the Securities Investment Segment amounted to HK\$379,600,000 for the same four month period.
8. On 30 September 2014, by a special resolution passed by the shareholders at the annual general meeting, the Company changed its name from Poly Capital Holdings Limited to Mission Capital Holdings Limited.
9. On 13 October 2014, Suki Leung sent an email to all members of the board of directors, including the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons (the “**13 October Email**”),

attaching the unaudited consolidated management accounts of the Company for the five months ended 31 August 2014 (the “**August Management Accounts**”).

10. The August Management Accounts revealed a further significant improvement in the Company’s financial performance from that of the previous month. The improved performance was also significant when compared with the Interim Results 2013 and the Annual Results 2014. The August Management Accounts revealed that:-
  - (1) The Company made a profit of HK\$464,909,000 in the month of August 2014.
  - (2) Cumulative profit for the five months from 1 April 2014 to 31 August 2014 amounted to HK\$837,861,000.
  - (3) Cumulative profit for the Securities Investment Segment amounted to HK\$847,743,000 for that same five month period.
11. The information relating to the financial performance of the Company for the first five months of the financial year starting on 1 April 2014 as contained in the August Management Accounts (the “**2014 Apr-Aug Financial Performance**”) did, or alternatively, ought reasonably to have come to the knowledge of the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons on or around 13 October 2014 when Suki Leung sent the 13 October Email to members of the board of the Company including the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons.
12. On 17 October 2014, the Company issued an announcement (the “**17 October Announcement**”) upon SEHK’s enquiry about the recent decrease in the price and increase in the trading volume of the shares of the Company. The board of directors stated in the 17 October Announcement that it was not aware of any reason for those price and volume movements or any information which must be announced to avoid a false market in the Company’s securities or any inside information that needed to be disclosed under Part XIVA of the Ordinance.
13. The 17 October Announcement was made pursuant to a written resolution approved by all members of the board, including the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons. The 2<sup>nd</sup> to 7<sup>th</sup>

Specified Persons noted and confirmed that having made all reasonable enquiries, the information contained in the 17 October Announcement was to the best of their knowledge and belief accurate and complete in all respects and not misleading and deceptive, and that there were no other matters the omission of which would make any statement in the 17 October Announcement misleading.

14. On 22 October 2014, Lai Yin Ling Elaine, the then financial controller of the Company, sent by email to Philip Suen a schedule of investment in securities of the Company (held via its subsidiary) for the six months ended 30 September 2014 (the “**Investment Schedule**”). The Investment Schedule revealed the following:-

(1) The Company achieved a total unrealised gain of over HK\$958,000,000 from its securities portfolio held through one of its fully-owned subsidiaries for the six months ended 30 September 2014.

(2) The profits were mainly contributed by the Company’s holdings in ICube Technology Holdings Limited (stock code: 139), Heritage International Holdings Limited (stock code: 412), and Rising Development Holdings Limited (stock code: 1004). The holdings in these three companies contributed unrealised profits of HK\$337,533,380, HK\$329,398,333, and HK\$154,440,000 respectively.

15. At some time between 30 September 2014 and 7 November 2014, the unaudited consolidated management accounts of the Company for the period ended 30 September 2014 were prepared and circulated to the board of directors. The said management accounts revealed that:-

(1) The Company made a profit of HK\$815,259,000 for the six months ended 30 September 2014.

(2) The profit for the Securities Investment Segment amounted to HK\$945,938,000 for that same six month period.

16. On 7 November 2014 after trading hours at 5:58 pm, the Company issued a profit alert (the “**Profit Alert**”) which stated *inter alia* that:-
- (1) Based on a preliminary review of the Group’s unaudited management accounts, the Group expected a sharp turnaround of its results by recording a profit for the six months ended 30 September 2014 as compared to the loss for the same corresponding period in 2013.
  - (2) The sharp turnaround of the Group’s results was mainly attributable to the estimated substantial net gains on investments (which comprised listed equity securities, convertible bonds and interest bearing notes) measured at fair value through profit or loss of over HK\$900 million recorded by the Group for the six months ended 30 September 2014 as compared to the net losses on investments measured at fair value through profit or loss of HK\$20,492,000 as stated in the Interim Results 2013.
17. The Profit Alert was issued pursuant to the board resolution made at the board meeting of the Company on 7 November 2014, at which the 2<sup>nd</sup> to 4<sup>th</sup> Specified Persons were personally present and the 5<sup>th</sup> to 7<sup>th</sup> Specified Persons attended by telephone conference.
18. Following the publication of the Profit Alert, the share price of the Company on 10 November 2014 (i.e. the next trading day following the publication of the Profit Alert) traded between \$0.169 and \$0.202 per share, and closed at \$0.201. The closing price represented an increase of 24.84% when compared with the closing price on 7 November 2014, and on an increased trading volume from 105,340,000 shares on 7 November 2014 to 249,873,000 shares on 10 November 2014.
19. On 28 November 2014, the Company published its results for the six months ended 30 September 2014 (the “**Interim Results 2014**”). The Company reported a profit of HK\$945,938,000 in its Securities Investment Segment and an overall total profit before taxation of HK\$936,224,000 for the six months ended 30 September 2014.

