

Market Misconduct Tribunal finds Magic Holdings International Limited and its directors culpable of late disclosure of inside information

25 Mar 2020

The Market Misconduct Tribunal (MMT) found that Magic Holdings International Limited (Magic) and five of its directors culpable of the company's failure to disclose in a timely manner inside information on L'Oréal S.A.'s (L'Oréal) proposed acquisition of Magic in 2013, as required under the corporate disclosure requirements of the Securities and Futures Ordinance (SFO) (Notes 1 to 3).

The five Magic's directors are: chairman, Mr Stephen Tang Siu Kun; executive directors, Mr She Yu Yuan, Mr Luo Yao Wen and Mr Cheng Wing Hong, who was also the company secretary at the material time; and non-executive director, Mr Sun Yan (collectively, the five directors). Tang, She and Luo were co-founders of Magic (collectively, the founders).

The MMT was told that Magic and L'Oréal, a French cosmetics group, had discussions relating to the latter's acquisition proposal since early March 2013. In a meeting held on 27 April 2013, L'Oréal and Magic's founders agreed that an offer price of not less than \$5.5 per share would be put before Magic's board of directors for their consideration.

Magic's founders indicated to L'Oréal that they would contact Magic's institutional investors to gauge their interest in the acquisition proposal and they would also support L'Oréal's request to Magic's board of directors to carry out due diligence.

However, Magic did not disclose the information relating to L'Oréal's acquisition proposal to the public until August 2013.

The MMT considered that there was a commercial reality to the negotiations between Magic and L'Oréal and such negotiations had gone beyond testing the waters and that Magic had failed to disclose inside information to the public as soon as reasonably practicable (Note 4).

In the MMT's view, Magic's breach of the disclosure requirements was due to the fact that its directors were not informed in a timely manner of all information relevant to the determination of whether it was necessary to make disclosure about the potential acquisition by L'Oréal to the public.

The MMT hence found that Tang and Cheng had failed to carry out their functions as the company's chairman and company secretary which resulted in Magic's breach of the corporate disclosure requirements. It also found that the five directors had failed to take all reasonable measures to ensure that proper safeguards existed within Magic to prevent it from breaching its disclosure obligation.

The MMT will hold a hearing on the making of the consequential orders on 25 April 2020.

End

Notes:

1. The proceedings were brought by the Securities and Futures Commission (SFC) under section 307I of the SFO against Magic and its nine directors. The MMT did not find four of the nine directors of Magic at the material time – Mr Chen Dar Cin, Mr Yan Kam Tong, Mr Yang Rude and Mr Dong Yin Mao – in contravention of their duties under section 307G(2) of the SFO. For more details, please see the SFC's press release dated 15 May 2018.
2. Magic was listed on the Main Board of The Stock Exchange of Hong Kong Limited (SEHK) on 24 September 2010. Upon completion of L'Oréal's acquisition of Magic, listing of Magic's shares on the SEHK was withdrawn on 9 April 2014.
3. Listed corporations are abided by the law to disclose inside information that has come to their knowledge as soon as reasonably practicable. Timely disclosure of inside information is central to the orderly operation of the market and underpins the maintenance of a fair and informed market.
4. The MMT's report is available on its website (www.mmt.gov.hk).

Page last updated : 25 Mar 2020

**Report of the
Market Misconduct Tribunal
of Hong Kong**

**on whether a breach of the disclosure requirements has taken place
in relation to the listed securities of**

Magic Holdings International Limited

and other related questions

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- (i) contrary to section 307B (1) of the Ordinance, Magic did not disclose to the public information, which constituted inside information, as soon as reasonably practicable after the inside information had come to its knowledge;
- (ii) contrary to section 307G (2) (a) of the Ordinance, the negligent conduct of Mr Stephen Tang and Mr Chris Cheng resulted in the breach by Magic of the disclosure requirement and each of them is in breach of the disclosure requirement;
- (iii) contrary to section 307G (2) (b) of the Ordinance, Mr Sun Yan did not take all reasonable measures from time to time to ensure that proper safeguards existed to prevent Magic's breach of the disclosure requirement and is himself in breach of the disclosure requirement; and
- (iv) contrary to section 307G (2) (b) of the Ordinance, each of Mr Stephen Tang, Mr Chris Cheng, Mr She and Mr Luo did not take all reasonable measures from time to time to

ensure that proper safeguards existed to prevent Magic's breach of the disclosure requirement and are each in breach of the disclosure requirement.

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CHAPTER 1

THE NOTICE

1. Magic Holdings International Limited (“Magic”) is a company incorporated in the Cayman Islands, which was listed on the Main Board of the Stock Exchange of Hong Kong Limited (“SEHK”) on 24 September 2010 with the Stock Code 1633. In 2005, Magic was founded by three co-founders, namely Tang Siu Kun Stephen (鄧紹坤), She Yu Yuan (佘雨原) and Luo Yao Wen (駱耀文). In the period 2012 and 2013, they were all executive directors and respectively chairman, general manager and deputy general manager.

2. On 15 August 2013, L’Oréal SA (“L’Oréal”) and Magic made a Joint Announcement that on 12 August 2013 L’Oréal had requested the board of directors of Magic to put forward to its shareholders a proposal by L’Oréal to acquire all the issued shares of Magic by way of a scheme of arrangement, by which all Magic shares would be cancelled in exchange for payment of \$6.30 in cash for each share and the listing of Magic on the SEHK would be withdrawn.

3. By a written notice, dated 29 March 2018, the Securities and Futures Commission (“the Commission”) instituted proceedings in the Market Misconduct Tribunal (“the Tribunal”) pursuant to section 307 I of the Securities and Futures Ordinance, Cap. 571 (“the Ordinance”) requiring the Tribunal to conduct proceedings and determine:

“(a) whether a breach of disclosure requirement has taken place; and

(b) the identity of any person who is in breach of the disclosure requirement.”

4. Designating them as “Specified Persons”, the Notice identified:

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

1. Magic Holdings International Limited (美即控股國際有限公司) (the “Company”)
2. Tang Siu Kun Stephen (鄧紹坤) (“Tang”)
3. She Yu Yuan (佘雨原) (“YY She”)
4. Luo Yao Wen (駱耀文) (“Luo”)
5. Cheng Wing Hong (鄭永康) (“Cheng”)
6. Sun Yan (孫焱) (“Sun”)
7. Chen Dar Cin (陳達信) (“Chen”)
8. Yan Kam Tong (甄錦堂) (“Yan”)
9. Yang Rude (楊汝德) (“Yang”)
10. Dong Yin Mao (董銀卯) (“Dong”)

5. A ‘Statement for Institution of Proceedings’ (“the Statement”), attached to the Notice, asserted of the Specified Persons:

1. The Company (the 1st Specified Person) is a Cayman Islands incorporated company.
2. The Company’s shares were listed on the Main Board of The Stock Exchange of Hong Kong Limited (“SEHK”)... On 9 April 2014, the listing of the Company’s shares on the SEHK was withdrawn.
3. At all material times, the 2nd to 10th Specified Persons were members of the board of directors of the Company (the “**Board**”). In particular, Tang, YY She and Luo (the 2nd to 4th Specified Persons) were the three founders of the Company (the “**Three Founders**”) and together they held close to 30% of the issued share capital of the Company.
4. Further, Tang (the 2nd Specified Person) was the chairman of the Board, YY She and Luo (the 3rd and 4th Specified Persons) were executive directors responsible for the day to day management of the business of the Company, and Cheng (the 5th Specified Person) was the Company Secretary of the Company.
5. All of the Specified Persons (except the Company) were at all material times “*officers*” of the Company as defined in section 1 of Part 1 of Schedule 1 to the Ordinance.

6. The Statement went on to describe discussions at meetings in March and April 2013, at the instigation of L’Oréal, between representatives of L’Oréal, together with its advisers BNP Paribas Securities (Asia) Ltd (“BNP Paribas”), and some or all of the three co-founders at which L’Oréal proposed the acquisition of the shares of Magic.

7. On 5 and 6 March 2013, meetings were held between L’Oréal, its financial adviser BNP Paribas Securities (Asia) Limited (“**BNP Paribas**”) and the Three Founders, namely Tang, YY She and Luo (the 2nd to 4th Specified Persons). During the meetings, L’Oréal offered to acquire the shares of the Company and suggested that YY She remain as a minority shareholder after the acquisition. YY She declined this proposal and indicated his preference for a sale of his shares together with the other shareholders. Apart from the Three Founders, the following persons were also present at these meetings: (a) Huang Yong Qing, a PRC lawyer representing the Three Founders; (b) Mike Liu, assistant to YY She; and (c) Leo Liu, director of BNP Paribas.
8. During a meeting on 29 March 2013 attended by the Three Founders (the 2nd to 4th Specified Persons), Mike Liu, Leo Liu and representatives of L’Oreal, a preliminary agreement regarding the sale of all the issued shares of the Company was reached, albeit there was no agreement as to the offer price, as an offer price proposed by L’Oreal was not accepted by the Three Founders.
9. Between 10 and 12 April 2013 the Company conducted a roadshow in New York. During a meeting in New York, Tang (the 2nd Specified Person) received an

enquiry from a US fund manager as to whether L’Oreal would acquire the Company.

10. On 15 April 2013, a video conference was held between BNP Paribas, L’Oreal, Tang (the 2nd Specified Person) and Mike Liu (representing YY She, the 3rd Specified Person). The parties reached a general agreement on the structure and methodology of the Acquisition Proposal (i.e. by scheme of arrangement) and agreed to further discuss it at a later stage.
11. In an email dated 17 April 2013 from Leo Liu of BNP Paribas to L’Oreal’s officers and lawyers, Leo Liu said the regional sales director of the Company mentioned that one of the Company’s suppliers asked Tang if L’Oreal was going to acquire the Company.
12. On 18 April 2013, Cheng received an email from an investment analyst of CSV capital partners (“CSV”) enquiring whether L’Oreal would acquire the Company.
13. On 27 April 2013, a meeting was held among BNP Paribas, L’Oreal, and the Three Founders (the 2nd to 4th Specified Persons). During the meeting, the Three Founders confirmed their willingness to sell their shares in the Company. In particular, the parties agreed that in approaching and putting forward the Acquisition Proposal before the Board, the preliminary offer price should not be less than HK\$5.50 per share. The Company further agreed to grant 30 days to L’Oreal to conduct a due diligence exercise.
14. By 13 May 2013, all the institutional investors of the Company were informed of the potential share offer and had signed non-disclosure agreements. Discussions concerning the structure of the Acquisition Proposal continued between BNP Paribas and Tang (the 2nd Specified Person).
15. On 15 May 2013, L’Oreal sent a written preliminary proposal (regarding the Acquisition Proposal) to Tang (the 2nd Specified Person) for the attention of the Board, indicating its interest in acquiring all the issued shares of the Company by way of a scheme of arrangement at a preliminary offer price of not less than HK \$5.50 per share (in line with the meeting on 27 April 2013). Tang forwarded the letter to Cheng (the 5th Specified Person) on the same day.

Inside Information

7. Of the nature of the discussions held at those meetings, it was asserted:
 31. Information concerning the Acquisition Proposal constituted “*inside information*” within the meaning of section 307A of the Ordinance, including in particular the following:
 - (a) discussions during the meeting on 29 March 2013;
 - (b) discussions during the video conference on 15 April 2013;
 - (c) discussions during the meeting on 27 April 2013;
 - (d) the written preliminary proposal sent by L’Oréal on 15 May 2013.
37. The aforesaid discussions and offers:

- (a) were specific information about the Company; and
- (b) were 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 those securities.

Knowledge of the Inside Information

8. Of the knowledge of the respective Specified Persons of what was asserted to be “inside information”, it was asserted:

- 32. The Three Founders (the 2nd to 4th Specified Persons) were all along involved in the discussions and offers pertaining to the Acquisition Proposal and had knowledge of the same. They had therefore been aware of inside information pertaining to the Acquisition Proposal since late March 2013 at the latest.
- 33. Such discussions and offers did, or alternatively, ought reasonably to have come to the knowledge of Cheng (the 5th Specified Person), in the course of performing his function as Company Secretary of the Company. In particular, by reason of the enquiry made by CSV with Cheng on 18 April 2013, Cheng was thereafter aware, or alternatively ought reasonably to have become aware, of inside information pertaining to the Acquisition Proposal since 18 April 2013 at the latest.
- 34. Further, such discussions and offers did, or alternatively, ought reasonably to have come to the knowledge of the 6th to 10th Specified Persons, in the course of their performing their functions as officers of the Company. In particular, L’Oreal’s letter of 15 May 2013 was forwarded by Cheng to all the members of the Board on 17 May 2013. The 6th to 10th Specified Persons had therefore been aware, or alternatively ought reasonably to have become aware, of inside information pertaining to the Acquisition Proposal since 17 May 2013 at the latest.

Leakage of inside information: knowledge

9. Of the leakage of inside information, and knowledge of that fact, it was asserted:

- 35. Separately, the Three Founders (the 2nd to 4th Specified Persons) and Cheng (the 5th Specified Person) did, or alternatively, ought reasonably to have known about the leakage of inside information concerning the acquisition proposal by reason of
 - (a) the enquiry from a US fund manager received during 10 to 12 April 2013,
 - (b) the enquiry from the Company’s supplier received by the Company’s regional sales director,
 - (c) the enquiry from CSV received on 18 April 2013, and
 - (d) the changes in share price and trading volume of the shares of the Company between 5 March and 26 July 2013.

They had therefore been aware, or alternatively ought reasonably to have become aware, of the leakage of inside information since mid-April 2013 at the latest.

Consequential duties

10. The Statement asserted that in consequence of the circumstances:
 40. Once such information came to the knowledge of the Company through the 2nd to 10th Specified Persons as its officers, the Company was obliged, under section 307B of the Ordinance, to disclose that information to the public as soon as reasonably practicable. However, no disclosure was made until the announcement issued on 2 August 2013 disclosed that the Company was in the course of negotiating a potential transaction with a third party.

Breach of disclosure requirement by the Company

11. In alleging that the Company was, or may have been, in breach of the disclosure requirement provided for in section 307B of the Ordinance, it was asserted that:
 41. ... the Company failed to disclose to the public information concerning the Acquisition Proposal which constituted “inside information” (within the meaning of 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.
 42. Under section 307(A)(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.

Breach of disclosure requirements by other Specified Persons

12. Of the duties of the 2nd to 10th Specified Persons, it was asserted that:
 44. It was the responsibility of the 2nd to 10th Specified Persons, as officers of the Company, to take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the Company (section 307G (1) of the Ordinance). Moreover, as officers of the Company, the 2nd to 10th Specified Persons were themselves in breach of the disclosure requirement if the breach of disclosure requirement by the Company was the result of their negligent conduct (section 307G(2)(a) of the Ordinance), or if they had failed to take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach (section 307G(2)(b) of the Ordinance).
13. Of the alleged breaches of those duties, it was asserted that:
 45. ... the 2nd to 5th Specified Persons were aware of, or alternatively ought reasonably to have become aware of, the inside information pertaining to the Acquisition Proposal and the leakage of the same well before the issuance of the announcement on 2 August 2013. They failed to take any steps to ensure timely disclosure of information about the Acquisition Proposal to the public. Such failure amounted to negligent conduct on the part of the 2nd to 5th Specified Persons. In these circumstances, they were, or may have been, in breach of a disclosure requirement pursuant to section 307G(2)(a) of the Ordinance.

46. Further or alternatively, the 2nd to 10th Specified Persons failed to take reasonable measures to ensure that proper safeguards exist to prevent a breach of a disclosure requirement by the Company. In these circumstances, they were, or may have been, also in breach of a disclosure requirement pursuant to section 307G(2)(b) of the Ordinance.

CHAPTER 2

THE LAW

14. Section 307J of the Ordinance provides:

- (1) Without limiting section 307H, the object of disclosure proceedings is for the Tribunal to 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.
- (2) Subject to section 261 (3), the standard of proof required to determine any question or issue before the Tribunal in disclosure proceedings is the standard of proof applicable to civil proceedings in a court of law.

The nature of the proceedings and the standard of proof

15. This inquiry into alleged market misconduct is civil and inquisitorial in nature.¹ The standard of proof is on a balance of probabilities. Regard is to be had to the fact that, “The more serious the act or omission alleged, the more inherently improbable must it be regarded. And the more inherently improbable it is regarded, the more compelling will be the evidence needed to prove it on a preponderance of probability.”²

Requirements for listed corporations to disclose inside information

16. Section 307B provides that:

- (1) A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public.
- (2) for the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if-
 - (a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and
 - (b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.”

¹ *SFC v Cheng Chak Ngok* [2018] 4 HKLRD 612; page 626, paragraph 7.1

² *Solicitor (24/07) v Law Society* (2008) 11 HKCFAR 117, Bokhary PJ at paragraph 116.

17. Section 2 and Schedule 1 of the Ordinance provide for interpretation of stipulated terms used in the Ordinance:

“Corporation” means a company or other body corporate incorporated either in Hong Kong or elsewhere.

“Listed” means listed on a recognised stock market. Further, a corporation shall be regarded as listed if any of its securities are listed.

“Officer” in relation to a corporation means a “director, manager or secretary of, or any other person involved in the management of, the corporation”.

Inside information

18. Section 307 A (1) stipulates that “inside information” in relation to a listed corporation, means specific information that-

(a) is about-

(i) the corporation;

(ii) a shareholder or officer of the corporation; or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities.

Breach of disclosure requirement

19. Section 307 A (2) provides that:

(a) a breach of disclosure requirement takes place if any of the requirements in section 307B or 307C is contravened in relation to a listed corporation; and

(b) in those circumstances, the listed corporation is in breach of the disclosure requirement.

Exceptions to disclosure requirement

20. Section 307D (2) provides that:

A listed corporation is not required to disclose any inside information under section 307B if and so long as-

(a) the corporation takes precautions for preserving the confidentiality of the information;

(b) the confidentiality of the information is preserved; and

(c) one or more of the following applies-

(i) the information concerns an incomplete proposal or negotiation...

21. Section 307D (4) provides that:

Despite subsection (2)(b), a listed corporation is not in breach of a disclosure requirement in respect of inside information the confidentiality of which is not preserved if-

- (a) the corporation has taken reasonable measures to monitor the confidentiality of the information; and
- (b) the corporation discloses the information in accordance with section 307C as soon as reasonably practicable after the corporation becomes aware that the confidentiality of the information has not been preserved.

Duty of officers of listed corporations

22. Section 307G provides that:

- (1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.
- (2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation-
 - (a) whose intentional, reckless or negligent conduct has resulted in the breach; or
 - (b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,is also in breach of the disclosure requirement.

Negligence

23. Negligence has been defined as “the failure to exercise that care which the circumstances demand.”³ The legal standard is objective. In the context of the liability of an officer of a corporation in relation to section 307G (2) (a) for his negligent conduct, paragraph 58 (c) of SFC’s *Guidelines on Disclosure of Inside Information* ⁴ (the “*Guidelines*”) states:

³ *Carmarthenshire County Council v Lewis* [1955] AC 549.

⁴ Expert Evidence Bundle; page 603.

“The requirement for conduct to be negligent means the officer failed to exercise such care, skill or foresight as a reasonable officer in his situation would exercise to ensure or cause the corporation to comply with a disclosure requirement.”

Director’s duty of care, skill and diligence

24. Section 465 of the Companies Ordinance, Cap. 622, provides:

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) Reasonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with-
 - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
 - (b) the general knowledge, skill and experience that the director has.
- (3) The duty specified in subsection (1) is owed by a director of a company to the company.
- (4) The duty specified in subsection (1) has effect in place of the common law rules and equitable principles as regards the duty to exercise reasonable care, skill and
- (5) diligence, owed by a director of a company to the company.

25. The Ordinance came into effect on 25 April 2013. As Harris J observed in his judgment in *Chung Keng v Pearl Oriental Oil Limited*⁵, those duties of care “are similar to these duties in common law...”.

26. In determining whether a director has exercised care and diligence the considerations identified by Brereton J in *Australian Securities and Investment Commission v Maxwell and Others* are relevant:⁶

“...the type of company, the provision of its constitution, the size and nature of the company’s business, the composition of the board, the director’s position and responsibilities within the company, the particular function the director is performing, the experience or skills of the particular director, the terms on which he or she has undertaken to act as a director, the manner in which responsibility for the business of

⁵ *Chung Keng v Pearl Oriental Oil Limited* (HCMP 1795/2018; [2019] HKCFI 1743; unreported, 2 May 2019).

⁶ *Australian Securities and Investment Commission v Maxwell* (2006) ACSR 373 at paragraph 100.

the company is distributed between its directors and its employees, and the circumstances of the specific case.”

CHAPTER 3

INSIDE INFORMATION

The meetings of 29 March, 15 April and 27 April 2013 and the written proposal L'Oréal sent to Magic on 15 May 2013

27. The Notice to the Tribunal asserts that information concerning the Acquisition Proposal by L'Oréal to acquire the shares of Magic at the meetings of 29 March, 15 April and 27 April 2013, and the written proposal L'Oréal sent to Magic on 15 May 2013 constituted "inside information" as defined in section 307 A of the Ordinance.⁷

Issues that arise

28. Did inside information come into existence in consequence of the discussions between L'Oréal and their representatives and Mr. Tang, Mr. She and Mr. Luo and their representatives in March and April 2013 and the written proposal L'Oréal sent to Magic on 15 May 2013?

The cases of the SFC and the Specified Persons

29. It is the case of the SFC that those discussions and the written L'Oréal proposal sent to Magic on 15 May 2013 did give rise to the existence of inside information, whereas it is the case of the Specified Parties that no inside information came into existence from those dealings.

BNP Paribas

30. By letter, dated 6 September 2013, signed by Ms. Isadora Li, the Head of Investment Banking-North Asia, BNP Paribas responded to a written request from the SFC, dated 19 August 2013, for "information and records" relevant to specific questions posed by the SFC regarding the Proposal and a detailed timetable of events, including "details of personnel involved, agenda items and resolutions of each meeting/discussion", leading up to the announcement, dated 15 August 2013, of L'Oréal's 'Proposal', "to acquire all shares of (Magic) by way of a scheme of arrangement."⁸ BNP Paribas acted as financial adviser to L'Oréal in the transaction.

⁷ Notice, paragraph 31.

⁸ Exhibit Bundle, page 7.

31. The letter stated that:⁹

“The Proposal was first discussed between L’Oréal...and the Company, with the presence of BNP Paribas Group... during a meeting on 29 March 2013.”

Attachment A to the letter was entitled “Summary of Key Emails, Calls and Meetings” (the “Summary”), which it was stated captured events of a “material nature” between L’Oréal, its advisers and Mr. She (“Shareholder, Executive Director and General Manager”), Mr. Tang (“Shareholder, Executive Director and Chairman”) and/or Mr. Luo (“Shareholder and Executive Director”). [An extract of the Summary is at **Appendix A.**] In addition, Liu Liang Jie, also known as Mike, (“Assistant General Manager to Mr. She”) and Cheng Wing Hong (“Executive Director and Company Secretary”) were identified as relevant parties.

32. The persons participating in some of those events were identified as including:

(i) *BNP Paribas*

- Muriel Petit-Managing Director
- Leo Liu-Director
- Jean-Christophe Vallat-Director
- Ms. Wei Feng-Associate

(ii) *L’Oréal*

- Alain Evrard-Director
- Yannick Chalme-Group General Counsel
- Francis Derooy-General Counsel
- Alexis Perakis-Valat-China CEO
- Ms. Zhenzhen Lan (Gourves)-China Communication

33. The meeting of 15 April 2013 was described as a “video conference”. Mr. Leo Liu, of BNP Paribas, and Mr. Alain Evrard and Mr. Alexis Perakis-Valat, of L’Oréal, were identified as participating in all four meetings, whereas Ms. Petit, of BNP Paribas was identified as participating in the meetings and the video conference, save for the meeting of 27 April 2013. However, the Tribunal has not received any written or oral evidence from Ms. Petit or Mr. Alexis Perakis-Valat.

Mr. Leo Liu

34. By the time Mr. Liu gave oral evidence, on 4 September 2019, more than six years had elapsed since the events of March, April and May 2013. Also, the Tribunal has received the transcript of an oral interview conducted of him by an officer of the SFC on 11 July 2014. By

⁹ Exhibit Bundle, page 534.

the latter date, he had left his employment with BNP Paribas, his final day of employment having been 8 July 2014. In the course of that interview he was presented by the SFC officer conducting the interview with the BNP Paribas Summary.¹⁰ In answers to questions from the Chairman, Mr. Liu confirmed that he had played no part in the compilation of the Summary nor was he aware of the information that was attached to the BNP Paribas reply to the SFC, dated 6 September 2013, at the time it was sent.¹¹

5/6 March 2013 meeting

35. In his record of interview, Mr. Leo Liu said that the discussions held with the three founders of the 5/6 March 2013 were held in Guangzhou. They were divided into several parts: future development plans; negotiating for a lower price; and the financial part, acquiring the company. Of the latter he said “The European talked about what the structure was, running the scheme arrangement.”¹² Mr. She said that, if he was to sell the shares, “he would sell all” of them, together with the other founders.¹³

36. In his oral testimony, Mr. Leo Liu confirmed¹⁴ the accuracy of the assertion made in an email, dated 5 March 2013, from Ms. Muriel Petit to others within BNP Paribas in which she had said of the atmosphere of the discussions of 5/6 March 2013 as “Chemistry remain very good between the two groups.”¹⁵ However, he said that, because it was “such a long time ago” he could not confirm whether there had been discussions about price of the shares.¹⁶

29 March 2013 meeting

37. Mr. Liu agreed with the suggestion that his answers in the record of interview in respect of the meeting of 29 March 2013 suggested that the meeting had ended “unhappily”. He agreed that was because of very significant differences in expectations on the value of Magic shares. He confirmed that his reference in his record of interview to the statement “they said there is no room for negotiation” was a statement made by one of the founders of Magic and was a reference to price:¹⁷

¹⁰ Witness Evidence Bundle; pages 647-8, counter #171.

¹¹ Transcript; Day 3, pages 42-3.

¹² Witness Evidence Bundle; page 650, counter #194.

¹³ Witness Evidence Bundle; page 650, counter #192.

¹⁴ Transcript; Day 3, pages 9 and 10.

¹⁵ Exhibit Bundle, page 589.

¹⁶ Transcript; Day 3, page 11.

¹⁷ Transcript; Day 3, pages 15-6.

“I can remember very clearly that at this meeting the price—there were differences on the price, and then the atmosphere was very bad. In Chinese expression, it ended on an unhappy note.”

38. Of the statement in the Summary, that at the meeting of 29 March 2013 there was “preliminary agreement on 100% sale”, Mr. Liu said at first that he could not recall, but went on to agree with the suggestion that “no agreement was reached.”¹⁸

15 April 2013-video conference

39. Mr. Liu said that the video conference of 15 April 2013 was conducted from four different locations: he was with JC Vallat, of BNP Paribas; whereas, Mr. Stephen Tang of Magic was elsewhere; Alain Evrard and Muriel Petit were in Paris; and the legal advisers of L’Oréal in yet another place.¹⁹ In his record of interview, he said that during the video conference he was in the offices of Cisco in Shanghai.²⁰ The video conference “didn’t last long”, the conference room having been booked for a maximum of one hour only. He could not recall if it was suggested that Mr. Tang represented Mr. She and/or Mr. Luo. From what he could recall, he said that the meeting “had to do more with improving the atmosphere, because the meeting previous to this one did not appear to be happy.” He said of the statement in the Summary, “General agreement on deal structure reached,” that he could not really recall, but added “I don’t think this should be the case because it was a video conference. Such thing that you mention, Mr. Counsel, should have been done face to face.”²¹ However, in answer to a question from the Chairman, Mr. Liu said:²²

“This refers to two ways by which the Hong Kong listed company can be acquired 100%. One of them was a general offer. The other one was a scheme of arrangement. Then everybody at the meeting, that is the video conference meeting, discussed on both these two ways. Then finally Mr. Stephen Tang was convinced that it is the latter way that should be adopted.”

40. Mr. Liu added that there were many other details that “still need to be discussed” but went on to confirm that, “as to the manner, the way how Magic is going to be delisted, then that was agreed on. Correct. It appears that they agreed on that.” He explained:²³

“You see, Mr. Stephen Tang was the chairman of the board of directors of Magic, and he is a Hongkonger and, therefore, for matters concerning the listed companies, whether

¹⁸ Transcript; Day 3, page 16.

¹⁹ Transcript; Day 3, page 17.

²⁰ Witness Evidence Bundle; page 653, counter #212.

²¹ Transcript; Day 3, page 19.

²² Transcript; Day 3, pages 43-4.

²³ Transcript; Day 3, pages 44-5.

it is a general offer or a scheme of arrangement, on these matters Chief She relied on Mr. Stephen Tang. However, on the price and also the arrangements for Chief She afterwards, on these matters Mr. Stephen Tang could not make arrangements on behalf of Chief She, and Mr. Stephen Tang could not make decisions on behalf of Chief She.”

41. Mr. Liu disagreed with the assertion made in an email dated 00:00 on 15 April 2013, from Ms. Zhenzhen Gourves of L’Oréal to BNP Paribas and her L’Oréal colleagues,²⁴ in which she attributed to Mr. Mike Liu the assertion that, at the meeting to be held that day, Mr. Stephen Tang “has the entire power of decision” and “will represent Martha officially.”²⁵

“...the arrangement for Chief She and that for Mr. Stephen Tang were different... for Mr. Stephen Tang, it was a case that after the sale of the shareholding, then he just leaves; whereas for Chief She, he had to remain behind, stay behind. That’s why, because the arrangements were different, so how could Mr. Stephen Tang represent Chief She?”

42. Finally, Mr. Liu agreed with the suggestion that after the video conference of 15 April 2013 there was a decision to continue negotiations.²⁶

27 April 2013 meeting

43. Of the statement in the Summary of the meeting of 27 April 2013, “preliminary offer price of no less than HK \$5.5 per share”, in his record of interview, Mr. Liu said that Mr. Stephen Tang had said “...if it is less than 5.5 we... will definitely not sell (it).”²⁷ In his oral evidence, Mr. Liu said:²⁸

“I did remember that there was this price of 5.5, but whether it was brought up at this particular meeting, I can’t recall.”

44. Of the second statement made in the Summary, namely “The Company agreed to grant 30 days of due diligence to the offeror”, Mr. Liu said:²⁹

“I do remember there was this 30 days, 30 days was mentioned, that is 30 days and you go ahead and do the due diligence”.

Nevertheless, Mr. Liu agreed with the suggestion that L’Oréal would have to approach the board of Magic in order to obtain permission to perform due diligence.

²⁴ Exhibit Bundle, page 626.

²⁵ Transcript; Day 3, pages 38-9.

²⁶ Transcript; Day 3, page 36.

²⁷ Witness Evidence Bundle; pages 659-660, counter #s 264-272.

²⁸ Transcript; Day 3, page 20.

²⁹ Transcript; Day 3, page 21.

L'Oréal: Mr. Alain Evrard

45. In a record of interview, conducted of Mr. Alain Evrard by Ms. Wong Mei Mei on 3 September 2014, Mr. Evrard confirmed that he was and had been since 2007 the head of the Mergers and Acquisitions Department (“M & A”) of L'Oréal, which he had joined in 1981 and from which he retired on 1 September 2018. It was his job to identify and approach acquisition targets.³⁰ As the head of M&A he had been involved in more than sixty transactions involving acquisitions and licensing agreements.³¹

46. Of the acquisition process, he testified that:³²

“...in all acquisition processes or initial discussions, you always try to talk to shareholders first... and obviously you start with the ones you have identified and who represent the biggest chunk of shares.”

February 2012

47. In testimony, Mr. Evrard confirmed his account in his record of interview that he had held the first exploratory meeting with “the founders” of Magic, whom he identified as Mr. Tang, Mr. She and Mr. Luo, in February 2012. L'Oréal had approached them as holders of “close to 30%” of the shares of Magic³³. He knew them to be executive directors of Magic.³⁴ L'Oréal did not approach Magic itself. BNP Paribas had assisted in making the initial contact and had been “in the loop” from the end of 2011, beginning of 2012.³⁵ BNP Paribas were engaged as the financial adviser to L'Oréal.³⁶ In response to the observation that Magic was performing well, the founders indicated that they saw that the future of Magic as bright and that they had no intention of selling their shares³⁷. Of that, he testified “...for us, at the end of the initial meetings, it was a dead end.”³⁸

³⁰ Witness Evidence Bundle; pages 739-40, counter #s 29-37.

³¹ Transcript; Day 13, pages 57-8.

³² Transcript; Day 13, pages 8-9.

³³ Witness Evidence Bundle; pages 740-1, counter #s 39-51.

³⁴ Transcript; Day 13, page 70.

³⁵ Witness Evidence Bundle; page 741 at counter # 43.

³⁶ Transcript; Day 13, page 64.

³⁷ Witness Evidence Bundle; page 742, counter #63.

³⁸ Transcript; Day 13, page 69.

September 2012

48. Mr. Evrard testified that in September 2012 he entertained Mr. She to lunch at the L'Oréal offices, whilst the latter was on holiday in Paris. Because of language difficulties "there were lots of smiles et cetera, but actually no discussion". It was a social occasion.³⁹

The meetings of 5/6, 29 March, 15 and 27 April 2013

49. In his testimony, Mr. Evrard confirmed that he had participated in meetings with one or more of the three founders on 5/6 and 29 March, 15 and 27 April 2013. As he remembered, BNP Paribas had arranged those meetings. He agreed with the suggestion by Mr. Dawes that he understood the three founder shareholders to be "...representing themselves as shareholders and not the company".⁴⁰ Similarly, he agreed that, if negotiations with them were unfavourable, L'Oréal would not have approached Magic. The meetings were conducted in English, which language Mr. Tang used in making his points. Mr. Tang or Ms. Zhenzhen Gourves translated, in particular for Mr. Luo.⁴¹

L'Oréal's hierarchy of objectives in discussions

50. Of the hierarchy of objectives identified by L'Oréal in their discussions with the three founders in March and April 2013, Mr. Evrard testified:⁴²

"...it was key to us to make sure that we could find a deal structure allowing us at the end to own 100% of the shares and to delist the company from the Stock Exchange. Therefore, at this stage of the discussions with the founders, an agreement on a deal structure was a kind of condition precedent before even starting talking about price."

51. Mr. Evrard went on to explain:⁴³

"...we had done some preparatory work with our lawyers, Linklaters, in order to be educated on the rules and regulations in the... Hong Kong Stock Exchange, and we had come to the conclusion that there was only one acceptable deal structure meeting our expectation, which is a scheme of arrangement."

52. Subsequently, in cross-examination by Mr. Scott, he elaborated:⁴⁴

"... we had a very intense preparation session in January, in Hong Kong, with our lawyers and bankers, in order to get trained on the rules and regulations in Hong Kong and what would be the best deal structure for us... and from that meeting onwards we

³⁹ Transcript; Day 13, pages 68-9.

⁴⁰ Transcript; Day 13, page 9.

⁴¹ Transcript; Day 13, pages 14-5.

⁴² Transcript; Day 13, page 10.

⁴³ Transcript; Day 13, pages 10-1.

⁴⁴ Transcript; Day 13, page 74.

had decided that the scheme of arrangement was probably the only way to achieve this deal.”

53. Returning to the hierarchy of L’Oréal’s objectives, Mr. Evrard testified: ⁴⁵

“So number one was an agreement on a deal structure and for the founders to sell their shares; number two was the possibility to keep Mr. She on board; and it was only once we could be comfortable on these two prerequisites that we had really started to discuss price-because if the two first conditions had not been met, there wouldn’t be any deal.”

54. Of the importance that L’Oréal ascribed to the retention of Mr. She, Mr. Evrard said: ⁴⁶

“...he was the creator, the founder, but also the main animator... of the business. Therefore, it was important that we could get some security on the fact that-it would be in a new structure, probably-be able to pursue his mission in developing the business.”

55. In cross-examination by both Mr. Dawes and by Mr. Scott, Mr. Evrard was presented with the Summary. In taking issue with the accuracy of the entries in respect of the four meetings in March and April 2013, Mr. Evrard testified:⁴⁷

“We had no opportunity to amend the errors because...I never saw this table before today, I would say, so I could not correct it.”

5 and 6 March 2013 meeting

56. In disagreeing with the description in the Summary of the 5 and 6 March 2013 meeting, that L’Oréal’s proposal was that Mr. She “remain as minority shareholder with at least 6% stake” and that “Mr. S rejected the proposed structure and expressed his preference to exit 100% of the shares together with other shareholders”, Mr. Evrard said:⁴⁸

“... we were focusing on the scheme of arrangement. We never proposed to acquire less than 100% of the shares. This is not correct.”

57. Mr. Evrard elaborated:⁴⁹

“My recollection is that at that meeting we exposed the reasons why we wanted to go to a scheme of arrangement and we wanted to, at the end, receive irrevocable undertakings from the shareholders, et cetera, and it was a kind of surprise for the founders because they had probably imagined another type of deal, and there was no agreement at the end.”

⁴⁵ Transcript; Day 13, page 11.

⁴⁶ Transcript; Day 13, page 12.

⁴⁷ Transcript; Day 13, page 67.

⁴⁸ Transcript; Day 13, page 17.

⁴⁹ Transcript; Day 13, page 18.

58. Mr. Evrard described the atmosphere at the conclusion of the meeting as being “cold”, explaining that “...without any agreement on the structure, it was the end of the story.”⁵⁰

29 March 2013 meeting

59. Mr. Evrard agreed the description in the Summary of the 29 March 2013 meeting that, “Offeror mentioned the framework of the proposal”, was correct, adding that this subject-matter “occupied probably 80% of the time of the meeting.” Mr. Evrard explained:⁵¹

“...it was the opportunity for us to explain in more details what was our view on the deal structure, i.e. we could explain to the shareholders how we intended to proceed, to at the end get to a scheme of arrangement”.

However, he said that in the result “there was ... a disagreement on the structure.”⁵²

60. Of the description in the Summary of Mr. She’s “special deal”, Mr. Evrard said that the concept was mentioned in that meeting, but that the details were discussed a couple of weeks later. He disagreed with the assertion in the Summary that “Mr. She had agreed to put 20% of the consideration to be paid for his shares and options” in escrow. On the contrary, he agreed with the suggestion that “...there was no agreement from Mr. She on anything.” Similarly, whilst he agreed that the topic of a performance bonus based on results was discussed, Mr. Evrard said that he was, “...almost certain that we didn’t go that far into details, to mention 5%”. He agreed with the statement in the Summary that there was no agreement on price. In the result, he agreed with the suggestion made by Mr. Dawes that at the end of the meeting there was no agreement on anything.⁵³

61. Subsequently, in cross-examination by Mr. Scott, Mr. Evrard said of the fact that there was no agreement “the way this disagreement was expressed by the founders was, ‘Okay, we’re going to think about it, let’s give us a couple of weeks.’”⁵⁴ As a result, he said of the prospect of the proposal proceeding “I still thought there was a possibility, yes... I wouldn’t say realistic prospects... but it was a period of great uncertainty.”⁵⁵

⁵⁰ Transcript; Day 13, pages 19-20.

⁵¹ Transcript; Day 13, page 21.

⁵² Transcript; Day 13, page 25.

⁵³ Transcript; Day 13, pages 23-5.

⁵⁴ Transcript; Day 13, page 79.

⁵⁵ Transcript; Day 13, page 80.

15 April 2013 video conference

62. Mr. Evrard testified that he thought he had participated in the video conference of 15 April 2013 from Paris together with Ms. Muriel Petit. It was a two-way video conference and the other parties were together either in Hong Kong, Guangzhou or Shanghai.⁵⁶ Of the fact that a video conference took place, Mr. Evrard said that he regarded it as a “good surprise”. Of the statement in the Summary, “Preliminary discussion on price. Both parties had a significant gap in price expectations and agreed to further discuss at a later stage.”, Mr. Evrard said there was “no discussion on price.”⁵⁷

63. Mr. Evrard testified that the message from Mr. Tang was, “Look, we are open to keep on talking and we should have another meeting to better understand the details of your proposal”. That, led to the meeting at the end of April.⁵⁸ Mr. Evrard went on to elaborate: ⁵⁹

“...this video conference on 15 April was very short, Mr. She was not there, and for me this was just the opening by the shareholders to go deeper into the understanding of the scheme of arrangement. So (,) it was an agreement on principle to deep dive into the details of the scheme of arrangement, and again this led to the meeting at the end of April.”

64. Of the suggestion made by Mr. Scott that, in the context of the statement in the Summary that “General agreement on deal structure reached”, his answers in the record of interview ⁶⁰ implied that he agreed that, during the video conference, agreement had been reached to conduct a scheme of arrangement, Mr. Evrard testified:⁶¹

“No, because I had to fly to China two weeks later precisely to finalise the discussion with the shareholders. If we had agreement on 15 April, why should I fly to China?”

65. It was at that stage in his evidence, that Mr. Evrard said that he had participated in a “preparation session with Linklaters” the day before giving evidence. He did discuss the contents of the Summary. Linklaters did not suggest to him that any of the contents might be inaccurate. Rather, he suggested to them that “...it was inaccurate”.⁶²

⁵⁶ Transcript; Day 13, pages 27-8.

⁵⁷ Transcript; Day 13, pages 28-9.

⁵⁸ Transcript; Day 13, page 83.

⁵⁹ Transcript; Day 13, pages 85-6.

⁶⁰ Witness Evidence Bundle; page 750, counters #s 144-9

⁶¹ Transcript; Day 13, page 89.

⁶² Transcript; Day 13, page 95.

66. Mr. Evrard went on to say that the agreement that was reached at the video conference of 15 April 2013 was “the agreement to study further the scheme of arrangement”. That, was a “significant step, but it’s not at all an agreement on the details.”⁶³

27 April 2013 meeting

67. Mr. Evrard said that he had flown from France to attend the meeting of 27 April 2013 in Guangzhou. Of the matters discussed at the meeting, Mr. Evrard said:⁶⁴

“...we re-discussed the different steps, which is to get the three founders’ agreement on the scheme of arrangement, their agreement to dispose their share, the agreement of Mr. She to discuss and have a special deal, and then we explained to them for us, the following steps would be to formally write to the company, to the board, in order to have due diligence.

Once we had explained this, we said ‘Obviously if you write to the board and ask for due diligence, we have to mention some level of pricing.’ And that’s where we have a further discussion on price. And because we didn’t want to close that discussion at that moment, somebody suggested-and this is what happened, actually-that we could put in a letter to the board something like “the price of no less than \$5.5”, because the following step of due diligence was a key step for us, obviously because here again, if the due diligence had not given satisfactory results, we would have walked away.”

68. Mr. Evrard denied the suggestion put to him by Mr. Scott that the question of due diligence had been discussed at all four meetings “I dispute. I don’t agree.” Rather, he said “...we discussed that the due diligence for us was important.” He went on to say, “And it’s only, if I remember properly, when we wrote the letter to the board that we went into more details in explaining the content of the due diligence... Obviously, we mentioned broadly what this could be, but as a matter of general principle.” He concluded “it was not a discussion. It was an information, one side information from us to the shareholders of what we would ask the company in the next step.”⁶⁵

69. In cross-examination by Mr. Scott, Mr. Evrard denied that his discussions with the three founders to obtain their support for a proposal to the board to acquire the company through a scheme of arrangement were discussions that he held with them “as directors and members of the board of Magic”. He explained, “Because I was still talking to them as shareholders”.⁶⁶

⁶³ Transcript; Day 13, page 86.

⁶⁴ Transcript; Day 13, page 31.

⁶⁵ Transcript; Day 13, pages 100-102.

⁶⁶ Transcript; Day 13, page 96.

70. Of the discussions with Mr. She for the retention of his services after the proposed acquisition of Magic, Mr. Evrard said that it was “an individual discussion with Mr. She, in order to explain to him and sign with him an employment agreement where he would become an employee of L’Oréal China and keep-run the business unit of Magic.”⁶⁷

71. In cross-examination by Mr. Chan, in respect of the letter on the letterhead of L’Oréal, dated 6 May 2013 sent to Mr. Stephen Tang, Mr. She and Mr. Luo, ⁶⁸ Mr. Evrard said that, “ the purpose of the three letters was to confirm the agreement reached with the three shareholders a few days before writing formally to the board of the company.”⁶⁹ The executed copy of the letter was attached to the email, dated 12 May 2013, sent by Mr. Huang to Linklaters and L’Oréal. The letter addressed to Mr. Stephen Tang on the letterhead of L’Oréal stated, *inter alia*:

Possible offer for all of the issued shares of Magic Holdings International Limited (the “Company”)

We refer to our recent discussions in relation to a possible offer by us for all of the issued shares (the “**Shares**”) and options over shares (“**Options**”) of the Company (the “**Acquisition**”).

We are writing to confirm the principal terms of the Acquisition for which we would like to confirm your support and ask that an exclusivity period be granted for us for the duration of the due diligence process, as discussed further below.

Structure of the possible Acquisition

The Acquisition, if made, would be by way of a scheme of arrangement under the Companies law of the Cayman Islands (the “Scheme”), but we would reserve the right to elect to implement the Acquisition by way of a general offer within the meaning of the Code on Takeovers and Mergers (the “Code”), *provided that the financial terms of such general offer are at least as favourable as the financial terms of the Scheme*. The consideration for Shares subject to the Acquisition would *be not less than HK \$5.5 per Share* subject to satisfactory due diligence, be wholly incash, and financed entirely out of our internal resources. We would also comply with the Code requirements to make an appropriate offer or proposal (the “Option Offer”) to holders of Options. [Italics added.]

72. Save for use of the letterhead of L’Oréal, rather than Lara, and the stipulation of Magic, rather than Martha, and the added italicised words, the text of the letter was identical to the text of earlier versions of the letter attached to an email from Linklaters to Mr. Huang, dated

⁶⁷ Transcript; Day 13, page 100.

⁶⁸ Witness Evidence Bundle, pages 887-913.

⁶⁹ Transcript; Day 13, page 54.

28 April 2013,⁷⁰ and to the version attached to an email from Jaimie Cheung of Linklaters to L'Oréal, dated 26 April 2013, under the subject heading "Martha: draft documents for weekend meeting"⁷¹. The relevance of those document is considered subsequently.

The executive directors of Magic

Mr. Stephen Tang

January/February 2012

73. Mr. Stephen Tang testified that the first approach made by L'Oréal to Magic had been made in January to February 2012. That followed an investor presentation meeting by Magic, at which Mr. Leo Liu of BNP Paribas was present. He introduced L'Oréal to Magic at a subsequent meeting between representatives of the two companies. Mr. Stephen Tang knew BNP Paribas to be an investment bank.⁷² In his record of interview, conducted by Ms. Wong Mei Mei on 10 June 2014, he described the discussions as involving "business cooperation".⁷³ He testified that those discussions were "...exchanges on the businesses of each other and also exploration on R&D."⁷⁴

Early March 2013

74. Mr. Stephen Tang testified that in March 2013 "L'Oréal started revealing to us that they wanted to acquire Magic".⁷⁵ He explained that his reference in his record of interview to L'Oréal having stated that they would like to make "a general offer", which proposal the founder shareholders would not consider⁷⁶, was not a term which he understood clearly. He testified that he understood it to be "selling all our shares", namely "what was being asked was the founders' shares."⁷⁷ However, he went on to concede that he knew at the beginning of March that L'Oréal wanted to make a general offer for a complete acquisition of all of the shares in Magic.⁷⁸ Nevertheless, he disagreed with the suggestion made by Mr. Scott that, in those circumstances, he was representing not only the founder shareholders but also the company and its other shareholders. On the contrary, "L'Oréal was only talking to the founders... about buying the founders' shares of Magic...".⁷⁹ In his witness statement,

⁷⁰ Exhibit Bundle, pages 732-755 at pages 752-755.

⁷¹ Exhibit Bundle, pages 656-726 at pages 695-698.

⁷² Transcript; Day 4, pages 56-61.

⁷³ Witness Evidence Bundle; page 9, counter #104.

⁷⁴ Transcript; Day 4, page 62.

⁷⁵ Transcript; Day 4, page 61.

⁷⁶ Witness Evidence Bundle; page 10, counter # 125.

⁷⁷ Transcript; Day 4, pages 66-7.

⁷⁸ Transcript; Day 4, page 70.

⁷⁹ Transcript; Day 4, page 71.

Mr. Stephen Tang said that he was “rather unhappy” about the approach of L’Oréal.⁸⁰ In his testimony, he said that he was “very unhappy”.⁸¹

29 March 2013

75. Of the fact that, notwithstanding the tone in which the meeting of early March had concluded, representatives of the various parties met again on 29 March 2013, Mr. Stephen Tang explained that he was hoping “...that maybe there would be cooperation in future with L’Oréal.”⁸² The meeting was organised by Leo Liu of BNP Paribas. Having acknowledged that investment bankers did not get involved in matters of business cooperation of that kind, Mr. Stephen Tang said that both possibilities, namely acquisition and cooperation coexisted.

76. Of the description in the Summary of the meeting of 29 March 2013, Mr. Stephen Tang said that he had no clear recollection that the representatives of L’Oréal “...mentioned the framework of the Proposal.”⁸³ Nevertheless, he disagreed with the description of the meeting made in an email, dated 1 April 2013, from Muriel Petit of BNP Paribas to other colleagues⁸⁴ that there had been “an agreement on the deal structure”. On the contrary, Mr. Stephen Tang said “...we don’t have agreement on the deal structure.”⁸⁵

77. Furthermore, Mr. Stephen Tang disagreed with the statement in the Summary that there was “Preliminary agreement on 100% sale”. On the contrary, the founder shareholders did not agree to sell the shares that they held in Magic. That was “a deep memory”. Of the statements that Mr. She had agreed to “put 20% of the consideration of his shares and options” and to an entitlement of “an annual performance-based bonus amounting to 5% of the annual increase of turnover in the coming three years”, Mr. Stephen Tang said “Chief She did not agree”.⁸⁶

78. On the other hand, Mr. Stephen Tang agreed with the statement that there was “No agreement on price”. At first, he denied that there had been any discussion about a possible range of price per share. Then, he said that Mr. Leo Liu had disclosed a valuation that had been prepared of the value of the company from which he could and did calculate the price per share. He was not sure that it fell in the range testified to by Mr. Leo Liu, namely \$ 4.30 -\$4.80 per

⁸⁰ Witness Evidence Bundle; page 796, paragraph 47.

⁸¹ Transcript; Day 4, page 73.

⁸² Transcript; Day 4, page 73.

⁸³ Transcript; Day 4, pages 77-9.

⁸⁴ Exhibit Bundle, page 605.

⁸⁵ Transcript; Day 4, page 87.

⁸⁶ Transcript; Day 4, pages 77-83.

share.⁸⁷ He said that Mr. Mike Liu had articulated an alternative valuation, which was significantly higher than that advanced by L'Oréal/BNP Paribas.⁸⁸

79. Of the statement in the email of Muriel Petit to her colleagues, dated 1 April 2013, that “On the valuation discussion, which has been long, we remain with a difference of 1.20 HKD, knowing that Seller’s expectations are 1 HKD higher than one Lara Board authorised”⁸⁹ Mr. Stephen Tang agreed that there had been long valuation discussions, but testified that he could not recall the exact difference in the figures between the parties.⁹⁰

80. Mr. Stephen Tang disagreed with the suggestion of Mr. Scott that there had been significant progress in negotiations between the parties between the meetings in early March and that of 29 March 2013, “I don’t agree with this characterisation that there was important progress. All the things that you said were proposals made by BNP to us.”⁹¹ Of the relationship between the parties at the end of the meeting, Mr. Stephen Tang said: ⁹²

“The feeling at that time that I had is that I did not want to go on talking with L’Oréal on the acquisition of the shares of Magic Holdings in the hands of founder shareholders.”

He added:⁹³

“L’Oréal and Magic’s founders, between the two sides, they ended up very unhappy with each other.”

81. On the other hand, he said that he had not communicated those feelings to the representatives of L’Oréal because, given that L’Oréal was a multinational corporation with a well-known and famous brand in the cosmetics industry, he wished to maintain a relatively good relationship with L’Oréal.⁹⁴

15 April 2013 video conference

82. Mr. Stephen Tang testified that he accepted the invitation of L’Oréal to participate in the video conference of 15 April 2013 for the same reasons. He was present in Shanghai with

⁸⁷ Transcript; Day 4, page 84.

⁸⁸ Transcript; Day 4, page 91.

⁸⁹ Exhibit Bundle, page 605.

⁹⁰ Transcript; Day 4, pages 89-90.

⁹¹ Transcript; Day 4, pages 90-1.

⁹² Transcript; Day 4, page 95.

⁹³ Transcript; Day 4, page 97.

⁹⁴ Transcript; Day 4, page 95.

Mr. Mike Liu, together with the representatives of BNP Paribas and a representative of Linklaters. The representatives of L'Oréal participated from an unknown venue elsewhere.⁹⁵

83. Of the absence of Mr. She as a participant in the video conference, Mr. Stephen Tang said "Chief She genuinely did not want to attend that meeting. That's why he declined to attend the meeting under an excuse." That excuse was the one to which reference was made in an email, dated 15 April 2013, from Ms. Zhanzhan Gourves of L'Oréal China to other colleagues in L'Oréal and to BNP Paribas and Linklaters, namely that a child of Mr. She was severely sick. The provenance of that information was described as being "information from Martha Mr. Liu".⁹⁶ Mr. Stephen Tang said that according to his knowledge neither of Mr. She's children were sick at that time. Of the assertion in the email "...consider the importance of the meeting and Mr. Stephane has the entire power of decision, Liu suggests to maintain tomorrow's meeting without Mr. S's presence and Stephane will represent Martha officially", Mr. Stephen Tang said that he was not aware that Mr. Mike Liu had made those representations, which in any event "obviously contrast with the facts", adding that at the commencement of the video conference:⁹⁷

"I already declare that I am attending this video conference... I am only representing myself. I'm not representing Chief She or Chief Luo and neither would I discuss in depth the matter concerning discussion of selling the shares in the hands of the founder shareholders..."

84. Mr. Stephen Tang said that the video conference "lasted a very short time" and "was mainly devoted to discussions on the valuation of the company, Magic...".⁹⁸ Of the issue of whether the discussions included the sale of the shares of the founders or an offer to make a complete acquisition of all the issued shares of Magic, Mr. Stephen Tang said:⁹⁹

"Two levels. At one level, L'Oréal did mention its wish of acquiring 100% of Magic shares. But then at all the meetings starting from 5 March and 29 March, all the way down to 15 April-at all these meetings, what management was discussing was the shares of Magic Holdings in the hands of the founder shareholders."

85. Of the statement in the Summary that "General agreement on deal structure reached" and of Mr. Leo Liu's testimony in respect of that statement, namely that "the way how Magic

⁹⁵ Transcript; Day 4, pages 98-9.

⁹⁶ Exhibit Bundle, page 626.

⁹⁷ Transcript; Day 4, page 102.

⁹⁸ Transcript; Day 5, page 2.

⁹⁹ Transcript; Day 5, pages 3-4.

is going to be delisted, then that was agreed on” and that “finally Mr. Stephen Tang was convinced” that a scheme of arrangement should be adopted, Mr. Stephen Tang said:¹⁰⁰

“I don’t understand why it is written that way, but at the time there was no agreement.”

86. Mr. Stephen Tang said that the representatives of L’Oréal mentioned the term “scheme of arrangement”, but went on to explain that, because he was not familiar with the term, he had received an explanation as to the nature of a scheme of arrangement from a representative of Linklaters who was present in Shanghai at the video conference.¹⁰¹

87. In the context of the statement in the Summary, that there was “Preliminary discussion on price” at the video conference, Mr. Stephen Tang said that there were “discussions on the value of the assets and the way of valuation.”¹⁰² In answer to questions from the Chairman, Mr. Stephen Tang said that in those discussions he had put forward a money valuation himself, which was higher than that made on behalf of L’Oréal:¹⁰³

“I think the valuation of the Magic assets on our side differ from that reached by BNP Paribas by 50 per cent.”

88. It is to be noted that the Summary asserted:

“Both parties had significant gap in price expectations and agreed to further discuss at a later stage.”

27 April 2013

89. Mr. Stephen Tang said that, together with Mr. She and Mr. Luo, he attended a meeting with the representatives of L’Oréal and BNP Paribas at Guangzhou Baiyun International Airport in the late afternoon of 27 April 2013. He knew that Mr. Evrard had flown from France to attend the meeting and would only stay a few hours.¹⁰⁴ He agreed with the suggestion of Mr. Scott that the purpose of the meeting was a “high-level discussion for the acquisition of the entirety of Magic by L’Oréal”.¹⁰⁵ He did not agree with the suggestion that there was already in place an agreement to proceed by way of a scheme of arrangement and that what remained was discussion of price. Of the different stages of the meeting, Mr. Stephen Tang said:¹⁰⁶

¹⁰⁰ Transcript; Day 5, page 9.

¹⁰¹ Transcript; Day 5, pages 6 and 11-2.

¹⁰² Transcript; Day 5, page 5.

¹⁰³ Transcript; Day 5, page 14.

¹⁰⁴ Witness Evidence Bundle; page 801, paragraphs 70-1.

¹⁰⁵ Transcript; Day 5, page 15.

¹⁰⁶ Transcript; Day 5, page 17.

“I believe that we convened a meeting on that day-consists of several steps. The first step was that Alain talked with Chief She on internal matters of the company and also on the terms of retainment of Chief She, and also confirmed to us how L’Oréal was going to develop the future of Magic, and what L’Oréal would do to develop Magic into the leader in the face mask sector. After this there was a private meeting with Chief She, me and Chief Luo.”

90. Mr. Stephen Tang agreed with the statement in the Summary, that there was “preliminary offer price of no less than HK \$5.5 per share”. He did not agree that the statement, “The Company agreed to grant 30 days of Due Diligence to the Offeror”, was accurate. Whilst he accepted that was L’Oréal’s request at the meeting, he explained: ¹⁰⁷

“I needed L’Oréal to prepare a written preliminary proposal to us, and only after that could I submit this document to our board of directors for discussion, and only after the approval given by the board of directors could due diligence start.”

91. In answer to the question of the Chairman, if it was the case that there was an agreement in principle that, subject to the appropriate documentation due diligence would be approved by the board of directors of Magic, Mr. Stephen Tang said, “the founder shareholders at the time agreed that they could go on with-they can go on with the due diligence.”

92. Mr. Stephen Tang’s attention having been drawn to an email, dated 29 April 2013, from Ms. Muriel Petit of BNP Paribas to her colleagues in which she had said of discussions with Magic,¹⁰⁸

“An agreement was found this weekend with the co-founders. It is under formalization. The idea is to approach core shareholders (institutional investors and PE) as well as the board next week end, with the objective to start DD (and obtaining exclusivity)”

and his assertion in his witness statement that at the conclusion of the meeting of 27 April 2013, he did not think “there were sufficient substantive materials for the founders to notify Magic’s board of directors at the time”, he testified that “I could do that only after I received their written documents.” Mr. Stephen Tang explained:¹⁰⁹

“...so, prior to this meeting, all meetings prior to this meeting were confined to the discussion of the sale of the Magic Holdings shares in the hands of founder shareholders. That is why the founder shareholders did not feel that it was necessary to tell the board of directors about details of discussion.”

¹⁰⁷ Transcript; Day 5, page 20.

¹⁰⁸ Exhibit Bundle, page 767.

¹⁰⁹ Transcript; Day 5, page 22.

Mr. Stephen Tang: post 27 April 2013 meeting

93. In his witness statement, Mr. Stephen Tang said “during the period between 27 April 2013 and 15 May 2013.... I helped with administrative coordination and liaison... I did not particularly discuss these with Mr. She and Mr. Luo.”¹¹⁰ He replied in the negative when asked by the Chairman if, in that context, he done anything before 15 May 2013.¹¹¹

Email 30 April 2013: Call to Stephen

94. However, subsequently Mr. Stephen Tang agreed that he had participated in a discussion with Mr. Leo Liu, to which reference was made in Mr. Leo Liu’s email, dated 30 April 2013, to Ms. Muriel Petit and other colleagues at BNP Paribas, namely:¹¹²

“Call to Stephen

Stephen called me this morning. He told me that he start to schedule meeting with financial investors already. But Ms. Liu is in US now, she will be back early next week. He cannot find anyone in Greenwoods cause some of them are on holiday. He sent the email. But there is no reply yet. Baring is ok for a meeting Friday. He is checking with us if we should postpone the meeting one more week. I told him I will contact lara and let him have the feedback asap. I tell nothing for the price or DD. I will wait for your instruction on this.”

95. Mr. Stephen Tang agreed that he had started to schedule meetings with financial investors. When asked if he had done so because he had agreed to support the acquisition, he said:¹¹³

“This arrangement was made at the request of L’Oréal. Because prior to this L’Oréal did not know the institutional investors, major institutional investors. And L’Oréal requested me to pass this NDA to those three institutional investors. This is the only work that I did.”

96. Mr. Stephen Tang disagreed with the suggestion that he was cooperating with L’Oréal:¹¹⁴

“At their request, I only passed on the message of this NDA to them, at their request. Other than that, I did not do anything.”

¹¹⁰ Witness Evidence Bundle; page 802, paragraph 79.

¹¹¹ Transcript; Day 5, page 26.

¹¹² Exhibit Bundle, page 769.

¹¹³ Transcript; Day 5, page 28.

¹¹⁴ Transcript; Day 5, page 29.

97. In his record of interview, in responding to the question of who was responsible for obtaining “the undertakings” of the “three key institutional investors”, Mr. Stephen Tang said:¹¹⁵

“Well, at the very beginning, since L’Oréal or its FA, they did not know our institutional investor (s). Well at that time—firstly there was an NDA signed with the three institutional investors... It was passed to them through me since they did not know them.”

98. He denied that he was acting in the capacity of an executive director of Magic. On the other hand, he accepted that it related to “investor relations work”, but asserted that it was “...not in the capacity of executive director.”¹¹⁶ He acknowledged that he asserted in his witness statement that as chairman and executive director of Magic his responsibilities included dealing with “investor relations work.”¹¹⁷ Nevertheless, he repeatedly denied that he was acting as an executive director of Magic when he contacted the institutional investors: “that was not in my mind”; “actually, I look at myself merely as a messenger.”¹¹⁸

Email 2 May 2013: Call memo with Stephen

99. Mr. Stephen Tang’s attention was drawn by Mr. Scott to an email, dated 2 May 2013, from Mr. Leo Liu to Ms. Muriel Petit of BNP Paribas, copied to various other persons at L’Oréal and Linklaters, in which the subject was described as “Call memo with Stephen”. The text of the Call memo was set out under bullet point headings, beneath which was a description of what was asserted to be the position of Mr. Stephen Tang:¹¹⁹

- *Approached the financial investor after signing the letter for cofounders* Stephen agreed on this...
- *The information delivered to the financial investors* Stephen has no objections with the information we ask them to deliver to the financial investors.
- *NDA with the financial investors* Stephen has reviewed NDA from Mr. Huang. He is ok with the content. It is also his intention to ask financial investors to sign an NDA. He will deal this matter with financial investors.
- *Price to be disclosed with the financial investors* Here comes the disagreement from Stephen. He thinks it’s really important to keep the flexibility for the price of financial investors. If he needs to reveal the final price to the financial investors, it will be his responsibility to convince the financial investors that there will be no room for any further bargaining

¹¹⁵ Witness Evidence Bundle; page 28, counter # 343.

¹¹⁶ Transcript; Day 5, pages 28-31.

¹¹⁷ Witness Evidence Bundle; page 788, paragraph 8.

¹¹⁸ Transcript; Day 5, page 31.

¹¹⁹ Exhibit Bundle, pages 802-3.

...

If Lara could state “The price per share will be no less than 5.50 HK \$ and the final price will be determined by DD result” in a letter to the board, it could be considered as full transparency with all shareholders. If Lara could do so, Stephen will keep financial investors focus on price issue and get them to sign the irrevocable more smoothly. [Italics added.]

100. Mr. Stephen Tang acknowledged that the purpose of a non-disclosure agreement, NDA, was to protect confidential and price-sensitive information of the company. He agreed that it was his intention to ask the financial investors to sign the NDAs. However, once again he denied that he did so on behalf of Magic “...what I did was merely pass on this document, that is the NDA, to the institutional investors. I did not do this with institutional investors on behalf of the company.”¹²⁰ Subsequently, he said that he acted as he did “...in the capacity as a postman.”¹²¹

Chiu & Partners’ reply on behalf of Magic to the SFC

101. Mr. Stephen Tang acknowledged that, having received a letter from the SFC, dated 19 August 2013,¹²² addressed to Magic but marked for his attention as Chairman, which posed a series of questions arising from the Announcement, dated 15 August 2013, of the proposed acquisition by L’Oréal of all of Magic shares, he had given instructions and information to Chiu & Partners to reply to those enquiries.¹²³ He acknowledged that the reply, dated 30 August 2013,¹²⁴ to the first question posed by the SFC, namely “when and by whom the proposal was first initiated and contemplated?”, was in the following terms:¹²⁵

“As far as the Company was aware, the proposal was initiated by L’Oréal S.A. (“**L’Oréal**”), and it was first initiated by L’Oréal when BNP Paribas, the financial adviser to L’Oréal contacted Mr. Tang Siu Kun Stephen, the chairman of the Company (the “**Chairman**”) by phone on 2 May 2013 (the “**Initial Approach**”) expressing L’Oréal’s interest in considering to acquire all the shares and sought his views on

- (i) how L’Oréal’s interests could be relayed to the institutional investors; and
- (ii) how the proposed nondisclosure agreement (“NDA”) could be relayed to Mr. She, Mr. Luo and institutional investors.” [Reformatted.]

102. Of the contents of the answer, Mr. Stephen Tang said that he had provided information to Magic’s Company Secretary, including that the proposal was first initiated by L’Oréal in a

¹²⁰ Transcript; Day 5, page 35.

¹²¹ Transcript; Day 5, page 41.

¹²² Exhibit Bundle, pages 549-50.

¹²³ Transcript; Day 5, page 37.

¹²⁴ Exhibit Bundle, pages 551-63.

¹²⁵ Transcript; Day 5, pages 38-9.

telephone contact on 2 May 2013. Mr. Stephen Tang accepted that the answer was not correct.¹²⁶ He agreed that “starting from 5 March, L’Oréal staff had been liaising with the founder shareholders.” When asked why it was that he had not instructed Chiu & Partners to answer truthfully, Mr. Stephen Tang said:¹²⁷

“I can’t recall as to why at that time it was written this way.”

103. Similarly, Mr. Stephen Tang acknowledged that the answer to the second question posed by the SFC, namely “when the company and L’Oréal/agents of L’Oréal first discuss the proposal?”, was in the following terms:¹²⁸

“Subsequent to the Initial Approach, there were discussions between the Chairman and BNP Paribas by phone and emails over the proposed NDA between 3 May 2013 and 10 May 2013 and the structure of the possible transaction was first discussed between them in a meeting on 10 May 2013.”

104. In face of the suggestion by Mr. Scott that the reply made it clear that, in being involved in the email/phone calls, he was representing the company, Mr. Stephen Tang said:¹²⁹

“If it is written here so, then yes.”

He went on to assert that he could not recall why the answer was couched in the letter stated, but acknowledged that he had provided the information.¹³⁰ [An extract of the letter is at **Appendix B.**]

Email 9 May 2013: Atlantis

105. Mr. Stephen Tang testified he had sent an email, dated 9 May 2013, to Ms. Yang Liu of Atlantis, to which was attached NDA documents in English and Chinese. The email was sent from the email address of Mr. Stephen Tang at Magic and copied to Amy Zhang at that same address. The ‘Subject’ was described as: “????-????”. Addressing “Honourable President Liu”, the email stated:¹³¹

“Knowing that (*our*) company will be having a conference with your company on 9 May, the contents of the conference involve price sensitive information, would your company please sign the relevant non-disclosure agreement, (we) now enclose the relevant non-disclosure agreement for your company’s reference, please give (us) your comments as soon as possible. If (you) do not have any other comments, (*our*) company

¹²⁶ Transcript; Day 5, page 40.

¹²⁷ Transcript; Day 5, page 41.

¹²⁸ Exhibit Bundle, pages 551-2.

¹²⁹ Transcript; Day 5, page 42.

¹³⁰ Transcript; Day 5, page 43.

¹³¹ Exhibit Bundle, page 2389.

will bring along the original non-disclosure agreement for your company to sign before (us).

If you have any questions, please contact me.

Best wishes for your business

Tang Siu Kun:

Magic Holdings International Ltd”

[Italics added.]

106. In face of the suggestion by Mr. Scott that the email was sent on behalf of Magic, Mr. Stephen Tang said:¹³²

“Actually, at the time, I was sending this out on behalf of L’Oréal.”

Nevertheless, he acknowledged of the reference to “our company”, that it “...appears that it refers to Magic.”

107. Mr. Stephen Tang denied that he had a discussion with Ms. Liu about the acquisition. Rather, his role was to obtain her signature on the NDA.¹³³ He acknowledged the fact that the email referred specifically to the fact that the conference between the two companies involved “price sensitive information”, but re-asserted, “... I did not have discussion with President Liu.” Nonetheless, he accepted that the purpose of an NDA was to protect confidential price sensitive information and that, on 9 May, information about the acquisition was price sensitive.¹³⁴

Ms. Liu Yang: Atlantis Capital Holdings Limited

108. It is to be noted that in a record of interview conducted of Ms. Liu Yan by an officer of the SFC, dated 23 September 2014, Ms. Liu was asked, in the context of the announcement, dated 15 August 2013 of the proposed acquisition of all of Magic shares by L’Oréal, when it was that she had first found out that a company wanted to buy Magic. Ms. Liu said¹³⁵:

“It should be May 9. Magic’s Stephen... He came to my office that day. And then asked me to sign a confidentiality agreement... So that means he told me about this matter in person.”

109. In answer to the question of what Mr. Stephen Tang told her at that time, Ms. Liu said:¹³⁶

“He came in the afternoon and told me that... they and L’Oréal reached an agreement... And there was a possibility the L’Oréal would become the major shareholder of his

¹³² Transcript; Day 5, page 45.

¹³³ Transcript; Day 5, page 47.

¹³⁴ Transcript; Day 5, page 48.

¹³⁵ Exhibit 1A; counter #s 45-51.

¹³⁶ Exhibit 1A; counter #s 55.

company... or acquire the company... And then he asked me to sign a confidentiality agreement relating to the transaction between L'Oréal and him.”

Ms. Liu went on to say that on that occasion three persons had visited her, namely Mr. Stephen Tang, Mr. Sit (transliteration) and someone called Michael.

Emails 9 May 2013: Greenwoods and Baring

110. Mr. Stephen Tang sent emails, dated 9 May 2013, from his email address at Magic with identical text to the other two institutional investors, namely Greenwoods and Baring¹³⁷, to which were attached Chinese and English versions of the NDAs. The subject matter in each email was described as being “Magic Holdings-NDA”. Each email ended with the name of Mr. Stephen Tang, beneath which was the title Magic Holdings International Limited.

111. In their reply, dated 28 August 2013, to the SFC’s earlier enquiry as to “When and by whom Greenwoods Asset Management Limited was first approached for the Proposal”, namely that announced on 15 August 2013 of the proposed acquisition by L’Oréal of all Magic shares, Greenwoods stated:¹³⁸

“On 9 May 2013, Magic Holdings International Limited’s (the “Company” or “Magic”) management visited Greenwoods to brief that an international company, L’Oréal (the “Buyer”), is potentially considering an offer to acquire Magic. Magic’s management did not disclose specific information such as the offer price of the Buyer.”

112. In their reply, dated 30 August 2013, to the same enquiry by the SFC, Baring stated that on 10 May 2013:¹³⁹

“Baring met with Mr. Stephen Tang, She Yu Yuan and Mike Liu of the Company whereby Baring was informed of the potential transaction involving the Company, the founders of the company and the offeror, and Baring was requested to sign a confidentiality agreement relating thereto.”

The terms “Company” and “Offeror” were defined to mean Magic and L’Oréal respectively.

113. In a record of interview conducted of Mr. Dar Chen by an officer of the SFC, dated 2 June 2016, the former explained the circumstances in which he had met Mr. Stephen Tang: ¹⁴⁰

“I first became aware of a possible transaction on 9 May. Stephen called me and said that there is a large transaction, he didn’t tell me the name. But in order for him to tell us more-tell me more, he wants to enter.... into a non-disclosure agreement. So he sent

¹³⁷ Exhibit 11 and Exhibit Bundle, pages 3214-20.

¹³⁸ Exhibit Bundle, page 517.

¹³⁹ Exhibit Bundle, page 529.

¹⁴⁰ Witness Evidence Bundle; page 401, counter # 69.

across something around 9 or 10 May. It was addressed to Baring. Baring executed the NDA. And then Stephen came by and said that, okay, well, L'Oréal is interested in the company, okay. That's the first time I heard it. So I forgot exact date that he came by, it's around 10 May, 11 May or something around there."

114. In answer to the question of when he was informed about the details of the deal, Mr. Dar Chen added:¹⁴¹

"So Stephen came by and say L'Oréal is interested in buying all the company, okay, didn't really describe how they are going to buy the company. And of course we are very interested in the price, I was very interested in the price. He said around-may be around 5, okay."

115. In his testimony, Mr. Dar Chen answered in the affirmative the suggestion made to him by Mr. Scott that the information that L'Oréal was interested in acquiring Magic was "inside information", as defined by Part XIVA of the Securities and Futures Ordinance.¹⁴²

She Yu Yuan

Early 2012

116. Mr. She said that in early 2012 contact was made by Magic, through BNP Paribas as an intermediary, with L'Oréal. At an ensuing meeting in Guangzhou the possibility of cooperation in business was discussed between Mr. Stephen Tang, Mr. She and Mr. Luo and L'Oréal, including the possible acquisition of the former by the latter. That possibility was immediately rejected.¹⁴³

September 2012

117. In September 2012, whilst on holiday in France with his wife, at the invitation of L'Oréal Mr. She met Mr. Evrard and a colleague at L'Oréal's Headquarters and lunched together. There was no discussion about business co-operation or the acquisition of Magic.¹⁴⁴

Late November 2012

118. Mr. She testified that in late November 2012 he, Mr. Stephen Tang and Mr. Luo met representatives of L'Oréal at the Sofitel hotel in Guangzhou and received a proposal that L'Oréal acquire Magic and that he remain as CEO. He denied that he received the offer in his capacity as a director of Magic. Rather, the discussions were with the founder shareholders.

¹⁴¹ Witness Evidence Bundle; page 402, counter # 71.

¹⁴² Transcript; Day 16, page 88.

¹⁴³ Witness Evidence Bundle, page 836, paragraphs 31-2.

¹⁴⁴ Transcript; Day 8, pages 33-4.

The three founder shareholders rejected the proposal because it did not fit with Magic's brand development strategy and their concerns about uncertainties for the future of Magic employees.¹⁴⁵

5/6 March 2013

119. Mr. She testified that there was a meeting between the three founder shareholders and representatives of L'Oréal and BNP Paribas on 5/6 March 2013 at the Shangri-La hotel in Guangzhou. Of the statement in the BNP Paribas Summary that the "offeror proposed to launch the Proposal together with Mr. S, who will remain as a minority shareholder with at least 6% stake", Mr. She testified that it was accurate, save the reference to the 6% stake, which, as he recalled, was in fact 20%.¹⁴⁶ Once again, the three founder shareholders rejected the proposal. Of the position that he took, Mr. She explained:¹⁴⁷

"My reply to them was if they really wanted me to sell my shareholding, that is under only three conditions would I be willing to sell my shareholdings, first of all, how they ensure the healthy development of Magic as a brand, how to ensure the interests of my team, ... my own team... the third one of course was the price, and also the interest that I would get for my retainment, or for me to stay behind. Only when these three conditions were satisfied that I would start to consider selling my shares. Also, ... given the fact that they agreed to Mr. Stephen Tang and Chief Luo... selling all of their shares while they would withhold some of my interest, I think that was unfair".

120. Of the suggestion made by Mr. Scott, that L'Oréal's proposal was to acquire all the shares of Magic, Mr. She said:¹⁴⁸

"No, they did not spell it out to explain whether they were acquiring all of the Magic shares or just acquiring a controlling stake."

121. Mr. She said that the issue of a valuation of the company/its shares was canvassed at the meeting:¹⁴⁹

"I remember it was the afternoon on 5 March, at the conference room of the Shangri-La hotel-when Mr Alain arrived, he gave us a bunch of evaluations... and then through these evaluations, they did come to a price. If I remember correctly, it was 4.3. But I remember clearly that when this 4.3 price was brought up, Mr. Alain said this is not a price-our intention of acquisition; it is not a price, it is a value. It was a valuation."

¹⁴⁵ Transcript; Day 8, pages 34-41.

¹⁴⁶ Transcript; Day 8, page 44.

¹⁴⁷ Transcript; Day 8, pages 45-6.

¹⁴⁸ Transcript; Day 8, page 46.

¹⁴⁹ Transcript; Day 8, pages 50-1.

29 March 2013

122. Mr. She said that he, Mr. Stephen Tang, Mr. Luo and Mike Liu attended a meeting with the representatives of L'Oréal and BNP Paribas at the Shangri-La hotel in Guongzhou on 29 March 2013. He attended in his capacity as a shareholder, not as CEO of Magic.¹⁵⁰ Mr. She denied that there was a preliminary agreement that all the shares of Magic would be acquired by L'Oréal. He added that even if he agreed to sell all his shareholding, "20% of that would be withheld".¹⁵¹ Of the statement in the Summary that there was "No agreement on price", Mr. She said:

"It was only a valuation-price per share. Alain also said that it was just a valuation, it was not an indicative offer price."

123. Finally, Mr. She denied that progress was being made towards reaching an agreement. Rather, he said:¹⁵²

"It was stopped... I felt that it was entirely impossible to go on this proposition because there were just too many hurdles and challenges. Because the three pre-conditions that I put up for selling all my shares on 5 March, they achieved none of them. Plus, it turned out to be it was worse than they had proposed earlier."

124. Mr. She said that, although that was his view at the end of the meeting, what he communicated to the other side was simply "we wouldn't consider their proposal". Of that, he said:¹⁵³

"...what I expressed there did not really express what I was thinking inside. What I told the meeting was that this was not acceptable to us. At the same time, for myself, I felt that this was an entirely impossible thing."

15 April 2013: video conference

125. Mr. She did not participate in the video conference of 15 April 2013 with representatives of L'Oréal and BNP Paribas: he had no interest to do so and used various excuses to reject L'Oréal's invitations to meet. On the other hand, he said that in the middle of April he did not have a severely ill child and denied having told Mr. Mike Liu that was the case.¹⁵⁴

¹⁵⁰ Transcript; Day 8, page 62.

¹⁵¹ Transcript; Day 8, pages 64-5.

¹⁵² Transcript; Day 8, page 66.

¹⁵³ Transcript; Day 9, page 3.

¹⁵⁴ Transcript; Day 9, page 6.

126. Of Mr. Stephen Tang's participation in the video conference, he said:¹⁵⁵

“...he represented himself... He couldn't even represent me”

He denied that Mr. Stephen Tang had the entire power of decision making on behalf of Magic.

Post video events conference

127. Mr. She said that after the video conference, Mr. Stephen Tang joined him and others in an hotel in Huangshan City. There, in answer to his question as to how the video conference had gone, Mr. Stephen Tang had said “It was very boring”. He did not report to him that general agreement had been reached to use a scheme of arrangement as the method of takeover of Magic by L'Oréal.¹⁵⁶

27 April 2017

128. Mr. She said that subsequently Mr. Mike Liu contacted him advising him that L'Oréal wished to meet with him again saying, in particular, “Even though it means we are going to break up, we need to meet again.” It was in those circumstances that the “very unusual” meeting took place at Guangzhou Baiyun airport on 27 April 2013, after he had returned to Guangzhou the previous day.¹⁵⁷ Mr. She acknowledged that he knew that Mr. Evrard had flown from France to meet him. In advance of the meeting, he was not aware of its purpose.

129. In his witness statement, Mr. She described two separate stages of the meetings he attended with representatives of L'Oréal. First, he had a “brief and individual” meeting with Mr. Evrard in which he was told that Mr. Evrard had “...secured an indicative offer price of no less than HK \$5.5 per share from L'Oréal's Board of Directors and hoped that I would remain as the Chief Executive Officer after that proposed acquisition.” Then, he was told, “...in respect of my retention, L'Oréal generically proposed that my retention will come with some conditions, but L'Oréal did not provide any specific conditions or incentive arrangements. L'Oréal adopted a flexible attitude towards the retention and future remuneration of Magic's over 100 employees.” In response, Mr. She said that he told Mr. Evrard that he had “...to first seek the views of Stephen and Mr. Luo as well as other shareholders.”¹⁵⁸

¹⁵⁵ Transcript; Day 9, page 9.

¹⁵⁶ Transcript; Day 9, page 10.

¹⁵⁷ Transcript; Day 9, pages 15-6.

¹⁵⁸ Witness Evidence Bundle; pages 844-5, paragraph 58.

130. Of the second stage of the meeting, which occurred after he had met Mr. Stephen Tang and Mr. Luo and informed them of the indicative offer price of HK \$5.5 per share, Mr. She said:¹⁵⁹

“At the meeting between L’Oréal and the Founders, L’Oréal proposed an indicative offer price of HK \$5.5 per share to Stephen and Mr. Luo. The parties also talked about the fact that the majority of Magic shares were held by the institutional investors, but the Founders had yet to seek their consent and views on the proposed sale and the proposed offer price at the time. Thus, the Founders told L’Oréal that they could not confirm whether to accept the indicative offer price proposed by L’Oréal before consulting with the institutional investors.”

131. In his testimony, Mr. She confirmed that at the meeting there was agreement between the parties of an indicative offer price of no less than \$5.50 per share.¹⁶⁰ On the other hand, he repeatedly denied that there was any discussion at the meeting of L’Oréal conducting due diligence. However, having made that denial four times, when Mr. Scott suggested to him that not only was it discussed but also that “representatives of Magic agreed to grant 30 days due diligence to L’Oréal”, Mr. She said:¹⁶¹

“I’m sorry, I don’t know that. I do not have any recollection of that. What I remember was that L’Oréal put forward two things. First of all, they hoped to relay the message to three institutional investors.

And second thing, they also wanted to find a good time to get in touch with other shareholders, to find appropriate time to get into contact with the company, Magic. And they may also talk about subsequent procedures and things, but those are professional and legal matters.”

132. In the context of the statement in the L’Oréal’s proposal letter to Magic, that L’Oréal was interested in acquiring all Magic’s shares,¹⁶² Mr. She responded to Mr. Scott’s question “...was there any occasion before this letter when the founder shareholders received a proposal from L’Oréal that L’Oréal wished to acquire all the shares in Magic?”, by saying:¹⁶³

“Well, I learned about that on 27 April as a founder shareholder.”

Inside information

133. Of the issue of the existence of “inside information” in respect of discussions between L’Oréal and himself, Mr. Stephen Tang and Mr. Luo, Mr. She said:¹⁶⁴

¹⁵⁹ Witness Evidence Bundle; page 846, paragraph 62.

¹⁶⁰ Transcript; Day 9, page 17.

¹⁶¹ Transcript; Day 9, pages 19-20.

¹⁶² Exhibit Bundle, pages 935-67.

¹⁶³ Transcript; Day 9, page 27.

¹⁶⁴ Transcript; Day 10, pages 3-4.

“... Prior to 27 April, there was no negotiations on a deal, and therefore I do not consider that there was in fact any inside information or not. So (,) much less talking about making an announcement...

But after 27 April, yes, there was-indeed may have a deal but during that process, negotiations were underway, and we believed that we have done a good job in keeping confidentiality and there was no leakage of information to outside...”

[Italics added.]

Post 27 April 2013 events

134. Mr. She acknowledged that “...on about 28 April 2013, L’Oréal’s lawyers started to send the Founders L’Oréal’s preliminary draft offer letter and its preliminary proposal regarding my retention.”¹⁶⁵ Those documents were attached to an email from Linklaters to Mr. Huang, dated 28 April 2013.¹⁶⁶ The document entitled “Mr. She Employment Terms” was marked “Draft/Linklaters/26. 04. 2013”. It stated:¹⁶⁷

“We refer to our recent discussions in relation to a possible offer by us for all of the issued shares (the “**Shares**”) and options over shares (the “**Options**”) of the Company (the “**Acquisition**”) likely by way of scheme of arrangement under the Cayman Islands Laws (the “**Scheme**”)... and the desire for you to continue in a leadership capacity in relation to the Company after completion of the Acquisition.”

We are pleased that you are supportive of the Acquisition and write to confirm the principal terms of your employment with the Company, which will take effect after completion of the Acquisition, and ask that an exclusivity period be granted to us for the duration of the due diligence process, as discussed further below.”

135. The letters to Mr. Tang and Mr. Luo were also marked “Draft/Linklaters/26. 04. 2013”.¹⁶⁸ The text of those letters was identical to the text of an earlier version of the letter attached to an email from Jaimie Cheung of Linklaters to L’Oréal, dated 26 April 2013, under the subject heading “Martha: draft documents for weekend meeting”.¹⁶⁹

Ms. Liu Yang: Atlantis

136. In his witness statement, Mr. She said that:¹⁷⁰

“On 9 May 2013, I together with Stephen, Chris and Mike went to meet Ms. Liu Yang, the representative of one of Magic’s institutional investors, Atlantis Investment Management (Hong Kong) Limited at their office in Central. After Ms. Liu Yang agreed to sign a confidentiality agreement on behalf of Atlantis..., Stephen briefly told

¹⁶⁵ Witness Evidence Bundle; page 847, paragraph 65.

¹⁶⁶ Exhibit Bundle, pages 732-59.

¹⁶⁷ Exhibit Bundle, pages 733-8.

¹⁶⁸ Exhibit Bundle, pages 739-59.

¹⁶⁹ Exhibit Bundle, pages 752-3.

¹⁷⁰ Witness Evidence Bundle, page 848, paragraph 68.

Ms. Liu Yang about L'Oréal's takeover proposal. I recall that Ms. Liu Yang was in favour of L'Oréal's takeover proposal.”

137. Mr. She explained that he had participated in the meeting at the invitation of Mr. Stephen Tang, who had told him “...that he intended to consult Magic's important institution investors' views on the takeover conditions proposed by L'Oréal.”

Mr. Cheng Wing Hong, Chris

138. For his part, Mr. Chris Cheng testified that the first he knew of the possibility of an acquisition of all of the shares of Magic by L'Oréal was when he received an email from Mr. Stephen Tang on 15 May 2013 enclosing a proposal letter to the board of directors of Magic from L'Oréal, dated 13 May 2013.¹⁷¹ Although Mr. Chris Cheng said that he came to know that the “preliminary discussions” L'Oréal said that they had with the three founders had taken place on 5/6 and 29 March and 15 and 27 April 2013, he said that he knew nothing of those meetings until after receipt of the L'Oréal proposal letter. Similarly, although he had travelled with Mr. Stephen Tang and Mike Liu to New York for the roadshow between 10 and 12 April 2013 the subject of the possibility of L'Oréal acquiring Magic had not been raised.¹⁷²

139. Furthermore, although Mr. Chris Cheng said that he had forwarded to Mr. Stephen Tang the email enquiry of him from Kevin Xu of CSV Partners, dated 18 April 2013,¹⁷³ in which he had been asked to confirm the truth of information received by CSV partners that “L'ORÉAL may be would acquire Magic Holdings”, Mr. Stephen Tang simply told him that it was “market rumours”. He had not asked him if the information was true nor was he told by Mr. Stephen Tang that he was in discussions with L'Oréal about the acquisition of Magic.¹⁷⁴ Mr. Chris Cheng acknowledged that Mr. Stephen Tang had also replied to him by email¹⁷⁵, dated 19 April 2013, copied to Mike Liu and Mr. She, attaching an email to Mr. Stephen Tang from Leo Liu enclosing a draft reply from the latter to enquiries of the same nature of the CSV & Partners enquiry, including “our board is not in discussions and has not been approached in relation to the acquisition of the company's shares by Lara.” Mr. Chris Cheng said that he did not pay particular attention to the use of the name Lara.¹⁷⁶ Although he acknowledged Mr. Leo Liu's email address indicated he worked for BNP Paribas, Mr. Chris Cheng said that he did not think

¹⁷¹ Witness Evidence Bundle; page 905, paragraph 44. Transcript; Day 10, page 51.

¹⁷² Transcript; Day 10, page 57.

¹⁷³ Exhibit Bundle, page 635.

¹⁷⁴ Transcript; Day 10, pages 62-6.

¹⁷⁵ Exhibit Bundle, page 2377.

¹⁷⁶ Transcript; Day 11, pages 2-3.

that Mr. Leo Liu was representing anybody, rather he thought Mr. Stephen Tang had sought advice from a financial advisor.¹⁷⁷

Institutional investors: meetings in May 2013

140. In a record of interview conducted by Ms. Wong Mei Mei on 10 June 2014, Mr. Chris Cheng said that he had not participated in the meetings between the executive directors of Magic and the representatives of Magic's institutional investors held in May 2013. Mr. Stephen Tang had told him that he wished to have meetings with Baring, Atlantis and Greenwoods, as he recalled in the period 8 to 10 May 2013, because "Chief She and Chief Luo had not been seen for a long time and they wanted to have an update (of the status) of the company." That explanation had been given to Mr. Chris Cheng in face of his enquiry, given that Mr. Stephen Tang would rarely ask Mr. She and Mr. Luo "to come to meet" as a result of which "I felt strange about why they would make such a big deal to come to meet." He contacted Ms. Amy Cheung, Ms. Lau Yang's assistant and told her that "Chief She, Chief Luo and Stephen... would like to meet you to have an update." She said that she would revert to him. However, before dates were confirmed, he handed over arrangements to his colleague, Jackie, because he went on leave to Japan.¹⁷⁸

Luo Yao Wen

February 2012

141. Mr. Luo said that in February 2012 for the first time he met representatives of L'Oréal. They discussed business cooperation, including in Research & Development and product structure.¹⁷⁹ He was mainly involved in the latter discussions, in which he took the lead.¹⁸⁰ As he recalled, L'Oréal did not mention the possibility of acquiring Magic.

5 and/6 March 2013

142. Mr. Luo said that, as a result of L'Oréal approaching Magic, a meeting was held between the parties in Guangzhou on 5 and 6 March 2013. L'Oréal asked the founders to consider an acquisition of all the shares of Magic by L'Oréal. Of the response of the founders, he said:¹⁸¹

¹⁷⁷ Transcript; Day 10, page 72.

¹⁷⁸ Witness Evidence Bundle; pages 241-3, counter #s 254-287.

¹⁷⁹ Witness Evidence Bundle, page 878, paragraph 22.

¹⁸⁰ Transcript; Day 7, pages 8-9.

¹⁸¹ Transcript; Day 7, page 11.

“At the time we rejected the L’Oréal proposal to acquire Magic shares immediately, on the spot. Secondly, how many shares were involved, that I was not clear.... The third thing is we were representing ourselves personally.”

143. Mr. Luo agreed that the reasons that he did not wish to sell were that first, he was attached to his team of employees at Magic and secondly, he was optimistic about the prospects of Magic’s development.

144. Having been referred to an email sent by Ms. Muriel Petit to colleagues at BNP Paribas, dated 5 March 2013,¹⁸² in which it was asserted of the meetings on 5 March 2013, “On valuation discussion, Martha management disagrees, talking about ‘big gap’ on value expectations, making reference to their IPO price of (6 HKS) as well as their own share purchase post-IPO at 4.30 HKS”, Mr. Luo said:¹⁸³

“We didn’t mention such matters.”

Mr. Luo added that he could not recall if it was at this meeting or one held on 29 March 2013 that “...price was mentioned.”

29 March 2013

145. Mr. Luo explained that, having rejected the offer of L’Oréal on 5 March 2013, at the invitation of L’Oréal the three founders attended a meeting in the Shangri-La hotel in Guangzhou on 29 March 2013 “purely for reasons of courtesy”.¹⁸⁴ The three founders immediately rejected L’Oréal’s “rough estimate of Magic share price” of \$4.3 to \$4.8 per share. Mr. Luo acknowledged that the closing price of Magic shares on 27 March 2013 was only \$3.18 per share, but went on to say “I was not paying much attention... to this closing price.”¹⁸⁵ Further, he said that their rejection of the proposal of L’Oréal “...had nothing to do with prices.” Rather, his concern was the “future development of the company”.¹⁸⁶ He denied that in those discussions he was acting as a director of Magic.¹⁸⁷

¹⁸² Exhibit Bundle, page 589.

¹⁸³ Transcript; Day 7, page 19.

¹⁸⁴ Transcript; Day 7, page 23.

¹⁸⁵ Transcript; Day 7, page 26.

¹⁸⁶ Transcript; Day 7, page 28.

¹⁸⁷ Transcript; Day 7, page 29.

146. Of the description in the BNP Paribas Summary of the discussions on 29 March 2013, namely that L'Oréal "...mentioned the framework of the proposal", Mr. Luo said that he could not remember that.

15 April 2013 video conference

147. Mr. Luo said that he did not participate in the video conference of 15 April 2013 between Mr. Stephen Tang and representatives of L'Oréal and BNP Paribas. He decided not to do so because he did not consider the meeting important at all, in particular because as a result of the meeting on 29 March 2013 he did not think that "L'Oréal was serious about the idea of acquiring Magic".¹⁸⁸

27 April 2013 meeting

148. Mr. Luo said that he was given very short notice of the meeting to be held at an hotel near Guangzhou Baiyun airport on 27 April 2013, explaining "I was on my way home and I needed to turn around and then went back to the airport."¹⁸⁹ He was aware that Mr. Evrard had flown from Paris to Guangzhou especially for the meeting. He agreed that he felt that L'Oréal were treating the matter "very seriously".¹⁹⁰ Of the meeting, he testified:¹⁹¹

"The meeting was divided into two parts. At the first part, there was contact between Chief She and them, and they first had talks between them. Afterwards we had meetings together."

149. Mr. Luo agreed that L'Oréal had put forward a "proposal of taking over Magic at an acquisition price of not less than HK \$5.5 per share".¹⁹²

150. In his testimony, Mr. Luo confirmed the assertion made in his witness statement that "...both parties only briefly touched upon the due diligence framework at the meeting."¹⁹³ Of that, he went on to say:¹⁹⁴

"...we briefly touched on the due diligence, so that we can continue discussions further, and then we would wait for them to discuss it on the level of board of directors."

151. Notwithstanding his acknowledgement that his responsibilities as a director of Magic involved its supply chain, production, research and development, logistics and procurement,

¹⁸⁸ Witness Evidence Bundle, page 880, paragraph 28.

¹⁸⁹ Transcript; Day 7, page 36.

¹⁹⁰ Transcript; Day 7, page 37.

¹⁹¹ Transcript; Day 7, page 42.

¹⁹² Witness Evidence Bundle, page 881, paragraph 32. Transcript; Day 7, page 43.

¹⁹³ Witness Evidence Bundle; page 881, paragraph 34. Transcript; Day 7, page 44.

¹⁹⁴ Transcript; Day 7, page 47.

Mr. Luo denied that those discussions involved his duties as a director of Magic.¹⁹⁵ At that time, he was not involved in that role. He was representing himself, not other founders or shareholders. He did not represent the company.¹⁹⁶

152. Mr. Luo agreed that at the conclusion of the meeting on 27 April 2013:¹⁹⁷

“I felt there was progress, but at that time I did not give much thinking about this.”

Non-disclosure agreement

153. In his witness statement, Mr. Luo said that:¹⁹⁸

“On around 9 May 2013, Stephen informed me that he wished to consult with Magic’s important institutional investors regarding L’Oréal’s proposed takeover, and invited me to meet with the representative of one of the institutional investors Atlantis...”

154. However, Mr. Luo said that he did not attend that meeting. Moreover, he did not agree with a suggestion put to him by Mr. Scott, that the fact that it was proposed that two executive directors of Magic meet with an institutional investor meant that “negotiations between L’Oréal and Magic had reached a significant phase”.¹⁹⁹ He said that Mr. Stephen Tang had told him subsequently that a non-disclosure agreement had been signed. He agreed that indicated the necessity to maintain the confidentiality of the discussions between L’Oréal and Magic.²⁰⁰

Preparations for the meeting of 27 April 2013: BNP Paribas/Linklaters/L’Oréal

155. Email exchanges between BNP Paribas/Linklaters/L’Oréal, prior to the meeting of 27 April 2017, evidence the preparations that were underway for that meeting:

(i) 22 April 2013,²⁰¹ from J-C Vallat to Muriel Petit of BNP Paribas, noted that the meeting was to be held on “**Saturday 27 April evening** (no longer Sunday 28 April)”;

(ii) 25 April 2013,²⁰² from Muriel Petit to Mr. Evrard and others at L’Oréal stated “...please find attached possible key messages of Saturday’s sessions with Mr. S and co-founders”. The text went on to describe two separate meetings: “Private

¹⁹⁵ Transcript; Day 7, page 44.

¹⁹⁶ Transcript; Day 7, pages 42-4.

¹⁹⁷ Transcript; Day 7, page 47.

¹⁹⁸ Witness Evidence Bundle; page 882, paragraph 35.

¹⁹⁹ Transcript; Day 7, page 48.

²⁰⁰ Transcript; Day 7, page 49.

²⁰¹ Exhibit Bundle, page 639.

²⁰² Exhibit Bundle, pages 653-5.

meeting between Alexis/Zhenzhen and Mr. S.” and “B) all parties meeting.” Of the second meeting, it was stated, *inter alia*:

“Recap our views on possible next steps presented in the video conference:

+ formalize our agreement in letters among us approach by co-founders of their core shareholders (maximum two days before the letter to the board is sent)

+...

2) Ask them when they plan to talk to their shareholders:

+ Shall they approach them on tuesday 30 April and ask them a feedback for friday 3 May?

+ Ask with whom they intend to talk, their price tactics and other key messages...”.

(iii) 26 April 2013,²⁰³ from Jaimie Cheung to Anne-Helene and Francis Deroy of L’Oréal addressed the subject, “Martha: draft documents for weekend meeting” and attached multiple documents including “Letter to Founders”. The draft letters to Mr. Tang and Mr. Luo stated, *inter alia*:²⁰⁴

Possible offer for all of the issued shares of Martha (“the Company”)

We refer to our recent discussions in relation to a possible offer by us for all of the issued shares (the “**Shares**”) and options over shares (“**Options**”) of the Company (the “**Acquisition**”).

We are writing to confirm the principal terms of the Acquisition for which we would like to confirm your support and ask that an exclusivity period be granted for us for the duration of the due diligence process, as discussed further below.

Structure of the possible Acquisition

The Acquisition, if made, would be by way of a scheme of arrangement under the Companies law of the Cayman Islands (the “**Scheme**”), but we would reserve the right to elect to implement the Acquisition by way of a general offer within the meaning of the Code on Takeovers and Mergers (the “**Code**”). The consideration for Shares subject to the Acquisition would be wholly in cash, and financed entirely out of our internal resources. We would also comply with the Code requirements to make an appropriate offer or proposal (the “**Option Offer**”) to holders of Options.