**C. FAILURE TO DISCLOSE INSIDE INFORMATION**

20. The information relating to the 2014 Apr-Aug Financial Performance, which contained key financial information of the Company including turnover and profit in the relevant period, constituted “*inside information*” within the meaning of the definition of that term in section 307A(1) of the Ordinance in that:-
- (1) It was specific information about the Company; and
  - (2) It was not generally known to the persons who were accustomed to or would be likely to deal in the listed securities of the Company but would if generally known to them have been likely to materially affect the price of the securities.
21. The information relating to the 2014 Apr-Aug Financial Performance did, or ought reasonably to have, come to the knowledge of all members of the board of directors, including the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons, as officers of the Company, on or around 13 October 2014 by virtue of the 13 October Email.
22. A reasonable person, acting as an officer of the Company, would have considered that the information relating to the 2014 Apr-Aug Financial Performance was inside information in relation to the Company.
23. By reason of the aforesaid, the information relating to the 2014 Apr-Aug Financial Performance came to the knowledge of the Company through the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons (and in particular, Philip Suen) as its officers on or around 13 October 2014. Once such information came to the Company’s knowledge, under section 307B of the Ordinance, the Company was obliged to disclose that information to the public as soon as reasonably practicable. However, no disclosure in respect of the significant improvement in the Company’s financial performance was made until the publication of the Profit Alert on 7 November 2014.



**D. BREACH OF A DISCLOSURE REQUIREMENT BY THE COMPANY**

24. By reason of the matters set out above, the Company failed to disclose to the public information in relation to the 2014 Apr-Aug Financial Performance (which constituted “*inside information*” within the meaning of the definition of that term in section 307A(1) of the Ordinance) as soon as reasonably practicable after the said inside information had come to its knowledge, contrary to section 307B(1) of the Ordinance.
25. Under section 307A(2) of the Ordinance, a breach of a disclosure requirement takes place if any of the requirements in *inter alia* section 307B is contravened in relation to a listed corporation.
26. Therefore, the Company was, or might have been, in breach of the disclosure requirement as provided for in section 307B of the Ordinance.

**E. BREACH OF A DISCLOSURE REQUIREMENT BY THE 2<sup>ND</sup> TO 7<sup>TH</sup> SPECIFIED PERSONS**

27. As officers of the Company, the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons would each be in breach of the disclosure requirement if (individually considered) the breach by the Company was as a result of their reckless or negligent conduct under section 307G(2)(a) of the Ordinance or if they had not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach under section 307G(2)(b) of the Ordinance.
28. By reason of the matters set out above, each of the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons was aware of, or alternatively ought reasonably to have become aware of, the inside information pertaining to the 2014 Apr-Aug Financial Performance (which revealed a significant improvement in the Company’s financial performance) on or around 13 October 2014.

29. Philip Suen, as an executive director and the officer responsible for the Securities Investment Segment of the Company, failed to ensure timely disclosure of the inside information pertaining to the 2014 Apr-Aug Financial Performance to the public after it had, or ought reasonably to have, come to his knowledge. Such failure amounted to reckless or negligent conduct on his part.
30. The 3<sup>rd</sup> to 7<sup>th</sup> Specified Persons, as directors of the Company, failed to ensure timely disclosure of the inside information pertaining to the 2014 Apr-Aug Financial Performance to the public after it had, or ought reasonably to have, come to their knowledge. The failure of each of them amounted to reckless or negligent conduct on their part.
31. Further or alternatively, at all material times, there were no proper safeguards existing in the Company to prevent a breach of the disclosure requirement under Part XIVA of the Ordinance. Each of the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons had failed to take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of the disclosure requirement (under Part XIVA of the Ordinance) pursuant to section 307G(2)(b) of the Ordinance.
32. In the circumstances, the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons were, or might have been, in breach of the disclosure requirement pursuant to section 307G(2)(a) and/or section 307G(2)(b) of the Ordinance.

Dated this 26th of November 2018

Securities and Futures Commission