Pre-condition to the Acquisition

....

Standstill and exclusivity

We intend to seek permission from the Company to commence financial, business, manufacturing, legal, employment and tax due diligence on the Company and other members of its group as soon as possible and are ready to commit significant

²⁰³ Exhibit Bundle, pages 656-726.

²⁰⁴ Exhibit Bundle, pages 695-8.

internal and external resources in order to complete this process in a timely manner. We anticipate that due diligence would complete within three weeks from the date of the formal commencement of the due diligence process. A summary of the matters which will be subject to due diligence is set out in *Schedule 1*. [Italics added.]

In view of the significant commitment of resources by us to complete due diligence, we ask that you, for a period starting from the date of this letter and ending 30 days after the formal commencement of the due diligence process (the “**Exclusivity Period**”):

- not directly or indirectly to explore... any proposals... with a view to a transaction taking place which would preclude or materially restrict or delay the Acquisition;
- notify us immediately in writing of any approach that is made to you or the Company with a view to entering into or continuing negotiations of the type described in the paragraph above;
- Grant us an exclusive right to negotiate the Acquisition; and
- not make an offer for, not take any step which might give rise to any obligation under the Code to make any offer for, all or any part of the share capital of the Company,

provided that this paragraph shall not apply to any action or omission which is required by you by virtue of your fiduciary duties to the Company.

Shareholder support

In addition to your commitment to support our Acquisition, we expect to initiate discussions with certain key shareholders of the Company shortly thereafter to ascertain their support for the acquisition. Irrevocable undertakings from shareholders, including you, representing at least 55 per cent of the issued share capital of the Company to vote in favour of the scheme and sell their shares pursuant to the Scheme should be obtained before the Acquisition is announced.

Confidentiality

We trust that you understand the importance of maintaining the confidentiality of the contents and existence of this letter, and kindly remind you to observe the provisions of the relevant non-disclosure agreement entered between each of yourselves and L’Oréal S.A. on 21 February 2013.

General

We trust that this letter reflects the discussions and understanding between us. Please note that this letter does not constitute an offer or impose on us any obligation to make an offer, nor does it evidence an intention to make an offer under the Code.

The letter is written in both English and Chinese. In the case of conflict discrepancy between English and Chinese versions, the English version shall prevail.

If you agree with the terms set forth above, please sign this letter and return it to our address at the beginning of this letter.

Schedule 1, was entitled **Summary of matters subject to due diligence** and detailed 13 topics in bullet point form in half a page of text²⁰⁵;

- (iv) 26 April 2013,²⁰⁶ from Muriel Petit to Mr. Evrard and others at L'Oréal set out, a “new version of the key messages”:

“We have come to the conclusion that we have no issues providing “blind” draft to them, as soon as we are sure that they will be meeting the core shareholders very soon.

Even if the co-founders confirm tomorrow their willingness to see the core shareholders very rapidly, we still have the risk that the core shareholders are not immediately available...

Consequently, it is our best protection to provide these draft letters only when we have confirmation from the cofounders, after the meeting, when they can see the core shareholders

Another alternative could be that the co-founders could read the letters tomorrow, at the end of the sessions, in our presence without leaving them copies”.

- (v) 27 April 2013, from Ms. Muriel Petit to Alexis Perakis, Ms. Zhenzhen Gourves and Alain Evrard, stated that:²⁰⁷

“Leo and Jean-Christophe will be arriving in Guangzhou after you have started the private session with Mr. S...

They will bring with them one copy (in English and Chinese) of the letters to each of the co-founders as well as the letter to the board.

None of these letters will be left to the co-founders, before we know when they will meet with the other core shareholders.

If Mr. S has been transparent to the co-founders, the letters could be read in the full session tomorrow.”

Action subsequent to the 27 April 2013 meeting

156. Email exchanges between BNP Paribas/Linklaters/L'Oréal, subsequent to the meeting of 27 April 2013, evidence the action taken after that meeting:

- (i) 8:42 p.m. 27 April 2013, Jean-Christophe Vallat to Teresa Ma, copied to Jaimie Cheung:²⁰⁸ “Re:!! Meeting Martha: URGENT!!” Teresa, Could you please call me...”

²⁰⁵ Exhibit Bundle, page 698.

²⁰⁶ Exhibit Bundle, page 761.

²⁰⁷ Exhibit Bundle, page 727.

²⁰⁸ Exhibit Bundle, page 730.

(ii) Teresa Ma to Jean-Christophe Vallat:²⁰⁹

“JC

We have spoken. I’ve briefed Jaimie and she will send an email shortly of what you and I discussed. Thank you for the update with positive news.”

(iii) 10:13 p.m. 27 April 2013, Jaimie Cheung to JC Vallat, copied to Teresa Ma:²¹⁰

“I understand that the parties plan to approach the key shareholders (Ms. Liu and the fund) next Friday evening, after the market has closed.

The approach to the shareholder should be along the following lines:

- first warn the relevant shareholders that you are would like to share price sensitive/confidential information with them that would make them insiders and ask if they are willing to continue the conversation;
- if the shareholder agrees, you should inform them that in order to receive the information they are required to sign an NDA;
- assuming the shareholder says yes, provide them with an NDA which will contain both confidentiality and insider dealing restrictions; and
- once the NDA has been signed, you may then brief them on the transaction and ascertain whether they are supportive.”

(iv) 01:44 hours on 28 April 2013, from Jean Christophe Vallat to Teresa Ma and Jaimie Cheung:²¹¹

“Dear Jamie,

Please, note that it will be Martha’s founders who will talk to the key shareholders.”

In addressing Teresa Ma, in the context of a telephone conversation he asked her to have with “the lawyer of the founders, Mr. Huang” tomorrow (Sunday) at 3:30 p.m. he said:

“2. -send the founders’ letters to Mr. Huang as he needs to review each letter (*the letter to Stephen was read by Leo to all founders during the dinner tonight*)

...

3. Could the timing of next steps be?

*signing of the founders’ letters asap after the letters are sent to Mr. Huang

*founders to call the key shareholders on Friday afternoon (May 3), just before the weekend, with the script described by Jaimie below”

[Italics added.]

157. In an email, dated 15:00 hours on 28 April 2013, sent by Ms. Josephine Yung of Linklaters to Mr. Huang, copied to Jean-Christophe Vallat, in which the subject was described as “Project Martha-Letter to the founders”, the attachments included letters to Mr. Tang and

²⁰⁹ Exhibit Bundle, pages 729-30.

²¹⁰ Exhibit Bundle, page 729.

²¹¹ Exhibit Bundle, page 728.

Mr. Luo entitled “Possible offer for all of the issued shares of Martha (the “Company”)”.²¹²

The writer said:²¹³

“I refer to the discussions among Lara and Mr. She, Mr. Tang and Mr. Luo regarding Project Martha. Please find attached the letter to each of the founders for your review, as promised by Lara.”

158. In the ensuing emails within L’Oréal and with Linklaters, dated 28 April 2013, issues were raised about obtaining NDAs from the key shareholders. In an email Francis Deroy said, *inter alia*:²¹⁴

“Since they will be contacted by Martha co-founders and not by us I do not see how NDAs could be entered with us.”

159. In an email in reply, Mr. Evrard supported that position. However, in a further email in reply, Jaimie Cheung:²¹⁵

“As discussed between Teresa and JC yesterday, the NDA is required for the following reasons:

- the investors are being approached in their capacity as investors (rather than board members), therefore the fact that the Board letter will be delivered on Sunday night should not make any difference as they will not be bound by the Martha NDA. We would still want to ensure that the investors do not deal when the market opens on Monday, or leak any of the information that has been discussed with them;
- the fact that the investors sign the NDA will not have any direct insider dealing obligations-the NDA will in fact contain an obligation for them to comply with insider dealing restrictions;
- *the NDA will be signed with Lara, not Martha, because Martha will not know about the transaction at that point in time.*”

[Italics added.]

160. An email, dated 29 April 2013, from Muriel Petit circulated to the MLIST PARIS CIB CF PROJECT MARTHA, asserted:²¹⁶

“An agreement was found this weekend with the cofounders. It is under formalization.

The idea is to approach core shareholders (institutional investors and PE) as well as the board next weekend, with the objective to start DD (and obtaining exclusivity).”

²¹² Exhibit Bundle, pages 732-59.

²¹³ Exhibit Bundle, page 732.

²¹⁴ Exhibit Bundle, page 763.

²¹⁵ Exhibit Bundle, page 763.

²¹⁶ Exhibit Bundle, page 767.

161. In an email, dated 30 April 2013, from Leo Liu to Muriel Petit entitled “Call to Stephen”, Leo Liu said: ²¹⁷

“Stephen called me this morning. He told me that he start to schedule meeting with financial investors already. But Ms. Liu is in US now, she will be back early next week. He cannot find anyone in Greenwoods cause some of them are on holiday. He sent the email. But there is no reply yet. Baring is ok for a meeting Friday. He is checking with us if we should postpone the meeting one more week. I told him I will contact lara and let him have the feedback asap. I tell him nothing for the price or DD. I will wait for your instructions on this.”

162. If the email to Greenwoods was sent to them, as asserted by Mr. Stephen Tang, it is not in the material made available to the Tribunal. Mr. Scott confirmed that it was not in ‘Unused material’.

163. In a subsequent email, dated 3 May 2013, from Leo Liu to L’Oréal/Linklaters and BNP Paribas, entitled “RE: Call Memo with Stephen” it was asserted:²¹⁸

“Stephen just returned my call after a meeting. He appreciated that we can agree on his proposed wording. He feels comfortable to talk to the financial investors now. He already lined up the meeting with major ones, Ms. Liu of Atlantis on 14:00 next Thursday (May 9); Greenwoods on 16:00 same day. Mr. Dar Chen of Baring PE on 9:00 next Friday (May 10). He will call me after the meeting with all of them.”

164. In an email, dated 6 May 2013, from Ms. Josephine Yung of Linklaters to Mr. Huang, in which the subject was described as “Project Martha-letters to the founders”, the attachments included letters to Mr. Tang and Mr. Luo. The writer said:²¹⁹

“Please find attached letters to Mr. She, Mr. Tang and Mr. Luo, each executed by Lara.
... If you and the founders are agreeable to the letters, kindly arrange for execution by Mr. She, Mr. Tang and Mr. Luo of their respective letters...and scan and email a copy of the signed letters to us.”

The letters described as being attached to the email in respect of Mr. Tang and Mr. Luo are not in the bundles.

165. In an email, dated 8 May 2013, from Leo Liu to Ms. Muriel Petit, in which the subject was stated to be “Project Martha-3 letters to the founders and 3 NDAs”, it was stated:²²⁰

“I called Stephen just now.

²¹⁷ Exhibit Bundle, page 769.

²¹⁸ Exhibit Bundle, page 800.

²¹⁹ Exhibit Bundle, page 815.

²²⁰ Exhibit Bundle, page 848.

I re-emphasized again on the importance of the sequence of events agreed on April 27 in Guangzhou:

- 1/ signing of the letters by the founders
- 2/ transmission of the NDAs to Stephen
- 3/ contact with the investors”.

...

Here is the feedback provided by Stephen:

...

-Stephen believes it is important to meet investors tomorrow, as:
he will see the decision-makers of each investor, who are not easy to meet”.
[Italics added.]

166. An email, dated 12 May 2013, from Mr. Huang to Linklaters copied to L’Oréal, attached, *inter alia*, an executed version, of the L’Oréal letter to Mr. Tang, dated 6 May 2013, entitled **“Possible offer for all of the issued shares of Magic Holdings International Limited (the “Company”).”**

167. Apart from the removal of the code names “Martha” and “Lara” and the insertion of dates the text of the letter was identical to the draft letter addressed to Mr. Tang and Mr. Luo attached to the email, dated 26 April 2013, from Jaimie Cheung to Anne-Helene and Francis Dero of L’Oréal, save that the paragraph under the heading **“Structure of the Possible Acquisition”** now included a reference to the price, the addition being in italics:²²¹

“...provided that the financial terms of such general offer are at least as favourable as the financial terms of the Scheme. The consideration for Shares subject to the Acquisition would be not less than HK \$5.50 per Share subject to satisfactory due diligence...”

Expert evidence

Lung Hak Kau, Karl

168. Mr. Karl Lung provided the Tribunal with two statements, dated 21 March 2018 and 31 May 2019 respectively, and gave oral evidence on 25 and 26 September 2019. In his first statement, he said that he had been provided with ‘Instructions’ by the SFC and that he had been asked to provide his opinion, *inter alia*, as to whether “specific information” existed.²²² The Instructions included a ‘Chronology of Events’ addressing, *inter alia*, what it was asserted had occurred at meetings between representatives of L’Oréal and BNP Paribas on the one hand and, on the other hand, all or some of Messrs Tang, She and Luo on 5/6 March, 29 March,

²²¹ Exhibit Bundle, page 909.

²²² Expert Evidence Bundle 1; page 3, paragraph 18; and page 20 at paragraph 12 (1) and (2).

15 April and 27 April 2013.²²³ A document attached to the Instructions was the BNP Paribas Summary.²²⁴ It is readily apparent that the detail contained in the Chronology of Events in respect of the four meetings described above had been extracted from the description of those meetings in the Summary. Not all the matters asserted to have occurred in the latter document were included in the former document.

169. In his Supplemental Statement, dated 31 May 2019, Mr. Lung acknowledged that now he had been provided with the statement of Mr. Richard Witts, dated 28 February 2019, the witness statements of the 2nd to 10th Specified Persons, dated variously on and between 28 and 31 January 2019, and the transcripts of the records of interview conducted of Ms. Liu Yang of Atlantis, and Mr. Alain Evrard of L'Oréal, dated 11 July and 3 September 2014 respectively.

170. By the time that Mr. Lung gave oral testimony on 25 and 26 September 2019, the Tribunal had received all of the oral testimony of witnesses testifying to factual matters. However, Mr. Lung had been provided with only some of the transcript of those witnesses, and then only on the morning before he began his oral testimony.

5/6 March 2013 meeting

171. Of the meetings of 5/6 March 2013, in his oral testimony Mr. Lung confirmed that the opinion that he had expressed in his first statement was based on the asserted fact that L'Oréal had indicated their wish to acquire all of Magic shares and delist the company, but that Mr. She had rejected the request that he remain as a shareholder.²²⁵ He confirmed that opinion to be that, although knowledge of those facts would likely have a positive impact on the share price of Magic shares, it would not have been material.²²⁶

29 March 2013 meeting

172. Having regard to the witness statements of Messrs Tang, She and Luo and the record of interview of Mr. Evrard, Mr. Lung, stated in his Supplemental Statement that he accepted that the three founders “did not appear to have expressly agreed to sell their shares.” However, he said that now he also had regard to the assertions of Mr. She and Mr. Luo that, at the meeting on 29 March 2018, L'Oréal had expressed a valuation of Magic, which implied a share price of \$4.30 to \$4.80 per share. That represented a premium of between 35% and 51% on the

²²³ Expert Evidence Bundle 1; pages 18-22.

²²⁴ Expert Evidence Bundle 1; pages 152-9.

²²⁵ Transcript; Day 18, page 158.

²²⁶ Transcript; Day 18, page 159.

closing price of Magic shares on 28 March 2013.²²⁷ [An extract of Magic Stock Historical Data²²⁸ at **Appendix C.**] In explaining the fact that he maintained his original opinion that the information was specific information, knowledge of which by those who would likely trade in Magic shares would likely have a material effect on the share price of Magic shares, Mr. Lung explained that one difference was that now L'Oréal was prepared to acquire all of Mr. She's shares.²²⁹ Having been informed that in his testimony Mr. Leo Liu agreed that at the end of the meeting of 29 March 2013 there were "very significant differences on the expectation on the value of Magic, of the shares" and that the meeting had ended on an unhappy note, Mr. Lung testified that, nevertheless, he remained of the same opinion. He explained that \$4.30 to \$4.80 was "a huge premium to the prevailing price and they're very serious, willing to pay a very high price."²³⁰

15 April 2013 videoconference

173. Having regard to what he said had been said by Mr. Luo and Mr. Evrard in their respective records of interview, about agreement being reached about the deal proceeding by way of scheme of arrangement, in his Supplemental Statement Mr. Lung said that represented "significant progress" in the discussions between the parties about the acquisition.²³¹ In his oral evidence, Mr. Lung agreed that the evidence of Mr. Leo Liu that, at the conclusion of the meeting of 15 April 2013, Mr. Tang agreed that the scheme of arrangement approach would be adopted could be described as "meaningful progress" in the acquisition.²³² In cross-examination by Mr. Dawes, Mr. Lung agreed that, if the purpose of proceeding by way of a general offer was to delist the company, the premium over current share value would be high, just as it would be in a scheme of arrangement.²³³ Mr. Lung agreed that the significance to be attached to the agreement to proceed by way of a scheme of arrangement was that, for the first time, the founders had indicated that they were agreeable to a sale of 100% of the shares of Magic

27 April 2013 meeting

174. In his Supplemental Statement, Mr. Lung re-affirmed the opinions expressed in his first statement that a preliminary offer price made by L'Oréal at the meeting of 27 April 2013 of

²²⁷ Expert Evidence Bundle; page 833, paragraphs 12-15.

²²⁸ Expert Evidence Bundle, pages 23-5 and 851-69.

²²⁹ Transcript; Day 19, page 8.

²³⁰ Transcript; Day 19, page 13.

²³¹ Expert Evidence Bundle; page 835, paragraphs 22-5.

²³² Transcript; Day 18, page 135.

²³³ Transcript; Day 19, page 29.

not less than \$5.50 per Magic share was a “major step forward” in the acquisition discussions and would, if known to those likely to trade in Magic shares, likely have had a significant impact on the share price of Magic.²³⁴ He said that it represented “a premium of 37.5% or more than its previous close of HK \$4.0 on April 26, 2013.” Mr. Lung acknowledged that in disagreeing with that opinion, in his statement Mr. Witts had noted²³⁵ that the parties had agreed that it was necessary for the institutional investors to be consulted and that approval of L’Oréal’s request for the conduct of due diligence was a matter for the board of Magic. Of those concerns, Mr. Lung said:²³⁶

“...it appears that Mr. Witts has mixed up relative progress with the absolute progress of the negotiation. Mr. Witts had taken a narrow view (which I disagree) that only an acquisition proposal already addressed to the board of directors and indicated as agreeable to the majority shareholders can have a material impact on the share price. This overlooks how the market usually responds to positive affirmation of the value of the company, even if the acquisition negotiations are still ongoing; it also fails to consider the likelihood or prospects of other institutional investors and public shareholders agreeing to the acquisition proposal.”

175. Of the position of the institutional investors, Mr. Lung said:²³⁷

“As the offer price indicated is at a high premium to the trading price of the shares, it’s likely that institutional investors would give their consent...”

Even if the lowest possible price of \$5.50 were to be taken, the offer price was 37.5% above Magic’s closing price of HK \$4.00 on April 26, 2013, and as much as 72% above Magic’s closing price of HK \$3.20 on April 12, 2013 (i.e. two weeks before the April 27, 2013 meeting). Such premium is likely to be sufficiently attractive to the institutional investors of Magic.”

176. Of the rise in the price of trading in Magic shares following the meeting of 27 April 2013, Mr. Lung said in his first report, “the share price of Magic reached \$4.52 on May 7, 2013, and the premium from a \$5.50 offer price dropped to 21.6%.”²³⁸ Of that he said:²³⁹

“Beginning from May 7, 2013, while the knowledge of L’Oréal was likely to acquire Magic might still have a positive impact on the share price of Magic, the magnitude might not reach a material level. The indicated offer price by L’Oréal no longer represent a very significant premium...”

²³⁴ Expert Evidence Bundle; page 10, paragraphs 39 and 40. Expert Evidence Bundle; page 836, paragraph 29.

²³⁵ Expert Evidence Bundle; pages 902-3 and 909, paragraphs 16 and 29.

²³⁶ Expert Evidence Bundle; pages 836-7, paragraph 31.

²³⁷ Expert Evidence Bundle; page 837, paragraphs 34-5.

²³⁸ Expert Evidence Bundle; page 13, paragraph 57.

²³⁹ Expert Evidence Bundle; page 13, paragraph 58.

It is to be noted that the closing price of Magic shares of \$4.52 on 7 May 2013 itself represented an increase of 4.15% over the closing price on 6 May 2013 of \$4.34.

177. Of the fact that the closing price of Magic shares on 8 May 2013 was \$4.85, Mr. Lung said:²⁴⁰

“From around May 8, 2013 onward, shares of Magic traded around \$4.85 compared to the proposed price of not less than \$5.50. Between May 8, 2013 and July 26, 2013, with the exception of six trading days, the proposed minimum price of the acquisition was less than 20% above the closing price.”

178. Of that he said that “...when the premium of the offer price over the prevailing market price narrowed” knowledge of the discussions and agreement with L’Oréal “might not have a material impact on the share price of Magic.” [A Magic Stock/Index Price Chart²⁴¹ is at **Appendix D.**]

13 May 2013 letter

179. In his Supplemental Statement, Mr. Lung said that he agreed with the opinion expressed by Mr. Witts in his statement²⁴² that knowledge of the dispatch of the L’Oréal written proposal to acquire the shares of Magic, dated 13 May 2013, to the board of directors of Magic on 15 May 2013, if generally known to those who were likely to deal in Magic shares, would have “been likely to materially affect the price of Magic shares *if they were trading in the market at a sufficient discount to the tentative offer price.*” [Italics added.] Mr. Lung said:²⁴³

“L’Oréal’s offer was still conditional upon a number of matters (for instance, satisfactory due diligence). But the share price of a listed company would often react when there is a legitimate chance that such an acquisition would happen.”

Mr. Richard Witts

5/6 March 2013 meeting

180. In his written report, dated 28 February 2019, Mr. Richard Witts expressed the opinion that, if known to the market, information from the discussions between the parties on 5/6 March 2013 that L’Oréal were interested in acquiring Magic would, at most, have had a modest and fleeting impact on the price of Magic shares.²⁴⁴ Of the evidence of Mr. She, that Mr. Evrard had presented the meeting with evaluations which implied a price for Magic shares of \$4.30,

²⁴⁰ Expert Evidence Bundle; page 11, paragraph 50.

²⁴¹ Transcript; Day 1, pages 22-3 (SFC Opening).

²⁴² Expert Evidence Bundle; pages 909-10, paragraph 30.

²⁴³ Expert Evidence Bundle; page 839, paragraph 45.

²⁴⁴ Expert Evidence Bundle; page 899, paragraph 12.

Mr. Witts acknowledged that was as a premium of 41% to the then closing price of Magic shares, but went on to assert that it would have had no material effect on the price of Magic shares because “...the founders were not in the slightest bit interested in accepting such a figure.”²⁴⁵

29 March 2013 meeting

181. Of the meeting of 29 March 2013, Mr. Witts said in his report that he did not accept that it would “have been likely to materially affect the price of Magic’s shares,” explaining:²⁴⁶

“The evidence does not appear to show that the three Founders had agreed at that stage to sell their shares to L’Oréal. There has also been minimal, if any, discussion about the future of Magic and its employees should L’Oréal be successful in the acquisition. Also, not even a tentative price had been agreed for the acquisition.”

182. In his testimony, Mr. Witts said of the discussions:²⁴⁷

“... It takes two to tango, and the reaction from the founders has been very negative. Indeed, 29 March was described by several people, including Mr. Liu, I think, of BNP, as being a very unhappy meeting.”

15 April 2013: video conference

183. In his report, Mr. Witts said of the video conference of 15 April 2013 that “the evidence does not appear to show that any meaningful progress was made in the possible acquisition discussions.”²⁴⁸ Of the significance of the evidence of Mr. Leo Liu that, at the conclusion of the meeting, Mr. Stephen Tang “was convinced” of L’Oréal’s proposal that the acquisition proceed by way of a scheme of arrangement, Mr. Witts said in his evidence that he did not change his opinion that there was no meaningful progress in the video conference.²⁴⁹

“The whole thing about we are going to go by a scheme of arrangement is of course conditional on there being agreement for sale in the first place. It is all in theory. Secondly, if you are going to go by a scheme of arrangement, this is not an amazing breakthrough that I think Mr. Scott is, with respect, suggesting. I would suggest that—the vast majority of takeovers in Hong Kong are done by scheme of arrangement.”

27 April 2013 meeting

184. In his report, Mr. Witts expressed the opinion of the meeting of 27 April 2013 that:²⁵⁰

²⁴⁵ Transcript; Day 19, page 76.

²⁴⁶ Expert Evidence Bundle; page 908, paragraph 27.

²⁴⁷ Transcript; Day 19, page 80.

²⁴⁸ Expert Evidence Bundle; page 909, paragraph 28.

²⁴⁹ Transcript; Day 19, page 90.

²⁵⁰ Expert Evidence Bundle, page 909, paragraph 29.

“I do not accept that knowledge of the discussions during the meeting on 27 April 2013 would, if generally made known to the persons who are accustomed to or would be likely to deal in Magic’s shares, have been likely to materially affect the price of Magic’s shares. The three Founders have stated that the major institutional shareholders should be consulted before they would agree to sell their shares to L’Oréal. Mr. She was still negotiating his contract to remain at Magic for at least three years. An offer price of not less than \$5.50 per share had, however, been indicated and L’Oréal had requested 30 days to undertake due diligence. This was not agreed at the meeting on 27 April but would be subject to permission being granted by the Magic Board of Directors at a later date.”

185. In his testimony, Mr. Witts confirmed that opinion:²⁵¹

“...we still didn’t have the acceptance of the founders, which has been the thrust of L’Oréal’s approach from the beginning, to try and get the founders to agree to support the takeover. And at that point, the founders said-they certainly had softened, I think. I don’t see before then, 15 April, end of March, I think they totally rejected it. But at this point they did soften slightly and say if the institutions support it, then they will go along as well.”

L’Oréal’s Proposal to Magic: 13/15 May 2013

186. Mr. Witts acknowledged that in his report he had gone on to say:²⁵²

“I do accept the knowledge of the dispatch of a written proposal on 15 May 2013 by L’Oréal to acquire Magic may, if generally made known to the persons who are accustomed to or would be likely to deal in Magic shares, have been likely to materially affect the price of Magic shares if they were trading in the market at a sufficient discount to the tentative offer price. L’Oréal’s bid is now in writing for the first time and whilst conditional on satisfactory due diligence and other matters such as acceptance of the offer by the Founders and major institutional shareholders, it is now addressed to Magic’s Board of Directors.”

187. In re-examination, Mr. Witts said that he agreed with the opinion of Mr. Karl Lung that, given that the proposed acquisition price of Magic shares of \$5.50 was less than 20% above the closing price of around \$4.85 for Magic shares in the period 8 May to 26 July 2013, save for six trading days, knowledge of the information of the discussions between L’Oréal and the three founders in March and April in the period after 7 May 2013 would not have likely had a material impact on the share price of Magic.²⁵³ Mr. Witts added:²⁵⁴

²⁵¹ Transcript; Day 19, page 135.

²⁵² Expert Evidence Bundle; page 909, paragraph 30.

²⁵³ Transcript; Day 20, page 3.

²⁵⁴ Transcript; Day 20, page 4.

“The maximum difference between 4.85 and 5.50 would be borderline, but... a 10% discount to the offer price would be unlikely to result in a material movement upwards in the shares. Partly because of the uncertainty as to whether the deal will go through; and, secondly, if it is by a scheme of arrangement, the time before you get the money. And I think in this case,...it was February 2014. So you’ve got another six months to wait. So that’s another factor.”

188. In his testimony, Mr. Witts said that it was not necessary for the information to be in writing for it to be price sensitive. Then, for the first time Mr. Witts went on to assert that the information was price sensitive information only when it was discussed at the meeting of the board of directors on 24 May 2013, explaining:²⁵⁵

“The due diligence is granted, everyone is done. Institutions have already been advised with non-disclosure agreement. Things are taking a significant step forward. I think it should have been announced.”

189. However, very soon thereafter, Mr. Witts resiled from that new position, re-affirming his opinion that the letter from L’Oréal to the board of directors of Magic, dated 13 May 2013 and received on 15 May 2013 by Magic, was price sensitive information.²⁵⁶

190. In answer to a question from the Chairman, as to whether or not what had been agreed at the meeting of 27 April 2013 and what was identified as the steps to be taken going forward, constituted price sensitive information, Mr. Witts said:²⁵⁷

“The major sticking point, as I said, is that whilst there was progress, I say, I repeat, I think for the first time in all these negotiations there was some progress. The founders still had not agreed to sell their shares. Even the share price, and there is dispute in the testimony of the parties, Mr. She said it was actually Mr. Tang said, “We need to price, why not 5.50?” But then there are some other indications that it was Mr. Evrard who gave this price. But there is a dispute of who mentioned the 5.50 first. But the founders, as I can read, stated they could not confirm the acceptance of this offer price before consulting with the major institutional investors.”

191. Mr. Witts said that he was not sure when it was that the three institutional investors had agreed to sell those shares, “but it wasn’t at that time.”²⁵⁸

²⁵⁵ Transcript; Day 19, page 136.

²⁵⁶ Transcript; Day 19, page 137.

²⁵⁷ Transcript; Day 19, pages 142-3.

²⁵⁸ Transcript; Day 19, page 144.

Discussion

Specific information

192. There is no dispute between Mr. Witts and Mr. Lung that L'Oréal's proposal to the board of directors of Magic, set out in the letter dated 13 May and received on 15 May 2013, was specific information. Similarly, both of them agreed that, because of the relatively small difference in the tentative offer price and the price at which Magic shares were trading in the market on 15 May 2013, knowledge at that date and thereafter of the information contained in the proposed offer, if generally known to those who traded in or were likely to trade in Magic shares, would be unlikely to materially impact the price of Magic shares in the market.

193. That evidence begs the question of whether or not information of the results of the discussions at the meeting between the three founders and L'Oréal/BNP Paribas on 27 April 2013, was specific information. Mr. Lung testified that it was and Mr. Witts that it was not specific information.

194. At an early stage in his written submissions on behalf of SPs 2-5 Mr. Dawes submitted that "the discussions during the March and April meetings did not qualify as inside information" (paragraph 4.1), a submission developed in more detail in paragraphs 132-158. Having reasserted that primary submission at paragraph 205.1, on the basis that in the March and April meetings "the chance of the deal materialising was either low or wholly unclear", nevertheless at paragraph 205.2 Mr. Dawes conceded:

"Inside information could only have emerged on 27 April 2013 at the earliest, as that was the first time (1) L'Oréal proposed the preliminary offer price of no less than HK \$5.50 per share, (2) L'Oréal sought to address the founder's concerns regarding the development of Magic's brand and the retention of Magic's employees, and (3) the founders first indicated that they would seriously consider L'Oréal's offer."
[Italics added.]

195. Mr. Dawes was correct to make the concession. As noted earlier, in his witness statement Mr. She said that on 27 April 2013, in the initial individual meeting he had with Mr. Evrard, he was told by Mr. Evrard that he had "secured an indicative offer price of no less than HK \$5.5 per share from L'Oréal's Board of Directors." With respect, the concerns Mr. Witts expressed, in explaining his opinion that price sensitive information did not come into existence at that meeting, namely that the evidence of the provenance of the offer price was "in dispute" were nothing to the point. What was significant was that L'Oréal and the three founders had agreed that the offer price of not less than \$5.5 per share was to be the basis of the request by

L'Oréal to the board of directors that L'Oréal be permitted to conduct due diligence. In his testimony, Mr. She said, in the context of whether or not inside information existed, "...after 27 April, yes, there was-indeed may have a deal but during that process, negotiations were underway."²⁵⁹ As Mr. Witts conceded realistically in testimony, it was not necessary for the information to be rendered into writing to make it specific information. What was required was that there be "substantial commercial reality to such negotiations which goes beyond mere exploratory testing of the waters and which is at a more concrete stage where the parties intend to negotiate with a realistic view to achieving an identifiable goal."²⁶⁰

196. The offer price articulated on 27 April 2013 of not less than \$5.50 per share represented a premium on the closing price of 26 April 2013 of \$4 per share of 37.5%. Secondly, clearly the three founders had responded affirmatively to the request of L'Oréal that they support the request that L'Oréal indicated it would make to the board of directors to be permitted to conduct due diligence. Significantly, Mr. Evrard said, "we discussed that the due diligence for us was important". Of its importance, he said "due diligence was a key step for us, obviously because... if the due diligence had not given satisfactory results, we would have walked away." That much was readily apparent from the draft of the letter from L'Oréal to Mr. Stephen Tang that was read at the dinner at the meeting on 27 April 2013, in which L'Oréal said:

"We intend to seek permission from the Company to commence financial, business, manufacturing, legal, employment and tax due diligence on the Company and other members of its group as soon as possible and *are ready to commit significant internal and external resources in order to complete this process in a timely manner*. We anticipate the due diligence would complete within three weeks from the date of the formal commencement of the due diligence process. A summary of the matter which will be subject to due diligence is set out in Schedule 1. *In view of the significant commitment of resources by us to complete due diligence...*"

[Italics added.]

197. The context in which those proposals were advanced by L'Oréal was the fact that Mr. Evrard had travelled from France to Guangzhou for the purpose of attending the meeting that day before returning to France. L'Oréal had engaged BNP Paribas to attend all of the four meetings between the parties in March and April 2013. Linklaters had been engaged as lawyers to L'Oréal. Clearly, by 27 April 2013 not only had L'Oréal incurred substantial costs in

²⁵⁹ Transcript; Day 10, page 4.

²⁶⁰ *Report of the Insider Dealing Tribunal-Firststone International Holdings Limited* -8 July 2004, at pages 60-1.

negotiating with the three founders but also on 27 April 2013 it made it clear that it was prepared to “commit significant external and internal resources” to complete due diligence.

198. For their part, the three founders had indicated that they would lend their support to the proposal, not only in respect of due diligence but also in making contact with the institutional investors. As is readily apparent, Mr. Stephen Tang set about making arrangements for the latter meetings immediately after the meeting on 27 April 2013. Mr. She, together with Mr. Stephen Tang, attended the meeting with Ms. Liu Yang of Atlantis on 9 May 2013. Clearly, on 27 April 2013 there was a “commercial reality” to the negotiations which had gone beyond “testing the waters”.

199. Obviously, there remained matters to be negotiated between the parties. Given that the offer price was couched as being “not less than \$5.50” per share, clearly it was intended that the price be a price ‘floor’, but it implied the possibility existed of further negotiations on price. Clearly, the parties understood that it was necessary to confirm that the institutional investors were supportive of ongoing negotiations for the acquisition by L’Oréal of all Magic shares, including their shares. As was to be expected, they were not only supportive of that process but also active in articulating proposals as to the stance to be taken in negotiations. The final price per Magic share was \$6.30, rather than the price of not less than \$5.50 identified at the meeting of 27 April 2013. That revised offer price was made by L’Oréal to the board of directors of Magic by letter dated 31 July 2013.²⁶¹ Nevertheless, we are satisfied that specific information existed at the conclusion of the meeting on 27 April 2013.

Not generally known

200. There is no issue that the information of the discussions between the parties on 27 April 2013 was not generally known to those who were accustomed or would be likely to deal in Magic shares.

Materially affect the price

201. We have no hesitation in accepting the evidence of Mr. Lung that, if the information of the discussions between the parties on 27 April 2013, which we have found to be specific information, was generally known to those who were accustomed to or would be likely to deal in Magic shares, it would have “significantly affected the share price of Magic.” In his opinion, the share price of Magic “was likely to react favourably to this information and move close to

²⁶¹ Exhibit Bundle, pages 2691-2.

the offer price.” As Mr. Lung noted, the tentative offer price of not less than \$5.50 per share was at a premium of 37.5% to the closing price of Magic shares on 26 April 2013.²⁶² We are satisfied that it would be likely to materially affect the price of Magic shares. We accept Mr. Lung’s evidence that knowledge of the information would have had that effect until, first of all, at the close of trading on 7 May 2013. However, it is to be noted that, although the closing price at which Magic shares traded in subsequent days was higher than the closing price of \$4.52 on 7 May, there were other days when the closing price was below that price. For example, the closing price on 13 May and 7 June was \$4.46 and on 3 and 6 June 2013 was \$4.50. Knowledge of the specific information remained generally not known to those who were accustomed to or would be likely to deal in Magic shares and on those dates would likely to materially affect the price of Magic shares. No announcement was made by Magic of any proposals to acquire Magic shares until 2 August 2013. As noted earlier, in the context of L’Oréal’s proposal letter, Mr. Lung agreed with the opinion expressed by Mr. Witts that knowledge of that event would have been likely to materially affect the price of Magic shares “...if they were trading in the market at a sufficient discount to the tentative offer price.”

Conclusion

202. In the result, we are satisfied that inside information in relation to Magic and its shares came into existence as a result of the discussions and agreements between the parties on 27 April 2013.

The existence of specific information prior to 27 April 2013

203. We accept the evidence of Mr. Leo Liu that the meeting of 29 March 2013 ended on an “unhappy” note. That evidence resonates with the evidence of Mr. Evrard that it was his assessment that, at the conclusion of that meeting, there was a possibility of the proposal proceeding, but that he was unable to say that it was a “realistic” prospect. That assessment accords with his description of the fact that the video conference took place on 15 April 2013, albeit with only Mr. Stephen Tang of the three founders participating, was a “good surprise”. On the other hand, Mr. Evrard described the ‘message’ that he had received in the video conference from Mr. Stephen Tang as being simply that “we are open to keep on talking and we should have another meeting to better understand the details of your proposal”. It was the tenor of that response that Mr. Evrard said led to the meeting “at the end of April.” In rejecting the suggestion that agreement had been reached at the video conference on 15 April 2013 that

²⁶² Expert Evidence Bundle; page 10, paragraph 40.

the acquisition proceed by way of a scheme of arrangement, Mr. Evrard said, “No, because I had to fly to China two weeks later precisely to finalise the discussion with the shareholders.”

204. We are not satisfied that specific information in relation to Magic and its shares came into existence as a result of the meetings and discussions between the parties on 29 March and 15 April 2013. Accordingly, with respect, we do not accept Mr. Lung’s opinion to that effect.

CHAPTER 4

ATTRIBUTION OF INSIDE INFORMATION

Did the inside information come to the knowledge of Magic?

205. As noted earlier, Section 307B provides that:

“(1) A listed corporation must, as soon as reasonably practicable after any information has come to its knowledge, disclose the information to the public.

(2) For the purposes of subsection (1), inside information has come to the knowledge of the listed corporation if-

(a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and

(b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.”

206. There is no dispute that Mr. Stephen Tang, Mr. She and Mr. Luo, as executive directors, were officers of Magic at all material times. We have found, that as participants in the discussions and agreements reached with L’Oréal on 27 April 2013, inside information came to their knowledge. At issue, is whether or not that occurred “in the course of performing functions as an officer” of Magic.

207. Section 1 of Schedule 1 of the Ordinance provides that:

“**function** includes power and duty; and

“**performance**, in relation to a function, includes discharge and exercise;”

The SFC’s case

208. It is the SFC’s case that inside information of L’Oréal’s proposed acquisition of Magic’s shares that had come to the knowledge of Mr. Stephen Tang, Mr. She and Mr. Luo had been acquired in the course of them performing functions as an officer of Magic and, being information that a reasonable person acting as an officer of Magic would consider to be inside information in relation to Magic, was attributable to Magic. In so submitting, Mr. Scott acknowledged the evidence of the three founders and Mr. Evrard that the former had been approached by L’Oréal in their personal capacity and that the ensuing negotiations had been conducted on that basis, some support for which was to be found in contemporaneous emails.

Mr. Scott submitted that the three founders conducted themselves in a dual capacity, namely not only as shareholders but also as officers of Magic. He posed the following rhetorical questions: were the founders of “in full or in part performing functions as an officer?”; Were they “doing things that directors are generally accustomed to do on behalf of Magic?”.

209. In addressing those questions, Mr. Scott submitted that the evidence of the negotiations indicated that the subject matter concerned all the shareholders, not only the founders. First, L’Oréal’s proposal was to acquire all Magic shares, to do so by a scheme of arrangement, and to take over operating its business. Secondly, that required a valuation of Magic and thereby its shares. Thirdly, the future development of Magic was addressed. Fourthly, the negotiations concerned the retention in employment not only of Mr. She but also of many other members of staff. Fifthly, L’Oréal requested to be permitted to perform due diligence on Magic and its subsidiaries. Sixthly, Mr. Stephen Tang agreed to, and did, approach Magic’s institutional investors and, having secured their acceptance of non-disclosure agreements, agreed to inform them of L’Oréal’s proposal to acquire Magic. That role of ‘investor relations’ was one of his acknowledged duties as chairman of Magic. He was acting as an officer of Magic.

210. Finally, Mr. Scott observed that no issue had been taken on behalf of the Specified Persons in respect of the requirement of section 307B (2) (b) of the Ordinance.

Mr. Chris Cheng

211. In addition, Mr. Scott submitted that inside information regarding L’Oréal’s proposed acquisition of Magic had or ought reasonably to have come to Mr. Chris Cheng’s knowledge in the course of his performing functions as an officer of Magic.

212. The Tribunal was invited to disbelieve his evidence that he had not learned anything at all of the discussions between Mr. Tang, Mr. She and Mr. Luo with L’Oréal until he received L’Oréal’s proposal letter on 15 May 2013. First, although he travelled on the roadshow with Mr. Stephen Tang, his evidence that he had not heard the enquiry of Mr. Stephen Tang at lunch by a US fund manager if L’Oréal was going to acquire Magic or the reference by Mr. Stephen Tang to the same enquiry having been made of the regional manager of Magic was not credible. They travelled together, stayed in the same hotel and had eaten meals and met investors together. Secondly, the email, dated 18 April 2013, from CSV Capital Partners, to Mr. Chris Cheng “We heard some information that L’ORÉAL may be would acquire Magic Holdings,

was that true?”²⁶³ , Mr. Stephen Tang’s telephone response to Mr. Chris Cheng and the subsequent emails²⁶⁴ begged many obvious questions. In the context that Magic’s share price had risen sharply on 15 and 16 April 2013, why was Mr. Leo Liu of BNP Paribas providing Mr. Stephen Tang with an explanation drafted by “our lawyer” to be provided by Magic in the face of any other such enquiries? Why was there a reference in that email to “Lara”? Why were Mr. She and Mr. Luo copied in Mr. Leo Liu’s email?

213. Mr. Scott submitted that Mr. Chris Cheng’s evidence that he had not asked Mr. Stephen Tang any of those questions was not credible, unless he was privy to the L’Oréal proposal and knew of the March and April 2013 meetings. Alternatively, it was submitted that, acting reasonably as company secretary of Magic, Mr. Chris Cheng ought to have made those enquiries, so that the inside information ought reasonably to have come to his knowledge.

The Specified Persons’ case

214. The case for the Specified Persons on this issue was articulated primarily by Mr. Li, on behalf of Magic, and by Mr. Dawes, on behalf of the 2nd to 5th Specified Persons.

215. For the 2nd to 5th Specified Persons, Mr. Dawes placed reliance on the testimony of Mr. Stephen Tang, Mr. She and Mr. Luo, supported by Mr. Evrard’s testimony, that they had negotiated the sale of their own shares and the related issue of voting in favour of the proposed scheme of arrangement at a general assembly in their personal capacity, not as officers of Magic. Mr. She’s commitment to continue employment with the business after the acquisition was the exercise of his personal rights. They were entitled to conduct themselves in that manner in their personal affairs. In doing so, they were entitled to participate in discussions about the valuation of Magic, the offer price per share, the future development of the company and the retention of the staff of Magic.

Mr. Chris Cheng

216. Of Mr. Scott’s invitation to the Tribunal to reject Mr. Chris Cheng’s evidence that he did not come to learn anything at all about the L’Oréal proposal to acquire Magic until 15 May 2013, Mr. Dawes submitted that it was inherently improbable that the founders would tell Chris Cheng about the March and April meetings. What motive would they have for doing so? There was nothing to be gained by doing so. In any event, information about the fact of an approach

²⁶³ Exhibit Bundle, page 635.

²⁶⁴ Exhibit Bundle, Page 2377.

by L'Oréal to Magic, by itself, was not inside information. Further, he received confirmation from Mr. Stephen Tang that the enquiry in the CSV Capital Partners' email as to whether L'Oréal "maybe would acquire Magic Holdings" was merely "rumours". Mr. Dawes submitted that there was no "legal or regulatory requirement" for him to question the chairman of Magic further.²⁶⁵

217. For Magic, Mr. Li submitted that, in considering the evidence relied upon by the SFC to support their contention that knowledge of the inside information was attributable to Magic, the conduct was to be tested against a "litmus test", namely: could the discussions have been conducted by someone other than an officer of Magic, for example a shareholder *simpliciter* or an analyst? If so, then it cannot be said that information from those discussions must have come to the founders in the course of performing functions as officers. Further, Mr. Li submitted that the mere fact that the founders were engaged in discussions concerning the affairs of Magic did not answer in the affirmative the question of whether or not they acquired that knowledge in the course of performing functions as an officer of Magic.

218. Of the issue of whether or not Mr. Stephen Tang was performing functions as an officer of Magic in approaching the institutional investors in early May 2013, Mr. Li submitted that, since the conduct occurred "*after*" the meeting of 27 April 2013, it could not be said that the inside information that came to his knowledge in the meeting had been acquired "*in the course of performing functions as an officer*" of Magic.

219. In any event, the Tribunal was invited to note that Mr. Stephen Tang had testified that his role was that of a mere "messenger" or "postman" for L'Oréal, passing on the NDAs to the institutional investors. That evidence was consistent with his account in his record of interview and his witness statement. He repeatedly denied that he had done so in his capacity as an officer of Magic. Mr. Li submitted that "...the entire series of emails between the BNP, L'Oréal Linklaters in late April and early May 2013 makes clear that it was the L'Oréal side asking Tang as shareholder to approach the co-investors. There was no suggestion that Tang was to do so as part of his role in investor relations as executive director of Magic, or as part of any other of his functions as officer of Magic." Finally, Mr. Li invited the Tribunal to place no weight on the email from Mr. Stephen Tang to Ms. Liu of Atlantis, dated 9 May 2013, from his email address at Magic. The use of Magic's email address was irrelevant. It was

²⁶⁵ Transcript; Day 22, page 161.

commonplace persons to use the company email for personal purposes. It was a single email. The text “should not be picked apart with a fine tooth-comb.”

Discussion

Mr. Chris Cheng

220. The events upon which Mr. Scott relied as the basis to invite the Tribunal to reject Mr. Chris Cheng’s evidence that he had no knowledge of the L’Oréal’s proposal to acquire Magic occurred in the overall period 10 to 19 April 2013. They all pre-date the meeting between the parties on 27 April 2013. The latter is the date on which we have found inside information to have come into existence for the first time. Mr. Chris Cheng was not present at that meeting. There is no evidence at all that, prior to receiving L’Oréal’s proposal letter on 15 May 2013, Mr. Chris Cheng was aware of that meeting or what was discussed and agreed.

221. Also, there is no evidential basis to reject Mr. Chris Cheng’s testimony that he was not present during the several days of the roadshow on the occasions at which the two matters referred to in Mr. Leo Liu’s email of 17 April 2013 about the acquisition of Magic by L’Oréal were raised with Mr. Stephen Tang. Clearly, those matters could have been raised and dealt with in a matter of seconds. Further, there is some force in the suggestion that it would have been inherently improbable that, without any obvious benefit to them, Mr. Stephen Tang, Mr. She and Mr. Luo would have informed Mr. Chris Cheng of the negotiations with L’Oréal.

222. On the other hand, whilst it is perhaps understandable that Mr. Chris Cheng would have accepted Mr. Stephen Tang’s categorisation of the CSV Capital Partners enquiry in their email, dated 18 April 2013, as the usual “rumours”, it is surprising he testified that he was “not curious” and did not ask Mr. Stephen Tang why Mr. Leo Liu of BNP Paribas was involved in providing a draft of an explanation drafted by “our lawyer” for future use by Magic. Similarly, it is surprising that Mr. Chris Cheng should have testified that he did not pay attention to nor was he curious about the reference in the draft explanation to “Lara”. Nevertheless, we are satisfied that, having received the answer from the chairman of the company that the CSV & Partners enquiry was merely based on “rumours”, there was no duty on Mr. Chris Cheng to pursue the matter with further questions.

223. In the result, we are satisfied that the inside information that came into existence at the meeting on 27 April 2013 did not come to the knowledge of Mr. Chris Cheng or ought

reasonably to have come to his knowledge until 15 May 2013 when he became aware of the L'Oreal's proposal, which reflected the agreements reached at that meeting.

Mr. Tang, Mr. She and Mr. Luo

224. We do not accept that in participating in discussions on 27 April 2013 with L'Oréal/BNP Paribas which involved L'Oréal's proposal to acquire all of the shares of Magic, in particular to do so by way of a scheme of arrangement, thereby impacting on all the other shareholders and Magic itself, that the three founder shareholders were each performing functions as an officer of Magic. We accept that they were acting in their personal interests as shareholders of Magic and were entitled to do so. Similarly, we do not accept generally and without more Mr. Scott's all-embracing submission that in discussing other topics, which impacted on the interests of other shareholders or Magic itself, the three founder shareholders were each performing functions as an officer of Magic. Specifically, we do not accept that they were conducting themselves in that way merely by discussing: the future plans for Magic; the retention in employment of members of staff of Magic, including that of Mr. She; and supporting the conduct of due diligence by L'Oréal on Magic and its subsidiary companies. Again, we accept that they were acting in their personal interests not only as shareholders of Magic but also founders and persons with long-term connections with its employees and their future and that of Magic itself.

225. Of those present at the discussions held between three founders of L'Oréal/BNP Paribas on 27 April 2013, the Tribunal has received oral evidence only from the three founders and from Mr. Evrard and Mr. Leo Liu of L'Oréal and BNP Paribas respectively. The Tribunal received no oral evidence or records of interview/witness statements from Mr. Jean-Christophe Vallat or Ms. Zhenzhen Lan, both of whom were present at the meeting.

The meeting of 27 April 2013: emails: before and after the meeting

226. On the other hand, the Tribunal has received copies of emails, dated apparently immediately and soon after the meeting between the parties, of which the former was an author. In the absence of evidence that tends to suggest the unreliability of contemporaneous assertions of the occurrence of factual events at which the author was present, we approach that evidence on the basis that it is *prima facie* accurate and reliable.

227. Of significance, is the fact that Jean-Christophe Vallat was in email and telephone contact with Linklaters from the mid-evening of 27 April to the early morning of 28 April 2013.

It began with an urgent request, at 8:42 p.m., that contact be made with him by Teresa Ma, a partner at Linklaters. An email from Ms. Teresa Ma to Jean-Christophe Vallat acknowledged that they had spoken to each other, thanked him for the “positive news” and said that she had briefed Jaimie Cheung, her associate, and advised him to expect an email shortly. Clearly, that was a reference to the successful discussions between the parties earlier that day. An email, sent at 10:13 on 27 April 2013, from Jaimie Cheung to Jean Christophe Vallat addressed the subject of a plan to approach “key shareholders”, identifying Ms. Liu by name, “next Friday evening”. By an email in response, at 01:44 on 28 April 2013, Jean-Christophe Vallat advised Jaimie Cheung that it was Magic’s founder shareholders who would “talk to the key shareholders.” Having requested Ms. Teresa Ma to send “the founders’ letters” to Mr. Huang to review, it was asserted “the letter to Stephen was read by Leo to all founders during the dinner tonight.”²⁶⁶

228. In the context of the exchange of emails between BNP Paribas and L’Oréal immediately prior to the meeting of 27 April 2013, it is clear that the reference to “the letter to Stephen” being read out to all founders during the dinner was a reference to a copy of a draft letter from L’Oréal to Mr. Stephen Tang. A copy of a draft letter from L’Oréal to each of the founders had been provided to Mr. Jean-Christophe Vallat and Mr. Leo Liu to bring with them to the meeting in Guangzhou. That much was asserted in terms in an email dated 27 April 2013, from Ms. Muriel Petit to Mr. Evrard and his L’Oréal colleagues who were to attend the meeting. The issue of disclosing to the founders the contents of the draft letter was the subject of discussion in earlier emails. The ultimate position taken by L’Oréal was that the draft letter might be provided or read to them: “as soon as we are sure that they will be meeting the core shareholders very soon”²⁶⁷; “none of these letters will be left to the co-founders, before we know when they will meet with the other core shareholders”²⁶⁸; and “If Mr. S has been transparent to the co-founders, the letters could be read in the full session tomorrow.”²⁶⁹

229. Clearly disclosure of the contents of the draft letter to Mr. Stephen Tang to the co-founders was contingent on their agreement to meet the institutional investors. Although none of the witnesses was asked to deal with the two issues in the oral testimony, we accept the accuracy of the statement by Jean-Christophe Vallat that the draft letter from L’Oréal to Mr.

²⁶⁶ Exhibit Bundle, page 761.

²⁶⁷ Exhibit Bundle, page 761.

²⁶⁸ Exhibit Bundle, page 727.

²⁶⁹ Exhibit Bundle, page 727.

Stephen Tang was read to the founders at the dinner on 27 April 2013. In all circumstances, there is a compelling inference, and we so find, that prior to the letter being read the three founders had confirmed to L'Oréal at the meeting that they would meet the institutional investors very soon after the meeting to inform them of the L'Oréal's proposal.

230. It is to be noted that the emails, upon which Mr. Li relies as providing support for his submission that L'Oréal envisaged that the approach to the institutional investors by Mr. Tang and the other founders would be made in their capacity as shareholders only, are all dated after the 27 April 2013 meeting. Those emails were sent between BNP Paribas, L'Oréal and Linklaters. None of them were sent between BNP Paribas/L'Oréal and Mr. Stephen Tang, Mr. She or Mr. Luo. On the other hand, in some emails Mr. Leo Liu reported to BNP Paribas/L'Oréal conversations he had with Mr. Stephen Tang. Other emails sent to Mr. Leo Liu by BNP Paribas provided him with a script to be used in those conversations.

231. In response to Jaimie Cheung's email sent at 10:13 on 27 April 2013, in which she had said without particularisation that she understood "the parties plan to approach the key shareholders", Mr. Jean-Christophe Vallat replied that it was the founder shareholders who would play that role.²⁷⁰ That statement was no more than a re-affirmation of the plan articulated in emails prior to 27 April 2013.²⁷¹ However, it was silent as to the status of the founders in so acting. In an email from Jaimie Cheung to Mr. Evrard, dated 28 April 2013, it was asserted that Magic "...will not know about the transaction" at the time that the key investors were asked to sign NDAs and provided with information about the proposal. She explained that in those circumstances the NDAs would be signed with L'Oréal not Magic. Probably, the inference to be drawn from that unparticularised assertion is that Linklaters expected that the founder shareholders to act in their capacity as shareholders only, not as officers of Magic. However, it is to be noted that was a cryptic assertion made by a lawyer to her client and only after the conclusion of the meeting on 27 April 2013.

232. Mr. Leo Liu reported to Ms. Muriel Petit by an email, dated 30 April 2013, that Mr. Stephen Tang had told him that he had already begun to schedule meetings with the institutional investors.²⁷² On that day a suggested script for the anticipated conversation between Mr. Stephen Tang and the institutional investors was circulated in emails, under the rubric "Call to

²⁷⁰ Exhibit Bundle, pages 728-9.

²⁷¹ Exhibit Bundle, pages 653-5.

²⁷² Exhibit Bundle, page 769.

Stephen”, between BNP Paribas and L’Oréal. In an email, dated 1 May 2013, Ms. Muriel Petit provided the script to Mr. Leo Liu, which called for Mr. Stephen Tang and Mr. She to explain to the institutional investors various details of the L’Oréal proposal:²⁷³

- “a) there is a possible offer
- b) the offer price is the result of a long discussion process
- c) the founders are supportive of the offer
- d) it is the final price from Lara’s board; there is no room for price increase
- e) Lara’s request is exclusivity to conduct DD for 30 days
- f) Lara is committed to acting quickly”.

233. In an email, dated 2 May 2013, Mr. Leo Liu reported to Ms. Muriel Petit and others a conversation he had with Mr. Stephen Tang, noting “Stephen has no objections for the information we asked them to deliver to the financial investors.”²⁷⁴ In an email from Jean-Christophe Vallat to various persons that L’Oréal, dated 7 May 2013, another suggested script was attached, it being noted that was done “in view of Stephen and Mr. S contacting the co-investors.”²⁷⁵

234. There is nothing in the evidence before the Tribunal that suggests that the nice distinction in the capacity in which they were to act in contacting the institutional shareholders was drawn to the attention of the three founders.

The steps taken by Mr. Stephen Tang to inform the institutional investors of L’Oréal’s proposal

235. It is apparent that Mr. Stephen Tang acted with alacrity in making arrangements to meet the institutional investors. As noted earlier, in an email dated 30 April 2013 to Muriel Petit, Mr. Leo Liu reported a telephone conversation that he had with Mr. Stephen Tang, in which he was informed that Mr. Stephen Tang had started to schedule meetings with the institutional investors and was able to report that “Baring is ok for a meeting Friday” and that he had sent an email to Greenwoods. In an email, dated 3 May 2013, to L’Oréal/Linklaters and BNP Paribas Mr. Leo Liu reported a telephone conversation he had just had with Mr. Stephen Tang in which he reported that meetings had been scheduled with Atlantis and Greenwoods for 9 May and with Baring for 10 May 2013.²⁷⁶ For his part, Mr. Chris Cheng said in his record of interview that, at Mr. Stephen Tang’s request, he had begun making arrangements for meetings with Baring, Atlantis and Greenwoods for Mr. She, Mr. Luo and Mr. Stephen Tang. However,

²⁷³ Exhibit Bundle, pages 788-91.

²⁷⁴ Exhibit Bundle, pages 802-3.

²⁷⁵ Exhibit Bundle, pages 828-35.

²⁷⁶ Exhibit Bundle, page 800.

he handed over the task of completing those arrangements to Jackie. Obviously, use was being made of employees of Magic to arrange the meetings.

236. Then, by email dated 9 May 2013, Mr. Stephen Tang sent emails to the three institutional investors; namely Atlantis, Baring and Greenwoods.²⁷⁷ The emails were sent from the email address of Magic; the Subject in the emails to Baring and Greenwoods was described as, “Magic Holdings-NDA”; the text was identical in each email, save that the date of the meeting with Baring was said to be 10 May 2013, and asserted “the company will have a meeting with your company which will involve price sensitive information” and requested that the recipient sign the attached NDA; the email concluded “If you have question, please contact me” and “Mr. Stephen Tang Magic Holdings International Limited”.

237. If Mr. Stephen Tang wished to communicate and meet the three institutional investors in his capacity as a shareholder of Magic only, or if either of the other founder shareholders wished to do so, it would have been perfectly simple for that to have been stated in emails to the three institutional investors or for the latter to have been informed of that at the meetings. That was not done.

238. Although Mr. Stephen Tang asserted that he had sent the email to Ms. Liu at Atlantis “on behalf of L’Oréal”, not surprisingly he accepted that the reference in the text to “our company” appeared to refer to Magic.²⁷⁸ Similarly, having accepted that he gave instructions to Chiu & Partners to reply to the SFC letter, dated 19 August 2013²⁷⁹, requesting information about the L’Oréal proposal, he accepted that the statement in the reply²⁸⁰ that “the proposal... was first initiated by L’Oréal... when BNP Paribas contacted Mr. Tang Siu Kun Stephen, the chairman of the Company... by phone on 2 May 2013” was not correct.²⁸¹ He could not recall why it was written in that way. Further, Mr. Stephen Tang accepted that the following text, “Subsequent to the Initial Approach, there were discussions between the chairman and BNP Paribas by phone and emails over the proposed NDA between 3 May 2013 and 10 May 2013”, clearly stated that he was representing Magic. Again, he said that he could not recall why it

²⁷⁷ Exhibit Bundle; pages 2389, 3214-15 and Exhibit 11.

²⁷⁸ Transcript; Day 5, page 46.

²⁷⁹ Exhibit Bundle, pages 549-50.

²⁸⁰ Exhibit Bundle, page 551.

²⁸¹ Transcript; Day 5, page 40.

was written in that way, but he acknowledged that he had provided the information to Chiu & Partners.²⁸²

239. Having represented explicitly in the emails to the three institutional investors that the respective meetings were to be with Magic, not surprisingly that is what the institutional investors said they understood to be the status of the representatives at the meetings in their replies to the SFC: “On 9 May 2013, Magic Holdings International Limited’s management visited Greenwoods to brief that... L’Oréal is potentially considering an offer to acquire Magic. Magic’s management did not disclose specific information”²⁸³; “Baring met with Mr. Stephen Tang, She Yu Yan and Mike Liu of the Company whereby Baring was informed of the potential transaction involving the Company, the founders of the company and the offeror;”²⁸⁴ and Atlantis said “9 May 2013, 1400: a brief meeting between the Company and Atlantis takes place... Attending from the Company are Mr. Tang and Mr. She Yu Yuan... and Michael Lau (sic)... The Atlantis representatives are informed, following execution of the agreement, that the Company is the subject of an acquisition set in motion by the Offeror,”²⁸⁵

240. There is no doubt at all that Mr. Stephen Tang represented to the three institutional investors that he was representing Magic in the meetings in which he sought to secure the agreement of the respective institutional investors to the NDAs and in which imparted the price sensitive information. The reply of Chiu & Partners, dated 30 August 2013, to the SFC stated in terms that in dealing with BNP Paribas, *inter alia*, in respect of the NDAs, he did so as chairman of Magic. Mr. Chris Cheng testified that, when he was asked to arrange meetings between the three institutional shareholders and Mr. Tang, Mr. She and Mr. Luo, Mr. Stephen Tang told him that the purpose of the meetings was to have an “update on the status of the company.”

241. We are satisfied that from the outset in making arrangements for and then conducting meetings with the institutional investors Mr. Stephen Tang did so as an officer of Magic. His wholly consistent conduct subsequent to the meeting of 27 April 2013 is highly relevant to a consideration of what he had agreed to do at the meeting. As noted earlier, disclosure of the contents of the L’Oréal letter to Mr. Stephen Tang was contingent on the agreement of the three founders to contact the institutional shareholders, secure their agreement to NDAs, after which

²⁸² Transcript; Day 5, page 43.

²⁸³ Exhibit Bundle, page 517.

²⁸⁴ Exhibit Bundle, page 529.

²⁸⁵ Exhibit Bundle, pages 507-14 at page 510.

L'Oréal's proposal was to be disclosed. It would seem that the probability is that no one had drawn to his attention the nice lawyer's implied distinction, made in an email to her own client after the meeting of 27 April 2013, between doing so as a shareholder only, rather than as an officer of Magic.

242. Given that, at the meeting of 27 April 2013, he had agreed to hold meetings with the three institutional shareholders very soon afterwards, perhaps it was easier for Mr. Stephen Tang to achieve the objective of arranging an early meeting with busy business men and women by communicating with them as the chairman of the company in which they were investors. In that context, it is to be noted that reporting his telephone conversation with Mr. Stephen Tang on 8 May 2013, in an email to Ms. Muriel Petit and various persons at L'Oréal, Mr. Leo Lu said “-Stephen believes it is important to meet the investors tomorrow, as: he will see the decision-makers of each investor, *who are not easy to meet...*”.²⁸⁶ [Italics added.] Whatever the reason might be, that is what Mr. Stephen Tang did.

Conclusion

243. In the result, we are satisfied that the inside information in relation to Magic and its shares which came into existence at the meeting of 27 April 2013 came to Mr. Tang's knowledge in the course of performing functions as an officer of Magic and that a reasonable person, acting as an officer of Magic, would consider that the information is inside information in relation to Magic. Accordingly, the inside information came to the knowledge of Magic. Pursuant to section 307B (1), subject to section 307D, Magic had a duty to disclose the information to the public as soon as reasonably practicable.

²⁸⁶ Exhibit Bundle, page 848.

CHAPTER 5

Did Magic take reasonable precautions to preserve the confidentiality of the inside information?

Was the confidentiality of the inside information preserved?

244. Section 307D (2) provides that:

“A listed corporation is not required to disclose any inside information under section 307 B if and so long as-

(a) the corporation takes reasonable precautions for preserving the confidentiality of the information;

(b) the confidentiality of the information is preserved; and

(c) one or more of the following applies-

(i) the information concerns an incomplete proposal or negotiation;

...”

245. We have found that inside information came into existence at the meeting between L’Oréal/BNP Paribas and Mr. Stephen Tang, Mr. She and Mr. Luo on 27 April 2013. It is the preservation of that inside information that is relevant to the applicability of section 307D (2) (b). There is no dispute that the information concerned “an incomplete proposal or negotiation”.

The cases advanced by the parties

246. Having regard to the Tribunal’s findings as to the time at which inside information came into existence, the relevant part of the cases advanced by the parties in their written and oral closing submissions is of reduced ambit.

The SFC’s case

Reasonable precautions

247. Mr. Scott submitted that Magic had not taken reasonable precautions for preserving the confidentiality of the inside information which arose from the meetings between the parties. For example, although present at the meetings between L’Oréal and the founders, Mr. Mike Liu had not signed a non-disclosure agreement and had not received any training so that he would be made aware of his obligations under Part XIVA of the Ordinance. The fact that Magic did not seek legal advice in respect of the company’s obligations of disclosure promptly after the meeting of 27 April 2013, when it was obvious that confidentiality was no longer preserved,

was illustrative of the failure to comply with the suggestion in the SFC's *Guidelines*²⁸⁷ that procedures be developed to deal with, *inter-alia*, leaks of inside information. Those failures were further evidenced by the manner in which legal advice was sought, almost one month later, at Magic's board meeting on 24 May 2013: there were no written documents, in particular Magic's minutes, evidencing the fact that legal advice was sought and given, what the advice was or what information had been provided for that purpose to Ms. Susana Lee of Chiu & Partners. In any event, no information was provided to Ms. Susana Lee of matters highly relevant to her advice: namely, of when and what had been discussed between the parties in their meetings prior to the receipt of the L'Oréal proposal to Magic on 15 May 2013; the price and volume movements of Magic shares traded in mid-April 2013; and enquiries made of Magic about an acquisition of Magic by L'Oréal.

Preservation of confidentiality

248. Mr. Scott invited the Tribunal to note that, against a background of "unusual and sustained growth" in the share price of Magic from 28 March to 25 July 2013, namely from \$3.20 to \$5.25, there were two particular surges in the share price:

- (i) on 15 and 16 April 2013, from a closing price of \$3.20 on 12 April to a closing price of \$3.66 on 16 April 2013, a rise of 14.38%, which price rise was accompanied by a significant increase in trading volume;
- (ii) from 26 April to 8 May 2013, from a closing price of \$3.88 on 25 April to a closing price of \$4.86 on 8 May 2013, a rise of 25%.

249. Mr. Scott submitted that Mr. Witts's opinion that the Magic's share price rise on 15 and 16 April 2013 was attributable to a positive response to the roadshow by Magic in New York on 10 to 12 April 2013 was essentially speculative, there being no empirical evidence. Of the share price rise in the period 26 April to 8 May 2013, Mr. Scott submitted that Mr. Witts's attempts in his testimony to explain the share price rise on the basis of two analyst's reports published on 25 April 2013 were "unsustainable" and "insufficient".

250. Further, he submitted that the fact that there was a live possibility of leakage of inside information was evidenced by the concerns expressed about that possibility and the action taken in the third week of April 2013 by both Mr. Stephen Tang, and BNP Paribas.

²⁸⁷ Expert Evidence Bundle; page 605, paragraph 60(I).

251. Finally, Mr. Scott said that reliance by the Specified Persons on the fact that the SFC investigation did not reveal any transactions of insider dealing, as supporting their case that confidentiality in respect of inside information was preserved, was misplaced. The elements of insider dealing and loss of confidentiality were plainly different.

The case of the 1st Specified Person

Reasonable precautions

252. Mr. Laurence Li submitted that Magic had taken reasonable precautions for preserving the confidentiality of the inside information, if such existed: there was on-going monitoring of Magic's share price; information was only shared on a need-to-know basis; the directors were reminded to take extra care to keep the information confidential; and non-disclosure agreements and confidentiality measures were employed in respect of institutional investors and employees.

Preservation of confidentiality

253. Mr. Li contended that the confidentiality of what was alleged to be inside information had been preserved. That was the evidence of Mr. Evrard, given in the context that L'Oréal's lawyers Linklaters had prepared drafts of announcements to be made if confidentiality was not preserved.²⁸⁸ No such announcement was necessary.

The case of the 2nd to 5th Specified Persons

Reasonable precautions

254. On behalf of the 2nd to 5th Specified Persons, Mr. Dawes submitted that the requirement that reasonable precautions be taken to preserve the confidentiality applied to the specific information only. The essence of that requirement was set out in paragraph 65 of the *Guidelines*, namely that:²⁸⁹

“...the corporation needs to ensure that knowledge of information is restricted to those who need to have access to it and the recipients of the information are aware that the information is confidential and recognise their obligations to maintain the information confidential”

255. Mr. Dawes submitted that, in cross-examination, Dr. Fong Chi Wah accepted, if every recipient of the inside information was given those directions and was aware of them, that would be sufficient to comply with the “reasonable precautions” requirement of section 307

²⁸⁸ Exhibit Bundle, pages 811-14.

²⁸⁹ Expert Evidence Bundle, page 607.

D(2)(a).²⁹⁰ Further, the multiple measures identified in paragraph 60 of those *Guidelines* merely identify examples of the means by which those objectives may be achieved. It was not necessary that any of the measures to be adopted in order to have in place “reasonable precautions”.

Preservation of confidentiality

256. On the premise that no inside information existed before 27 April 2013, Mr. Dawes submitted that, since the enquiries made of Mr. Stephen Tang at the roadshow and those made of Mr. Chris Cheng by email by CSV Capital Partners were all made before that date, “they do not indicate that relevant inside information was leaked.” Secondly, in any event there were other plausible explanations for the enquiries: analyst’s reports suggesting that Magic was an acquisition target for a large international skincare conglomerate; the public dissemination by L’Oréal of its strategic objectives to acquire skincare companies; and speculation. Thirdly, to be supportive of the inference that the rise in Magic share price and trading volumes was attributable to the leakage of inside information, it was necessary that the increase be material and there be no plausible alternative explanation. There could be many reasons, unrelated to the leakage of inside information, that could explain some, even if not the entirety, of the undisputed increase in the price and volume of trading in Magic’s shares: Magic’s non-deal roadshow in New York; Magic was a small to mid-cap company not actively traded, whose share price was known to be volatile; analyst’s reports suggested that Magic was undervalued; and research inspired rumours of a takeover bid. Finally, although the SFC had investigated the matter it had not identified any evidence of insider dealing.

The case of the 6th, 8th to 10th Specified Persons

Reasonable precautions

257. For the 6th, 8th to 10th Specified Persons, Mr. Derek Chan endorsed the submission of Mr. Dawes that the essence of the requirement to take reasonable precautions to preserve the confidentiality of inside information was that articulated in paragraph 65 of the *Guidelines*.²⁹¹ Those requirements were met: information was limited to officers of Magic on a ‘need-to-know’ basis; they were aware that the information in respect of the discussions with L’Oréal was confidential and that preservation of confidentiality was critical. Non-disclosure agreements

²⁹⁰ Transcript; Day 18, pages 19-22.

²⁹¹ Expert Evidence Bundle, page 607.

were signed between L'Oréal and the founder shareholders and also with the institutional investors.

Preservation of confidentiality

258. Mr. Derek Chan submitted that there was insufficient evidence that confidentiality of inside information had not been preserved. The enquiries as to whether or not L'Oréal was going to acquire Magic set out in the email from Mr. Leo Liu to L'Oréal, dated 17 April 2013, and the email from Kevin Xu of CSV Capital Partners to Mr. Chris Cheng, dated 18 April 2013, did not refer to any discussions between the parties. They were speculative enquiries. Of the rise in the price of shares of Magic from “mid-April to early May”, Mr. Chan submitted that it was “likely to be attributable to the non-deal road show that Magic held between 10 and 12 April 2013.”

The case of the 7th Specified Person

Reasonable precautions

259. For the 7th Specified Person, Mr. Wadham also submitted that the requisite reasonable precautions were “specific to the transaction”. The Tribunal was invited to note that non-disclosure agreements had been signed by the three institutional investors on 9 and 10 May 2013²⁹² and the undisputed evidence was that information was disseminated on a need-to-know basis.

Preservation of confidentiality

260. Of the rise in the price of Magic shares from 15 April 2013, Mr. Wadham endorsed the submission made by Mr. Dawes in respect of insider dealing, emphasising that the SFC had investigated whether or not there was insider dealing in the period “on or about 27 April to 15 August 2013”, but had concluded that there was no or insufficient evidence of insider dealing. He invited the Tribunal to note that, notwithstanding the significant data obtained in its investigation, the SFC had made enquiries of only two parties who traded in Magic shares in that period of time, both of whom had provided a rational economic decision to trade. The inference that the SFC invited the Tribunal to draw, namely that confidentiality of inside information had not been preserved, was contrary to its investigative conclusions and to the limited evidence that it had obtained.

²⁹² Exhibit Bundle, pages 914-34.

261. Of the references in the email from Mr. Leo Liu to L'Oréal and Linklaters, dated 17 April 2013, to statements made by Mr. Stephen Tang of enquiries as to whether or not L'Oréal was going to acquire Magic,²⁹³ Mr. Wadham invited the Tribunal to note media reports of a press conference held by L'Oréal in Shanghai on 10 April 2013, attended by the Chairman and CEO, which recorded L'Oréal's ambition for rapid business and customer growth in the PRC.²⁹⁴ In that context, he suggested that the enquiries were essentially speculative. Of the question posed in the email, dated 18 April 2013, from Kevin Xu of CSV Capital Partners to Mr. Chris Cheng of whether or not it was true that L'Oréal would acquire Magic,²⁹⁵ Mr. Wadham invited the Tribunal to note that Ms. Wong Mei Mei, an SFC investigating officer, had acknowledged that, although the contact details of Mr. Kevin Xu were readily apparent from the email, no attempt had been made to contact him to ascertain what had prompted that enquiry.²⁹⁶ That enquiry ought to have been made. It was unsafe for the Tribunal to be invited to draw the inference that confidentiality of the discussions between the parties had not been preserved.

The evidence: preservation of confidentiality

262. There is no direct evidence that the confidentiality of the inside information was not preserved. On the contrary, the effect of the evidence of the parties to the discussions, Mr. Stephen Tang, Mr. She and Mr. Luo on the one hand and Mr. Evrard on the other hand, was to the effect that there was no leak of price-sensitive information. Mr. She testified:²⁹⁷

“...after 27 April, yes, there was-indeed may have a deal. But during that process, negotiations were underway, and we believed that we have done a good job in keeping confidentiality and there was no leakage of information to outside. Therefore, according to my understanding of the obligations on disclosures, and it is not necessary for us to make an announcement because there was this provision of safe harbour.”

263. In explaining that he was satisfied that confidentiality had been preserved of L'Oréal's proposal to acquire Magic in the period 27 April to 1 August 2013, Mr. She testified:²⁹⁸

“Actually, at any one time we had monitoring of information. What I could gather from the information in the feedback from the market, there were no leakage. I do not find any signs of leakage.”

²⁹³ Exhibit Bundle, pages 629-30.

²⁹⁴ Exhibit Bundle, pages 3647-9.

²⁹⁵ Exhibit Bundle, page 635.

²⁹⁶ Transcript; Day 2, page 28.

²⁹⁷ Transcript; Day 10, page 4.

²⁹⁸ Transcript; Day 10, page 5.

264. For his part, Mr. Evrard answered in the affirmative the suggestion made by Mr. Dawes that “between March to July 2013, L’Oréal never considered that there was a leak which would require them to make an announcement of the proposed acquisition?”²⁹⁹

265. Mr. Dar Chen testified that, given the Baring was a holder of over 20% of Magic’s issued share capital, he paid close attention to the movement of its share price and was aware of the rise in the price and volume in trading of Magic shares in the period from March up to 24 May 2013.³⁰⁰ In his testimony, he confirmed his assertion in his witness statement that he was not surprised by the rise:³⁰¹ Magic had a history of significant sentiment-driven movement over relatively short periods; in his view, Magic’s shares were undervalued; and its interim results “were strong”, in particular an increase over the interim results for previous six month period of approximately 31% in revenue and 20% in net profit, together with the declaration of an interim dividend. He said that the “significant increase in share price-has occurred within the weeks following this results announcement, was as hoped and expected” once the market had assimilated the information, in particular in the context of the roadshow.

266. However, in testimony, he acknowledged that he was wrong to ascribe 27 March 2013 as the date of the announcement of those interim results. In fact, the announcement was made on 25 February 2013.³⁰² Also, he acknowledged in cross-examination by Mr. Scott that in the trading days in late February and early March 2013, immediately after the announcement of those results, the market in trading in Magic shares had not reacted, albeit that he observed of the market that “It sometimes doesn’t react right away.”³⁰³

267. Of the issue of the preservation of confidentiality, Mr. Dar Chen said:³⁰⁴

“...after L’Oréal approached us... we continue to monitor the stock price as well as the news out there in the market. We were sensitive to any potential leak, but we didn’t see it.”

268. However, as is noted in the SFC’s *Guidelines*, “unexplained changes to the share price of the corporation’s securities... may indicate the confidentiality has been lost.”³⁰⁵

²⁹⁹ Transcript; Day 13, page 36.

³⁰⁰ Transcript; Day 16, pages 94-6.

³⁰¹ Witness Evidence Bundle; page 951, paragraph 55.

³⁰² Exhibit Bundle, pages 201 (1-20).

³⁰³ Transcript; Day 16, page 101.

³⁰⁴ Transcript; Day 16, pages 116-7.

³⁰⁵ Expert Evidence Bundle; pages 588-619, paragraph 66.

The market price of Magic shares

1 March to 26 April 2013

269. On 1 March 2013, the closing price of Magic shares was \$3.02, whereas on Friday, 12 April 2013 it was \$3.20. Then, Magic shares closed at \$3.30 and \$3.66 on Monday 15 April and Tuesday, 16 April 2013 respectively. The respective rises in the share price on each of those days was 3.12% and 10.91%. Also, the volume of shares traded on each day increased sharply to about 6.2 million and 9.6 million respectively. Those price rises occurred against a drop in the Hang Seng Index from 22,089.05 on 12 April 2013 to 21,672.03 on 16 April 2013. The rise in the closing price of Magic shares from 12 April to 26 April 2013 was from \$3.20 to \$4.00, namely \$0.80 or 25%.

26 April to 8 May 2013

270. On Friday, 26 April 2013 the closing price of Magic shares was \$4.00, whereas its closing price on Wednesday, 8 May 2013 was \$4.85. The closing price on Tuesday and Wednesday, 7 and 8 May 2013, namely \$4.52 and \$4.85 respectively, was 4.15% and 7.3% higher respectively than the previous trading day. Over those seven trading days Magic shares had risen a total of 21.25%. The Hang Seng Index had risen over the same period from 22,547.71 to 23,244.35, a gain of 3.089%.³⁰⁶

9 May to 25 July 2013

271. Having closed at \$4.85 on 8 May 2013, Magic shares traded within a range of closing prices with a low of \$4.50 on 6 June, until closing on 25 July 2013 at a high of \$5.25. Then, on 26 July 2013, Magic's shares closed at \$4.60, a fall of 12.38% from the previous closing price.

The meeting on 27 April 2013

272. As noted earlier, Mr. Karl Lung testified, the tentative offer price of not less than \$5.50 per Magic share, stipulated at the meeting on 27 April 2013, represented a premium, at the lowest possible price, over the closing price of Magic shares on 26 April 2013 of 37.5%.³⁰⁷ Having noted that the closing price of Magic shares on 7 May 2013 was \$4.52, Mr. Lung said that represented a premium over the \$5.50 offer price of only 21.6%.³⁰⁸ Of that he said, from

³⁰⁶ Expert Evidence Bundle; page 24.

³⁰⁷ Expert Evidence Bundle; page 12, paragraph 55.

³⁰⁸ Expert Evidence Bundle; page 13, paragraph 57.

that date "... while the knowledge of L'Oréal is likely to acquire Magic might still have a positive impact on the share price, the magnitude might not reach a material level."³⁰⁹

273. Having noted that the closing price on 8 May 2013 was \$4.85 and having said that was the price around which Magic shares traded until 26 July 2013, Mr. Lung observed that the "proposed minimum price of the acquisition was less than 20% above the closing price". Given that there was a risk that the acquisition might not proceed, it was his opinion that knowledge of inside information "might no longer have a material impact on the price of Magic shares."³¹⁰ Mr. Witts shared that opinion.³¹¹ So, the likely material impact on the price of trading in Magic shares of the inside information of the discussions that had taken place between the parties on 27 April 2013 remained such, in the first place, only until 7 May 2013, although as noted earlier because of the lower closing price of trading in Magic shares on subsequent days it regained the quality on 13 May, 3, 6 and 7 June 2013.

Possible explanations for the rise in Magic's share price: the preservation of confidential information

274. Although the issue of the preservation of the confidentiality of inside information with which the Tribunal is concerned is only that arising from the meeting on 27 April 2013, to give context to that issue, it is relevant to have regard to the evidence of the rise in the price and traded volume of Magic shares throughout April and early May 2013 and the various explanations advanced for those rises. In short, that evidence concerned:

- a non-deal roadshow conducted by Magic in New York between 10 to 12 April 2013;
- three enquiries made of Magic, specifically as to whether or not they were to be acquired by L'Oréal and evidenced by emails, dated 17 and 18 April 2013;
- the fact of the rise in Magic's share price; and
- the effect of the research reports of analysts on Magic.

The roadshow

275. On and between 10 and 12 April 2013, Mr. Stephen Tang, Mr. Chris Cheng and Mr. Mike Liu conducted a non-deal roadshow in New York with market participants on behalf of Magic. In an email, sent at 21:54 on 17 April 2013, to Ms. Teresa Ma and Mr. Jean Christophe

³⁰⁹ Expert Evidence Bundle; page 13, paragraph 58.

³¹⁰ Expert Evidence Bundle; pages 11 and 12, paragraph 50.

³¹¹ Transcript; Day 20, page 3.

Vallat, copied to Mr. Evrard, Mr. Leo Liu had asserted beneath the subject '*TR: Press research for leakage*', what Mr. Stephen Tang had told him of the roadshow:³¹²

“So far, no contact from the regulator, and when re-emphasising confidentiality, Stephen made to understand that so far Martha did a great job in terms of confidentiality. However, Stephen is getting more and more embarrassed by the questions he is being asked:

*1 Martha regional sales director mentioned that one of Martha's supplier asked Stephen if Lara (naming Lara) was going to acquire Martha.

Stephen replied “no”

*during the road show, a US fund manager asked Stephen during a lunch if Lara (naming Lara) was going to acquire Martha, as he heard a senior official from Lara saying that Lara wants to make acquisition in China

Again, Stephen replied “no”

Through this message, Stephen:

-emphasises Martha is making great efforts on confidentiality and does not want our side to have any doubts of, i.e. if there is any leak, it would not come from Martha side

-is not surprised the stock reacts after the road show to the US. Stephen means that as discussions have been going on for 18 months, the stock price could have increased before; so the recent increase is clearly connected to their road show in the US

-not unusual for a mid-cap like Martha to have price variations given the daily low volumes.”

276. Of the circumstances that led to their telephone conversation, Mr. Leo Liu explained:³¹³

“There was a team of mine who monitored the share price movements of Magic... if there were significant movement of the Magic price, they would report in an email that there were significant share price movements...

we would report to L'Oréal as well as to Teresa Ma, who was the legal counsel to L'Oréal.

If the client considered it was necessary for us to enquire about it, then it would be me who would do the enquiry...I would approach Magic... seeking the reason why, then afterwards I would tell L'Oréal what the Magic client told me.”

277. Emails earlier on 17 April 2013, first within BNP Paribas and then between BNP Paribas and L'Oréal/Linklaters, bearing the same subject heading, evidence research by BNP Paribas of material that might explain what was described in the email to L'Oréal/Linklaters

³¹² Exhibit Bundle, pages 629-30.

³¹³ Transcript; Day 3, pages 26-7.

as, “a shift in trading pattern in the market over the past three days (price increased by 10% yesterday and volume is higher than average)”. Mr. Leo Liu was asked to raise the matter with Mr. Stephen Tang and to enquire what he thought was the reason for the trading pattern.³¹⁴

278. Mr. Leo Liu said that it was likely that the conversation with Mr. Stephen Tang had taken place on the same day on which he had sent the email in the evening.³¹⁵ He agreed that two of the concerns were confidentiality and leakage. Mr. Leo Liu testified in terms that Mr. Stephen Tang had told him about the enquiry in relation to the sales director of Magic.³¹⁶ It was not suggested to Mr. Leo Liu that Mr. Stephen Tang had not reported those matters to him. Counsel was given a specific opportunity to do so.³¹⁷

279. However, in cross-examination by Mr. Scott, Mr. Stephen Tang said repeatedly that he had not told Mr. Leo Liu that a regional sales director of Magic had told him that one of Magic’s suppliers had asked if L’Oréal was going to acquire Magic.³¹⁸ Having agreed that, if he had been asked a question by a US fund manager during the roadshow about the proposed acquisition by L’Oréal of Magic it would have left a “deep impression”, Mr. Stephen Tang said that no such question was asked of him by a US fund manager.³¹⁹ On the other hand, Mr. Stephen Tang agreed in his testimony that Mr. Leo Liu had telephoned him on 17 April 2013 and raised the question of the recent rise in the price of Magic shares³²⁰. Mr. Stephen Tang said “...in that two days, the changes were radical.”³²¹ They discussed the confidentiality of price sensitive information.³²² He told Mr. Leo Liu that the price rise was connected to the roadshow.³²³ Also, he agreed that he had made the observation, as recorded in the email, that it was not unusual for a mid-cap to have price variations given low trading volume.³²⁴

280. For his part, Mr. She testified that Mr. Stephen Tang told him nothing about the roadshow: in particular, nothing about the interest of investors in Magic shares; that a US fund manager had asked him if L’Oréal was going to acquire Magic; that a supplier of Magic had asked a sales director of Magic the same question. Although Mr. Mike Liu had been on the

³¹⁴ Exhibit Bundle, pages 630-32.

³¹⁵ Transcript; Day 3, pages 25-6.

³¹⁶ Transcript; Day 3, page 25.

³¹⁷ Transcript; Day 3, pages 24-8.

³¹⁸ Transcript; Day 5, pages 62-5.

³¹⁹ Transcript; Day 5, pages 68-9.

³²⁰ Transcript; Day 5, page 55.

³²¹ Transcript; Day 5, page 73.

³²² Transcript; Day 5, page 55.

³²³ Transcript; Day 5, page 73.

³²⁴ Transcript; Day 5, pages 73-5.

road show he did not pass on any of that information.³²⁵ Mr. Luo said that Mr. Stephen Tang had not told him of the conversations that he had during the roadshow in New York.³²⁶

CSV Capital Partners: 18 April 2013

281. In an email to Mr. Chris Cheng, dated 18 April 2013, Kevin Xu of CSV Capital Partners said:³²⁷

“We heard some information that L’ORÉAL maybe would acquire Magic Holdings, was that true? And will you really consider being acquired by some big companies? Btw, Magic’s stock price increased about 15% within two days (4.15-4.16), was there any news?”

282. Mr. Chris Cheng said that he forwarded the email to Mr. Stephen Tang³²⁸ and then telephoned him.³²⁹ He replied to Kevin Xu’s email within several hours of the enquiry:³³⁰

“L’ORÉAL acquire Magic is just a rumours and I think the increase in stock price mainly due to our NDR in New York last Wednesday and Thursday.”

He could not recall the sequence of forwarding the email and having a telephone conversation with Mr. Stephen Tang.³³¹ The latter had said to him “...there have always been this kind of rumours.”³³²

283. In his witness statement, Mr. Stephen Tang said that he had been copied in Mr. Chris Cheng’s email in reply to Mr. Kevin Xu.³³³ Mr. Chris Cheng had not discussed the matter with him before responding to Mr. Kevin Xu.³³⁴ Then, several hours later Mr. Stephen Tang forwarded the email to Mr. Leo Liu saying, “Please see the rumours from the market for your reference.”³³⁵ In a telephone call to Mr. Leo Liu, made after he had forwarded Kevin Xu’s email to him, Mr. Stephen Tang said that Mr. Leo Liu confirmed that he was not aware of disclosure of the discussions between L’Oréal and the founders other than on a “need-to-know basis”.³³⁶ On 19 April 2013, Mr. Stephen Tang forwarded the reply that he had received by email from

³²⁵ Transcript; Day 9, pages 50-1.

³²⁶ Transcript; Day 7, page 54.

³²⁷ Exhibit Bundle, page 635.

³²⁸ Exhibit Bundle, page 635.

³²⁹ Transcript; Day 10, pages 62-3.

³³⁰ Exhibit Bundle, page 635.

³³¹ Transcript; Day 10, page 66.

³³² Transcript; Day 10, page 65.

³³³ Witness Evidence Bundle; page 799, paragraph 59.

³³⁴ Witness Evidence Bundle; page 799, paragraph 61.

³³⁵ Exhibit Bundle, pages 634-5.

³³⁶ Witness Evidence Bundle; page 800, paragraph 64.

Mr. Leo Liu that day to Mr. Chris Cheng, Mr. Mike Liu and Mr. She.³³⁷ In his reply, having said "...market rumours will goes around", Mr. Leo Liu had suggested a response to any future enquiry:

"We believe that the increase in stock price/volume is attributed to the roadshow which took place in New York around 10 April. Our Board is not in discussions and has not been approached in relation to the acquisition of the Company's shares by Lara."

The genesis of that text was an email, dated 19 April 2013, from Jaimie Cheung of Linklaters to Muriel Petit of BNP Paribas and to Mr. Evrard and others at L'Oréal.³³⁸

284. In a statement to the SFC, dated 17 June 2014, Mr. Stephen Tang said that in response to learning of Kevin Xu's enquiry, he had contacted Mr. She and Mr. Luo, both of whom had confirmed that they had kept confidential and not disclosed to any third party the fact of communications between the founders and L'Oréal.³³⁹

285. In the result, Mr. Stephen Tang said in answer to Mr. Scott in cross-examination, "I don't agree with you on the issue that there was a leakage of price sensitive information."³⁴⁰ Further, in answer to the suggestion that he must have been aware that confidentiality had not been preserved in the period March to 2 August 2013, he said:³⁴¹

"I had confirmed with L'Oréal and BNP that we have been able to keep the matter confidential."

286. In a record of interview, conducted of him by Ms. Wong Mei Mei on 23 June 2014, Mr. She said of the CSV Capital Partners' email, dated 18 April 2013, "now I can see that on 19 April... Stephen definitely sent a copy of the email to me."³⁴² However, he added that "I, in fact, didn't read too many emails." Also, he said that "Stephen phoned to confirm with us at that time that ... secrecy matter." He testified "...he sent it to me, but then I did not see it, and then I was not paying attention to it ... When Stephen forwarded the email to me, I did not read it, because usually I would not read these emails."³⁴³ Mr. She testified that he had responded to Mr. Tang's telephone enquiry in late April 2013,³⁴⁴ as to whether or not he had kept discussions between L'Oréal and the founders confidential, by saying that, apart from

³³⁷ Exhibit Bundle, page 2377.

³³⁸ Exhibit Bundle, page 634.

³³⁹ Witness Evidence Bundle; page 78, paragraph 3.

³⁴⁰ Transcript; Day 6, page 26.

³⁴¹ Transcript; Day 6, page 38.

³⁴² Witness Evidence Bundle; page 104 counter #321.

³⁴³ Transcript; Day 9, page 42.

³⁴⁴ Witness Evidence Bundle; page 843, paragraph 50.

discussing the matter with the three founders, Mr. Mike Liu and Mr. Huang , “I had not told anybody.”³⁴⁵ He did not take any steps to enquire of Mr. Mike Liu or Mr. Huang whether or not they might be the source of the leak of price-sensitive information.³⁴⁶ He did not ask Mr. Stephen Tang why he had raised the issue with him: “I was not very eager about why his question was being asked. All I was eager about was that I did not leak confidentiality matters.” It “did not cross my mind” that he was investigating a leak of price-sensitive information.³⁴⁷ He reaffirmed that to be the case, notwithstanding that Mr. Mike Liu had told him on 26 April 2013 that “Magic share price in April was in an increasing trend”.³⁴⁸ He did not feel there was a leakage of price-sensitive information.³⁴⁹

287. Mr. Luo testified that Mr. Stephen Tang had asked him whether anybody had enquired of him whether Magic would be acquired. He answered in the negative, “I did not receive an enquiry from anybody”. He did not enquire of Mr. Stephen Tang why he had asked that question.³⁵⁰ Although in his witness statement³⁵¹ he had asserted that “Stephen once mentioned to me that someone enquired whether Magic would be acquired and asked me whether I disclosed any communication between L’Oréal and the Founders to any third party”, Mr. Luo testified “What Stephen said was Stephen asked me whether there was anybody who asked me about the question.” When it was suggested to him that when he had this conversation with Mr. Stephen Tang he was aware that confidentiality had not been preserved, Mr. Luo said “I felt that it had been achieved.”³⁵² In the result, he asserted, “No leakage at all, including on the side of the company, that I never heard of any leakage.”³⁵³

288. Mr. Evrard acknowledged that, if confidentiality about L’Oréal’s proposal to acquire Magic had not been preserved, L’Oréal would have had to make an announcement about the proposed acquisition.³⁵⁴ By an email dated 6 May 2013, to which was attached three draft announcements to be made variously by either L’Oréal or Magic of the proposed acquisition, L’Oréal was advised by Mr. Geoffrey Tang of Linklaters:³⁵⁵

³⁴⁵ Transcript; Day 9, page 38.

³⁴⁶ Transcript; Day 9, page 54.

³⁴⁷ Transcript; Day 9, pages 37-9.

³⁴⁸ Transcript; Day 9, pages 51-2. Witness Evidence Bundle; page 843, paragraph 52.

³⁴⁹ Transcript; Day 9, page 52.

³⁵⁰ Transcript; Day 7, page 53.

³⁵¹ Witness Evidence Bundle; page 880, paragraph 29.

³⁵² Transcript; Day 7, page 54.

³⁵³ Transcript; Day 7, page 69.

³⁵⁴ Transcript; Day 13, pages 34-5.

³⁵⁵ Exhibit Bundle, pages 809-14.

“It is unlikely that you will be the party making the leak announcement (if any!), the primary responsibility for making leak announcement will shift to Martha (and their counsel) once the Martha Board have been approached.”

289. In that context, Mr. Evrard agreed with the suggestion made to him by Mr. Dawes that “between March to July 2013, L’Oréal never considered that there was a leak which would require them to make an announcement of this proposed acquisition?”³⁵⁶

290. Of the assertion by Mr. Leo Liu in his email, dated 17 April 2013, that Mr. Stephen Tang had told him that at the roadshow a US fund manager had said that “he heard a senior official from Lara saying that Lara wants to make acquisition in China”, Mr. Evrard said:³⁵⁷

“...obviously, no senior official of L’Oréal said anything about this deal, because I would say there were only very, very few people involved.”

291. Mr. Evrard went on to say, in the context of communications by L’Oréal of its global acquisition strategy:³⁵⁸

“...when the CEO of L’Oréal is speaking about strategic priorities, and so forth, Asia, particularly China, was-and still is, by the way-a strategic priority. Therefore, ... it was not a surprise to me that someone, a supplier, connecting the dots and talking to a company making a roadshow and presenting itself as very successful, that someone asked, “Could you be acquired by a larger company like L’Oréal?” But this is, for me, typically a rumour and not a leak.”

Receipt of L’Oréal’s proposal by Magic: 15 May 2013

292. Of the precautions taken to preserve confidentiality of the L’Oréal proposal received by Magic on 15 May 2013, Mr. Chris Cheng said:³⁵⁹

“...it was not until 15 May, when I received a letter, did I learn there was such a thing, and after that date... as far as Hong Kong was concerned, only me would have had this knowledge. So, at that time we were discussing-discussions about this need-to-know basis requirement. So, therefore, I was the one who handle all the things. So, on this acquisition, all matters concerning the acquisition were handled by me. I did not tell this to anybody among the Hong Kong colleagues. And, according to my understanding, Stephen did not involve any mainland colleagues in this. So that even when they, these colleagues, were involved in due diligence, they had no idea what was going on.”

³⁵⁶ Transcript; Day 13, page 36.

³⁵⁷ Transcript; Day 13, page 41.

³⁵⁸ Transcript; Day 13, pages 41-2.

³⁵⁹ Transcript; Day 11, page 13.

Magic's board meeting: 24 May 2013

293. Mr. Stephen Tang said that in the telephone conference at the board meeting of 24 May 2013, Ms. Susana Lee of Chiu & Partners had posed the question to the board, "Did you feel there had been a leak of the information?" He answered: ³⁶⁰

"...I confirmed that apart from founders, L'Oréal and BNP, there was no third party who knew the meetings and also the contents of the discussions between founders and L'Oréal. Plus, in addition, the meetings between founders and L'Oréal, the meetings themselves and also the contents of the meetings and the whole course of the meetings, they were all kept confidential."

He did not tell her of the enquiry of him during the roadshow of the US fund manager nor of the enquiry of the regional sales manager by the supplier of Magic of the possible acquisition by L'Oréal of Magic. He did not do so because that had not happened. As he recalled, he had told her of the 15% increase in Magic share price and the considerable rise in turnover of shares on 15/16 April 2013.³⁶¹

294. For her part, Ms. Susana Lee, testified that she had participated in the telephone conference from Nanjing airport, but had no notes. Having alerted the Magic board of directors that they had to keep a close watch on the movement in Magic's share price and trading volume and on rumours circulating in the market, she advised them that they would "have to make an announcement if there is anything which suggests a leakage of inside information."³⁶² She did not ask and she was not told of any rumours in the market or movement in the share price or trading volume of Magic shares.³⁶³

295. For his part, Mr. Chris Cheng said that, as he recalled, no information was provided to the lawyers who participated in the board meeting on 24 May 2013.³⁶⁴ He could not remember whether or not Mr. Stephen Tang had told the lawyers in the meeting that there had been a significant increase in Magic share price in April 2013 or of the email enquiry by CSV Capital Partners on 18 April 2013 of whether or not L'Oréal was to acquire Magic.³⁶⁵ As he recalled, no one told the lawyers of the enquiries of whether or not L'Oréal was to acquire Magic made

³⁶⁰ Transcript; Day 6, page 32.

³⁶¹ Transcript; Day 6, pages 32-3.

³⁶² Transcript; Day 21, page 81.

³⁶³ Transcript; Day 21, pages 78 and 81.

³⁶⁴ Transcript; Day 11, page 38.

³⁶⁵ Transcript; Day 11, pages 40-1.

of Mr. Stephen Tang during the roadshow or of a supplier of a regional sales director of Magic.³⁶⁶

296. Mr. Dar Chen confirmed that Ms. Susana Lee participated, by telephone, in discussions with members of the board of directors at the meeting on 24 May 2013 in respect of the issue of whether or not an announcement ought to be made by Magic of the L'Oréal proposal. He was sure about that.³⁶⁷ She advised that there was no need to make an announcement. Having considered that advice, he agreed. He accepted that although the issue was “a very important matter” there was no record of the advice in the minutes of the board.³⁶⁸ Although he had signed the minutes, he had not noticed that the omission then.³⁶⁹

297. Mr. Dar Chen could not remember if there was discussion with Ms. Susana Lee about movement in the price and volume of trading in Magic shares in the previous few weeks. There were no discussions of market rumours.³⁷⁰ He had not seen the email, dated 18 April 2018, from Mr. Kevin Xu to Mr. Chris Cheng, which posed the question of whether or not L'Oréal was going to acquire Magic.³⁷¹ Similarly, he did not know about a US fund manager or a supplier of Magic asking the same question. No one at Magic told him of any such rumours prior to the meeting on 24 May 2013.³⁷²

298. Mr. Sun Yan testified that he attended the Magic directors board meeting on 24 May 2013 in person.³⁷³ There was a telephone conference with the “female lawyer from the company’s legal counsel”. He said that he remembered clearly that she spoke in Putonghua.³⁷⁴ Three main issues were discussed:

“First of all, whether we allow the acquisition; second, whether we allow the due diligence. But actually, they are not important. The most important thing was the third one, whether the inside information should be disclosed through announcement. But on this issue, it was not something that I could make a judgment on within my own abilities, and on this, professional legal advice had to be sought.”

³⁶⁶ Transcript; Day 11, pages 41-2.

³⁶⁷ Transcript; Day 16, pages 106-7.

³⁶⁸ Transcript; Day 16, pages 114-5.

³⁶⁹ Transcript; Day 16, page 113.

³⁷⁰ Transcript; Day 16, page 108.

³⁷¹ Transcript; Day 16, page 98.

³⁷² Transcript; Day 16, pages 117-8.

³⁷³ Witness Evidence Bundle; page 923, paragraph 14. Transcript; Day 16, page 26.

³⁷⁴ Transcript; Day 16, page 30.

299. Of the information provided to the lawyer, Mr. Sun said "...she specifically referred to L'Oréal's document, saying that this document was (sic) preliminary stage and that it does not constitute a legal document."³⁷⁵ He could not recall whether or not she had been informed about movements in the price and volume in trading of Magic shares, enquiries or rumours relating to L'Oréal's proposals.³⁷⁶ Having agreed with Mr. Scott that there was no reference in the minutes of the meeting, to a consultation with a lawyer during the meeting on the issue of disclosure ³⁷⁷ Mr. Sun said "But I can tell you that that's what happened. It is a fact."³⁷⁸

300. Similarly, Mr. Sun agreed that the reply provided by Chiu & Partners to the SFC, dated 30 August 2013, in which a description was given of the meeting of Magic's board of directors on 24 May 2013 was inaccurate, in that it had omitted to record the consultation with the female lawyer as to whether or not an announcement should be made.³⁷⁹

301. Mr. Thomas Yan Kam Tong testified that he first became aware of the L'Oréal proposal on receipt of the email, dated 17 May 2013, circulated to Magic's directors by Mr. Chris Cheng.³⁸⁰ He attended Magic's directors board meeting on 24 May 2013 in person.³⁸¹ A woman lawyer participated in the discussions by a telephone link. Mr. Chris Cheng had made those arrangements in advance of the meeting, copying him an email which had been sent to the lawyer, which contained the telephone dialling code.³⁸² Part of the conversation with the lawyer concerned disclosure, "the disclosure of the acquisition" to the public.³⁸³ Mr. Stephen Tang asked the lawyer questions. When asked what information Mr. Stephen Tang had given the lawyer, Mr. Yan said "He probably did not do so."³⁸⁴ He did not recall anything being said to the lawyer about the rise in the Magic share price the previous month. He agreed that nothing had been said to the lawyer about rumours circulating in April 2013 that L'Oréal might acquire Magic.³⁸⁵

302. Mr. Yan agreed that the minutes of the board meeting, which he had signed, did not contain any reference to a lawyer's advice concerning disclosure to the public. He had not

³⁷⁵ Transcript; Day 16, page 35.

³⁷⁶ Transcript; Day 16, pages 35-6.

³⁷⁷ Exhibit Bundle, pages 2646-7.

³⁷⁸ Transcript; Day 16, page 29.

³⁷⁹ Transcript; Day 16, pages 34-5.

³⁸⁰ Witness Evidence Bundle; page 966, paragraph 17. Transcript; Day 17, page 78.

³⁸¹ Witness Evidence Bundle; page 966, paragraph 18.

³⁸² Transcript; Day 17, page 92.

³⁸³ Transcript; Day 17, page 93.

³⁸⁴ Transcript; Day 17, page 95.

³⁸⁵ Transcript; Day 17, page 95.

noticed that. Of how the omission had occurred, he said the “discussions on disclosure wasn’t that much”, adding “...it is possible Chris might have forgotten this point.”³⁸⁶ Similarly, he agreed that there was no mention of discussions with and advice by the lawyer: first, in the reply given by Chiu & Partners to the SFC, dated 30 August 2013³⁸⁷; secondly, in his answers in his record of interview, given in February 2016³⁸⁸; and thirdly in his witness statement, dated 30 January 2019.³⁸⁹ He explained that after making the witness statement he had noticed the email from Mr. Chris Cheng which provided the lawyer with the dialling code.

303. Professor Yang Rude said that, having been informed in an email from Mr. Chris Cheng dated 17 May 2013 of the L’Oréal proposal, he had participated by telephone in the meeting of the directors of Magic held on 24 May 2013.³⁹⁰ He did not ask any of the executive directors of Magic whether anything had happened that might suggest that confidentiality of the proposal had not been preserved.³⁹¹ Prior to the board meeting, he was not aware of any rumours circulating that L’Oréal might purchase Magic. Although he owned Magic shares, he did not pay any attention, in the period prior to 17 May 2013, of movements in the price and trading volume in Magic’s shares. His daughter-in-law looked after his shares for him.³⁹² Professor Yang Rude agreed that the minutes of the meeting contained no reference to any discussion or advice from a lawyer. It was a long time ago and he could not recall now whether or not a lawyer was present at the meeting.³⁹³

304. There is no dispute that the minutes of the Magic board meeting on 24 May 2013³⁹⁴ contained no reference whatsoever to advice having been sought from and given by telephone by Ms. Susana Lee of Chiu & Partners in respect of Magic’s duties of disclosure under the Ordinance. Of that omission, Mr. Stephen Tang said that “all we did was to file away and sign on the resolutions.” He had “no recollection” that any written record was made of the advice that was given.³⁹⁵

³⁸⁶ Transcript; Day 17, pages 97-9.

³⁸⁷ Transcript; Day 17, page 101.

³⁸⁸ Transcript; Day 17, pages 110-1.

³⁸⁹ Transcript; Day 17, pages 102-3.

³⁹⁰ Witness Evidence Bundle; pages 972-3, paragraph 12.1.

³⁹¹ Transcript; Day 14, page 25.

³⁹² Transcript; Day 14, page 27.

³⁹³ Transcript; Day 14, page 33.

³⁹⁴ Exhibit Bundle, pages 2646-8.

³⁹⁵ Transcript; Day 6, page 35.

Insider dealing in Magic shares: the SFC's investigation

305. Ms. Wong Mei Mei testified, she had received a 'Direction to Investigate', dated 6 November 2013, from the Director of Enforcement at the SFC³⁹⁶, which included a direction to investigate whether or not insider dealing in Magic shares had occurred "on or about 27 April 2013 to 15 August 2013". Of the difference between the failure to preserve confidential information and insider dealing, she said in cross-examination by Mr. Wadham:³⁹⁷

"So, in order to prove there's insider dealing, I not only need to prove they trade because of this piece of information. I have to find evidence to prove that they obtained this particular information from a person connected with the listed company. So that's different."

Of the results of the investigation she said that there was "not sufficient evidence."³⁹⁸

Expert evidence

306. In his report Mr. Witts identified two significant rallies in Magic's share price; namely, first from 15 to 17 April 2013, which was accompanied by higher trading volume; and secondly, from 26 April to 8 May 2013.³⁹⁹ Of the first significant rally, he said:⁴⁰⁰

"I have no hesitation at all in suggesting that the increase in volume and share price from 15 April 17 April 2013 was mainly the result of orders generated by the roadshow in the latter part of the previous week. The higher volume and buying strength on the Tuesday compared to the Monday would most probably have resulted from potential new investors in America initially holding back because of the comparative lack of liquidity in what was not a large company. Seeing the considerable increase in the number of shares traded on the Monday would have removed the possible negative in the minds of some of these potential shareholders."

307. Mr. Witts went on to add:⁴⁰¹

"I am convinced that the sudden very high turnover and surge in price which began on 15 April was principally the result of the roadshow in New York towards the end of the previous week."

308. Of the second significant rally, without seeking to explain it, he simply noted that:⁴⁰²

"Two research reports were issued on Magic on 25 April 2013. BOCOM International reaffirmed its buy recommendation and increased its target price for the shares to \$4.50. The report comments on the recent share price strength saying it "should be explained

³⁹⁶ Exhibit Bundle, page 566.

³⁹⁷ Transcript; Day 1, page 132.

³⁹⁸ Transcript; Day 1, page 133.

³⁹⁹ Expert Evidence Bundle; pages 905-6, paragraphs 22 and 23.

⁴⁰⁰ Expert Evidence Bundle; pages 905-6, paragraph 22.

⁴⁰¹ Expert Evidence Bundle; pages 910, paragraph 31.

⁴⁰² Expert Evidence Bundle; pages 906, page 23.

by its re-rating potential building on the company's on-track performance and acquisition story...". It continued that it was "fond of Magic's unique and enhanced market leadership coupled with its profile of being an ideal acquisition target. We believe there is further upside for this budding facial mask leader in China."...

Haitong International Research, however whilst mentioning the increase production facilities which would be brought into operation in mid-2015, recommended Magic shares only as a "hold" with a target price of \$3.84."

309. However, in his testimony Mr. Witts went on to add:⁴⁰³

"I agree that the roadshow is unlikely to have been the catalyst for the rally commencing on 26 April 2013... Research reports on the company were generally good and some contained opinions that Magic was a very suitable target for acquisition."

310. Mr. Witts acknowledged in cross-examination that one of the factors to look at in determining whether or not confidential inside information had been preserved was the rise in the share price over the relevant period.⁴⁰⁴

The roadshow: new investors in America

311. In cross-examination by Mr. Scott, Mr. Witts acknowledged that, although he had studied the material, provided by the SFC during the hearing, in respect of trading on 15 and 16 April 2013, he had been unable to establish the identity or the residence of the investors he had described in his report as being "new investors in America". He agreed that his statement that the higher volume and buying strength on 15 and 16 April "would most probably have resulted from potential new investors in America" was essentially "speculative". He could not point to any empirical evidence.⁴⁰⁵

The Magic share price rise: 26 April to 8 May 2013

312. When asked by Mr. Scott of the relevance of his reference to the two research reports, dated 25 April 2013, in the context of his consideration of the share price rise in the period 26 April to 8 May 2013, Mr. Witts said:⁴⁰⁶

"I was just desperately looking for some catalyst in the public domain to explain the admittedly rapid increase in the share price."

⁴⁰³ Expert Evidence Bundle; page 910, paragraph 31.

⁴⁰⁴ Transcript; Day 19, page 120.

⁴⁰⁵ Transcript; Day 19, pages 122-4.

⁴⁰⁶ Transcript; Day 19, page 125.

313. Subsequently, the following interchange ensued between the Chairman and Mr. Witts:⁴⁰⁷

“CHAIRMAN: to what extent, if at all, do these two analysts’ reports assist in explaining the 25% rise in the period that you identified, 26 April to 8 May 2013?

A. The BOCOM one did-...they’ve always been positive on Magic, I have to say, and I think one of the first to mention it as a potential acquisition story. They do increase the target price to 4.50. But trying to extend that to say that is why the share price went up 25% in a couple of weeks is-I’m not saying that. I don’t think anybody could say that.”

Mr. Karl Lung

The roadshow

314. Of the possible effect of the Magic roadshow in New York on and between 10 to 12 April 2013 on the price of Magic shares, Mr. Lung said in his first report:⁴⁰⁸

“...given the time of the price surge that started just a few days after the road show, this is consistent with the roadshow which could be a factor that contributed to the strong price surge that started at around April 16, 2013.”

He went on to observe:⁴⁰⁹

“As trading in Magic was not very active between March 1, 2013 and April 15, 2013, with average daily turnover of just about \$5.9 mn, buying interest caused by the road show and/or the leakage could have a noticeable impact on the share price of Magic.”

315. In a supplementary report, Mr. Lung said:⁴¹⁰

“I remain of the view that leakage was likely a contributing factor to the surge in share price of Magic which started from mid-April 2013... I accept that other factors, such as the road show, research inspired rumours etc could also be contributing factors, but those other factors and the leakage of information relating to a possible acquisition of Magic by L’Oréal were not mutually exclusive.”

316. Of the possible effect of the roadshow on the share price of Magic, Mr. Lung went on to say:⁴¹¹

“...the New York road show was likely to bring a positive impact on the share price of Magic. But... one could still not rule out the possibility of other factors which might have contributed to the rise of Magic’s share price during the material time. In particular,

⁴⁰⁷ Transcript; Day 19, page 129.

⁴⁰⁸ Expert Evidence Bundle; page 10, paragraph 43.

⁴⁰⁹ Expert Evidence Bundle; page 11, paragraph 47.

⁴¹⁰ Expert Evidence Bundle; page 840, paragraph 48.

⁴¹¹ Expert Evidence Bundle; page 841, paragraph 51.

it was very unusual for a road show to have such a large impact on the share price. There should be other factors which contributed to and multiplied the impact.”

317. In cross-examination by Mr. Dawes, Mr. Lung said that such an effect was “quite rare”. He said that he was referring to the share price rise from the closing price on 15 April of \$3.30 and the closing price on 30 April 2013 of \$4.19. However, he agreed that he was not precluding that effect because he had no information about who traded and why they did so.⁴¹²

Magic’s share price: volatility

318. Having said that whilst Magic’s share price was volatile after its listing on 24 September 2010 up until around December 2011, Mr. Lung said:⁴¹³

“After that and up until mid-April, 2013, Magic’s share price remained mostly steady at around the \$3.00 level with only occasional fluctuations. Share price then rose and started to surge strongly. The rally since mid-April 2013 was an obvious deviation from the norm in that the share price was pushed up to and maintained at a level which had not been seen for more than two years, and was close to its historic high back in late 2010.”

It is to be noted that the range of the closing price of Magic shares in the year 2012 was from \$2.35 to \$3.55.⁴¹⁴

The evidence: reasonable precautions

319. Of the precautions taken to protect the confidentiality of information arising from meetings between L’Oréal and the three founder shareholders, as noted earlier, Mr. Stephen Tang testified that the meetings were known only to the founders, Mr. Mike Liu and Mr. Huang. Not only were the meetings arranged by them, but also all the discussions were kept confidential.⁴¹⁵

320. Of relevance to whether or not those precautions were effective in preserving the confidentiality of that information, and therefore reasonable precautions, Mr. Stephen Tang said that daily checks were conducted by colleagues of his at Magic in respect of the price and volume at which Magic shares traded:⁴¹⁶

“Every day, we have colleagues monitoring the market information on Magic, including its share price, it’s trading volumes, and also fluctuations of Magic share prices. This information would be concentrated in the founders. And every day our colleagues will

⁴¹² Transcript; Day 19, pages 46-9.

⁴¹³ Expert Evidence Bundle; pages 842-3, paragraph 58.

⁴¹⁴ Expert Evidence Bundle, pages 860-8.

⁴¹⁵ Transcript; Day 6, page 16.

⁴¹⁶ Transcript; Day 6, pages 16-7.

prepare reports to me on the market information and then the trading volume of their shares and also the share price movements, so that if we found there are unusual situations occurring in the share price and also trading volume or any news, then the management shareholders, namely me and Chief She and Chief Luo, would have meetings regularly. Basically, our working relationship is very close and we would meet every day.

If the founders felt that the information was unusual, we would notify the board of directors to discuss. And meanwhile, these directors themselves also pay attention to what is going on, the information on the market. And these directors, if they find something unusual on the market, they would also inform the founder shareholders.

On legal matters, we would seek the legal opinion and assistance with our permanent retained legal counsel, Chiu & Partners.”

321. However, Mr. Stephen Tang went on to acknowledge:⁴¹⁷

“...we did not have a procedure manual wherein all these things are written down. But then such behaviour or such a practice had been carried on as such since the company had been founded, all along... So, although there were not any written document, but then the management and the founders, they were well aware of this. Because, as I said, this was our daily work.”

He went on to agree with the suggestion that there were no “written policies, procedures, circulars or guidelines” maintained by Magic “such that any potential inside information is promptly identified and escalated.”⁴¹⁸

Non-disclosure agreement: Baring, Atlantis and Greenwoods

322. As noted earlier, attached to the email Mr. Stephen Tang sent to each of Baring, Atlantis and Greenwoods on 9 May 2013 was a non-disclosure agreement, which set out the terms on which the party identified as “Gold” would provide “Confidential Information” to each of the recipients.⁴¹⁹ Of the Confidential Information, which was described as being “information which is made available (whether before, on or after this letter is agreed) in writing or orally to you or your advisers by or on behalf of Gold...”, it was asserted that “some or all” of it may be “inside information” for the purposes of the Ordinance. Paragraph 2 required that the recipient:

“2.1 keep the Confidential Information secret and confidential and not disclose any of it to any person other than your directors or directors, partners or employees of your advisers;

⁴¹⁷ Transcript; Day 6, page 18.

⁴¹⁸ Transcript; Day 6, page 49.

⁴¹⁹ Exhibit Bundle, pages 3214-20; 2389 and Exhibit 11.

2.2 procure that the persons under paragraph 2.1 to whom Confidential Information is made available shall observe the obligations contained in this letter regarding Confidential Information; and

2.3 inform Gold as soon as reasonably practicable if you become aware that Confidential Information has been disclosed to an unauthorised third party.”

L’Oréal’s Proposal Letter

323. In his witness statement⁴²⁰, Mr. Chris Cheng said that he received an email, sent at 10:13 a.m., from Mr. Stephen Tang on 15 May 2013⁴²¹, in which the subject was “FW: letter to the board” and to which was attached the L’Oréal proposal letter, dated 13 May 2013, to the Magic board of directors.⁴²² In a telephone conversation, which he initiated with Mr. Stephen Tang after he had received the email, Mr. Stephen Tang had asked him to send the L’Oréal letter to Chiu & Partners and Magic’s board of directors.⁴²³ At 11:00 a.m. that day, he forwarded the attachments to Mr. Stephen Tang’s email to Ms. Susana Lee, stating simply “FYI”.⁴²⁴

324. For her part, Ms. Susana Lee not only confirmed receipt of that email but also testified of telephone conversation between them that day and of a telephone conference in which she participated with Mr. Stephen Tang, Mr. Chris Cheng and Mr. Huang on 16 May 2013.⁴²⁵ She said that having received the L’Oréal proposal by email from Mr. Chris Cheng, following her request to be provided with it, after he had told her of its receipt in a telephone conversation he initiated, they had a second telephone conversation on 15 May 2013. She advised him that there were implications in respect of the Takeovers Code and Listing Rules and suggested that he arrange a meeting of Magic’s board of directors as soon as possible.⁴²⁶ At 3:30 p.m. on 16 May 2013 she participated in a telephone conference call with Mr. Stephen Tang, Mr. Chris Cheng and Mr. Huang. At 2:30 p.m. that afternoon she had sent excerpts from Rules 3.1 to 3.5 of the Takeovers Code to Mr. Stephen Tang and Mr. Chris Cheng.⁴²⁷ In the telephone conference-call she advised them that there were possible implications in respect of the Takeovers Code and also in respect of inside information. Again, she advised that they call a board meeting as soon as possible. She did not ask any questions, nor was she supplied with any information about the “preliminary discussions”, referred to in the L’Oréal proposal letter as having been held

⁴²⁰ Witness Evidence Bundle; page 905, paragraph 44.

⁴²¹ Exhibit Bundle, page 2514.

⁴²² Exhibit Bundle, pages 2452-2513.

⁴²³ Transcript; Day 11, page 23.

⁴²⁴ Exhibit 8, pages 2-30.

⁴²⁵ Transcript; Day 21, pages 54-62.

⁴²⁶ Transcript; Day 21, page 56.

⁴²⁷ Exhibit 8, pages 32-7.

between them and L'Oréal. Nothing was said about a rise in the price at which Magic shares had traded.⁴²⁸

325. By an email, dated 17 May 2013, Mr. Chris Cheng forwarded the attachment to all of the members of the board of directors.⁴²⁹ In his email, Mr. Chris Cheng said, *inter-alia*:⁴³⁰

“Attached for your perusal the notice and agenda of the meeting to be held at 1:30 p.m. on 24 May 2013 in relation to the discussion about a letter from a potential investor indicating (his/her) wish to carry out due diligence on the company and its subsidiaries, as well as other matters. Also attached Chinese and English versions of the investor’s letter for all of directors’ reference.”

326. The L'Oréal proposal letter was marked “**Strictly private and confidential**”. Under the heading “Confidentiality”, it stated:⁴³¹

“We ask that the Company keep the content and existence of this letter, the possible Offer, our interest in a possible acquisition of the Shares, and our name in connection with the possible acquisition of the Shares (“**Confidential Information**”) secret and confidential and not disclose any such information to any person, save for individuals who:

- are directors of the Company or directors, partners or employees of the Company’s professional advisers in respect of our approach in the possible Offer; and
- need to know the confidential information for the purposes of considering, evaluating, advising on or furthering the possible Offer.

The Company must ensure that the individuals to whom any Confidential Information is made available keep it secret and confidential and do not disclose any such information to any other person.”

327. The letter went on to add:⁴³²

“We trust that you understand the importance of this confidentiality obligation, as any leakage of such information may seriously harm the prospects of the possible Offer. Accordingly, we ask that the non-disclosure agreement attached in Schedule 3 be entered into between us as soon as possible.”

328. Paragraph 3, of the non-disclosure agreement in Schedule 3, provided:⁴³³

“Scope of obligations

⁴²⁸ Transcript; Day 21, pages 61-2.

⁴²⁹ Exhibit Bundle, pages 2515-20.

⁴³⁰ Exhibit Bundle, pages 2515 and 2578.

⁴³¹ Exhibit Bundle, page 2519.

⁴³² Exhibit Bundle, page 2520.

⁴³³ Exhibit Bundle, page 2542.

3. Each party shall procure that, in cases where it is a Recipient, its directors, employees, any member of its Group and any of their respective advisers to whom Confidential Information is to be made available shall observe the obligations contained in this letter regarding Confidential Information.”

329. In cross-examination about specific measures identified in paragraph 60 of the SFC’s *Guidelines* Mr. Chris Cheng testified that, whilst Magic did restrict access to information to a limited number of employees on a need-to-know basis⁴³⁴, Magic did not:

- maintain a sensitivity list⁴³⁵;
- authorise one or officer (s) or an internal committee to be notified of any potential inside information and to escalate any such information to the attention of the board⁴³⁶;
- maintain an audit trail of meetings and discussions concerning the assessment of inside information⁴³⁷

330. Mr. Chris Cheng confirmed Mr. Stephen Tang’s evidence about the existence of monitoring by Magic of movements in the price and volume of trading in Magic shares,⁴³⁸ adding that if there was any relevant news it would be reported by email to the executive directors.⁴³⁹ The duties of the staff delegated to perform those functions were in writing, but since the acquisition of Magic by L’Oréal those documents were kept in Guangzhou and he was unable to provide them.⁴⁴⁰

Mr. She

331. Of the precautions taken to preserve confidentiality of the discussions with L’Oréal Mr. She testified that, amongst the three founders, Mr. Mike Liu and Mr. Huang:⁴⁴¹

“...emphasis has been repeatedly made that we should keep our confidentiality... emphasis had been repeated by L’Oréal, also by us, that is Mr. Stephen Tang and lawyer Huang.”

332. Whilst Mr. She acknowledged that Mr. Mike Liu had received no training about obligations under Hong Kong law when dealing with investors⁴⁴² and had received no written

⁴³⁴ *Guidelines*, paragraph 60 (f). Transcript; Day 11, page 13.

⁴³⁵ *Ibid*, paragraph 60 (c). Transcript; Day 11, pages 9-11.

⁴³⁶ *Ibid*, paragraph 60 (d). Transcript; Day 11, pages 11-2.

⁴³⁷ *Ibid*, paragraph 60 (e). Transcript; Day 11, pages 12-3.

⁴³⁸ Transcript; Day 11, pages 9-10.

⁴³⁹ Transcript; Day 11, page 12.

⁴⁴⁰ Transcript; Day 11, page 21.

⁴⁴¹ Transcript; Day 9, page 38.

⁴⁴² Transcript; Day 8, page 28.

guidelines, policies, circulars or procedures in respect of those obligations, he said of both Mr. Mike Liu and Mr. Huang:⁴⁴³

“...before the two participated in the meeting with L’Oréal, they have been told about that, the confidentiality of this. And then, later on, they had been repeatedly reminded of it.”

333. Although, as noted earlier, Mr. She had testified that Magic had “monitoring of information” from which he gathered there was no “signs of leakage” of confidential information of the discussions with L’Oréal from 27 April 2013 onwards, nevertheless he also testified “I rarely would concern myself with share prices-rarely.”⁴⁴⁴ On the other hand, he confirmed in testimony⁴⁴⁵ his assertion in his witness statement that, when he returned from tea-picking, Mr. Mike Liu “once mentioned to me that Magic share price in April was in an increasing trend.”⁴⁴⁶ That was on 26 April 2013.⁴⁴⁷

Mr. Luo

334. In his witness statement, Mr. Luo asserted that on joining Magic all employees “signed confidentiality agreement to ensure confidential information about Magic would not be leaked.”⁴⁴⁸ Mr. Luo testified of the members of staff “all were aware of the company’s confidentiality code. Because those working under me, all were aware of these confidentiality things, especially when the work involved formulas, raw materials and suppliers.”⁴⁴⁹ He went on to say “so, by this confidentiality agreement, by then signing on it, it safeguards all the matters within the company that should be kept confidential; they would be kept confidential.”⁴⁵⁰ However, when asked whether any training was given to members of staff relating to “price sensitive information”, he said “No formal training, and I’m referring to staff under me.”⁴⁵¹ Similarly, he said that there were no documents that informed members of staff of what to do so became aware that price sensitive information had been leaked.⁴⁵²

⁴⁴³ Transcript; Day 9, page 55.

⁴⁴⁴ Transcript; Day 9, page 51.

⁴⁴⁵ Transcript; Day 9, pages 51-2.

⁴⁴⁶ Witness Evidence Bundle; page 843, paragraph 50.

⁴⁴⁷ Transcript; Day 9, page 39.

⁴⁴⁸ Witness Evidence Bundle; page 877, paragraph 17.

⁴⁴⁹ Transcript; Day 7, page 56.

⁴⁵⁰ Transcript; Day 7, page 62.

⁴⁵¹ Transcript; Day 7, page 62.

⁴⁵² Transcript; Day 7, page 56.

335. Of the importance of maintaining confidentiality in respect of the discussions between on the other hand, L'Oréal and the three founders, Mr. Luo testified:⁴⁵³

“Stephen would be concerned, very concerned, with this matter. At the same time, he would remind us from time to time to do a good job in confidentiality.”

He went on to add:⁴⁵⁴

“Everybody knew how to keep what should be confidential, confidential.”

336. Of the effectiveness of those precautions, in particular whether confidentiality had not been preserved, by reference to movements in the price and volume of trading in Magic shares, Mr. Luo replied in the negative when asked if he paid attention to the “figures themselves” for price or turnover.”⁴⁵⁵

Mr. Dar Chen

337. Having learned of the fact of the L'Oréal proposal to acquire Magic from Mr. Stephen Tang at the meeting on 10 May 2013 and having learned of more detail of the proposal on receipt of the email, dated 17 May 2013, from Mr. Chris Cheng, to which was attached to the L'Oréal proposal letter, dated 13 May 2013, Mr. Dar Chen said of the issue of the preservation of confidentiality that, at the meeting of the Magic board of directors on 24 May 2013, Mr. Stephen Tang “emphasised, he stressed the importance of confidentiality to everybody, and in fact in every discussion subsequent (ly), he would repeat that emphasis.”⁴⁵⁶

Mr. Sun Yan

338. Mr. Sun Yan said that he had first learned of the L'Oréal proposal when he received the email and its attachments⁴⁵⁷ sent to all Magic directors by Mr. Chris Cheng on 17 May 2013.⁴⁵⁸ He testified that at that time he was aware of the provisions of section 307B (1) of the Ordinance, in particular the obligation of disclosure of inside information to the public as soon as reasonably practicable after it had come to the knowledge of a corporation.⁴⁵⁹ Mr. Sun testified that, although there was nothing in the Notice, that a board meeting was to be convened on 24 May 2013, about there being a discussion about disclosure, nevertheless he had noted

⁴⁵³ Transcript; Day 7, page 69.

⁴⁵⁴ Transcript; Day 7, page 70.

⁴⁵⁵ Transcript; Day 7, page 59.

⁴⁵⁶ Transcript; Day 16, pages 117-8.

⁴⁵⁷ Exhibit Bundle, pages 2515-79.

⁴⁵⁸ Transcript Day 17, pages 10-1.

⁴⁵⁹ Transcript; Day 16, page 14.

that Schedule 3 of the attachment to the L'Oréal proposal addressed a "confidentiality requirement", in consequence of which he believed that the board meeting "...would have had to touch on these disclosure matters."⁴⁶⁰ He explained:⁴⁶¹

"...as far as commercial behaviours are concerned, for big companies, it is quite normal for them to have and to observe these confidentiality agreements. But on the other hand, as a director, one of his responsibilities is to make disclosure on this information. So, in between the two... there is significant conflict here."

Mr. Yan Kam Tong

339. Mr. Yan Kam Tong acknowledged that he was aware that, as an officer of Magic, he had a responsibility to ensure Magic had a reasonable system for comply with the rules for disclosure of inside information.⁴⁶² He testified that, although he did not monitor Magic's share price and volume movements in the period from 17 May 2013, when he was informed of the L'Oréal proposal, up and until the Magic board of directors meeting on 24 May 2013, nevertheless he had noticed that:⁴⁶³

"...there were a percentage of rises. That is starting from the period prior, previous month up to May."

340. In his record of interview, he acknowledged that he was aware of the rise in the price and volume at which Magic traded in mid-April 2013, "I saw that it shot up a lot... during that period of time."⁴⁶⁴ In explaining why it was that he had not made any enquiries as to why the share price had risen in that way, Mr. Yan said:⁴⁶⁵

"I expected Chris would be monitoring the share price."

Later, he added "...should there be any unusual trading, then Chris would inform the directors."⁴⁶⁶

341. However, Mr. Yan said that Mr. Chris Cheng had not informed the Magic directors prior to 17 May 2013 of any unusual movement in the company share price. No representative

⁴⁶⁰ Transcript; Day 16, page 14.

⁴⁶¹ Transcript; Day 16, page 16.

⁴⁶² Transcript; Day 17, page 77.

⁴⁶³ Transcript; Day 17, page 82.

⁴⁶⁴ Witness Evidence Bundle; pages 471-3, counter #s 291-2 and 300.

⁴⁶⁵ Transcript; Day 17, page 83.

⁴⁶⁶ Transcript; Day 17, page 89.

of Magic had told him of any rumours that had been circulating about L'Oréal acquiring Magic.⁴⁶⁷

Dr. Fong Chi Wah

342. In cross-examination by Mr. Dawes, Dr. Fong agreed that he had been asked by the SFC to express an opinion as to the “reasonable measures” which should have been taken by Magic to ensure that proper safeguards existed to prevent a breach of disclosure requirements by Magic, contrary to section 307G of the Ordinance. He had not been asked to express an opinion whether Magic had taken “reasonable precautions for preserving the confidentiality of the information”, as required by section 307D(2)(a) of the Ordinance.⁴⁶⁸ He agreed with the suggestion of Mr. Dawes that paragraph 65 of the SFC’s *Guidelines*⁴⁶⁹ contained two key elements, namely that the company will have to ensure: first, that knowledge of inside information is restricted to those who need to have access to; and secondly, that the recipient of the information are aware that the information is confidential and recognise their obligation to maintain the information confidential.⁴⁷⁰ After observing that paragraph 60 required the establishment of a system and provided examples of “reasonable measures” relevant to section 307G, nevertheless Dr. Fong accepted the suggestion of Mr. Dawes that “if every recipient of the information is aware of the two key elements... the requirements under section 307D(2)(a), in so far as reasonable precautions are concerned, are satisfied.”⁴⁷¹

343. In re-examination, Dr. Fong said that he was not aware of the existence of any document which had asked directors of Magic to familiarise themselves with paragraph 65 of the *Guidelines*.⁴⁷² Further, Dr. Fong expressed the opinion⁴⁷³ that some of the examples of “reasonable measures” identified in paragraph 60 of the *Guidelines*⁴⁷⁴ were relevant to the requirement to take “reasonable precautions for preserving the confidentiality of the information” provided for by section 307D(2)(a) of the Ordinance, including to:

- (a) Establish controls for monitoring business and corporate development and events so that any potential inside information is promptly identified and escalated.

⁴⁶⁷ Transcript; Day 17, page 89.

⁴⁶⁸ Transcript; Day 18, pages 6-8.

⁴⁶⁹ Expert Evidence Bundle, page 607.

⁴⁷⁰ Transcript; Day 18, pages 19-20.

⁴⁷¹ Transcript; Day 18, page 22.

⁴⁷² Transcript; Day 18, pages 115-6.

⁴⁷³ Transcript; Day 18, pages 97-115.

⁴⁷⁴ Expert Evidence Bundle, pages 604-5.

- (b) Maintain and regularly review of a sensitivity list identifying factors or developments which are likely to give rise to the emergence of inside information.
- (c) Authorize one or officer (s) or an internal committee to be notified of any potential inside information and to escalate any such information to the attention of the board.
- (d) Maintain an audit trail of meetings and discussions concerning the assessment of inside information.
- (e) Restrict access to inside information to a limited number of employees on a need-to-know basis. Ensure employees who are in possession of inside information are fully conversant with their obligations to preserve the confidentiality
- (f) Ensure appropriate confidentiality agreements are in place when the corporation enters into significant negotiations.
- (g) Provide regular training to relevant employees to help them understand the corporation's policies and procedures as well as their relevant disclosure duties and obligations.
- (h) Document the disclosure policies and procedures of the corporation in writing and keep the documentation up to date.

344. In response to the SFC's demand of Magic, dated 29 January 2016,⁴⁷⁵ that it produce, *inter-alia*, "any written policies, procedures, circulars, guidelines or training materials" in respect, in effect, of the matters identified in paragraph 60(a) of the Guidelines and those in respect of the matters identified in paragraph 60(f) of the Guidelines, in a letter dated 14 June 2016, Linklaters stated that, other than in respect of some training material in respect of matters identified in paragraph 60(a), "Magic has not been able to locate any other relevant records which are responsive", in effect, to the matters identified in paragraphs 60(a) and (f) of the Guidelines.⁴⁷⁶

Discussion

(i) Was the confidentiality of the inside information preserved?

345. With respect, Mr. Witts was correct to identify two separate periods in which there were significant rallies or surges in Magic's share price: first, on 15 and 16 April and then secondly, in the period 26 April to 8 May 2013. Monday, 15 April 2013 was the first, or perhaps the

⁴⁷⁵ Exhibit Bundle, pages 1055-8.

⁴⁷⁶ Exhibit Bundle, pages 1075-8.

second trading day in Hong Kong after the completion of the New York roadshow the previous week. Mr. Leo Liu noted in his email to L'Oréal, dated 17 April 2013 that Mr. Stephen Tang had reported a positive reaction to the roadshow, in particular that "institutional investors are interested."⁴⁷⁷

346. Mindful of the fact that Mr. Leo Liu's email, dated 17 April 2013, was contemporaneous with the conversation that he said he had with Mr. Stephen Tang, in which "feedback" was provided about Magic's New York roadshow, and having regard to all the evidence, in particular the fact that Mr. Stephen Tang accepted the accuracy of other parts of the email, we accept Mr. Leo Liu's evidence that Mr. Stephen Tang told him of the two enquiries set out in the email. Those enquiries, in common with the email, dated 18 April 2013, from CSV Capital Partners, mentioned L'Oréal by name in the context of an acquisition of Magic. It is surprising, given that the email was in the possession of the SFC in December 2013, that no attempt was made to contact Kevin Xu at CSV Capital Partners, whose email address was disclosed in the email, to enquire of him the nature of the information that had led him to ask Mr. Chris Cheng if L'Oréal was going to acquire Magic. Nevertheless, the fact remains that, although some of the analysts' reports on Magic expressed the view that Magic might be an acquisition target for an international brand and, although there was a reference in some reports to P&G, none of them referred to L'Oréal by name. In face of Mr. Stephen Tang's assertions that there were such reports, in which L'Oréal was named as a potential acquirer of Magic, when asked by Mr. Scott to produce any such report, Mr. Stephen Tang was unable to do so.⁴⁷⁸

347. In the period 1 March to 12 April 2013, the closing price of Magic shares moved between closing at \$3.03, a closing high of \$3.28, to close on 12 April 2013 at \$3.20. Then, in greatly increased volume of trading, Magic shares closed on 16 April 2013 at \$3.66. In all the circumstances, in particular the proximity in time to the roadshow and the sharp rise in Magic's share price, mindful of the evidence of both Mr. Witts and Mr. Lung, we accept that a likely contributing factor to that rise in the price and volume of trading activity was a positive reaction to the roadshow by investors. Although we found that inside information did not come into existence until the meeting between the parties on 27 April 2013, the three very specific enquiries referred to earlier, in which L'Oréal was named specifically, indicate that it is likely

⁴⁷⁷ Expert Evidence Bundle, page 629.

⁴⁷⁸ Transcript; Day 6, pages 9-13.

that there was a leakage of information, at least about the interest of L'Oréal to acquire Magic which had progressed to discussions between the parties. It is to be remembered that the video conference, in which Mr. Stephen Tang was a participant, had occurred on 15 April 2013.

348. Similarly, we accept Mr. Witts's evidence that "the roadshow was unlikely to have been the catalyst for the rally commencing on 26 April 2013." Furthermore, we note his disarming candour in testimony in accepting that his reference in his report to two research analyst reports published on 25 April 2013 by BOCOM International and Haitong International Research⁴⁷⁹ was the result of "desperately looking for some catalyst in the public domain to explain the admittedly rapid increase in the share price." Given that the target price identified in the Haitong report of \$3.84 was less than Magic's share closing price on 25 April 2013 of \$3.88, the report was of no assistance whatever in explaining the subsequent sharp Magic share price rise. Having observed that the target price identified in the BOCOM report was \$4.50, Mr. Witts was realistic in conceding that, although the target price stipulated was \$4.50, nevertheless "...trying to extend that to say that is why the share price went up 25% in a couple of weeks is—I'm not saying that. I don't think anybody could say that."

349. We are satisfied that the publication of Magic's interim results on 25 February 2013 played no part in the rally in the price of Magic shares commencing on 26 April 2013. Having been taken to the information⁴⁸⁰ of the closing price of Magic shares in the several days following the publication of those interim results, in which the price of Magic shares had either dropped or remained flat, Mr. Witts agreed with the suggestion made by Mr. Scott that there was no correlation/influence on Magic's share price in that period.⁴⁸¹ Having said that the interim results would have had the effect of bringing Magic to the attention of some fund managers for the first time, nevertheless he said "But to link the interim figures with the April rise is too extended."⁴⁸²

Magic as an acquisition target

350. As Mr. Witts noted, the BOCOM report referred to Magic's "acquisition story" and asserted that Magic had a "profile of being an ideal acquisition target". However, as Mr. Witts noted in his report,⁴⁸³ BOCOM had expressed the same opinion in a report, dated 18 October

⁴⁷⁹ Expert Evidence Bundle, pages 65-73; 95-98.

⁴⁸⁰ Expert Evidence Bundle, page 869.

⁴⁸¹ Transcript; Day 19, page 116.

⁴⁸² Transcript; Day 19, page 113.

⁴⁸³ Witness Evidence Bundle; pages 903-4, paragraphs 19 and 20.

2012, namely "...Magic could be appealing to some global skincare player(s) who intend to penetrate China's mass market with broadened product offerings and price ranges".⁴⁸⁴ Similarly, it did so in a report, dated 26 February 2013, "...moreover, we reiterated that Magic could be an ideal acquisition target to some global skincare players eyeing China's mass market."⁴⁸⁵ The BOCOM report dated 25 April 2013 added nothing new to the speculative opinion that BOCOM published nine months earlier. Indeed, a report on Magic published by Guosen Securities (HK) on 10 May 2012 indulged in similar speculation, "Foreign giants are relatively more advantageous in terms of resources and funds; therefore, cannot rule out the possibility of it being acquired by large conglomerates such as P&G in future."⁴⁸⁶

The absence of evidence of insider dealing

351. Clearly, Mr. Wadham's complaint is valid that the SFC ought to have disclosed to the Specified Persons as unused material the results of their investigations into whether or not insider dealing had occurred in the shares of Magic. Fortunately, the issue arose at the very commencement of the hearing and the material was disclosed by the SFC with expedition. The Tribunal and the parties were provided with data identifying those entities trading in Magic shares, but it appears that only two of those traders were interviewed by the SFC and they provided explanations, accepted by the SFC, for their trading.

352. Whilst the absence of any evidence of insider dealing, in particular on the trading days immediately following the meeting of 27 April 2013, is relevant generally, we accept the submission of Mr. Scott that "the absence of insider dealing and the loss of confidentiality are not mutually exclusive".

353. We are satisfied that the significant rise in Magic's share price from its close of \$4.00 on Friday 26 April to its close of \$4.85 on 8 May 2013 was "unexplained".⁴⁸⁷ Furthermore, it was material and there was no plausible explanation, other than that the confidentiality of the inside information had not been preserved. In that period of time, the meeting and the agreement between the parties had taken place on Saturday, 27 April 2013 and inside information had come into existence. Early in the following working week, Mr. Stephen Tang made contact with the three institutional investors to arrange separate meetings with each of them and Mr. Stephen Tang, Mr. She and Mr. Luo. At Mr. Stephen Tang's request, Mr. Chris

⁴⁸⁴ Expert Evidence Bundle, page 947.

⁴⁸⁵ Expert Evidence Bundle, page 969.

⁴⁸⁶ Expert Evidence Bundle, page 943.

⁴⁸⁷ Exhibit Bundle; page 607, paragraph 66-*Guidelines on Disclosure of Inside Information*.

Cheng became involved in making those arrangements, having been told that Mr. She and Mr. Luo “wanted to have an update of the status of the company”. That explanation had been given to Mr. Chris Cheng in face of his enquiry, which he made because Mr. Stephen Tang would rarely ask Mr. She and Mr. Luo “to come to meet”. As a result of which, he said “I felt strange about why they would make such a big deal to come to meet.”⁴⁸⁸ In arranging the meeting with Ms. Liu Yang of Atlantis, Mr. Chris Cheng had informed Ms. Liu Yang’s assistant of the proposed attendees and what he had been told was the purpose of the meeting.

Conclusion

354. In all the circumstances, we are satisfied to the appropriate standard that confidentiality of that inside information was not preserved.

(ii) Did Magic take reasonable precautions to preserve the confidentiality of the inside information?

355. In light of our finding that inside information came into being at the meeting between the parties on 27 April 2013 but, because the price at which Magic shares was trading in the market was at an insufficient discount to the minimum tentative offer price of \$5.50, for the first time ceased to have that quality at the close of trading on 7 May 2013, that period is of primary relevance to a consideration of whether or not Magic had taken reasonable precautions for preserving the confidentiality of that information, as required by section 307D(2)(a) of the Ordinance. Nevertheless, in that consideration we are satisfied that it is highly relevant to have regard to events before that period of time. As noted earlier, given that on 13 May, 3, 6 and 7 June 2013 Magic shares traded at a sufficient discount to the tentative offer price that period of time is also relevant to our considerations.

356. As noted earlier, Paragraph 60 of the SFC’s *Guidelines* stipulates multiple examples of measures which should be considered when establishing systems and procedures to comply with the requirement that officers of corporations must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement. We readily accept the caveat entered in paragraph 60 that the examples of such measures are not to be taken as “a definitive or exhaustive list” and that “the absence of some of the examples... would not be conclusive” in determining whether there was a breach of section

⁴⁸⁸ Witness Evidence Bundle; pages 241-2, counter #s 255-263.

307G(1) or section 307 G(2)(b) of the Ordinance. Regard is to be had to the “specific circumstances”.

357. With respect to Mr. Dawes, the reliance he placed on the acceptance he finally extracted from Dr. Fong in cross-examination that, if every recipient of the information is aware that knowledge of inside information is restricted to those who need to have access to it and that the recipients are aware that the information is confidential and recognise their obligation to maintain confidentiality, without more, satisfies the requirement that a corporation has taken reasonable precautions to preserve confidentiality and satisfied to section 307D(2)(a) of the Ordinance is misplaced. Even Dr. Fong made that clear in re-examination, when he identified various measures stipulated in paragraph 60 of the *Guidelines* as being relevant to a consideration of whether or not a corporation, in particular Magic, had taken reasonable precautions to preserve the confidentiality of the information. As Mr. Scott pointed out in his written closing submissions, in their evidence both Mr. Nicholas Allen and Mr. David Norman provided general support for Dr. Fong’s position. Having been referred to the SFC’s *Guidelines* and the *Guidance Note* of the Chamber of Hong Kong Listed Companies,⁴⁸⁹ Mr. Allen testified “...both documents give examples of reasonable measures that might be taken” by listed companies for the preservation of confidentiality of inside information.⁴⁹⁰ He added, “...what you might choose from that suite of options is going to depend on the nature of the business and the nature of the transaction you’re dealing with.” For his part, Mr. David Norman agreed with the suggestion that the measures identified in the *Guidance Note* were reasonable measures that a listed company could take to preserve confidentiality of inside information.⁴⁹¹ We accept that what are reasonable precautions will depend on the specific circumstances of the corporation.

Appropriate confidentiality agreements in significant negotiations: paragraph 60 (g)

358. There is no dispute that appropriate non-disclosure confidentiality agreements were secured by Mr. Stephen Tang from Atlantis, Greenwoods and Baring on 9 and 10 May 2013, prior to them being informed by Mr. Stephen Tang of the fact of the L’Oréal proposal. Those agreements were with L’Oréal and the respective institutional investor and were drafted for L’Oréal by Linklaters. They were secured by Mr. Stephen Tang at the behest of L’Oréal. Earlier, L’Oréal had secured non-disclosure agreements with Mr. Stephen Tang, Mr. She and Mr. Luo,

⁴⁸⁹ Expert Evidence Bundle, pages 789-830.

⁴⁹⁰ Transcript; Day 20, page 72.

⁴⁹¹ Transcript; Day 20, page 114.

on 21 February 2013, prior to the discussions of March and April 2013. That fact was adverted to in the letter from L'Oréal to Mr. Stephen Tang, dated 6 May 2013, in which he was reminded of the importance of maintaining "confidentiality of the contents of this letter" and of the requirement "to observe the provisions of the relevant non-disclosure agreement entered between each of yourselves and L'Oréal S.A. on 21 February 2013."⁴⁹² Similarly, L'Oréal's proposal letter to Magic, dated 13 May 2013, asked Magic to enter into a non-disclosure agreement, which was attached to the letter as Schedule 3.⁴⁹³ In L'Oréal's letters to Magic, dated 26 July⁴⁹⁴ and 31 July 2013,⁴⁹⁵ in which L'Oréal identified an "Offer price" per share of \$6.00 and \$6.30 respectively, reference was made to a confidentiality agreement between L'Oréal and Magic dated 7 June 2013, it being asserted that the information in the letters was subject to the terms of that agreement. No such agreement has been provided to the Tribunal.

Magic's employees: confidentiality

359. Although Mr. Luo testified that on the commencement of their employment all employees of Magic signed confidentiality agreements, none has been provided to the Tribunal. For his part, Dr. Fong testified that he had not seen any "employee confidential agreement."⁴⁹⁶ In any event, even if such general employee confidentiality agreements existed, as Mr. Luo acknowledged, there were no documented guidelines or circulars to assist an employee in addressing his obligations in the context of preserving confidential price-sensitive information.

Restricted access to inside information: paragraph 60 (f)

360. Mr. Tang, Mr. She and Mr. Luo were all consistent in their evidence that access to the information of the discussions with L'Oréal was restricted to themselves, together with Mr. Mike Liu and Mr. Huang. Of whom had been told of the discussions with L'Oréal, Mr. She said in his record of interview "...insofar as we were concerned, actually it is just the four of us who actually knew about this matter, I mean about the contact with L'Oréal. It is just the four of us... Then it's the lawyer."⁴⁹⁷ Clearly, the reference to the lawyer was to Mr. Huang.

⁴⁹² Exhibit Bundle, pages 909-13.

⁴⁹³ Exhibit Bundle, 2515-78.

⁴⁹⁴ Exhibit Bundle, pages 2680-1.

⁴⁹⁵ Exhibit Bundle, pages 2691-2.

⁴⁹⁶ Transcript; Day 18, page 106.

⁴⁹⁷ Witness Evidence Bundle; page 107 counter #s 357 and 359.

Establish controls, so that any potential inside information is promptly identified and escalated: paragraph 60 (a)

Document the disclosure policies and procedures of the corporation in writing: paragraph 60 (n)

361. Magic had no formal written disclosure policies and procedures.⁴⁹⁸ In addressing the subject of reporting on price sensitive information in their witness statements, Mr. Stephen Tang, Mr. She and Mr. Luo identified no specific, detailed policies and procedures that had been established within Magic and gave no examples of occasions prior to April and May 2013 of the assessment and escalation of potential inside information. For his part, Mr. She merely asserted that "...whenever Magic encountered compliance issues (including what constituted price sensitive information and whether such information required disclosure), Stephen, Chris and Mike were primarily responsible for contacting and consulting with lawyers or other relevant professional advisers..."⁴⁹⁹ As noted earlier, Mr. Yan Kam Tong testified that he expected that Mr. Chris Cheng would monitor Magic share price⁵⁰⁰ and, if there was any "unusual trading", then Mr. Chris Cheng "would inform the directors."⁵⁰¹

Ensure employees who are in possession of inside information are fully conversant with their obligations to preserve confidentiality: paragraph 60 (f)

Provide regular training to relevant employees to help them understand the corporation's policies and procedures as well as the relevant disclosure duties and obligations: paragraph 60 (m)

362. Mr. Mike Liu was the assistant to Mr. She, the general manager of Magic, having joined Magic in January 2010. Mr. She had come to know him when Mr. Mike Liu worked as Magic's advertising agent. Mr. She said that his own proficiency in English was "limited" and he relied on Mr. Mike Liu to assist in reading through the voluminous emails he received every day.⁵⁰²

363. There is no dispute that throughout Mr. Mike Liu was a full party to the discussions with L'Oréal, save that Mr. She said that he had not attended the initial "one-on-one meeting" that he had with Mr. Evrard on 27 April 2013 before the meeting held with all the founders.⁵⁰³ Mr. She said that it was clear to all participants at the discussions with L'Oréal that "he represented me".⁵⁰⁴ In Mr. She's absence from the video conference with L'Oréal on 15 April

⁴⁹⁸ Transcript; Day 6, pages 17-8 (Mr. Stephen Tang).

⁴⁹⁹ Witness Evidence Bundle; pages 832-3, paragraph 16.

⁵⁰⁰ Transcript; Day 17, page 83.

⁵⁰¹ Transcript; Day 17, page 89.

⁵⁰² Witness Evidence Bundle; page 832, paragraphs 13-4.

⁵⁰³ Witness Evidence Bundle; page 844, paragraph 58.

⁵⁰⁴ Transcript; Day 8, page 30.

2013, Mr. Mike Liu was present at the video conference with Mr. Stephen Tang in a conference room in Shanghai.⁵⁰⁵ It is to be remembered that Mr. Mike Liu was copied in the email, dated 19 April 2013, Mr. Stephen Tang forwarded to Mr. She and Mr. Chris Cheng, after he had received it from Mr. Leo Liu. That chain of emails had its genesis in the enquiry email from CSV Capital Partners of whether or not L'Oréal would acquire Magic. Also, Mr. Mike Liu accompanied Mr. Stephen Tang and Mr. She to their meetings with Atlantis and Baring on 9 and 10 May 2013 when the fact of the L'Oréal proposal was disclosed. And yet, as Mr. She conceded in cross-examination, Mr. Mike Liu had received no training whilst employed at Magic about obligations under Hong Kong law when dealing with investors and had received no relevant written guidelines, policies, circulars or procedures.⁵⁰⁶ Insofar as any steps at all were taken to ensure that Mr. Mike Liu understood his obligations of confidentiality, it appears that they lay in the oral, unparticularised exhortations to preserve confidentiality of the discussions with L'Oréal given to him and to each other by the executive directors.

364. Some significance of the failure by Magic to provide Mr. Mike Liu with appropriate training perhaps lies in the fact that his previous employment was in advertising, albeit that by self-study he was “certified for financial accounting” in the Mainland.⁵⁰⁷ He was not involved or experienced in regulatory compliance in Hong Kong. In any event, Magic had not established documented controls to identify what information was potential inside information and how it should be escalated within Magic. Insofar as there were any informal, orally-established controls, it appears that the matter was left entirely to the discretion of Mr. Chris Cheng and/or Mr. Stephen Tang. Moreover, Magic had established no procedures by which confidentiality could be secured by employees in the handling of inside information.

L'Oréal's proposal letter

365. As noted earlier, by an email dated 17 May 2013, Mr. Chris Cheng forwarded the L'Oréal proposal letter, dated 13 May 2013, and the multiple attachments to all the directors of Magic.⁵⁰⁸ Apart from Mr. Stephen Tang, Mr. She, Mr. Luo and Mr. Dar Chen, all of the other directors said that it was by the receipt of that material that they came to know for the first time of the L'Oréal proposal. Whilst in that material itself, L'Oréal demanded of Magic that the information contained therein be kept confidential, and even asked that Magic enter into a non-

⁵⁰⁵ Transcript; Day 4, page 99 and Day 5, page 4 (Mr. Stephen Tang).

⁵⁰⁶ Transcript; Day 9, page 55.

⁵⁰⁷ Transcript; Day 8, page 27 (Mr. She).

⁵⁰⁸ Exhibit Bundle, pages 2515-78.

disclosure agreement with L'Oréal⁵⁰⁹, it is to be noted that in his email to his fellow directors Mr. Chris Cheng did not enjoin or require them on behalf of Magic to maintain confidentiality of that information or even drew attention to or endorse L'Oréal's request that be done.

Maintain an audit trail of meetings and discussions concerning the assessment of inside information: paragraph (e)

366. Although Mr. Stephen Tang had described a system operating within Magic of collating data of the price and volume of trading in Magic shares on a daily basis and escalating any relevant information to the executive directors and ultimately to the board of directors and, although both he⁵¹⁰ and Mr. Chris Cheng⁵¹¹ said that they had noticed that price of Magic shares was on an "upward trend" and that the trading volume had "increased" after 15 April 2013, neither of them escalated that information to the other or to the other executive directors on 16 or 17 April 2013. Mr. Stephen Tang did not do so even after the fact of the rise in the price of traded Magic shares was drawn to his attention by Mr. Leo Liu in a telephone call on 17 April 2013. Insofar as Mr. Stephen Tang made any assessment of whether or not the confidentiality of inside information had been preserved, it appears that he did so on an *extempore* basis, attributing it to being connected with the Magic roadshow in New York, without seeking any information from or consulting with others. Even then, neither the information nor his assessment was escalated to the other executive directors of Magic let alone to the board of directors. Of course, one obvious dilemma faced by Mr. Stephen Tang was that, if he had informed the board of directors of Magic, including the non-executive directors, of the enquiries made as to whether or not L'Oréal was to acquire Magic, as we have found he did inform Mr. Leo Liu, he faced the real prospect of being asked whether or not he knew if L'Oréal was in discussions to acquire shares in Magic and/or Magic itself.

367. The first escalation to other executive directors of the information of the fact of the 15% rise in the price of shares occurred only after the receipt of the second communication, namely that from Mr. Kevin Xu of CSV Capital Partners on the early afternoon of 18 April 2013, when Mr. Chris Cheng forwarded the email that he had received to Mr. Stephen Tang.

368. In the absence of any established audit trail in Magic of meetings and discussions concerning the assessment of inside information, the fact and details of the telephone conversation between Mr. Stephen Tang and Mr. Leo Liu on 17 April 2013, in particular Mr.

⁵⁰⁹ Exhibit Bundle, pages 2540-47.

⁵¹⁰ Witness Evidence Bundle; page 800, paragraph 68.

⁵¹¹ Witness Evidence Bundle; page 903, paragraph 36.

Stephen Tang's assessment and his reasoning, were not documented within Magic. Such record as exists is only that of Mr. Leo Liu of BNP Paribas. Similarly, no record whatsoever was made within Magic of such enquiries as were made by telephone by Mr. Stephen Tang of Mr. She and Mr. Luo, after the receipt of the email from CSV Capital Partners, of whether or not they had maintained confidentiality in respect of the discussions with L'Oréal and their replies.

369. The failure of Magic to put in place any appropriate processes for documenting the assessment of inside information was also evidenced by the complete absence of any written record within Magic of not only the information given to Ms. Susana Lee of Chiu & Partners for the purposes of seeking her advice at the board meeting of 24 May 2013 of Magic's obligations of disclosure but also the advice that was given. The issue was of considerable importance and the fact that it was not mentioned at all in the minutes was quite extraordinary.

370. We accept Ms. Susana Lee's evidence that there was no discussion, in the telephone conference call of 24 May 2013, in which she was informed of the movement in the share price or trading volume of Magic shares in the period March to May 2013 or that she had been informed that there were rumours in the market about L'Oréal's acquisition of Magic. In respect of the latter matter, Ms. Susana Lee's evidence is supported strongly by the evidence of Mr. Dar Chen, "There was no discussion about market rumour. I would have remembered that."⁵¹² We reject the testimony of Mr. Stephen Tang that, as he recalled, he had informed Ms Susana Lee in the telephone conference of the 15% rise in the share price of Magic on 15/16 April 2013 and the considerable rise in the turnover of Magic shares traded.⁵¹³ As noted earlier, Mr. Stephen Tang accepted that he had not told her of the enquiry made of him during the roadshow of the US fund manager nor of the enquiry of the regional sales manager by the supplier of Magic of the acquisition by L'Oréal of Magic.⁵¹⁴

371. In the result, we are satisfied that prior to and at the board meeting of 24 May 2013 Ms. Susana Lee was presented with a wholly incomplete description of information that was clearly relevant to the advice being sought from her as to whether or not it was necessary to make disclosure.

⁵¹² Transcript; Day 16, page 108.

⁵¹³ Transcript; Day 6, page 33.

⁵¹⁴ Transcript; Day 6, pages 32-3.

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372. As noted earlier, Magic shares closed at \$4.00 on 26 April and at \$4.85 on 8 May 2013. Over the two days of 7 and 8 May 2013 the closing price rose a total of 11.45% over the closing price on 6 May 2013. We have found inside information to have existed from 27 April until, first of all, to the close of trading on 7 May 2013 and thereafter on 13 May, 3, 6 and 7 June 2013. In that overall period, and up and until the close of trading on 8 May 2013, the share price rise was very significant. However, the Tribunal received no evidence at all that this particular, significant share price rise had even been identified, discussed and assessed within Magic. Although Mr. She testified that there was monitoring of information and feedback from the market in the period from 27 April 2013, he provided no detail at all of those matters. Rather, he merely contented himself with the bland, unparticularised assertion that there was “no leakage.”⁵¹⁵ The agreement reached between the parties on 27 April 2013 had not been identified by Mr. Stephen Tang, Mr. She or Mr. Luo as inside information or even potential inside information. Clearly, it had not been escalated by them for the information of or attention of the board of directors of Magic. Similarly, apart from the assertions referred to earlier, there was no evidence that any considered, particularised assessment had been made by them as to whether or not confidentiality of the inside information had been preserved in that period. Neither Mr. Chris Cheng nor any of the non-executive directors had been told by Mr. Stephen Tang, Mr. She or Mr. Luo of the discussions and agreement reached between them and L’Oréal on 27 April 2013. None of them asked those directors or Mike Liu for any information at all of the “preliminary discussions” held with them by L’Oréal, as a result of which L’Oréal had asserted in their proposal letter that each of Mr. Stephen Tang, Mr. She and Mr. Luo were supportive of L’Oréal’s offer and were prepared to sell their Magic shares to L’Oréal.⁵¹⁶

Conclusion

373. In the result, we are satisfied that Magic did not take reasonable precautions for preserving the confidentiality of the information arising from the discussions and agreements at the meeting with L’Oréal on 27 April 2013.

⁵¹⁵ Transcript; Day 10, pages 4 and 5.

⁵¹⁶ Exhibit Bundle, page 2390.

CHAPTER 6

Did Magic take reasonable measures to monitor the confidentiality of the inside information?

Did Magic disclose the inside information to the public as soon as reasonably practicable after Magic became aware that the confidentiality of the information had not been preserved?

374. Section 307D (4) provides that:

“Despite subsection (2)(b), a listed corporation is not in breach of a disclosure requirement in respect of inside information the confidentiality of which is not preserved if-

- (a) the corporation has taken reasonable measures to monitor the confidentiality of the information; and
- (b) the corporation discloses the information in accordance with section 307C as soon as reasonably practicable after the corporation becomes aware that the confidentiality of the information has not been preserved.

The SFC’s case

375. In the written closing submissions of the SFC, Mr. Scott contended that Magic was unable to rely on ‘safe harbour’ provisions of section 307D(4) of the Ordinance because Magic had not announced the inside information as soon as reasonably practicable after it became aware of its leakage and also because it had failed to take reasonable measures to monitor the confidentiality of the information. Of the former, Mr. Scott invited the Tribunal to note that it had always been the case of the 2nd to 5th Specified Persons that there had been no leakage of any inside information;⁵¹⁷ alternatively, that Magic had not been aware of any indication of leakage of inside information.⁵¹⁸ In those circumstances, it was submitted that it was “logically and factually impossible for Magic to disclose the inside information as soon as reasonably practicable” after it had become aware that confidentiality of the information had not been preserved.

Reasonable measures to monitor the confidentiality of inside information

376. Mr. Scott submitted that the evidence demonstrated that Magic had failed to take reasonable measures to monitor the confidentiality of the inside information:

⁵¹⁷ Opening Submissions for the 2nd to 5th Specified Persons, paragraph 111.

⁵¹⁸ Opening Submissions for the 2nd to 5th Specified Persons, paragraph 121.5.

- it had no system for identifying and monitoring possible indicators of leakage of inside information;
- having noted the sharp rise in the share price of Magic on 15 and 16 April 2017, BNP Paribas had conducted a press search to seek to identify any public news that might have caused the price surge, whereas Magic did not do so;
- seeking legal advice was irrelevant to the monitoring of the confidentiality of inside information.

377. In his oral submissions, Mr. Scott said of the performance of the duties of the 2nd to 5th Specified Persons to comply with the disclosure obligations under Part XIVA of the Ordinance:⁵¹⁹

“The overwhelming evidence...is that Mr. Dawes’ clients gave no thought at all to Part XIVA. They never put their minds to the question whether there was inside information, whether there was leakage and whether they should make an announcement under Part XIVA.”

378. As illustrating that to be the case, Mr. Scott pointed to the fact that when Mr. Stephen Tang and the board of directors consulted Ms. Susana Lee of Chiu & Partners by telephone during the Magic’s board of directors meeting on 24 May 2013, as to whether or not it was necessary to make an announcement, she was not provided with all relevant information with which they could obtain properly informed advice; namely, of rumours in the market and the sharp rise in price and volume of trading in Magic shares.

The case of the 2nd to 5th Specified Persons

379. It was the case of the 2nd to 5th Specified Persons that Magic was entitled to rely on the ‘safe harbour’ exception to the disclosure requirements, provided for by section 307D(4), in that it had taken reasonable measures to monitor the confidentiality of the inside information and was not made aware of any information which indicated that confidentiality had not been preserved.

Reasonable measures to monitor the confidentiality of inside information

380. Of the measures taken by Magic to monitor the confidentiality of inside information, Mr. Dawes pointed to the assertions made in the witness statements of Mr. Stephen Tang⁵²⁰ and Mr. Chris Cheng⁵²¹ that Magic collated information on a daily basis not only of its brand image and business, and that of the industry, but also of the price and volume of trading in Magic’s shares. Mr. Stephen Tang said that the ensuing information was reported to the founders in a

⁵¹⁹ Transcript; Day 22, page 67.

⁵²⁰ Witness Evidence Bundle; pages 792-3, paragraphs 32 and 34.

⁵²¹ Witness Evidence Bundle; pages 900-901, paragraphs 20-23.

timely manner and in accordance to the division of “labour and needs”.⁵²² Mr. She⁵²³ and Mr. Luo⁵²⁴ asserted in their witness statements that, if an issue arose about sharp fluctuations in the price of shares/signs of leakage of confidential information, it was the role of Mr. Stephen Tang to seek legal advice and refer the matter to the board of Magic. Mr. Dawes submitted that it was undisputed that after Magic received L’Oréal’s proposal letter on 15 May 2013 there were no surges in the price or volume of trading in Magic’s shares or inquiries which suggested that the acquisition proposal had been leaked.

Discussion

(i) Did Magic take reasonable measures to monitor the confidentiality of inside information?

381. As is readily apparent, in considering whether or not Magic had taken reasonable precautions to preserve the confidentiality of inside information, we have had regard to the evidence of the measures taken to monitor the confidentiality of the information.

382. In his witness statement, Mr. Stephen Tang said “... through my subordinates, I monitored Magic share price and trading volume on a daily basis... My subordinates would consolidate the relevant materials and provide them to me and Chris.” Having said that, due to the lapse of time, he was “unable to locate all the relevant materials that were provided to me at the time,” he attached what was described as a “sample selection”.⁵²⁵

383. In his witness statement, Mr. Chris Cheng said “Stephen and I would monitor Magic’s share price and trading volume every day with the assistance of our subordinates (e.g. Jackie Tai, secretary to Stephen and myself)... Stephen and my subordinates consolidated the said information and provided the same to us.” He attached the same “sample selection” of that material as did Mr. Stephen Tang.⁵²⁶

384. The attachment encompassed seven pages only of “Share movements” on 15 and 16 April 2013 only for each entity, apparently Brokers, stipulated as a “CCASS Participant” on those two days. Neither Mr. Stephen Tang nor Mr. Chris Cheng explained the material in their evidence, but the documents appear to identify the total shareholding held by each of the participants on each of those days and the calculation of “% of the issued shares” held by each entity on each of the two days. The final column appears to reflect the increase or decrease of

⁵²² Witness Evidence Bundle; page 792, paragraph 32.

⁵²³ Witness Evidence Bundle; page 849, paragraph 72.

⁵²⁴ Witness Evidence Bundle; page 877, paragraphs 16 and 17.

⁵²⁵ Witness Evidence Bundle; page 793, paragraph 34.

⁵²⁶ Witness Evidence Bundle; page 901, paragraph 23.

the overall shareholding of each participant from 15 to 16 April 2013. The shareholding of only 19 of the 200 or so participants was described as having changed. The material does not contain any indication of the Low/High/Closing traded price of Magic shares. Clearly, not only did this material not enable the executive directors to monitor Magic's share price movements on 15 and 16 April 2013 but also it did not enable them to monitor the overall movement of turnover in Magic shares traded on those days.

385. For his part, Mr. Luo said in his witness statement "...when Magic's share price fluctuated, only Stephen, Mr. She, Mr. Liu (Mr. She's assistant) and I would discuss and seek to understand the reasons behind the fluctuation. Stephen would seek advice from external legal advisers and inform Magic's non-executive directors and independent non-executive directors if necessary, and make an announcement when appropriate."⁵²⁷ However, when asked in cross-examination if that had ever happened, Mr. Luo replied in the negative. He explained:⁵²⁸

"If it happened, then these things *would be* carried out according to what I said here."
[Italics added.]

386. If the purpose of monitoring the price and turnover of traded Magic shares was, as suggested in Mr. Luo's statement, to enable a fluctuation to be identified, so that it could be escalated for discussion between the three founders and Mr. Mike Liu, clearly that did not happen in the face of the approximately 15% rise in the price and a considerable increase in the turnover of Magic shares traded on 15 and 16 April 2013. Although Mr. Chris Cheng said that he noticed that "...the share price of Magic had an upward trend and an increase in trading volume after 15 April 2013,"⁵²⁹ he did not immediately escalate that information to any of the three founders. Similarly, although Mr. Stephen Tang made the same assertion,⁵³⁰ likewise he did not immediately escalate that information to any of the other executive directors or Mr. Mike Liu. Even after Mr. Stephen Tang's attention was drawn to the price rise in Magic shares by Mr. Leo Liu in a telephone call on 17 April 2013, the information was not escalated by Mr. Stephen Tang to any of the other executive directors.

387. By contrast, the rise in price in trading Magic shares, together with the enquiry as to whether or not L'Oréal was to acquire Magic, having been drawn to the attention of Mr. Chris Cheng by Mr. Kevin Xu in his email, dated 18 April 2013, the matter was escalated to Mr.

⁵²⁷ Witness Evidence Bundle; page 877, paragraph 17.

⁵²⁸ Transcript; Day 7, pages 60-1.

⁵²⁹ Witness Evidence Bundle; page 903, paragraph 36.

⁵³⁰ Witness Evidence Bundle; page 800, paragraph 68.

Stephen Tang.⁵³¹ Nevertheless, although there was a discussion between Mr. Stephen Tang and Mr. Chris Cheng, that assessment was not documented. Although the chain of emails that began with the CSV Capital Partners email to Mr. Chris Cheng, dated 18 April 2013, and concluded with Mr. Leo Liu's email to Mr. Stephen Tang, dated 19 April 2013, in which Mr. Leo Liu said that "market rumours will go around" and provided a suggested text attributing the recent price and volume rise in Magic shares to the New York roadshow, was forwarded to Mr. She,⁵³² it was not provided to or discussed with Mr. Luo or any of the non-executive directors. For his part, Mr. She said that he had not read the emails nor had Mr. Stephen Tang discussed their contents with him. All he was asked, was whether he had kept discussions between L'Oréal and the founders confidential.⁵³³

388. As noted earlier, there is no direct evidence that the significant rise in the price of trading in Magic shares on and between 26 April and 8 May 2013 was identified specifically within Magic, let alone assessed and escalated to other executive directors, let alone the board of directors.

Conclusion

389. In the result, we are not satisfied that Magic took reasonable measures to monitor the confidentiality of the inside information, which we have found came into existence on 27 April 2013.

(ii) Did Magic disclose the inside information to the public as soon as reasonably practicable after Magic became aware that confidentiality of the information has not been preserved?

390. There is no dispute that Magic did not make any disclosure at all to the public of the discussions with L'Oréal with any of its shareholders which "may lead to an offer... for all the issued shares" of Magic until 2 August 2013.⁵³⁴ On 15 August 2013, L'Oréal and Magic made a Joint Announcement that on 12 August 2013, L'Oréal requested that the board of Magic put forward a proposal for a "proposed acquisition of all the issued shares" of Magic "by way of a scheme of arrangement", which scheme "will provide that the Shares will be cancelled for HK \$6.30 in cash for each Share..."⁵³⁵

⁵³¹ Exhibit Bundle, page 635.

⁵³² Exhibit Bundle, page 2377.

⁵³³ Transcript; Day 9, pages 37-8.

⁵³⁴ Exhibit Bundle, pages 1-4.

⁵³⁵ Exhibit Bundle, pages 6-42.

391. We have found that the confidentiality of the inside information of the discussions on the agreements reached between the parties on 27 April 2013 was not preserved in the period thereafter. As noted earlier, it was submitted on behalf of the 2nd to 5th Specified Persons that they were not aware of any information which indicated that confidentiality had not been preserved. Notwithstanding that all-embracing submission, it is to be remembered that both Mr. Stephen Tang⁵³⁶ and Mr. Chris Cheng⁵³⁷ said that they were aware that the price of Magic shares was on an “upward trend” and the trading volume had “increased” after 15 April 2013. Each of them said that they were involved, with others, in monitoring the price and volume of trading in Magic shares traded.

392. Given that he had participated in all the discussions with L’Oréal and, in particular in the discussions held at the meeting on 27 April 2013, we are satisfied Mr. Stephen Tang’s understanding and perception of the significance of the rise in the price and volume of Magic shares traded in April and early May 2013 was different from that of Mr. Chris Cheng. As noted earlier, Mr. Stephen Tang was alerted by Mr. Leo Liu on 17 April 2013 about the concerns of BNP Paribas and L’Oréal as to whether there was a leak of the confidential information of the fact of their discussions. Those concerns arose in the context of a sharp rise in the price and volume of trading in Magic shares on 15 and 16 April 2013. Of whether or not he was worried that there had been “... a leak of price-sensitive information during April 2013”, Mr. Stephen Tang replied to Mr. Scott initially “I was concerned. I was worried that the meetings as well as the discussions between the founder shareholders and L’Oréal...” before his answer diverted into expressing concerns about the incorrect information circulating in the market.⁵³⁸

393. We are satisfied that, not surprisingly, Mr. Stephen Tang was concerned about and was alert to a leak of the fact of the discussions with L’Oréal, the more so after the agreement reached at the meeting of 27 April 2013.

394. Having agreed at the meeting of 27 April 2013 to contact the three institutional investors, to secure their acceptance of non-disclosure agreements and to disclose to them the fact of L’Oréal’s proposal to acquire Magic, as noted earlier, Mr. Stephen Tang had set about arranging those meetings immediately. He invited Mr. She and Mr. Luo to attend the meetings

⁵³⁶ Witness Evidence Bundle; page 800, paragraph 68.

⁵³⁷ Witness Evidence Bundle; page 903, paragraph 36.

⁵³⁸ Transcript; Day 6, page 21.

and informed Mr. Chris Cheng of their proposed attendance at the meetings. As Mr. Chris Cheng observed in his record of interview, that was unusual. The meetings took place on 9 and 10 May 2013. They did so against a rise in the closing price of trading in Magic shares from \$4.00 on 26 April 2013, the day before the meeting with L'Oréal, and a closing price of Magic shares on 8 May 2013 of \$4.85.

395. Whereas, Mr. Stephen Tang had been able to pray-in-aid, to himself and to Mr. Leo Liu, the roadshow as contributing to the approximately 15% rise in the price of Magic shares, together with significantly increased volume of trading, on 15 and 16 April 2013, and to agree that CSV Capital Partners be given that explanation and additionally that it was merely rumours, the material rise in the price of Magic shares in the period 26 April to 8 May 2013 of 21.25% was unexplained, other than by the leak of inside information of the discussions and the agreement reached with the representatives of L'Oréal on 27 April 2013.

396. We do not accept Mr. Stephen Tang's denial that there was a leakage of price sensitive information after the meeting of 27 April 2013 and prior to the meeting of the board of directors of Magic on 24 May 2013.⁵³⁹ Having been alerted a week or so earlier by Mr. Leo Liu of BNP Paribas/L'Oréal's concern that the sharp rise in the price and volume of trading in Magic shares might indicate a leak of confidentiality of their discussions, we are satisfied that in all circumstances, and in particular the material but otherwise unexplained rise in the price of trading in Magic shares immediately after the discussions and agreements reached at the meeting of 27 April 2013, Mr. Stephen Tang was aware that the confidentiality of the inside information had not been preserved. It is to be noted that, in contrast to his earlier response to the email enquiry of CSV Capital Partners, dated 18 April 2013, there is no evidence Mr. Stephen Tang asked any questions in respect of the circumstances of the rise in Magic's share price on and after 29 April 2013 of Mr. She or Mr. Luo or that he raised the matter at all with Mr. Chris Cheng. There is no dispute that monitoring movements in the price and volume of trading in Magic shares was part of Mr. Stephen Tang's ordinary duties as an executive director and chairman of Magic. Accordingly, we are satisfied that his knowledge was attributable to Magic. Section 307D (4) of the Ordinance is of no avail to Magic.

⁵³⁹ Transcript; Day 6, pages 25-6.

Conclusion

397. In the result, we are satisfied that, contrary to section 307B (1) of the Ordinance, Magic did not disclose to the public information, which constituted inside information, as soon as reasonably practicable after the inside information had come to its knowledge.

CHAPTER 7

Were any of the 2nd to 5th Specified Persons culpable of negligent conduct which resulted in the breach of Magic's disclosure requirement?

Did each of the 2nd to 10th Specified Persons take all reasonable measures to ensure that proper safeguards existed to prevent the breach of Magic's disclosure requirement?

398. Section 307G provides that:

- (1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.
- (2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation-
 - (a) whose intentional, reckless or negligent conduct has resulted in the breach; or
 - (b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,is also in breach of the disclosure requirement.

Director's duty of care, skill and diligence

399. As noted earlier, Section 465 of the Companies Ordinance, Cap. 622, provides that:

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) Reasonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with-
 - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
 - (b) the general knowledge, skill and experience that the director has.
- (3) The duty specified in subsection (1) is owed by a director of a company to the company.

- (4) The duty specified in subsection (1) has effect in place of the common law rules and equitable principles as regards the duty to exercise reasonable care, skill and diligence, owed by a director of a company to the company.

400. Those duties of care are similar to the duties in common law prior to the Ordinance coming into effect on 25 April 2013.

The cases advanced by the parties

401. Having regard to the Tribunal's finding as to the time at which inside information came into existence, the relevant part of the cases advanced by the parties in their written and oral closing submissions is of reduced ambit.

The SFC's case

The negligent conduct of the 2nd to 5th Specified Persons: Magic's breach of its disclosure requirements

402. Mr. Scott submitted that negligent conduct of the 2nd to 5th Specified Persons resulted in Magic's breach of its disclosure requirements.

403. The 2nd to 4th Specified Persons were negligent in having failed to identify that their discussions with L'Oréal in March and April 2013 constituted inside information. Given our findings, of particular relevance to the Tribunal are the discussions and agreements reached at the meeting of 27 April 2013. Mr. Scott submitted that they had failed to meet, review and assess the nature of that information. Given their evidence that they had intended to rely on the 'safe harbour' provisions of section 307D (2), they were negligent in having failed to identify possible leakages of inside information:

- although he had reported them to Mr. Leo Liu, who had raised the issue of the confidentiality of price-sensitive information, Mr. Stephen Tang had failed to initiate discussions with Mr. She and Mr. Luo about the three enquiries made in April 2013 as to whether or not L'Oréal was going to acquire Magic, having regard to the rise in the price and volume of trading in Magic's shares;
- Mr. She and Mr. Luo were negligent in not having investigated the reason that Mr. Stephen Tang had asked them in telephone calls whether or not they had disclosed their discussions with L'Oréal to a third party.

404. Mr. Chris Cheng, the 5th Specified Person, was negligent in having failed to ensure that the inside information of L'Oréal's proposed acquisition of Magic was disclosed to the public as soon as reasonably practicable after confidentiality of the inside information was not preserved. On receipt of the L'Oréal proposal letter on 15 May 2013, which made reference to

“preliminary discussions” between L’Oréal and Mr. Stephen Tang, Mr. She and Mr. Luo, together with the enquiry in the CSV Capital Partners email of whether or not L’Oréal was going to acquire Magic and Mr. Stephen Tang’s email replies to him, in the context of the rise in the price and volume of Magic’s traded shares, Mr. Chris Cheng was possessed of information that suggested the confidentiality of inside information had not been preserved. As Magic’s Company Secretary and an executive director, he was negligent in having failed to suggest that Magic’s board of directors be provided with all that information and asked to consider the possibility that there had been a leakage of inside information whilst seeking legal advice as to whether or not disclosure was required.

405. The 2nd to 5th Specified Persons were negligent in having failed to seek properly-informed legal advice of Magic’s disclosure obligations from Ms. Susana Lee of Chiu & Partners notwithstanding that three telephone conferences were held with Ms. Susana Lee. Although Mr. Chris Cheng had provided her with a copy of L’Oréal’s proposal letter by email on 15 May 2013, in the telephone conference of 16 May 2013, Mr. Stephen Tang did not provide her with any information of the “preliminary discussions” that had been held with L’Oréal. Similarly, no information as to those “preliminary discussions” was provided to her by any of Mr. Stephen Tang, Mr. She or Mr. Luo in the telephone conference at the board meeting of 24 May 2013. Further, she was not provided with information by them about the rise in the price and volume of Magic’s traded shares in mid-April nor by Mr. Stephen Tang of enquiries made as to whether or not L’Oréal was going to acquire Magic. Although Mr. Chris Cheng was the recipient of the CSV Capital Partners email enquiry as to whether or not L’Oréal was going to acquire Magic and he was aware of the rise in the price of traded Magic shares, he did not provide any of that information to Ms. Susana Lee.

The case of the 2nd to 5th Specified Persons

406. On behalf of the 2nd to 5th Specified Persons, Mr. Dawes submitted that a finding that any one of them was in breach of section 307G (2) (a) required it to be established that their respective negligent conduct had resulted in the breach of its disclosure requirement by Magic. Of the standard of care required of a director, he submitted that a director was only required to exercise the level of care, skill and diligence expected of a reasonably diligent person with the general knowledge, skill and experience that may be reasonably expected of a person carrying out those functions in relation to the company and having the general knowledge, skill and

experience of that director.⁵⁴⁰ He was not to be held liable for mere errors of judgment for decisions taken in good faith in what was honestly considered to be in the best commercial interests of the company.⁵⁴¹ Reliance on professional advice was an important factor to be taken into account.⁵⁴²

407. Mr. Dawes submitted that, even if the Tribunal found that Magic was in breach of its disclosure requirements, the SFC had not made out its case against them. First, the failure to ensure timely disclosure of L'Oréal's acquisition proposal was "a mere error in judgement", given that:

- it was not unreasonable for Mr. Stephen Tang, Mr. She and Mr. Luo to take the view that no disclosure was required by Magic to Chiu & Partners of their discussions with L'Oréal in March and April 2013, because they had acted in their private capacity as shareholders;
- it was not unreasonable for Mr. Stephen Tang, Mr. She and Mr. Luo to take the view that Magic was entitled to rely on section 307D to delay disclosure;
- it was not unreasonable for the 2nd to 5th Specified Persons to take the view that there was no leakage of inside information.

408. Further, the fact that the 2nd to 5th Specified Persons had caused Magic to take legal advice was relevant to the determination of whether or not they had used their best endeavours to comply with their duties.⁵⁴³ The failure of Chiu & Partners to take instructions on the movement of Magic share price and the existence of market rumours was a failure attributable to them, not to the 2nd to 5th Specified Persons.

409. Secondly, the SFC had failed to identify how weaknesses in Magic's procedures and safeguards led to Magic's breach of the disclosure requirement, in particular how the fact that the 2nd to 5th Specified Persons did not ensure that the measures set out in paragraph 60 of the *SFC's Guidelines* were put in place in Magic could have changed the outcome, given that the 2nd to 5th Specified Persons had reasonably taken the view that the discussions with L'Oréal prior to the receipt of L'Oréal's proposal letter on 15 May 2013 were private matters and that, in any event, Magic was entitled to avail itself of the 'safe harbour' defences.

⁵⁴⁰ *SFC v Yin Yingneng*, Richard (HCMP 2502/2012; unreported, 16 January 2015 at paragraphs 45-7).

⁵⁴¹ *Mortimer Company Directors: Duties, Liabilities and Remedies* (Third Edition) paragraph 14.34.

⁵⁴² *Green v Walkling* [2008] B.C.C. 256, at paragraph 36-7.

⁵⁴³ *Green v Walkling* [2008] B.C.C. 256, at paragraph 36-7.

Discussion

(i) Were any of the 2nd to 5th Specified Persons culpable of negligent conduct which resulted in Magic's breach of its duty of disclosure to the public of inside information as soon as reasonably practicable after the inside information had come to its knowledge?

410. We have found that inside information came into existence as a result of the discussions and agreement reached between L'Oréal and Mr. Stephen Tang, Mr. She and Mr. Luo on 27 April 2013 and that came to their knowledge.

411. The fact that Mr. Stephen Tang, Mr. She and Mr. Luo knew that the discussions and agreement with L'Oréal on 27 April 2013 was price sensitive information, albeit that they testified that it was not inside information, is evidenced by their testimony of repeated oral exhortations to each other at the material time to maintain confidentiality. On the other hand, there is no evidence that such system as did exist in Magic to monitor movements in the price and volume at which Magic shares traded played any role, let alone a proactive one, in prompting discussions between them as to whether there was a leakage of price sensitive information of the discussions with L'Oréal. Rather, such response as there was within Magic was reactive: first, to Mr. Leo Liu's telephone enquiry of Mr. Stephen Tang on 17 April 2013 and secondly, to the email from CSV Capital Partners on 18 April 2013. Notwithstanding the undisputed importance of the agreement reached between the parties on 27 April 2013, there was no evidence that they even identified specifically the significant rise in the price at which Magic shares traded from the close of \$4.00 on 26 April to the close of \$4.85 on 8 May 2013, including a rise of 11.75% to the latter date from the close of \$4.34 on 6 May 2013. There was no evidence that they assessed all the circumstances and reached a considered conclusion, let alone even considered escalating the information to Mr. Chris Cheng, the company secretary, or to the board of directors.

412. For his part, Mr. Stephen Tang knew of all three enquiries as to whether L'Oréal was going to acquire Magic. He reported the fact of all three enquiries to Mr. Leo Liu of BNP Paribas. The context in which he reported to Mr. Leo Liu, on 17 April 2013, the enquiries made of him by the US fund manager and the enquiry made by a Magic's supplier was the rise of about 15% in the price of Magic shares traded on 15/16 April 2013 and Mr. Leo Liu's enquiry as to whether confidentiality of the discussions with L'Oréal had been kept. However, Mr. Stephen Tang did not inform either Mr. She or Mr. Luo of either of those enquiries, or of the fact that Mr. Leo Liu had raised with him the issue of leakage of the fact of discussions with L'Oréal, and initiate a discussion on that topic.

413. Whilst Mr. Stephen Tang forwarded Mr. Leo Liu's email, dated 19 April 2013, to Mr. She, in which a suggested template was proposed to be given by Magic in the face of any further enquiry of the same nature as that raised in the email from CSV Capital Partners, he did not there and then initiate any discussion with Mr. She as to whether confidentiality of the discussions with L'Oréal had been kept nor did he provide the emails to Mr. Luo. When, in subsequent telephone calls, Mr. Stephen Tang raised with each of Mr. She and Mr. Luo whether or not they had informed any third party of the fact of the negotiations between L'Oréal and them, he did not inform them that he did so in the context of the three enquiries, together with the rise in price and volume of Magic shares and his conversation with Mr. Leo Liu on 17 April 2013 as to the confidentiality of discussions with L'Oréal.

414. For their part, notwithstanding the unusual nature of that enquiry, Mr. She⁵⁴⁴ and Mr. Luo⁵⁴⁵ testified that they made no enquiries at all of Mr. Stephen Tang and were supplied with no information by him as to why the issue had been raised with them. Mr. She added that it "...did not cross my mind" that, in asking the question, Mr. Stephen Tang was investigating a leak of price-sensitive information.⁵⁴⁶

L'Oréal's proposal letter

415. As noted earlier, the receipt of L'Oréal's proposal letter on 15 May 2013⁵⁴⁷, was the first time Mr. Chris Cheng came to know of those proposals and that their genesis lay in "preliminary discussions"⁵⁴⁸ with Mr. Stephen Tang, Mr. She and Mr. Luo. L'Oréal's proposal letter was attached to an email from Mr. Leo Liu⁵⁴⁹ received earlier in the morning by Mr. Stephen Tang, which Mr. Stephen Tang had forwarded to Mr. Chris Cheng. There is force in Mr. Scott's suggestion that Mr. Chris Cheng was now possessed of information which pointed to an earlier leak of the confidential information of discussions between L'Oréal and Mr. Stephen Tang, Mr. She and Mr. Luo: the CSV Capital Partners email enquiry as to whether or not L'Oréal was to acquire Magic, which he had dismissed as "rumours" was, at the very least, an accurate rumour. Also, not only had Mr. Leo Liu supplied Mr. Stephen Tang with the carefully worded template for Magic to deny any subsequent enquiry⁵⁵⁰ but also, about four weeks later, Mr. Leo Liu was the sender of the email to Mr. Stephen Tang attaching the

⁵⁴⁴ Transcript; Day 9, page 37.

⁵⁴⁵ Transcript; Day 7, page 53.

⁵⁴⁶ Transcript; Day 9, page 39

⁵⁴⁷ Exhibit Bundle, pages 2452-2514.

⁵⁴⁸ Exhibit Bundle, pages 2453.

⁵⁴⁹ Exhibit Bundle, page 935.

⁵⁵⁰ Exhibit Bundle, page 2377.

L'Oréal's proposal letter, which stated that "BNP Paribas is our financial adviser."⁵⁵¹ Obviously, it was clear to Mr. Cheng that Mr. Leo Liu and BNP Paribas not only were but also had been acting for L'Oréal in its proposed acquisition of Magic. Their involvement in the exchange of emails, dated 18 and 19 April 2013, addressing the enquiry made by CSV Capital Partners pointed to their contemporaneous concern of a potential leak of confidential information of the discussions with L'Oréal in respect of the acquisition of Magic.

416. We are satisfied that, in all those circumstances, Mr. Chris Cheng came to realise that the rise in the price and volume of trading in Magic shares on 15/16 April 2013, together with the CSV Capital Partners enquiry email, evidenced a potential leak of confidential information of discussions with L'Oréal. Further, that he realised the "preliminary discussions" were relevant to the issue of when inside information first came into existence and whether or not there was a leak of inside information. The text of the L'Oréal proposal letter made it clear that there was a link with those "preliminary discussions" to the making of the proposal to Magic in the letter received on 15 May 2013:

"Each of Mr. She, Mr. Tang and Mr. Luo has indicated to us that he would be supportive of the Offer and would sell his Shares to us."

That begged the questions of what, when and between whom had there been discussions which led to the making of that statement?

417. In cross-examination by Mr. Scott, Mr. Chris Cheng implied strongly that he had not raised the issue of the "preliminary discussions" with any of the founders: they were "a thing in the past" and "if they felt that I need to know, then I would have been told."⁵⁵² However, at the end of his testimony, in answering questions posed by the Chairman, he gave a different account:⁵⁵³

"CHAIRMAN: ... In the context of considering whether or not Magic ought to make an announcement, did you not think it necessary to find out when these preliminary discussions had taken place?

A. Yes, of course there was this need, but however Stephen Tang was already saying that they were talking, doing the talks, in the capacity of the founders."

⁵⁵¹ Exhibit Bundle, page 2455.

⁵⁵² Transcript; Day 11, page 24.

⁵⁵³ Transcript; Day 12, page 10.

418. In dealing with ensuing questions, Mr. Chris Cheng said, as he recalled, that he had raised the matter with Mr. Stephen Tang because “I wanted to understand or have an understanding of what was going on.”⁵⁵⁴ He said that he “...probably did this after I received the letter.” That was “probably” before the board meeting of 24 May 2013. He could not recall the exact date, “because at that time too many things were going on.” As he recalled, “...it doesn’t seem that I asked where the meeting took place.” Of who had attended the meeting, he said “It seems like that Stephen Tang said that those founders were there, along with lawyer Huang.” There was a “chance” that he gave that answer before the meeting of 24 May 2013.⁵⁵⁵ Then, he said:⁵⁵⁶

“...we had the discussion at the meeting, but then the contacts at that stage were at a preliminary stage. And it was the founders who made the contacts. That’s my impression. And the lawyers also-the lawyer also asked questions, questions about when they made the contacts...”

Of the answer, he said:⁵⁵⁷

“Stephen was talking about when they contact and then what was happening during the contact, that sort of thing.”

He could not recall what Mr. Stephen Tang had said about when the contacts were made. He confirmed that these were discussions at the board meeting on 24 May 2013.⁵⁵⁸

419. No other witness, who testified as having participated in the board meeting on 24 May 2013, said that the issue of the “preliminary discussions” between L’Oréal and Mr. Stephen Tang, Mr. She and Mr. Luo was raised at that meeting by a lawyer, presumably Ms. Susana Lee, and that she had elicited a response from Mr. Stephen Tang, in which he described “when” contact was made and “what was happening during the contact”. On the other hand, it is to be noted that in his record of interview, conducted of him on 26 February 2016, Mr. Sun Yan said that during the board meeting of 24 May 2013 “they” told us there had been discussions “for approximately 18 months” and that L’Oréal wanted Mr. She to work for it for “three or two

⁵⁵⁴ Transcript; Day 12, page 10.

⁵⁵⁵ Transcript; Day 12, pages 10-1.

⁵⁵⁶ Transcript; Day 12, page 12.

⁵⁵⁷ Transcript; Day 12, page 12.

⁵⁵⁸ Transcript; Day 12, pages 12-3.

years more”⁵⁵⁹. Also, of the process of the previous negotiations of price, Mr. Sun Yan said “...it seems that they did mention that it started at four dollars or so, or five dollars.”⁵⁶⁰

420. In his evidence, Mr. Stephen Tang did not suggest in any way that he had informed Ms. Susana Lee during the meeting on 24 May 2013 of what was discussed in meetings with L’Oréal and when they were held. In essence, his evidence was that he had told her that the meetings and their contents were all kept confidential.⁵⁶¹ For her part, in answer to the question if she had asked the three founders and Mr. Liu “what was (sic) date and the content” of the preliminary discussions, Ms. Susana Lee said, “I did not, but I remember I did ask them whether you agree to the pricing, and also you would definitely agree to sell.”⁵⁶² Clearly, those were questions arising directly from the assertion in L’Oréal’s proposal letter that each of the founders “has indicated to us that he would be supportive of the Offer and would sell his Shares to us.” Under the title **Possible Offer Price**, the letter went on to assert, “we have established a preliminary offer price of not less than HK \$5.50 per Share (the “**Offer Price**”).⁵⁶³ For his part, in replying to the question of whether he had found out “what those preliminary discussions” were about”, Mr. Dar Chen said “I don’t recall. I don’t think I asked a lot, no.”⁵⁶⁴

421. We do not accept Mr. Chris Cheng’s evidence that he had raised with Mr. Stephen Tang the question of when the preliminary discussions had taken place. That was wholly contrary to his initial and considered response to the question he was asked twice in respect of the issue: first, that it was a matter that lay in the past and secondly, that the founders would have told him if they felt that he needed to know. Perhaps, the change in his evidence is accounted for by his wishful thinking; namely, a belated realisation that this was clearly a matter that he ought to have pursued, in order to obtain all relevant information to provide to the non-executive directors. Clearly, such information was highly relevant to whether or not it was likely there had been a leakage of inside information, such that Magic ought to make an announcement to the public.

422. Further, we do not accept Mr. Chris Cheng’s evidence that, at the meeting of 24 May 2013, Ms. Susana Lee asked Mr. Stephen Tang what had been discussed at the meetings with

⁵⁵⁹ Witness Evidence Bundle; pages 301-2, counter #s 175-180.

⁵⁶⁰ Witness Evidence Bundle; page 314, counter #268.

⁵⁶¹ Transcript; Day 6, page 32.

⁵⁶² Transcript; Day 21, pages 77-8.

⁵⁶³ Exhibit Bundle, page 936.

⁵⁶⁴ Transcript; Day 16, page 89.

L'Oréal and when they had been held nor that Mr. Stephen Tang had given responsive replies to those questions. We accept Ms. Susana Lee's evidence that she did not ask those questions.

423. On Mr. Stephen Tang's instructions, on 15 May 2013 Mr. Chris Cheng informed Ms. Susana Lee by telephone of the L'Oréal proposal and provided her with L'Oréal's letter by email. At 3:30 p.m. on 16 May 2013, he participated in a telephone conference call with Mr. Stephen Tang, Ms. Susana Lee and Mr. Huang. Prior to the conference call, Ms. Susana Lee had circulated to Mr. Stephen Tang and Mr. Chris Cheng by email Rules 3.1 to 3.5 of the Takeovers Code. Factors described there, as being relevant for consideration as to whether or not an announcement is to be made by an offeree company, include whether or not the company:⁵⁶⁵

“...is the subject of rumour or speculation about a possible offer or there is undue movement in its share price or in the volume of shares turnover”.

424. We are satisfied that the provision of this information to Mr. Stephen Tang and Mr. Chris Cheng served to emphasise to them the obvious relevance, to a decision of whether or not to make an announcement to the public, to both the board of directors and its legal adviser of information about rumours or speculation about the acquisition of Magic by L'Oréal and to undue movement in the price and volume at which Magic shares traded.

425. However, Mr. Stephen Tang did not provide information of the three enquiries, which evidenced rumours, or speculation at least, of an acquisition of Magic by L'Oréal, to Ms. Susana Lee either before or at the Magic board meeting on 24 May 2013. Similarly, as noted earlier, we accept Ms. Susana Lee's evidence that there was no discussion in the telephone conference call of 24 May 2013, in which she was informed of the movement in the share price or volume of trading in Magic shares in the period March to May 2013.⁵⁶⁶

426. For his part, acting on Mr. Stephen Tang's instructions on 15 May 2013, Mr. Chris Cheng set about arranging a board meeting of Magic's directors. Although he provided the directors with a Notice setting out an agenda, dated 17 May 2013, it did not contain an item addressing whether or not it was appropriate for Magic to make an announcement.⁵⁶⁷ He had been advised by Ms. Susana Lee in a telephone conference in the afternoon of 15 May 2013 that the L'Oréal proposal letter had implications in respect of the Takeovers Code and Listing

⁵⁶⁵ Exhibit 2A.

⁵⁶⁶ Transcript; Day 21, pages 78 and 81.

⁵⁶⁷ Exhibit Bundle, page 2577.

Rules and had been advised to convene a meeting of Magic's Board of Directors as soon as possible. The meeting was not convened until nine days later. The excerpts of Rule 3 of the Takeovers Code, which Ms. Susana Lee had sent by email to Mr. Chris Cheng and Mr. Stephen Tang on the afternoon of 16 May 2013, were provided to those attending the meeting physically only at that meeting and to Mr. Yang Rude and Professor Dong Yin Mao, who participated in the meeting by telephone, by email only very shortly before the meeting.⁵⁶⁸ Mr. Dar Chen confirmed the copies of the Takeovers Code were on the table at the meeting.⁵⁶⁹ As noted earlier, those Rules made it perfectly clear that a relevant consideration as to whether or not Magic should make an announcement was whether Magic was the subject of "rumour or speculation about a possible offer or there is undue movement in its share price or in the volume of shares turnover".

427. Mr. Chris Cheng gave no explanation as to why those documents were provided to the other directors at such a late stage, given that they had been in his possession since the afternoon of 16 May 2013.

428. Mr. Chris Cheng did not suggest to any of the other executive directors that the movement in the price and volume of Magic shares traded on 15/16 April 2013 and the enquiry of CSV Capital Partners of whether or not L'Oréal was going to acquire Magic be drawn to the attention of all the directors at the board meeting. Similarly, he did not make any such suggestion prior to that meeting in respect of the movement in the price and volume of Magic shares traded on and between 29 April and 8 May 2013. He raised neither matter at the board meeting itself.

429. There is no dispute that the meeting of the board of directors of Magic on 24 May 2013 was a most important meeting. As chairman of the company, Mr. Stephen Tang conducted the meeting. As company secretary and an executive director, Mr. Chris Cheng was responsible for making the necessary arrangements for the meeting. It is clear that between them they failed to provide or cause to be provided all the relevant information, of which each was aware, to enable those participating in the meeting to make an appropriately informed decision or, in Ms. Susana Lee's case, to provide properly informed legal advice as to whether or not Magic ought to make disclosure to the public of the L'Oréal proposal. Had that information been made available to Ms. Susana Lee and to the board of directors at the meeting of 24 May 2013, or

⁵⁶⁸ Exhibit Bundle, pages 2585-2623.

⁵⁶⁹ Transcript; Day 16, pages 104-5.

more appropriately at an earlier date, we are satisfied that properly informed legal advice would have been given to the board of directors and the board, being properly advised and properly informed itself, would have determined that it was necessary to make an immediate announcement to the public of L'Oréal's proposal. In fact, no announcement at all was made by Magic until 2 August 2013.⁵⁷⁰ It was not until 15 August 2013 that Magic and L'Oréal made a joint announcement in which L'Oréal was identified.⁵⁷¹

430. At the meeting, Ms. Susana Lee testified that she alerted the participants that they must be alert to movement in Magic's "share price and volume" and "anything which suggests... a leakage of information".⁵⁷² Although both Mr. Stephen Tang and Mr. Chris Cheng were aware of the sharp rise in the price and volume of Magic shares traded on 15 and 16 April 2013 and of the subsequent upward trend in the price of Magic shares, neither of them provided that information at the board meeting. Similarly, although Mr. Stephen Tang was aware of three enquiries and Mr. Chris Cheng of one enquiry, as to whether Magic was to be acquired by L'Oréal, neither provided that information to the meeting.

431. Mr. Stephen Tang had participated in the video conference with representatives of L'Oréal and BNP Paribas on 15 April 2013 and, together with Mr. She and Mr. Luo, had reached the agreement at the meeting on 27 April 2013. For his part, Mr. Chris Cheng had been alerted by the L'Oréal proposal letter he received on 15 May 2013 to the "preliminary discussions" held by the founders with L'Oréal. In those circumstances, we are satisfied that each of them knew that, having regard to the need to be alert as to rumours and movements in the price and volume of trading in Magic shares, it was necessary not only to look forward from 15 May 2013 but also to have regard to the weeks leading up to that date.

432. With respect, the criticism by Mr. Dawes of Chiu & Partners for failing to elicit instructions from the executive directors of Magic on the movement in price and volume of trading in Magic shares and rumours of an acquisition of Magic is wholly misplaced. Ms. Susana Lee had identified them as matters to which the board of directors were required to have regard. Such failure as there was, was the failure of Mr. Stephen Tang and Mr. Chris Cheng, each of whom gave instructions to Ms. Susana Lee, to reveal to her information, which they possessed but which she did not, that was relevant to the legal advice sought from her by

⁵⁷⁰ Exhibit Bundle, pages 2-4.

⁵⁷¹ Exhibit Bundle, pages 6-42.

⁵⁷² Transcript; Day 21, page 84.

them. The validity of legal advice is dependent on the information the client chooses to provide to the lawyer. It is to state the obvious to observe that it is not open to a party to claim protection for his failings by reliance on legal advice, when the legal advice has been secured by the failure of that party to provide obviously relevant information to the lawyer in securing the legal advice. Similarly, Mr. Stephen Tang and Mr. Chris Cheng failed to provide relevant information to their fellow directors, which each of them possessed but which they did not.

433. For his part, Mr. Chris Cheng failed to make any enquiries himself, or to suggest to the board of directors that it makes enquiries, as to when the “preliminary discussions” with L’Oréal had taken place which had resulted in each of Mr. Tang, Mr. She and Mr. Luo indicating to L’Oréal that each would be “supportive of the Offer and would sell his Shares to us.”⁵⁷³ That information was clearly relevant to the issue of when inside information came into existence and, having regard to enquiries and movements in the price and volume of trading in Magic shares, whether or not there had been a leak of that information.

Conclusion

434. We are satisfied that, having regard to their respective knowledge, skill and experience, each of Mr. Stephen Tang and Mr. Chris Cheng failed to exercise the skill and diligence required of them in carrying out their functions as directors and chairman and company secretary of Magic respectively.

435. Each of them was an experienced, professionally qualified man. Each had been awarded a postgraduate degree, Mr. Stephen Tang by City University of Hong Kong in International Business Management 1999 and Mr. Chris Cheng in Practising Accounting from Monash University in Australia. Mr. Stephen Tang was a member of the CPA Australia and of the Hong Kong Institute of Certified Public Accountants, whereas Mr. Chris Cheng was a member of the latter. Mr. Stephen Tang was a co-founder of Magic and its chairman. Mr. Chris Cheng joined Magic as company secretary in May 2011 and became an executive director on 1 July 2012. The Annual Report of Magic for 2012/2013 described Mr. Stephen Tang as being “...responsible for the overall strategic planning, financial planning and corporate management of the Group” and having “...over 10 years experience in corporate management and strategic

⁵⁷³ Exhibit Bundle, page 2453.

planning” and Mr. Chris Cheng as having “...over 16 years of experience in company secretarial work, auditing, accounting, and financial management.”⁵⁷⁴

436. In the result, in all the circumstances, we are satisfied that the negligent conduct of Mr. Stephen Tang and Mr. Chris Cheng resulted in the breach by Magic of its disclosure requirement, contrary to section 307G (2) (a) of the Ordinance, and that each of them is in breach of the disclosure requirement.

Mr. She and Mr. Luo

437. Mr. She was the general manager and an executive director of Magic, having been appointed on 6 September 2010. He was described in Magic’s 2012/2013 Annual Report as “...responsible for overseeing the operations of the business of the Group. Mr. She graduated from South China University of Technology with a diploma in food engineering.”⁵⁷⁵ In his witness statement, he said, “I was mainly responsible for developing business strategies, and other work relating to sales and marketing within Magic.” Of the division of work between the three Founders, he said “...reports concerning sales, marketing and human resources were consolidated and reported to me, whilst the reports concerning finance and capital market were reported to Stephen. Reports concerning production were reported to Mr. Luo.”⁵⁷⁶

438. Mr. Luo was the deputy general manager and an executive director of Magic, having been appointed on 6 September 2010. He was described in Magic’s 2012/2013 Annual Report as being “responsible for overseeing the production and research and development of the Group... Mr.. Luo has over 20 years experience in production and research and development of the cosmetics industry.”⁵⁷⁷ In his witness statement, he said, “I was primarily responsible for Magic’s supply chain management, such as procurement of raw materials, production, logistics and research and development etc.” He added, “I worked mostly in Guangzhou. I visited Hong Kong only if I had to attend directors’ meetings of Magic...my business visits to Hong Kong did not exceed 15 days a year at that time.”⁵⁷⁸ Of the division of work between the three founders, he said “Stephen was primarily responsible for dealing with matters relating to corporate finance, the capital market in Hong Kong and investor relations of Magic, whereas

⁵⁷⁴ Exhibit Bundle, page 102.

⁵⁷⁵ Exhibit Bundle, page 102.

⁵⁷⁶ Witness Evidence Bundle; page 831, paragraph 12.

⁵⁷⁷ Exhibit Bundle, page 102.

⁵⁷⁸ Witness Evidence Bundle; pages 875-6, paragraphs 5 and 9.

Mr. She was responsible for Magic's business operations, including product sales and general management etc."⁵⁷⁹

439. Although Mr. She and Mr. Luo both failed to ask Mr. Stephen Tang the obvious question of why he asked each of them in April 2013 if each had kept the L'Oréal discussions confidential, Mr. She's failure was the greater since, on his own evidence, he had failed to even bother to read the email chain, originating with the CSV Capital Partners email to Mr. Chris Cheng, which Mr. Stephen Tang had forwarded to him on 19 April 2013. Had he done so, it would have been obvious to Mr. She why the question was posed by Mr. Stephen Tang. There is every reason to believe that, had each of them raised that question with Mr. Stephen Tang, he would have informed Mr. Luo of the enquiry as to whether or not L'Oréal was going to acquire Magic and its context, namely the rise in price and volume of trading in Magic shares and given Mr. She the same information, reminding him that the explanation lay in the chain of emails that he had forwarded to him on 19 April 2013.

440. Although each of them was a party to the agreement made with L'Oréal on 27 April 2013 and knew that knowledge of it was price-sensitive, each failed to suggest to Mr. Stephen Tang or Mr. Chris Cheng that, in monitoring whether or not there was a leakage of that information, particular regard be had to movements in the price and volume of trading in Magic shares in the period on and after 29 April 2013. Neither of them made the suggestion at the board meeting of 24 May 2013 that particular regard be had to movements in the price and volume of trading in Magic shares in April and early May 2013.

Conclusion

441. Notwithstanding those failures, but having regard to their respective responsibilities and the particular functions they performed within Magic, together with their experience and skills, we are not satisfied that either Mr. She or Mr. Luo was culpable of negligent conduct that resulted in the breach of Magic's disclosure requirement, contrary to section 307G (2) (a) of the Ordinance.

⁵⁷⁹ Witness Evidence Bundle; page 876, paragraph 10.

(ii) Did each of the 2nd to 10th Specified Persons take all reasonable measures from time to time to ensure proper safeguards existed to prevent the breach of Magic's disclosure requirement?

The SFC's case

442. On behalf of the SFC, Mr. Scott submitted that the 2nd to 10th Specified Persons had failed to take all reasonable measures from time to time to ensure that proper safeguards existed to prevent the breach of Magic's disclosure requirement.

443. Mr. Scott reminded the Tribunal that, having been gazetted on 4 May 2012, Part XIVA of the Ordinance came into operation on 1 January 2013. The SFC's *Guidelines* had been published in June 2012. The 2nd to 10th Specified Persons were all directors of Magic throughout the period. Nevertheless, no written policies and procedures on inside information were ever put into place in Magic and it maintained no audit trail of assessment of inside information. Further, apart from Mr. Chris Cheng and Mr. Dar Chen, Magic provided no training for its directors in 2012 and 2013 and no specific training in respect of Part XIVA of the Ordinance. Nevertheless, he acknowledged that Mr. Chris Cheng had circulated, attached to an email to all directors, dated 21 December 2012, a copy of Part XIVA of the Ordinance and the *Guidelines*.⁵⁸⁰ The subject of the email was "Training on the updates of the relevant regulations for disclosure of inside information by listed companies", and the text drew their attention, *inter-alia*, to the fact that the legislation "will take effect as of January 1, 2013."⁵⁸¹

444. Having pointed out that paragraph 60 of the *Guidelines* provided non-exhaustive examples of measures which should be considered when establishing systems and procedures to prevent a breach of a disclosure requirement, Mr. Scott submitted that, given that section 307G (1) required every officer to take "all reasonable measures", unless the measures were unreasonable, there was no reason why the measures should not be adopted.

445. Mr. Scott invited the Tribunal to note that Mr. David Norman, who had given evidence as an expert witness on behalf of all the Specified Persons, save for Magic, acknowledged in his written report that the practices commonly adopted in 2019 by Hong Kong listed companies included the measures identified paragraphs 60 (a), (d) to (f), (i) and (l) to (n) of the *Guidelines*.⁵⁸² Mr. Scott invited the Tribunal to reject the evidence of Mr. Norman to the effect that the board of a listed company "can establish policies without written policies" as obviously

⁵⁸⁰ Exhibits Bundle, pages 2962-3171.

⁵⁸¹ Exhibits Bundle, page 2964.

⁵⁸² Expert Evidence Bundle; pages 1012-13, paragraph 26.

wrong and the distinction he drew between “Owner-operated Listcos”, of which he said Magic was one, and “Independent Management Listcos.”⁵⁸³ Of the former, Mr. Norman said that they “...often see no need for SFC Guideline (n)”, namely to document the disclosure policies and procedures in writing and keep them up-to-date, and “often have in place only unwritten measures”.⁵⁸⁴

446. Mr. Scott submitted that no such distinction was drawn in law in section 307G. Further, Magic did not fit well into the distinction he sought to draw: in 2013 Magic had 4,726 employees; it had nine senior managers; its headquarters were in Guangzhou and its head office in Hong Kong;⁵⁸⁵ it had six managers of “the greater regions” and a sales controller.⁵⁸⁶ Further, together Mr. Stephen Tang, Mr. She and Mr. Luo owned only around 25% of the issued share capital, whereas together Atlantis, Baring and Greenwoods held about 40% of the issued share capital.⁵⁸⁷

Non-Executive Directors

447. Of the role of non-executive directors, Mr. Scott invited the Tribunal to note paragraph 59 of the *Guidelines*, in particular that, not normally being involved in the daily operations of a corporation, “... the board’s responsibility for establishing and monitoring key internal control procedures is of particular significance for non-executive directors as this is an area where they are more likely to be directly involved.”⁵⁸⁸

448. He submitted that non-executive directors had a non-delegable duty to ensure that appropriate systems and procedures were in place, developed and reviewed periodically for compliance by Magic of the requirements under Part XIVA of the Ordinance.

Reasonable measures

449. Mr. Scott submitted that Magic and all its directors had failed to put in place proper systems and procedures to enable Magic to comply with its obligations under Part XIVA of the Ordinance. Having regard to the fact that they had failed to implement many of the suggested

⁵⁸³Expert Evidence Bundle; page 1011, paragraphs 20-1.

⁵⁸⁴ Expert Evidence Bundle; page 1012, paragraphs 23-4.

⁵⁸⁵ Exhibit Bundle; pages 84-201 Magic's 2012/2013 Annual Report at pages 87, 101 and 104.

⁵⁸⁶ Transcript; Day 5, page 63. (Mr. Stephen Tang.)

⁵⁸⁷ Exhibit Bundle; pages 6-42. L’Oréal/Magic Joint Announcement, 15 August 2013 at page 16.

⁵⁸⁸ Expert Evidence Bundle; pages 603-4.

measures set out in paragraph 60 of the *Guidelines*, he submitted that the 2nd to 10th Specified Persons were in breach of section 307G (1) and 307G (2)(b) of the Ordinance.

Mr. Dar Chen

450. In respect of Mr. Dar Chen, Mr. Scott made further specific submissions that he had failed to take all reasonable measures to ensure that proper safeguards existed to prevent Magic's breach of a disclosure requirement. In doing so, he adverted to the following chronology:

- 4 May 2012-Part XIVA of the Ordinance was gazetted;
- June 2012-the SFC's *Guidelines* were published;
- 22 June 2012-Mr. Dar Chen attended an induction training course in which reference was made to various provisions of Part XIVA;
- 1 July 2012-Mr. Dar Chen was appointed a director of Magic;
- 21 December 2012-Mr. Chris Cheng sent an email to Mr. Dar Chen attaching Part XIVA and the SFC's *Guidelines*; and
- 1 January 2013-Part XIVA came into effect.

451. Having regard to the chronology, Mr. Scott submitted that it was within Mr. Dar Chen's power as a director to ask Mr. Chris Cheng or other executive directors, prior to the new legislation coming into effect on 1 January 2013, whether or not Magic had taken steps and/or were to take steps to put in place policies, systems or procedures to ensure Magic complied with the new legislation. He did not do so.

452. Mr. Dar Chen's receipt of the email and its attachments from Mr. Chris Cheng, dated 21 December 2012, a mere 10 days or so before the new law came into effect, made the making of such enquiries all the more necessary. Although Mr. Chris Cheng's email explained briefly some aspects of the new legislation, it did not even address other important matters.

453. Mr. Scott submitted that the reliance placed by Mr. Lester and Mr. Allen, that the undisputed steps that Mr. Dar Chen had taken to join Magic's audit committee was a significant step in satisfying the requirement that he take all reasonable measures to ensure that proper safeguards existed to prevent Magic's breach of the disclosure requirement, was "a red herring". Mr. Dar Chen had no less power as a director to make enquiries as to whether such safeguards existed.

454. Mr. Scott invited the Tribunal to note that Mr. Thomas Yan's suggestion that Mr. Dar Chen's offer to become a member of the audit committee be accepted and that he be nominated as a member of the audit committee for the consideration of the board, was rejected with a

detailed explanation by Mr. Chris Cheng in his email to Mr. Thomas Yan, dated 9 April 2013. He submitted that it was significant that Mr. Dar Chen's reply to Mr. Chris Cheng,⁵⁸⁹ dated 9 April 2013, that he would like to meet Mr. Cheng "to have the opportunity to understand more what specific measures are in place and findings of internal audits" was not followed up by Mr. Cheng or anyone else.

455. Mr. Scott acknowledged that Mr. Dar Chen had proposed, in emails to the board of directors from Mr. Thomas Yan and Mr. Dar Chen, respectively dated 28 and 29 March 2013,⁵⁹⁰ that an independent consulting firm be engaged to carry out internal control review on Magic at the expense of Baring. However, he said that, whilst that evidenced his "good intention", it did not absolve him from his duties pursuant to section 307G (1) and (2) (b) of the Ordinance.

The case for the 2nd to 5th Specified Persons

456. In his closing submissions, Mr. Dawes contended "... neither limb of the Commission's case against the Founders under s. 307G is sustainable." He prayed-in-aid the submissions he advanced in respect of the allegations of negligent conduct by the 2nd to 5th Specified Persons. In particular, he submitted that the SFC had "failed to demonstrate that the weaknesses in Magic's procedures and safeguards led to Magic's breach of the disclosure requirement" nor had the SFC identified measures that "could have changed this outcome".

The case for the 6th, 8th to 10th Specified Persons

457. Mr. Chan submitted that, even if Magic was found to be in breach of its disclosure requirements, the 6th, 8th to 10th Specified Persons were not in breach of section 307G. He submitted that, "There is no "freestanding" liability under S. 307G(2)(b) for a failure to ensure that proper safeguards to prevent any breach unrelated to "**the breach**" as referred to in s. 307G(2)(a)."

458. Of the cause of the breach of the disclosure requirements by Magic, if there was found to be a breach, Mr. Chan said that it was "a **misjudgment**" by Mr. Stephen Tang:

- in not escalating the matter to the Board prior to 15 May 2013; and
- when Chiu & Partners became involved, in failing to give them proper instructions in relation to the question of disclosure.

⁵⁸⁹ Exhibit Bundle, page 3210.

⁵⁹⁰ Exhibit Bundle, pages 3207-9.

Reasonable measures

459. Mr. Chan submitted that reasonable measures had been taken to ensure that proper safeguards existed to prevent the breach of disclosure by Magic. Having regard to the suggested measures set out in paragraph 60 of the SFC's Guidelines, he contended that "the actual cause of Magic's breach ... was **not** because of any alleged failure to implement those suggested measures, but because of Tang's misjudgment". Measures had been taken:

- *to ensure that the directors were "properly educated" about their disclosure obligations:*
in March 2010, Mr. Thomas Yan, Prof Yang and Prof Dong participated in a training course in which the disclosure obligations of directors was addressed; in June 2012, Mr. Dar Chen and Mr. Chris Cheng attended a training course; by an email, dated 16 February 2012, Mr. Chris Cheng circulated updates on the law relevant to directors' duties;⁵⁹¹ by an email, dated 21 December 2012, Mr. Chris Cheng circulated to the directors Part XIVA and the SFC's Guidelines;⁵⁹²
- *to monitor fluctuations in the price and volumes of trading in Magic shares;*
Mr. Stephen Tang⁵⁹³ and Mr. Chris Cheng⁵⁹⁴ testified to that effect;
- *to make all the directors aware that confidentiality of L'Oréal's proposal letter received on 15 May 2013 was critical;* non-disclosure agreements had been signed between L'Oréal and the founders on 21 February 2013 and on 6 May 2013;⁵⁹⁵ and on 9 and 10 May 2013 between L'Oréal and the three institutional investors;⁵⁹⁶
- *to take legal advice from Ms. Susana Lee of Chiu & Partners at the board meeting of 24 May 2013, as to whether or not it was necessary for Magic to make disclosure.*

Mr. Thomas Yan (the 8th Specified Person)

460. Mr. Chan invited the Tribunal to note that in an email, dated 28 March 2013, together with Mr. Dar Chen, Mr. Thomas Yan had identified to the board of directors the concerns that the transparency and internal control systems of Magic were "somewhat deficient and not up to standards" and made proposals to address those concerns, including that a "third-party independent consulting firm be engaged to carry out internal control review on the company's operation", which costs would be borne by Baring.⁵⁹⁷ That evidenced his awareness of his duties and was an example of him taking reasonable measures to ensure that proper safeguards existed to prevent Magic's breach of its disclosure duty.

⁵⁹¹ Exhibit Bundle, pages 2948-61.

⁵⁹² Exhibit Bundle, pages 2962-3171.

⁵⁹³ Transcript; Day 6, pages 16-7.

⁵⁹⁴ Transcript; Day 11, pages 9-11 and 21.

⁵⁹⁵ Exhibit Bundle, page 909-13.

⁵⁹⁶ Exhibit Bundle, page 914-34.

⁵⁹⁷ Exhibit Bundle, page 3207.

The case for Mr. Dar Chen (the 7th Specified Person)

461. Mr. Wadham submitted on behalf of Mr. Dar Chen that it did not follow axiomatically that a finding that Magic did not have relevant disclosure safeguards meant that Mr. Dar Chen had failed to take all reasonable measures to ensure that proper safeguards existed to prevent the breach of disclosure. It was necessary for the Tribunal to examine the conduct of each and every director.

462. Mr. Wadham suggested that the standard of care required that:⁵⁹⁸

“at a minimum, that directors take a diligent and intelligent interest in information available to them for which they might appropriately demand from the executives or other employees and agents of the company.”

463. Mr. Wadham submitted that considerations relevant to whether a director had discharged his duties of care and diligence were those identified by Brereton J in *Australian Securities and Investment Commission v Maxwell and Others*,⁵⁹⁹ to which reference was made earlier.

464. In approaching the evidence, Mr. Wadham said that the Tribunal was to have regard to the fact that Mr. Dar Chen was first appointed as a director on 1 July 2012. Part XIVA of the Ordinance was gazetted on 4 May 2012 and did not come into effect until 1 January 2013. The training course conducted by Chiu & Partners for Magic attended by Mr. Dar Chen on 22 June 2012 encompassed Part XIVA of the Ordinance, including the duties imposed on the company by section 307B and the ‘safe harbour’ provisions provided for by section 307D.

465. Mr. Wadham invited the Tribunal to note that, in his witness statement, Mr. Dar Chen said that it was his “primary focus and objective” in the second half of 2012 “to get to know and understand Magic, its strategic direction, the strengths and weaknesses of the company’s executive management, the dynamics of Magic’s board, and so on.”⁶⁰⁰ Of that approach, Mr. Wadham pointed out that it was Mr. Lester’s opinion that it would take a new non-executive director two to six months to make an “informed assessment of the company and its internal control environment”⁶⁰¹ but, having regard to the fact that the board of directors of Magic met

⁵⁹⁸ *Australian Securities and Investment Commission v Healey* (2011) 83 ACSR 484, at paragraph 143.

⁵⁹⁹ *Australian Securities and Investment Commission v Maxwell* (2006) ACSR 373 at paragraph 100.

⁶⁰⁰ Witness Evidence Bundle; page 943, paragraph 27.

⁶⁰¹ Expert Evidence Bundle; page 1024, paragraph 21.

only four times a year, it was Mr. Allen’s opinion that to achieve that objective “a year is still early days.”⁶⁰²

Audit committee

466. Of the steps taken by Mr. Dar Chen to discharge his duties as a non-executive director, Mr. Wadham pointed to the evidence of his repeated attempts, despite being rebuffed, to join the audit committee as illustrated by his email exchanges with Mr. Chris Cheng:

- 15 September 2012-when he sought to be permitted to sit as an observer,⁶⁰³ but was told that the committee should be comprised of independent non-executive directors only;⁶⁰⁴
- 7 February 2013-in which he suggested that was permitted, “...as long as I am not Chairman and the majority is ined”, but was told “we will keep the existing structure of the committee with only independent non-executive directors”;⁶⁰⁵
- 28 and 29 March 2013-in which he confirmed that he would accept Mr. Thomas Yan’s invitation to be appointed to the audit committee.⁶⁰⁶

Internal control review

467. Further, Mr. Wadham invited the Tribunal to note that on the latter occasion, Mr. Dar Chen’s proposal that there be an internal control review of Magic was endorsed by Mr. Thomas Yan.⁶⁰⁷

468. Mr. Wadham invited the Tribunal to note that in their evidence Mr. Lester,⁶⁰⁸ Mr. Allen⁶⁰⁹ and Dr. Fong⁶¹⁰ had testified that the proposed internal control review would have likely included compliance with disclosure obligations within its scope. If Mr. Dar Chen’s proposed internal control review had been accepted by the board and carried out, it was likely that the deficiencies in Magic’s disclosure safeguards would have been identified and remedial action taken. On that evidence alone, Mr. Dar Chen did take all reasonable measures to ensure that proper safeguards existed to prevent the breach.

⁶⁰² Transcript; Day 20, page 81.

⁶⁰³ Exhibit Bundle, page 3198.

⁶⁰⁴ Witness Evidence Bundle; page 943, paragraph 28.

⁶⁰⁵ Exhibit Bundle, page 3200.

⁶⁰⁶ Exhibit Bundle, page 3208.

⁶⁰⁷ Exhibit Bundle, page 3207.

⁶⁰⁸ Expert Evidence Bundle; page 1028, paragraph 43.

⁶⁰⁹ Expert Evidence Bundle; page 1050, paragraph 70.

⁶¹⁰ Transcript; Day 18, page 87.

469. Of the rejection of all those proposals by Mr. Chris Cheng in his email, dated 9 April 2013,⁶¹¹ Mr. Wadham invited the Tribunal to note the “reasoned affirmation” of the adequacy of Magic’s internal controls, on which Mr. Dar Chen was entitled to place reliance.

470. Of the criticism made in cross-examination by Mr. Scott that Mr. Dar Chen had “...just let your concerns drop without pursuing them further”, Mr. Wadham pointed to his reply:⁶¹²

“Well, I wasn’t giving up, right... I thought maybe I was coming on pretty aggressively, that we needed to repair the relationship and give them a little more time. So this exchange happened in April 2013. By beginning of May, of course... the L’Oréal transaction occurred. I took the view that the company is short of resources...they need to...prioritise their resources on the L’Oréal transaction.”

471. Of the criticism made of Mr. Dar Chen in cross-examination by Mr. Scott that, on receipt of Mr. Chris Cheng’s email, dated 21 December 2012, to which was attached Part XIVA and the SFC’s *Guidelines*, he had not made enquiries as to what steps had been taken or were to be taken to comply with the legislation, Mr. Wadham pointed to Mr. Dar Chen’s testimony that his approach “was just not on any one particular area of procedure or regulation compliance, but it’s about the overall company. And we were willing to pay for a much broader study.”⁶¹³

472. Finally, Mr. Wadham submitted that Mr. Dar Chen’s conduct, after he had learned, in an email dated 13 July 2013 from Chiu & Partners,⁶¹⁴ of the approach by Unilever to Magic in demanding and finally securing independent legal and financial advice to the board in the interest of the shareholders as a whole was relevant to the Tribunal’s assessment of his conduct as a whole. In so acting, he discharged his duties as a non-executive director by having regard, *inter alia*, to the interests of members of the public holding Magic shares.

Discussion

473. We have found that Magic was in breach of the requirement that it disclose to the public as soon as reasonably practicable the inside information that came to its knowledge of the agreement reached between L’Oréal and Mr. Stephen Tang, Mr. She and Mr. Luo on 27 April 2013. In making that finding we were satisfied that Magic was unable to avail itself of the provisions of section 307D of the Ordinance.

⁶¹¹ Exhibit Bundle, pages 3212-3.

⁶¹² Transcript; Day 17, page 53.

⁶¹³ Transcript; Day 17, page 27.

⁶¹⁴ Exhibit Bundle, page 2672.

The officers of Magic

474. There is no dispute that the 2nd to 10th Specified Persons were officers of Magic. As such, having regard to section 307G (2)(b) of the Ordinance, each of them, who had not taken all reasonable measures from time to time to ensure that proper safeguards existed to prevent the breach, is himself in breach of the disclosure requirement.

Executive and non-executive directors

475. Whilst all of them were directors of Magic, in the roles that they occupied within Magic, they fell into two categories: executive and non-executive directors. As noted earlier, Mr. Stephen Tang, Mr. She, Mr. Luo and Mr. Chris Cheng were executive directors. The remaining Specified Persons were non-executive directors. Of them, Professors Dong and Yang Rude and Mr. Yan Kam Tong were independent non-executive directors. All the directors were appointed on 6 September 2010, save for: Mr. Sun Yan, who was appointed on 27 October 2010; and Mr. Dar Chen and Mr. Chris Cheng, who were appointed on 1 July 2012.⁶¹⁵ The latter was also Magic's company secretary and had been since joining Magic in May 2011.

476. The attendance record for the four meetings of Magic's board of directors, held in the year ended 30 June 2013, set out in Magic's 2012/2013 Annual Report, stipulates that all the directors, except Mr. Sun Yan attended all four meetings of the board of directors that year. For his part, Mr. Sun Yan attended three of those meetings.⁶¹⁶ Mr. Thomas Yan, Professor Dong and Professor Yang Rude were described as having attended each of the two meetings of the audit committee held in that year.

Non-executive directors

Mr. Dar Chen

477. Mr. Dar Chen was described in Magic's 2012/2013 Annual Report as "aged 47" and having "...23 years of experience in the private equity and banking industries in Asia and the United States" and of being "...currently a managing director of Baring Private Equity Asia Limited." In 1990, he had been awarded a Bachelor's degree in economics from the University of California at Berkeley. In 2002, he qualified as a chartered financial analyst.⁶¹⁷ As at 30 June 2013, Baring held 20.77% of the issued shares of Magic.⁶¹⁸ In his witness statement, Mr. Dar Chen explained that Baring acquired 15% of the issued shares of Magic in January and a further

⁶¹⁵ Exhibit Bundle, pages 102-3: Magic's Annual Report 2012/2013.

⁶¹⁶ Exhibit Bundle, page 121.

⁶¹⁷ Transcript; Day 16, page 63.

⁶¹⁸ Exhibit Bundle, pages 103 and 112.

6% in July 2012. Those acquisitions resulted in his appointment as a director of Magic. In those circumstances, he was a non-executive, rather than independent non-executive, director of Magic, for which position he received no pecuniary remuneration.⁶¹⁹

Mr. Sun Yan

478. Mr. Sun Yan was described in Magic's 2012/2013 Annual Report as "aged 51" and having "...over 20 years of experience in financing and investing in real estate projects", having worked for the Ministry of Housing and Urban- Rural Development of the PRC and the China Rural Trust and Investment Corporation. He had been awarded a Bachelor's degree in Economics and Business Administration from Shanghai University of Finance and Economics.⁶²⁰

479. In his witness statement, Mr. Sun Yan explained that, in succession, he had been managing director of the Guangdong Huizhou Dayawan Investment Company Limited, chairman of Shenzhen Junyu Development and Investment Company and managing director of Pomoda (Shenzhen) Inc. As a result, he had "over 30 years of experience in real estate investment and more than 20 years of experience in finance and in the management of and investment in enterprises."⁶²¹

480. Mr. Sun Yan explained that he had been appointed as a non-executive director of Magic on 27 October 2010, after having been asked by Ms. Liu Yang of Atlantis to review whether Magic was a "good enterprise" and having reported positively prior to the listing of Magic in 2010.⁶²² Of the review, he said in his witness statement, "... I met with the management team of Magic, and visited its factories and products. Through the introduction of Magic's management team and my field investigation, I thought that Magic was a decent, well-structured company with potential for development."⁶²³ Of that review, he said in his record of interview, dated 26 February 2016, "It is because a job that I do on the mainland is mainly to see whether or not an enterprise is good, the industry that (it) is in, the qualification and experience in the company's management, mostly these (things). That's why I knew them at the time."⁶²⁴

⁶¹⁹ Witness Evidence Bundle; page 939, paragraphs 13-5.

⁶²⁰ Exhibit Bundle, page 102.

⁶²¹ Witness Evidence Bundle; page 922, paragraph 3.

⁶²² Witness Evidence Bundle; page 922 paragraphs 5-8.

⁶²³ Witness Evidence Bundle; page 922, paragraph 6.

⁶²⁴ Witness Evidence Bundle; page 284, counter #46.

Independent non-executive directors

Professor Dong Yin Mao

481. Professor Dong Yin Mao was described in Magic 2012/2013 Annual Report as “aged 50” and being a professor at the Beijing Technology and Business University, having graduated from the Beijing Institute of Light Industry with a bachelor’s degree in environmental conservation, in 1986, and a master’s degree in fine chemistry, in 1993.⁶²⁵

482. In his witness statement, Professor Dong said that he had been appointed a professor at the Beijing Technology and Business University in 1999 and had served as such ever since. Having been engaged in research and development in cosmetic products for many years he had met and come to know Mr. She at industry events and conferences. It was at Mr. She’s invitation that he became an independent non-executive director of Magic.⁶²⁶ He testified that, as he understood it, “...the reason why I was appointed to the Magic Board of Directors was because I was the expert having specialised knowledge in the cosmetics industry”.⁶²⁷

Professor Yang Rude

483. Professor Yang Rude was described in Magic’s 2012/2013 Annual Report as “aged 67” and “working in the postgraduate School of South China University of Technology”, from which institution, as it is known now, he had graduated in 1970 and in which he had held “...a teaching position for over 40 years”.⁶²⁸

484. In a record of interview conducted of him by an officer of the SFC, dated 24 June 2016, Professor Yang Rude said that it was at the invitation of Mr. She that he had agreed to be appointed as an independent non-executive director of Magic. He explained that Mr. She had been a student at South China University of Technology.⁶²⁹ Having testified that he had no experience in business and that his academic background was in industrial microbiological engineering, he said that he had joined the board of directors because Magic’s products were “biological engineering products”.⁶³⁰

⁶²⁵ Exhibit Bundle, page 103.

⁶²⁶ Witness Evidence Bundle; page 983, paragraphs 3-5.

⁶²⁷ Transcript; Day 12, pages 31-2.

⁶²⁸ Exhibit Bundle, page 103.

⁶²⁹ Witness Evidence Bundle; pages 537-8, counter #s 78-100.

⁶³⁰ Transcript; Day 14, pages 4-5.

Mr. Yan Kam Tong, Thomas

485. Mr. Thomas Yan Kam Tong was described in Magic 2012/2013 Annual Report as “aged 49” and being “the Chief Financial Officer and Responsible Officer of Quantsmile (HK) Limited, a licensed corporation under the SFO for type 9 (asset management) regulated activities under the SFO” and having “over 10 years experience in the areas of finance, operation and compliance in various asset management companies licensed under the SFO.” He had been awarded a Master of Arts degree in International Accounting by the City University of Hong Kong and is a member of the CPA Australia, the Hong Kong Institute of Certified Public Accountants and a CFA charter holder.⁶³¹

486. In his witness statement, Mr. Thomas Yan said that, having been approached by Mr. Stephen Tang in around 2010, he had agreed to be appointed an independent non-executive director of Magic. He explained that he had come to know Mr. Stephen Tang in 1992, when they had both studied for a Bachelor’s degree in commerce at Curtin University by way of a distance learning programme.⁶³²

The role of executive directors: compliance

487. Having acknowledged that Magic had not appointed a compliance officer, Mr. Chris Cheng said that he was the person responsible for handling compliance matters, “Yes, you can say so. Me and Stephen.”⁶³³ He accepted that he had that responsibility since his appointment as company secretary in May 2011.⁶³⁴ No doubt, as part of ensuring that he was properly informed about his responsibilities, together with Mr. Dar Chen, he attended a seminar on 22 June 2012 organised by Chiu & Partners,⁶³⁵ which addressed the ‘Duties of Directors of Listed Companies’ and at which he was provided with the written material which, in part, addressed the requirements of section 307 B, 307 D and 307 E of the Ordinance.⁶³⁶ Also, Mr. Chris Cheng testified that, on 5 December 2012, he had attended a whole day seminar jointly organised by the Stock Exchange of Hong Kong and the SFC, at which the latter addressed “Statutory backing of issuers obligations to disclose inside information and consequential changes to the

⁶³¹ Exhibit Bundle, page 103.

⁶³² Witness Evidence Bundle; page 964, paragraphs 7-10.

⁶³³ Transcript; Day 10, page 45.

⁶³⁴ Transcript; Day 10, page 46.

⁶³⁵ Transcript; Day 11, pages 46-9.

⁶³⁶ Exhibit Bundle, pages 1627-1835 and 1808-9.

Listing Rules.”⁶³⁷ Emails, dated 22 and 27 November 2012 evidenced his enrolment in that seminar.⁶³⁸

21 December 2012 email and attachments

488. Mr. Chris Cheng attached to an email to all his fellow directors of Magic, dated 21 December 2012, with the subject heading “Training on the updates of the relevant regulations for disclosure of inside information by listed companies”, Part XIVA of the Ordinance and the *Guidelines* in English and Chinese.⁶³⁹ He said that the Ordinance would take effect on 1 January 2013 and that Part XIVA imposed “...on listed companies general responsibilities for disclosure of inside information.” However, although he summarised the elements of inside information and set out “Potential sanctions for violations” he did not address the duties of disclosure of the company and its officers. Rather, he merely said that the *Guidelines* were “issued by the SFC to help us understand and comply with the duties of Part XIVA of the Ordinance on the disclosure of Inside Information” and that Part XIVA had been provided for “your reference”.⁶⁴⁰ He agreed that part of the contents of his email had come from what he had learned in the joint Stock Exchange and SFC seminar a few days earlier, “...that was my general practice”.⁶⁴¹ Although the email ended with an invitation to the recipients to raise any questions with him, Mr. Chris Cheng testified that he could not recall if he had received any reply from any of his fellow directors.⁶⁴² No other director testified of having done so.

489. A brief consideration of the material provided to the directors in that email begged the simple question in respect of the obligations of each director: what measures had Magic taken/were to take to ensure that proper safeguards existed to prevent a breach of a disclosure requirement of Magic? There is no evidence that the question was posed by any of the directors of fellow directors or management of Magic.

490. The first meeting of the board of directors, after circulation of the email on 21 December 2012, occurred on 25 February 2013. On that occasion, the board of directors approved the unaudited consolidated interim financial results of Magic for the six months ended

⁶³⁷ Transcript; Day 11, pages 49-52, 60-63 and 66-67.

⁶³⁸ Exhibit 3.

⁶³⁹ Exhibit Bundle, pages 2962-3171.

⁶⁴⁰ Exhibit Bundle, page 2965.

⁶⁴¹ Transcript; Day 11, pages 55-6.

⁶⁴² Transcript; Day 11, pages 59.

31 December 2012 and resolved to declare an interim dividend.⁶⁴³ There is no evidence that the issue of compliance with the new obligations of Part XIVA was raised or discussed.

491. By a Notice, dated 19 September 2017, the SFC required Magic to produce “copies of correspondences amongst the directors and/or minutes of directors’ meetings which record discussions concerning the internal systems and procedures of Magic... relating to its disclosure obligations if any.”⁶⁴⁴ In its reply on behalf of Magic, dated 13 December 2017, Linklaters said “...we are instructed by our client that they have not been able to locate any documents that are responsive to the request set out in the Notice.”⁶⁴⁵

492. In cross-examination by Mr. Scott, Mr. Stephen Tang accepted that, in the period 1 January to July 2013, there were no written documents evidencing “policies, procedures, circulars or guidelines maintained by Magic for monitoring business and corporate developments and events such that any potential inside information is properly identified and escalated.”⁶⁴⁶ Obviously, that evidence was directly relevant to the suggested measures set out at paragraph 60 (a) and (n) of the *Guidelines*. That evidence was wholly consistent with the testimony of the other directors and with the response by Linklaters, dated 14 June 2016, on behalf of Magic to the SFC’s requirement⁶⁴⁷ that they produce any such documents. They said that they had been unable to locate any such documents.⁶⁴⁸ The Tribunal has received no evidence that there were ever any written policies or procedures in Magic dealing with the panoply of measures suggested in paragraph 60 of the *Guidelines*.

The role of non-executive directors: compliance

493. In a consideration of whether or not each of the 2nd to 10th Specified Persons had taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach by Magic of its disclosure requirement, we accept the force of Mr. Scott’s submission that we are to have regard to the different roles of executive and non-executive directors within Magic and, in respect of non-executive directors, in particular to paragraph 59 of the *Guidelines*, namely:⁶⁴⁹

⁶⁴³ Exhibit Bundle, pages 201-1 to 201-75.

⁶⁴⁴ Exhibit Bundle, page 2193.

⁶⁴⁵ Exhibit Bundle, page 2201.

⁶⁴⁶ Transcript; Day 6, page 49.

⁶⁴⁷ Exhibit Bundle, pages 1075-8.

⁶⁴⁸ Exhibit Bundle, pages 1075-8.

⁶⁴⁹ Expert Evidence Bundle, pages 603-4.

“...non-executive directors normally are not involved in the daily operations of a corporation and would usually rely on a corporation’s internal controls and reporting procedures to ensure that, where appropriate, material information is identified and escalated to the board as a whole. It is for this reason that *the board’s responsibility for establishing and monitoring key internal control procedures is of particular significance for non-executive directors as this is an area where they are more likely to be directly involved.* It is therefore more likely that sections 307G (1) and 307G (2)(b) will be of direct relevance to them.” [Italics added.]

Proposed internal control review

494. It is to be noted that it is asserted in paragraph 59 that it is the “board’s responsibility” to establish and monitor key internal control procedures. Obviously, that is the responsibility of each and every director, not only that of the executive directors. Paragraph 60 asserts “...officers, including non-executive directors, are responsible to ensure that appropriate systems and procedures are put in place and reviewed periodically to enable the corporation to comply with the disclosure requirements.” In that context, the email, dated 28 March 2013, with the subject “Matters on Corporate Governance and Internal Control”, from Mr. Thomas Yan to all other directors of Magic is highly relevant:⁶⁵⁰

“Dear Board Members,

Mr. Dar Chen and I have a meeting today discussing Magic’s corporate governance and internal control system and *we shared the same view that the transparency and internal control system of Magic is somewhat deficient and not up to standards.* In order to address these concerns, we propose the followings for the board’s consideration.

1. That a third party independent consulting firm be engaged to carry out an internal control review of the company’s operation, the related cost would be borne by Mr. Dar Chen and his associates,
2. That annual internal control review reports for the past years be submitted to the audit committee for review,
3. That Mr. Dar Chen be nominated as a member of the audit committee.

We hope that all board members understand the importance of corporate governance and internal control system to safeguard the interests of the stakeholders of the company and we aim to enhance shareholder value by our commitment.

By the way, I apologise not to write it in Chinese.” [Italics added.]

495. We note that Mr. Dar Chen testified that he had received authorisation from Baring to fund such an internal control review, having informed them that the probable cost was

⁶⁵⁰ Exhibit Bundle, page 3207.

“between US \$100,000 to US \$150,000, maximum US \$200,000”, which monies Baring did not expect to recoup from Magic. On the contrary, he said, “...we were willing to pay for it.”⁶⁵¹

496. In that context, we note that Mr. Wadham drew the attention of the Tribunal to the collective effect of the testimony of Mr. Lester, Mr. Allen and Dr. Fong that the proposed internal control review would have likely included compliance with disclosure obligations within its scope. We are satisfied that, having regard to the significant level of funding authorised by Baring to conduct the review, that was indeed the likelihood.

497. For his part, in an email to all the other directors, dated 29 March 2013, in confirming that he would accept Mr. Thomas Yan’s invitation to join the audit committee, Mr. Dar Chen provided a translation of Mr. Thomas Yan’s email and went on to assert:⁶⁵²

“I would like to add that we all need to take our duties as directors of a public listed company seriously. After all, we are not only required to do so by law, but are also expected to do so by all the public shareholders. We are supposed to have their interests in mind. They expect us to ask questions proactively, discuss merits of projects, review and approve budget and expenditure, interact more with other senior-level managers, and objectively assess the management team’s performance against the budget and plan. Hence, we need to hold board meetings more regularly to discharge these responsibilities.”

498. In apparent response to Mr. Thomas Yan’s proposals and Mr. Dar Chen’s offer, a lunch meeting took place on 8 April 2013 between Mr. Stephen Tang, Mr. Chris Cheng and Mr. Thomas Yan, which was reflected in an email dated 9 April 2013 from Mr. Chris Cheng to Mr. Thomas Yan and the other two members of the audit committee, Professor Dong and Professor Yang Rude, but copied to all other directors:⁶⁵³

“As mentioned in the meeting, the internal control systems currently in place are sufficient. In 2010, the Company hired an independent third party internal audit company to conduct a review of the Company’s internal control systems. Thereafter, the independent internal audit company proposed changes to the Company’s operations, risk management and internal control systems, to which the company accepted and implemented the changes in accordance with the independent internal audit company’s proposal. The independent internal audit company conducted another round of review after the changes and expressed its satisfaction in the report.” [Italics added.]

⁶⁵¹ Transcript; Day 17, pages 35-6.

⁶⁵² Exhibit Bundle, page 3208.

⁶⁵³ Exhibit Bundle, pages 3212-3.

499. Having provided further details of the steps taken by Magic to address the issue, Mr. Chris Cheng concluded by re-asserting: “the management of the company thinks that the internal control systems currently in place are sufficient...”.

500. The email ended with an invitation to the audit committee to discuss the “above processes and systems” and an offer to endeavour “to provide all relevant documents for reference”, stating that the management welcomed more communications from the committee, “...so as to develop a better understanding of the internal control systems currently in place”. Very obviously, the invitation was pointedly limited to the audit committee, thereby excluding Mr. Dar Chen.

501. However, not rebuffed or daunted, Mr. Dar Chen responded within four minutes with an email to Mr. Chris Cheng and Mr. Stephen Tang stating, “I would love to have the opportunity to understand more what specific measures are in place and findings of internal audits. When can we meet?”⁶⁵⁴ Of subsequent developments, Mr. Dar Chen testified, “I do not remember if there was an email reply, but there was no meeting. He did not give me any additional information.”⁶⁵⁵

502. Mr. Thomas Yan’s email, dated 28 March 2013, to all his fellow directors did not describe the circumstances which had given rise to the concerns expressed there. He did not do so either in his witness statement or in the record of interview conducted of by Ms. Wong Mei Mei on 23 February 2016. Further, he was not asked any questions nor did he give any evidence about the matter in his oral testimony. That, is a most regrettable *lacuna* in the evidence.

Reasonable measures

Mr. David Norman

503. As Mr. David Norman noted in his report,⁶⁵⁶ paragraph 60 of the *Guidelines* states, that in responding to the requirement that officers must take all reasonable measures to ensure that safeguards exist to prevent a breach of a disclosure requirement and in ensuring that appropriate systems and procedures are put in place and reviewed periodically, “boards should take into account the particular needs and circumstances of the corporation.”⁶⁵⁷ He invited the Tribunal to note that the *Guidelines* went on to state that the examples of measures listed in the paragraph

⁶⁵⁴ Exhibit Bundle, page 3210.

⁶⁵⁵ Transcript; Day 17, page 52.

⁶⁵⁶ Expert Evidence Bundle; pages 1009-1011, paragraphs 17 and 18.

⁶⁵⁷ Expert Evidence Bundle; page 604.

at (a) to (o) on the one hand were not to be taken as a “definitive or exhaustive list” and on the other hand, in considering whether or not there was a breach of section 307G (1) or section 307G (2)(b), regard would be had to the specific circumstances and “...the absence of some of the examples... would not be conclusive.” We are satisfied that that is the correct approach.

504. In his report, Mr. Norman said of what he termed “Owner-Operated Listcos” that they “...often see no need for SFC Guideline (n) “Document the disclosure policies and procedures of the corporation in writing and keep the documentation up-to-date” and often have in place only unwritten measures.”⁶⁵⁸ He defined an ‘Owner-Operated Listcos’ as being a company “managed by a family, or a group of only a few individuals, together being substantial shareholders for the purposes of... the Listing Rules as well as the senior management of the company.”⁶⁵⁹ He testified that he drew the distinction between that category of company and “Independent Management Listcos” “...based largely on my experience as a solicitor of 35 years in Hong Kong, and partly from conversations, reading the newspapers, et cetera. It’s not a scientific test.”⁶⁶⁰

505. In cross-examination, having been referred to Magic’s 2012/2013 Annual Report, Mr. Norman accepted that the three founders of Magic held about 25% of the issued shares of Magic and that there were executive directors who were not shareholders and substantial shareholders who were not executive directors. Also, he accepted that Magic had offices in both Hong Kong and Guangzhou, 4,726 employees and that there were nine senior managers.

506. With the greatest of respect to Mr. Norman, we are not satisfied that his categorisation of Magic as an Owner-Operated Listcos, that being used as the justification for the fact that it did not document its disclosure policies and procedures in writing, is valid. In any event, with the candour to be expected of him, he accepted that there were obvious advantages of creating written documentation, in particular that it enabled the board to more effectively monitor, implement and review its policies whilst facilitating the training of employees and enhancing their awareness of those policies.⁶⁶¹

⁶⁵⁸ Expert Evidence Bundle; page 1012, paragraph 24.

⁶⁵⁹ Expert Evidence Bundle; page 1011, paragraph 20.

⁶⁶⁰ Transcript; Day 20, page 102.

⁶⁶¹ Transcript; Day 20, pages 119-20.

Magic's practices and procedures

507. Although there was no evidence that any officer in Magic had been authorised to be notified of any potential inside information and to escalate any such information to the attention of the Board, there was evidence of an informal understanding that Mr. Stephen Tang and Mr. Chris Cheng were the persons who would deal with those matters. That was the evidence of Professor Dong⁶⁶², Mr. Sun Yan⁶⁶³ and Mr. Thomas Yan.⁶⁶⁴ For his part, Mr. Dar Chen said that Mr. Stephen Tang was “the focal point of all such information”.⁶⁶⁵

508. Obviously, in the absence of a written authorisation that a particular officer (s) was/were to be notified of potential inside information and was/were to be responsible for escalating it to the attention of the Board, the existence of an audit trail of meetings and discussions concerning the assessment of inside information in Magic was all the more important.

509. As noted earlier, there were no records in Magic of the concerns raised by Mr. Leo Liu by telephone with Mr. Stephen Tang on 17 April 2013 about the leakage of price sensitive information and the assessment by Mr. Stephen Tang that the sharp rise in the price and volume of trading in Magic shares was attributable to the roadshow. The exchange of emails following the enquiry by CSV Capital Partners, dated 18 April 2013, clearly existed as emails evidencing the enquiry of whether L'Oréal was to acquire Magic in the context of the sharp rise in the price and volume of trading in Magic shares and the assessment of Mr. Chris Cheng and Mr. Stephen Tang that the enquiry reflected rumours only, but they were not made and maintained as “an audit trail of meetings and discussions concerning the assessment of inside information”. They were not made available to the board of directors contemporaneously or to the board of directors or to Ms. Susana Lee in preparation for or at the board meeting of 24 May 2013.

510. As noted earlier, the Notice of the Board meeting to be held on 24 May 2013,⁶⁶⁶ which was circulated by Mr. Chris Cheng to the directors as an attachment to an email, dated 17 May 2013, was deficient and significantly incomplete. It made no mention that there was to be a

⁶⁶² Transcript; Day 12, page 61.

⁶⁶³ Transcript; Day 16, pages 48-9.

⁶⁶⁴ Transcript; Day 17, page 121.

⁶⁶⁵ Transcript; Day 17, page 20.

⁶⁶⁶ Exhibit Bundle, page 2577.

discussion of disclosure obligations in the context of whether or not there was a leak of inside information.

511. Notwithstanding the deficiencies of the Notice in providing directors with adequate notice of what was to be discussed at the meeting, the L'Oréal proposal letter itself provided information that gave rise to obvious questions that were relevant to the discussions that did ensue about Magic's disclosure obligations. Having stated that L'Oréal had held "preliminary discussions", *inter-alia*, with Mr. Tang, Mr. She and Mr. Luo in relation to the "possible Offer", it was asserted that "Each of Mr. She, Mr. Tang and Mr. Luo has indicated to us that he would be supportive of the Offer and would sell his Shares to us."⁶⁶⁷ As noted earlier, that begged the question: 'What, when and between whom had there been discussions which led to the making of that statement?'

512. Notwithstanding the obvious possibility that the "preliminary discussions" might have involved inside information that gave rise to a duty of disclosure in Magic, Mr. Thomas Yan said that he did not raise any questions of Mr. Tang, Mr. She and Mr. Luo because he was "...waiting in the hope of the discussions on this would be held at the meeting."⁶⁶⁸ Professor Yang Rude testified that he too did not raise any questions with them, explaining "...all we could do was just wait, wait for the board meeting to be held on 24 May."⁶⁶⁹ Mr. Sun Yan said that he had not asked any questions of them because, having noted that the L'Oréal proposal contained a proposed confidentiality agreement at Schedule 3, he believed "...that the board meeting would have had to touch on these disclosure matters."⁶⁷⁰ For his part, Mr. Dar Chen said that he had not asked any questions of them because he believed "...they were negotiating on behalf of their own stake in the company."⁶⁷¹ Professor Dong asked no questions for the same reason.⁶⁷²

513. As noted earlier, in a record of interview conducted of him on 26 February 2016, Mr. Sun Yan said that, at the meeting of the board of directors on 24 May 2013, those present were informed, apparently by some or all of the founders, that there had been discussions "for approximately 18 months" and that, of the process of the previous negotiations of price, "it

⁶⁶⁷ Exhibit Bundle, page 2453.

⁶⁶⁸ Transcript; Day 17, pages 81-2.

⁶⁶⁹ Transcript; Day 14, pages 24-5.

⁶⁷⁰ Transcript; Day 16, pages 14-6.

⁶⁷¹ Transcript; Day 16, page 89.

⁶⁷² Transcript; Day 12, pages 39-40.

seems that they did mention that it started at four dollars or so or five dollars.”⁶⁷³ He gave no evidence there or in his oral testimony of any discussion of when the “preliminary discussions” had taken place, which had resulted in each of Mr. Tang, Mr. She and Mr. Luo indicating to L’Oréal that each would be “supportive of the Offer and would sell his Shares to us.”⁶⁷⁴ It was that information which was relevant to when inside information came into existence and whether or not there had been a leak of that information.

514. There is no dispute that the minutes of the board meeting of 24 May 2013 were egregiously deficient. Nothing whatsoever was mentioned about consideration by the directors of whether or not they were required to make a disclosure to the public or of information given to or legal advice received from Ms. Susana Lee in that respect. For his part, Mr. Thomas Yan was prepared to agree with Mr. Scott that they were “badly deficient”.⁶⁷⁵ Yet, he and all the other directors who attended the meeting signed the minutes.⁶⁷⁶ Mr. Thomas Yan said that he did not notice that the minutes made no reference to the conversation that had been held with Ms. Susana Lee.⁶⁷⁷ Professor Dong testified that he did not notice that the minutes did not record the discussion of the need or otherwise for disclosure of the L’Oréal proposal nor of the opinion expressed by the lawyer.⁶⁷⁸

515. No written record of the legal advice given by Ms. Susana Lee has been presented to the Tribunal. For his part, Mr. Stephen Tang testified that he had no recollection that anybody had ever made any written record of the advice given by Ms. Susana Lee.⁶⁷⁹

516. Having regard to the fact that Magic was a company registered in the Cayman Islands, Mr. David Norman said that “...companies are required by law to keep minutes of directors’ meetings”, which he confirmed to be “full minutes”, and that “notice of meeting is required to give sufficient details to the directors to know what the meeting is going to be about.”⁶⁸⁰

⁶⁷³ Witness Evidence Bundle; page 314, counter #268 and page 301, counter #s 175-180.

⁶⁷⁴ Exhibit Bundle, page 2453.

⁶⁷⁵ Transcript; Day 17, page 123.

⁶⁷⁶ Exhibit Bundle, pages 2648-50.

⁶⁷⁷ Transcript; Day 17, pages 98-9.

⁶⁷⁸ Transcript; Day 12, page 75.

⁶⁷⁹ Transcript; Day 6, page 35.

⁶⁸⁰ Transcript; Day 21, pages 17-8.

The conduct of the non-executive directors

517. It is clear that, apart from Mr. Dar Chen and Mr. Thomas Yan, the other non-executive directors of Magic were passive in their approach to taking all reasonable measures to ensure that proper safeguards existed to prevent a breach of a disclosure requirement by Magic.

518. Having acknowledged that he had a responsibility to ensure that Magic had a reasonable system for complying with Part XIVA of the Ordinance in respect of disclosure of inside information, Mr. Sun Yan said:⁶⁸¹

“Mr. Stephen Tang, who originally came over from Hua Han, and after he started working for Magic... Mr. Tang, he was the one who took charge of the corporate governance. After the company was listed, there was this company secretary, Chris Cheng. With these two combined, I think they did a relatively good job in gate-keeping.”

519. Of the management of Magic, he said that he was more familiar with Mr. Stephen Tang, of whom he said in his record of interview, “...(he) has a background in financial management (in) Hong Kong... (He) worked really by the book.”⁶⁸² Of the steps that he had taken to ensure that the executive directors worked hard to fulfil the responsibility of making disclosure of inside information, Mr. Sun Yan said:⁶⁸³

“What I felt was the company has the professional lawyers, plus these number of people that I mentioned. So according to their professional capacity, I did not-I agree I did not take steps to ensure, but I think there was this professional capacity on their part. In so far as the policy of the company is concerned, I agreed with them.”

Nevertheless, he said “...despite the fact that there were no written guidance... however there were such requirements in the course of work at the company.”⁶⁸⁴

520. In the context of receiving and reading the email from Mr. Chris Cheng, dated 21 December 2012, together with its attachments of Part XIVA of the Ordinance and the *Guidelines*, in responding to the question of whether he had taken all reasonable measures to ensure that proper safeguards existed to prevent a breach of a disclosure requirement by Magic, Professor Yang Rude said “I believe that the Magic company, that is the board of directors, had already taken reasonable measures to prevent a trickling or prevent a breach of the obligations of disclosure of inside information”.⁶⁸⁵ In responding to the question of whether or

⁶⁸¹ Transcript; Day 16, page 8.

⁶⁸² Witness Evidence Bundle; page 291, counter #s 101-102; page 293, counter #s 118-120.

⁶⁸³ Transcript; Day 16, page 9.

⁶⁸⁴ Transcript; Day 16, page 10.

⁶⁸⁵ Transcript; Day 14, page 55.

not he was aware of Magic had systems or procedures to ensure employees in possession of inside information were conversant with the obligations to preserve confidentiality, he said, "...I believe that the company would have these systems.... based on the fact that the feeling I got with these executive directors, I believe they're all very dedicated and professional to the business". Nevertheless, he conceded "I myself did not do any work in this regard."⁶⁸⁶

521. Having conceded that he had never seen a sensitivity list in Magic [*Guidelines*, paragraph 60 (c)], and in face of the suggestion that he had thereby failed to ensure that the appropriate systems and procedures were in place, Professor Dong said:⁶⁸⁷

"I agree that I did not directly give out instruction or put in place such measures. However, because the company was at a standardised level, and also there were internal monitoring and supervision mechanisms, and also the directors and the company secretary, they have the information about the listed company, and also year-round there were lawyers' consultations. Therefore, I believe that the basic guarantees were all there, and I did not therefore give out specific guidance on this."

522. Of whether or not he had taken steps to ensure that there was an audit trail of meetings and discussions concerning the assessment of inside information (paragraph 60 (e)), Professor Dong said, "That I'm not sure."⁶⁸⁸ Of whether or not he knew that Magic took measures to restrict access of employees of Magic to inside information (paragraph 60 (f)), he said "I'm not clear on this, because I was not among the executive directors."⁶⁸⁹ He did not know whether or not employees had received training to help them understand Magic's policies and procedures and the company's disclosure obligations (paragraph 60 (m)).⁶⁹⁰

Mr. Dar Chen

523. By contrast, it is clear that Mr. Dar Chen took a proactive approach in seeking to inform himself of the operations of Magic and began to do so by asking Mr. Chris Cheng to be permitted to sit as an observer on the audit committee on 15 September 2012, soon after becoming a director of Magic on 1 July 2012. That request and his subsequent request, on 7 February 2013, to become a member of the audit committee were refused immediately. Nevertheless, he persisted and succeeded in persuading Mr. Thomas Yan to nominate him to the board of directors, on 28 March 2013, to join the audit committee, of which he was chairman, and to advance the proposal to engage a consultant to conduct an internal control

⁶⁸⁶ Transcript; Day 14, pages 62-3.

⁶⁸⁷ Transcript; Day 12, page 61.

⁶⁸⁸ Transcript; Day 12, page 62.

⁶⁸⁹ Transcript; Day 12, page 67.

⁶⁹⁰ Transcript; Day 12, page 69.

review of Magic's operations at the expense of Baring. It is clear that he was convinced that membership of the audit committee was the vehicle by which, because of its broad terms of reference, he could address the matters that concerned him within Magic. His email, dated 29 March 2013, to his fellow directors in support of Mr. Thomas Yan's email illustrates the broad base of his purpose in advancing those requests. In face of criticism in cross-examination for not having addressed specifically the requirements of Part XIVA of the Ordinance, in particular to take all reasonable measures to ensure that proper safeguards exist to prevent a breach of Magic's disclosure requirements, Mr. Dar Chen said:⁶⁹¹

"My approach was not just on any one particular area of procedures or regulation compliance, but it's about the overall company. And we were willing to pay for a much broader study...

but at the time when I was a director in 2012, 2013, my concern was about overall compliance of the company."

524. Once again Mr. Dar Chen failed in his attempt to join the audit committee and his offer, on behalf of Baring, to fund an internal control review was comprehensively rejected by Mr. Chris Cheng as wholly unnecessary, it being asserted repeatedly that the internal control systems were "sufficient." As noted earlier, notwithstanding the pointed exclusion of Mr. Dar Chen from the invitation to the audit committee members to discuss the matter further and provide documents, nevertheless he pursued the matter in an email asking to meet Mr. Chris Cheng and Mr. Stephen Tang. We accept Mr. Dar Chen's explanation, in face of what in reality was a calculatedly, harsh rejection of his offers, of why he had not immediately pursued his request for information. He said:⁶⁹²

"I wasn't giving up, right... I thought maybe I was coming on pretty aggressively, that we needed to repair the relationship and give them a little more time. So this exchange happened in April 2013... by beginning of May, of course... the L'Oréal transaction occurred, I took the view that the company is short on resources and that they need to ... prioritise their resource on the L'Oréal transaction".

525. Whilst it is clear that it would have been possible for Mr. Dar Chen to seek specific information earlier from the executive directors about the systems and procedures taken or to be taken by Magic to ensure that he and Magic took all reasonable measures to ensure proper safeguards existed to prevent a breach of Magic's disclosure requirements and to have done so soon after receipt of Mr. Chris Cheng's email, dated 21 December 2012, nevertheless we are satisfied that Mr. Dar Chen's approach was a reasonable alternative way of seeking to become

⁶⁹¹ Transcript: Day 17, pages 27-8.

⁶⁹² Transcript; Day 17, page 53.

informed of Magic's systems and procedures including that relevant to Part XIVA of the Ordinance, so that he was in a position to make appropriate recommendations to the board of directors. We accept his evidence that his concern was "...lack of transparency and access to information that allow (ed) me to do my job as a director."⁶⁹³

Conclusion

526. In those circumstances, we are satisfied that Mr. Dar Chen took all reasonable measures to ensure that proper safeguards existed to prevent the breach of Magic's disclosure requirement.

Mr. Thomas Yan

527. Clearly, Mr. Thomas Yan could have taken measures at an earlier stage to ensure that proper safeguards existed to prevent Magic's breach of its disclosure requirement. Nevertheless, in identifying the internal control systems of Magic as being "somewhat deficient and not up to standards" and in endorsing Mr. Dar Chen's proposal that a third-party independent consulting firm be engaged to carry out an internal control review of Magic's operation, the cost of which was to be borne by Baring, in his email dated 28 March 2013, we are satisfied that, having regard to his capacity as an independent non-executive director, Mr. Thomas Yan had taken all the requisite reasonable measures. That entirely sensible and reasonable proposal was rejected by Mr. Chris Cheng on the erroneous basis that the internal control systems "are sufficient". They were not.

Professor Yang Rude and Professor Dong

528. We are satisfied that in determining whether or not Professor Yang Rude and Professor Dong had taken all reasonable measures to ensure that proper safeguards existed to prevent Magic's breach of a disclosure requirement, it is of importance to note that they were both independent non-executive directors who were appointed as such to bring to Magic their skill and knowledge as academic research scientists, in particular in fields directly relevant to cosmetics. Neither of them was a businessman. One worked in Beijing and the other in Guangzhou. There is no evidence that they had any experience of regulatory compliance in the Mainland, let alone in Hong Kong. As is readily apparent from their evidence, of necessity they reposed a considerable degree of trust in and reliance on the experience and professionally qualified executive directors, Mr. Stephen Tang and Mr. Chris Cheng, to identify areas in

⁶⁹³ Transcript; Day 17, page 36.

which regulatory compliance was required and to initiate discussions amongst the board of directors. We are satisfied that they were entitled to do so.

529. Mr. Chris Cheng's efforts to do so were too little, too late. He did not draw their attention to the fact that Part XIVA of the Ordinance was to come into effect until less than two weeks before it came into operation. Mr. Chris Cheng had attended a training seminar on 22 June 2012 at which the provisions of the prospect of Part XIVA of the Ordinance had been addressed. Even when he did belatedly inform his fellow directors that Part XIVA of the Ordinance was to come into effect on 1 January 2013, he did not inform them what, if any, systems and procedures Magic had in place or planned to put in place to ensure regulatory compliance. If he had done so, no doubt they would have been alarmed.

Conclusion

530. In all the circumstances, and having regard to the fact that in April and May 2013 Part XIVA of the Ordinance had been in operation for only four to five months, we are satisfied that Professor Yang Rude and Professor Dong took all reasonable measures to ensure that proper safeguards exist to prevent the breach of Magic's disclosure requirement.

Mr. Sun Yan

531. In contrast to Professor Yang Rude and Professor Dong, Mr. Sun Yan was a highly experienced businessman who had occupied senior positions, being variously the managing director and chairman, in companies in the Mainland over many years. He was not an independent non-executive director. Rather, he was an non-executive director. Moreover, in 2010, prior to Magic's listing on the Stock Exchange of Hong Kong he had conducted a review of Magic's business to determine for Ms. Liu Yang of Atlantis whether or not it was a "good enterprise". He said that was a job that he did on the Mainland.

532. He candidly admitted that he "did not take step to ensure" that the executive directors fulfilled their responsibilities for making disclosure of inside information. In doing so, he made it clear that he abdicated his responsibilities for doing so and placed complete reliance on Mr. Chris Cheng and Mr. Stephen Tang, together with their access to "professional lawyers". As noted earlier, it appears that he formed a positive view of the "qualification and experience of the company management" as long ago as 2010, prior to the listing of Magic on the Stock Exchange of Hong Kong, which view was strengthened by the arrival in 2011 of Mr. Chris Cheng as company secretary. With Mr. Stephen Tang "in charge of the corporate governance",

the two of them combined “to do a relatively good job in gate-keeping.” Far from taking “all reasonable measures”, he deliberately took no measures at all.

533. Whilst we are mindful that Part XIVA was in operation for only four to five months by April and May 2013, it is clear that Mr. Sun Yan had taken the view that he could repose confidence in Mr. Stephen Tang and Mr. Chris Cheng to address issues of compliance, including compliance with the obligations set out in Part XIVA of the Ordinance, and that there was nothing that he needed to do.

Conclusion

534. In all the circumstances, we are satisfied that, contrary to section 307G (2) (b) of the Ordinance, Mr. Sun Yan did not take all reasonable measures from time to time to ensure that proper safeguards existed to prevent Magic’s breach of disclosure requirement and is himself in breach of the disclosure requirement.

Mr. Stephen Tang, Mr. Chris Cheng, Mr. She and Mr. Luo

535. Magic’s breach of its disclosure requirement was caused by the fact that the directors of Magic were not informed timeously of all information relevant to the determination of whether or not it was necessary to make disclosure to the public. That was the case prior to and at the meeting of the board of directors on 24 May 2013. At and before that meeting neither Ms. Susana Lee nor the directors were informed of all matters relevant to making that decision. In part, that came about because Mr. Stephen Tang and Mr. Chris Cheng did not inform them of the concerns expressed by Mr. Leo Liu and the enquiries made by CSV Capital Partners or draw their attention to the related rise in the price and volume of trading in Magic shares on 15 and 16 April 2013 and subsequently on and between 29 April and 8 May 2013. Clearly, the failure to maintain an audit trail of meetings and discussions concerning the assessment of inside information also contributed significantly to the fact that all relevant information was not made available to the directors and Ms. Susana Lee at or before the meeting on 24 May 2013.

536. Whilst the failures of Mr. Stephen Tang and Mr. Chris Cheng were egregious, it is clear that, although they were executive directors, Mr. She and Mr. Luo abdicated responsibility for regulatory compliance to Mr. Stephen Tang and Mr. Chris Cheng.

Conclusion

537. We are satisfied that, contrary to section 307G (2) (b) of the Ordinance, each of Mr. Stephen Tang, Mr. Chris Cheng, Mr. She and Mr. Luo did not take all reasonable measures from time to time to ensure that proper safeguards existed to prevent Magic's breach of disclosure requirement and are each in breach of the disclosure requirement.

CHAPTER 8

SUMMARY OF THE TRIBUNAL'S FINDINGS

IN RESPECT OF CULPABILITY

538. By way of summary only, for the reasons set out in the body of the report, the Tribunal has made the following determinations, namely that:

- (i) contrary to section 307B (1) of the Ordinance, Magic did not disclose to the public information, which constituted inside information, as soon as reasonably practicable after the inside information had come to its knowledge;⁶⁹⁴
- (ii) contrary to section 307G (2) (a) of the Ordinance, the negligent conduct of Mr. Stephen Tang and Mr. Chris Cheng resulted in the breach by Magic of the disclosure requirement and each of them is in breach of the disclosure requirement;⁶⁹⁵
- (iii) contrary to section 307G (2) (b) of the Ordinance, Mr. Sun Yan did not take all reasonable measures from time to time to ensure that proper safeguards existed to prevent Magic's breach of the disclosure requirement and is himself in breach of the disclosure requirement;⁶⁹⁶ and
- (iv) contrary to section 307G (2) (b) of the Ordinance, each of Mr. Stephen Tang, Mr. Chris Cheng, Mr. She and Mr. Luo did not take all reasonable measures from time to time to ensure that proper safeguards existed to prevent Magic's breach of the disclosure requirement and are each in breach of the disclosure requirement.⁶⁹⁷

539. On a date to be fixed the Tribunal will receive the submissions of the parties as to the making by the Tribunal of consequential orders.

⁶⁹⁴ Report, paragraph 397.

⁶⁹⁵ Report, paragraph 436.

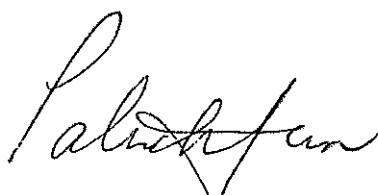
⁶⁹⁶ Report, paragraph 531.

⁶⁹⁷ Report, paragraph 534.



Mr. Michael Lunn, GBS

(Chairman)



Mr. Patrick Sun

(Member)



Ms. Cheung Man Kok, Christine

(Member)

Dated 18 March 2020.

APPENDIX A

An extract of the BNP Paribas Summary.

2 Summary of Key Emails, Calls and Meetings

Date	Mode of Communication	Matters Discussed	Company Participants and Advisers	Offeror Participants and Advisers
5 & 6 March 2013	Meeting	<p>Offeror proposed to launch the Proposal together with Mr S, who will remain as minority shareholder with at least 6% stake</p> <p>Mr S rejected the proposed structure and expressed his preference to exit 100% of his shares together with other shareholders</p>	Mr S. Tang, Mr She, Mr Luo, Mr L.J. Liu, Mr Huang	<p>Mr Evrard, Mr Perakis-Valat, Ms Lan</p> <p>Ms Petit, Mr L. Liu and Mr Vallat</p> <p>Ms T. Ma</p>
29 March 2013	Meeting	<p>Offeror mentioned the framework of the Proposal</p> <p>Preliminary agreement on 100% sale. Mr She special deal as follows:</p> <ul style="list-style-type: none"> - Mr She agreed to put 20% of the consideration of his shares and options - Mr She will be entitled an annual performance based bonus amounting to 5% of the annual increase of turnover in the coming three years <p>No agreement on price</p>	Mr S. Tang, Mr She, Mr L.J. Liu	<p>Mr Evrard, Mr Perakis-Valat, Ms Lan</p> <p>Ms Petit, Mr L. Liu</p>
15 April 2013	Video conference	<p>General agreement on deal structure reached</p> <p>Preliminary discussion on price. Both parties had significant gap in price expectations and agreed to further discuss at a later stage</p>	Mr S. Tang, Mr L.J. Liu	<p>Mr Evrard, Mr Perakis-Valat, Ms Lan</p> <p>Ms Petit, Mr L. Liu, Mr Vallat</p>
27 April 2013	Meeting	<p>Preliminary offer price of no less than HK\$5.5 per share</p> <p>The Company agreed to grant 30 days of Due Diligence to the Offeror</p>	Mr S. Tang, Mr She, Mr L.J. Liu	<p>Mr Evrard, Mr Perakis-Valat, Ms Lan</p> <p>Mr L. Liu, Mr Vallat</p>

APPENDIX B

An extract of the letter from Chiu & Partners to the SFC, dated 30 August 2013.

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1 Connaught Place
Hong Kong
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趙不渝 馬國強 律師事務所
CHIU & PARTNERS
S O L I C I T O R S



Our ref : GC/CSL/HMC/CYA/130140
Direct line : 2111 3238 (Grace Chan)/2111 3212 (Susana Lee)/ 2111 3283 (Michelle Chung)/ 2111 3275 (Antonia Au)
Email : g.chan@caplaw.com.hk / susana.lee@caplaw.com.hk / michelle.chung@caplaw.com.hk / antonia.au@caplaw.com.hk

30 August 2013

BY FAX (2810 5385) AND BY HAND

Securities and Futures Commission
Corporate Finance Division
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

Attn: **Ellen Cheng**

Total no. of page(s): 15
(incl. this page)

BY FAX (2248 6909)

The Stock Exchange of Hong Kong Limited
Attn: **Sammy Chau/Thomas Choy/Tracy Lee**

Dear Sirs

Company : Magic Holdings International Limited ("Company") (stock code: 1633)
SFC ref no : 508/EN/2626
Subject : Announcement – Letter from SFC

We refer to the letter from the SFC dated 19 August 2013 ("Fax") in relation to its comments on the Company's announcement published on 15 August 2013 ("Announcement"). We hereby set out the replies in the same numbering order as that appears in the Fax. Capitalised terms used herein shall have the same meanings as those defined in the Announcement.

Comment no.	Replies to the comments
(a)	As far as the Company was aware, the Proposal was initiated by L'Oréal S.A. ("L'Oréal"), and it was first initiated by L'Oréal when BNP Paribas, the financial adviser to L'Oréal contacted Mr. Tang Siu Kun Stephen, the chairman of the Company (the "Chairman") by phone on 2 May 2013 (the "Initial Approach") expressing L'Oréal's interest in considering to acquire all the Shares and sought his views on (i) how L'Oréal's interest could be relayed to the institutional investors; and (ii) how the proposed non disclosure agreement ("NDA") could be relayed to Mr. She, Mr. Luo and institutional investors.
(b)	Subsequent to the Initial Approach, there were discussions between the Chairman and

PARTNERS	Leo PY Chiu 趙不渝	Kenneth K K Ma 馬國強	Grace K W Chan 陳錦詠	Andrew Liu 劉安德	Susana C S Lee 李靜恩	Joey C S Chan 陳志成	Simon S H Lui 黎兆雄
SOLICITORS	Antonia C Y Au 歐俊余	Shani S Y Chan 陳信賢	Karen Y L Chang 張盈倫	Flora J Y Cheung 張勵研	Michelle H M Chung 鍾希汶	Eric Y L Fung 馮以力	Natalie Y M Lam 林依雯
	Catherine L Leung 梁麗娟	Juanpu C Y Leung 梁煥欣	Alroy T Y Ng 吳梓燦	Bon G Ng 吳邦智	Polly T O Ng 伍庭安	Douglas C L Tsang 曾昭標	Bonny H Y Wong 黃馨儀

趙不渝 馬國強 律師事務所
CHIU & PARTNERS
 SOLICITORS

	BNP Paribas by phone and emails over the proposed NDA between 3 May 2013 and 10 May 2013, and the structure of the possible transaction was first discussed between them in a meeting on 10 May 2013.
(c)	<p>L'Oréal issued a letter (the "Letter") to the Company on 13 May 2013 indicating its interest in discussing the possible offer to acquire all Shares by way of a scheme of arrangement at a preliminary offer price of not less than HK\$5.50 per Share. Such possible offer is subject to obtaining irrevocable undertakings from Shareholders representing at least 55% of the issued share capital of the Company to vote in favour of the Scheme and sell their Shares pursuant to the Scheme (the "Irrevocable Undertakings"). After the issue of the Letter, L'Oréal and the Company mainly discussed on conducting due diligence review on the Company until 16 July 2013 where there was a formal negotiation on the Implementation Agreement by way of telephone conference.</p> <p>On 26 July 2013, L'Oréal sent to the Company another letter in relation to, among others, an increase in offer price from HK\$5.50 per Share to HK\$6.00 per Share, subject to receiving Irrevocable Undertakings from Shareholders representing at least 51% of the issued share capital of the Company.</p> <p>On 31 July 2013, L'Oréal sent a letter to the Company to further revise the offer price from HK\$6.00 per Share to HK\$6.30 per Share, subject to receiving Irrevocable Undertakings from Shareholders representing at least 50% of the issued share capital of the Company.</p>
(d)	Please refer to the reply to question (c) above.
(e)	Please refer to the attached Appendix A for details of all parties who were aware of the Proposal prior to the Announcement throughout different stages of the process.
(f)	Please refer to the attached Appendix B for a detailed timetable of events leading up to the Announcement.

This transaction is handled by Ms Susana Lee, Ms Michelle Chung and Ms Antonia Au of this firm. Please mark your future correspondence in relation to this transaction for their attention.

Yours faithfully



Chiu & Partners
 Encl.
 CSL/HMC/CYA

Company	Chiu & Partners (Counsel to the Company)	Jingtian & Gongcheng (Counsel to Mr She)	Conyers Dill & Pearman	Offeror	BNP Paribas (Financial adviser to the Offeror)	Linklaters (Counsel to the Offeror)
Cheng Wing Hong ("Mr W.H. Cheng") – Executive Director and Company Secretary				Yann Jaffre ("Mr Jaffre") – Director		
Samantha Lu ("Samantha Lu") – PRC Financial Controller				Arnaud Morin ("Mr Morin") – Chief Financial Officer		
				Alexis Perakis-Valat ("Mr Alexis") – Chief Executive Officer of PRC		
				Christian Mulliez ("Mr Mulliez") – Executive Vice- President, Administration and Finance		

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2 Summary of Key Emails, Calls and Meetings

Date	Mode of Communication	Matters Discussed	Company Participants and Advisers	Offeror Participants and Advisers
2 May 2013	Phone call	Mr S. Tang's views were sought on (a) how the Offeror's proposed NDA could be relayed to (i) Mr She and Mr Luo; and (ii) institutional investors; and (b) how the Offeror's interest in the Company could be relayed to the institutional investors.	Mr S. Tang	Mr L. Liu, Ms Feng, Ms Yung

Date	Mode of Communication	Matters Discussed	Company Participants and Advisers	Offeror Participants and Advisers
3 May 2013	Phone call	Continuation of discussion on matters discussed on 2 May 2013.	Mr S. Tang	Mr L. Liu
6 May 2013	Email	Continuation of discussions on matters discussed on 2 and 3 May 2013. Mr L. Liu enquired whether the Offeror's draft NDA has been provided to the institutional investors.	Mr S. Tang	Mr L. Liu
8 May 2013	Phone call	Continuation of discussions on matters discussed on 2, 3 and 6 May 2013.	Mr S. Tang	Mr L. Liu
10 May 2013	Meeting	Mr L. Liu enquired whether Mr S. Tang had received any feedback on the NDAs. Discussion on structure of the possible transaction.	Mr S. Tang	Mr L. Liu
13 May 2013	Phone call	Confirmation that the institutional investors have signed the NDAs. Continuation of discussion on the structure of the possible transaction.	Mr S. Tang	Mr L. Liu
	Letter	The Offeror issued a letter to the Company on 13 May 2013 indicating its interest in discussing the possible offer to acquire all Shares by way of a scheme of arrangement at a preliminary offer price of not less than HK\$5.50 per Share, subject to obtaining irrevocable undertakings from Shareholders representing at least 55% of the issued share capital of the Company to vote in favour of the Scheme and sell their Shares pursuant to the Scheme (the "Irrevocable Undertakings").	Mr S. Tang, Mr. She, Mr. Luo	Mr. Mulliez

Date	Mode of Communication	Matters Discussed	Company Participants and Advisers	Offeror Participants and Advisers
14 May 2013	Phone call	Confirmation that the Offeror's interest in the Company has been relayed to the institutional investors. Discussion of timing of communication of the Offeror's expression of interest to all the members of the board of directors of the Company.	Mr S. Tang	Mr L. Liu
16 May 2013	Phone call	Discussion on the implications of receipt of the expression of interest by the Company. Discussion of timing of communication of the Offeror's expression of interest to all the members of the board of directors of the Company.	Mr S. Tang, Mr. She, Ms Lee, Mr Huang	Mr L. Liu, Mr G. Tang, Ms Yung
17 May 2013	Email	Notice to the Board of director to call a board meeting on 24 May 2013 in relation to the Offeror's letter dated on 13 May 2013	Board of directors of the Company	N/A
20 May 2013	Phone call	Mr S. Tang said that two institutional investors (unidentified) have asked him to contact other parties who may be interested in the Company.	Mr S. Tang	Mr L. Liu
24 May 2013	Phone call	Discussion of exclusivity period and the due diligence process. Mr S. Tang said that the Company's board was prepared to grant 30 days' exclusivity.	Mr S. Tang	Mr L. Liu
	Board meeting	Board meeting approving the Offeror to conduct due diligence for the period from 31 May 2013 and ending 30 days on 30 June 2013.	Board of directors of the Company, Ms Lee, Ms Chung	N/A
27 May 2013	Phone call	Mr S. Tang rejected the request of a virtual data room.	Mr S. Tang	Mr L. Liu

APPENDIX C

An extract of Magic Stock Historical Data

Stock Historical Data

Stock	01633 - MAGIC HOLDINGS		
Date (dd/mm/yyyy)	01/03/2013 - 15/08/2013	Total Volume	288,558,947 shares
Max / Min Closing Price	5.25 / 3.03	Daily Average	2,576,419 shares
Max / Min Price	5.31 / 2.91	Total Turnover (HKD)	1,242,744,002
Weighted Average Price	4.307	Average Turnover (HKD)	11,095,929

Date	Volume	Turnover (HKD)	High	Low	Close	%Change	HSI Close
01/03/2013	2,022,100	6,154,879	3.090	3.020	3.030	-1.62	22,880.22
04/03/2013	3,550,108	10,617,976	3.050	2.910	3.040	0.33	22,537.81
05/03/2013	2,185,123	6,690,961	3.120	2.990	3.110	2.30	22,560.50
06/03/2013	1,532,213	4,784,593	3.180	3.050	3.080	-0.96	22,777.84
07/03/2013	1,375,619	4,196,700	3.150	3.020	3.080	0.00	22,771.44
08/03/2013	1,588,120	4,980,484	3.160	3.080	3.160	2.60	23,091.95
11/03/2013	2,920,827	9,333,703	3.220	3.140	3.190	0.95	23,090.82
12/03/2013	2,849,000	9,063,940	3.260	3.140	3.150	-1.25	22,890.60
13/03/2013	991,120	3,108,508	3.200	3.100	3.150	0.00	22,556.65
14/03/2013	537,760	1,687,403	3.160	3.120	3.160	0.32	22,619.18
15/03/2013	683,206	2,165,625	3.190	3.140	3.170	0.32	22,533.11
18/03/2013	1,093,206	3,399,963	3.140	3.080	3.090	-2.52	22,083.36
19/03/2013	346,858	1,082,822	3.150	3.100	3.150	1.94	22,041.86
20/03/2013	2,417,000	7,556,510	3.160	3.100	3.120	-0.95	22,256.44
21/03/2013	2,515,400	7,884,990	3.220	3.100	3.200	2.56	22,225.88
22/03/2013	594,000	1,874,515	3.200	3.110	3.190	-0.31	22,115.30
25/03/2013	509,062	1,612,338	3.200	3.150	3.170	-0.63	22,251.15
26/03/2013	608,600	1,929,082	3.180	3.150	3.180	0.32	22,311.08
27/03/2013	826,504	2,628,905	3.200	3.160	3.190	0.31	22,464.82
28/03/2013	451,000	1,432,090	3.190	3.160	3.180	-0.31	22,299.63
02/04/2013	3,456,217	11,116,234	3.250	3.170	3.200	0.63	22,367.82
03/04/2013	4,252,454	13,939,344	3.300	3.240	3.280	2.50	22,337.49
05/04/2013	3,201,447	10,291,995	3.300	3.110	3.200	-2.44	21,726.90
08/04/2013	1,765,200	5,573,824	3.200	3.130	3.160	-1.25	21,718.05
09/04/2013	2,505,000	7,942,027	3.230	3.130	3.170	0.32	21,870.34
10/04/2013	730,070	2,320,151	3.210	3.150	3.180	0.32	22,034.56
11/04/2013	1,003,327	3,205,812	3.200	3.170	3.200	0.63	22,101.27
12/04/2013	1,136,000	3,595,450	3.200	3.120	3.200	0.00	22,089.05
15/04/2013	6,290,298	20,634,556	3.350	3.190	3.300	3.12	21,772.67
16/04/2013	9,616,054	33,566,832	3.670	3.260	3.660	10.91	21,672.03
17/04/2013	6,541,016	23,471,679	3.670	3.530	3.620	-1.09	21,569.67
18/04/2013	1,467,992	5,267,468	3.620	3.530	3.610	-0.28	21,512.52
19/04/2013	5,388,334	20,013,262	3.910	3.580	3.790	4.99	22,013.57
22/04/2013	1,399,813	5,304,334	3.820	3.740	3.790	0.00	22,044.37
23/04/2013	1,810,400	6,711,480	3.800	3.670	3.700	-2.37	21,806.61
24/04/2013	3,504,343	13,492,772	3.970	3.670	3.900	5.41	22,183.05
25/04/2013	1,138,461	4,441,956	3.960	3.860	3.880	-0.51	22,401.24

26/04/2013	3,391,906	13,551,664	4.100	3.850	4.000	3.09	22,547.71
29/04/2013	1,497,436	6,172,017	4.180	4.000	4.140	3.50	22,580.77
30/04/2013	2,067,038	8,567,220	4.200	4.060	4.190	1.21	22,737.01
02/05/2013	4,228,092	18,034,549	4.330	4.150	4.310	2.86	22,668.30
03/05/2013	4,096,504	17,753,377	4.390	4.240	4.350	0.93	22,689.96
06/05/2013	5,174,003	22,420,760	4.400	4.230	4.340	-0.23	22,915.09
07/05/2013	4,822,817	21,602,902	4.600	4.280	4.520	4.15	23,047.09
08/05/2013	6,208,475	29,761,666	4.900	4.670	4.860	7.30	23,244.35
09/05/2013	3,874,233	18,520,808	4.910	4.710	4.720	-2.68	23,211.48
10/05/2013	4,181,453	19,096,327	4.760	4.420	4.590	-2.75	23,321.22
13/05/2013	3,828,952	17,096,876	4.530	4.310	4.460	-2.83	22,989.81
14/05/2013	7,816,970	34,532,575	4.680	4.130	4.660	4.48	22,930.28
15/05/2013	3,121,370	14,722,040	4.830	4.570	4.780	2.58	23,044.24
16/05/2013	1,467,148	6,894,226	4.790	4.650	4.720	-1.26	23,082.68
20/05/2013	3,588,937	17,813,166	5.050	4.720	4.840	2.54	23,493.03
21/05/2013	1,403,600	6,723,614	4.880	4.710	4.800	-0.83	23,366.37
22/05/2013	1,842,469	8,337,514	4.750	4.440	4.560	-5.00	23,261.08
23/05/2013	1,356,012	6,224,966	4.740	4.470	4.540	-0.44	22,669.68
24/05/2013	892,240	4,181,796	4.760	4.550	4.760	4.85	22,618.67
27/05/2013	2,441,619	11,596,210	4.840	4.650	4.670	-1.89	22,686.05
28/05/2013	771,297	3,655,476	4.800	4.650	4.770	2.14	22,924.25
29/05/2013	2,811,347	13,241,534	4.770	4.680	4.700	-1.47	22,554.93
30/05/2013	3,996,216	18,535,662	4.700	4.520	4.600	-2.13	22,484.31
31/05/2013	4,756,911	22,156,997	4.720	4.580	4.680	1.74	22,392.16
03/06/2013	6,234,206	28,168,538	4.610	4.320	4.500	-3.85	22,282.19
04/06/2013	4,227,000	19,090,140	4.610	4.330	4.600	2.22	22,285.52
05/06/2013	2,644,780	12,017,264	4.610	4.460	4.600	0.00	22,069.24
06/06/2013	3,633,827	16,246,155	4.600	4.400	4.500	-2.17	21,838.43
07/06/2013	1,374,932	6,180,092	4.590	4.440	4.460	-0.89	21,575.26
10/06/2013	2,794,006	13,103,848	4.780	4.480	4.770	6.95	21,615.09
11/06/2013	1,791,758	8,479,133	4.770	4.690	4.730	-0.84	21,354.66
13/06/2013	2,401,748	11,050,089	4.760	4.420	4.680	-1.06	20,887.04
14/06/2013	3,064,239	14,518,353	4.780	4.680	4.720	0.85	20,969.14
17/06/2013	2,523,670	12,201,944	4.870	4.800	4.800	1.69	21,225.90
18/06/2013	245,806	1,183,885	4.830	4.780	4.820	0.42	21,225.88
19/06/2013	1,118,000	5,371,360	4.870	4.780	4.810	-0.21	20,986.89
20/06/2013	1,267,965	6,082,978	4.840	4.720	4.820	0.21	20,382.87
21/06/2013	4,981,626	23,493,777	4.800	4.500	4.780	-0.83	20,263.31
24/06/2013	3,806,207	17,707,822	4.750	4.580	4.720	-1.26	19,813.98
25/06/2013	3,841,122	17,523,242	4.710	4.390	4.580	-2.97	19,855.72
26/06/2013	973,175	4,513,074	4.710	4.540	4.690	2.40	20,338.55
27/06/2013	231,034	1,091,888	4.810	4.680	4.740	1.07	20,440.08
28/06/2013	1,705,620	8,130,409	4.840	4.670	4.800	1.27	20,803.29
02/07/2013	5,278,957	27,046,366	5.300	4.670	5.190	8.13	20,658.65
03/07/2013	3,137,812	16,277,082	5.300	5.100	5.120	-1.35	20,147.31
04/07/2013	1,258,703	6,538,801	5.280	5.110	5.190	1.37	20,468.67

Stock Historical Data

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05/07/2013	561,587	2,900,617	5.200	5.070	5.180	-0.19	20,854.87
08/07/2013	2,489,826	12,565,955	5.180	5.000	5.080	-1.93	20,582.19
09/07/2013	638,242	3,274,805	5.180	5.030	5.160	1.57	20,683.01
10/07/2013	405,448	2,082,008	5.170	5.050	5.160	0.00	20,904.56
11/07/2013	440,482	2,234,073	5.140	5.000	5.070	-1.74	21,437.49
12/07/2013	568,620	2,897,440	5.150	5.020	5.090	0.39	21,277.28
15/07/2013	1,662,419	8,293,331	5.090	4.930	5.040	-0.98	21,303.31
16/07/2013	1,429,876	7,277,213	5.190	5.010	5.110	1.39	21,312.38
17/07/2013	767,469	3,936,838	5.180	5.060	5.120	0.20	21,371.87
18/07/2013	813,346	4,167,594	5.170	5.090	5.120	0.00	21,345.22
19/07/2013	1,330,693	6,808,844	5.170	5.090	5.100	-0.39	21,362.42
22/07/2013	918,973	4,713,195	5.160	5.080	5.140	0.78	21,416.50
23/07/2013	3,321,154	17,162,266	5.260	5.100	5.220	1.56	21,915.42
24/07/2013	2,872,165	14,876,596	5.300	5.120	5.170	-0.96	21,968.93
25/07/2013	1,048,800	5,497,426	5.280	5.180	5.250	1.55	21,900.96
26/07/2013	8,872,790	41,419,262	5.310	4.280	4.600	-12.38	21,968.95
29/07/2013	0	0	-	-	4.600	0.00	21,850.15
30/07/2013	0	0	-	-	4.600	0.00	21,953.96
31/07/2013	0	0	-	-	4.600	0.00	21,883.66
01/08/2013	0	0	-	-	4.600	0.00	22,088.79
02/08/2013	0	0	-	-	4.600	0.00	22,190.97
05/08/2013	13,660,803	67,144,765	5.300	4.700	4.890	6.30	22,222.01
06/08/2013	9,913,078	46,351,858	4.930	4.340	4.900	0.20	21,923.70
07/08/2013	4,529,613	22,256,096	5.100	4.800	4.930	0.61	21,588.84
08/08/2013	4,231,631	21,314,838	5.100	4.960	5.060	2.64	21,655.88
09/08/2013	5,104,442	25,283,838	5.120	4.700	5.050	-0.20	21,807.56
12/08/2013	0	0	-	-	5.050	0.00	22,271.28
13/08/2013	0	0	-	-	5.050	0.00	22,541.13
15/08/2013	0	0	-	-	5.050	0.00	22,539.25

Date	Volume	Turnover (HKD)	High	Low	Close	%Change	HSI Close	Factor	Adj Close
24/9/2010	239,693,325	1,073,844,967.49	\$ 4.66	\$ 4.32	\$ 4.51	--	22,119.43	0.833333	3.76
27/9/2010	81,848,381	392,572,095.51	\$ 4.99	\$ 4.55	\$ 4.78	5.99	22,340.84	0.833333	3.98
28/9/2010	23,366,605	109,605,756.95	\$ 4.84	\$ 4.58	\$ 4.68	(2.09)	22,109.95	0.833333	3.90
29/9/2010	18,995,554	87,550,295.20	\$ 4.77	\$ 4.45	\$ 4.53	(3.21)	22,378.67	0.833333	3.78
30/9/2010	24,780,295	116,489,786.39	\$ 4.82	\$ 4.44	\$ 4.76	5.08	22,358.17	0.833333	3.97
4/10/2010	15,392,580	72,603,000.10	\$ 4.86	\$ 4.58	\$ 4.61	(3.15)	22,618.66	0.833333	3.84
5/10/2010	5,378,100	24,714,856.00	\$ 4.67	\$ 4.53	\$ 4.58	(0.65)	22,639.14	0.833333	3.82
6/10/2010	9,599,615	44,245,682.12	\$ 4.69	\$ 4.56	\$ 4.64	1.31	22,880.41	0.833333	3.87
7/10/2010	11,581,417	54,804,155.86	\$ 4.84	\$ 4.53	\$ 4.75	2.37	22,884.32	0.833333	3.96
8/10/2010	4,777,600	22,612,206.00	\$ 4.80	\$ 4.69	\$ 4.72	(0.63)	22,944.18	0.833333	3.93
11/10/2010	24,828,880	121,195,949.60	\$ 5.17	\$ 4.54	\$ 5.12	8.47	23,207.31	0.833333	4.27
12/10/2010	19,805,569	105,341,243.38	\$ 5.51	\$ 5.05	\$ 5.41	5.66	23,121.70	0.833333	4.51
13/10/2010	7,420,902	39,695,672.70	\$ 5.50	\$ 5.26	\$ 5.31	(1.85)	23,457.69	0.833333	4.43
14/10/2010	6,460,760	33,697,900.80	\$ 5.36	\$ 5.13	\$ 5.21	(1.88)	23,852.17	0.833333	4.34
15/10/2010	6,857,989	35,856,915.90	\$ 5.35	\$ 5.14	\$ 5.16	(0.96)	23,757.63	0.833333	4.30
18/10/2010	4,539,000	22,956,640.00	\$ 5.30	\$ 4.92	\$ 5.09	(1.36)	23,469.38	0.833333	4.24
19/10/2010	7,295,060	38,464,952.80	\$ 5.47	\$ 5.01	\$ 5.40	6.09	23,763.73	0.833333	4.50
20/10/2010	8,668,620	47,661,545.40	\$ 5.69	\$ 5.24	\$ 5.37	(0.56)	23,556.50	0.833333	4.48
21/10/2010	4,130,000	22,067,460.00	\$ 5.46	\$ 5.21	\$ 5.42	0.93	23,649.48	0.833333	4.52
22/10/2010	8,216,946	46,363,853.64	\$ 5.80	\$ 5.35	\$ 5.75	6.09	23,517.54	0.833333	4.79
25/10/2010	9,124,932	54,890,560.84	\$ 6.13	\$ 5.78	\$ 5.98	4.00	23,627.91	0.833333	4.98
26/10/2010	10,115,000	60,571,420.00	\$ 6.26	\$ 5.86	\$ 6.05	1.17	23,601.24	0.833333	5.04
27/10/2010	14,580,326	90,382,335.42	\$ 6.39	\$ 5.97	\$ 6.31	4.30	23,164.58	0.833333	5.26
28/10/2010	12,480,735	79,785,855.70	\$ 6.60	\$ 6.00	\$ 6.44	2.06	23,210.86	0.833333	5.37
29/10/2010	10,389,372	67,219,113.16	\$ 6.63	\$ 6.28	\$ 6.38	(0.93)	23,096.32	0.833333	5.32
1/11/2010	5,555,820	34,929,857.00	\$ 6.49	\$ 6.18	\$ 6.27	(1.72)	23,652.94	0.833333	5.23
2/11/2010	8,022,020	51,205,805.20	\$ 6.63	\$ 6.18	\$ 6.40	2.07	23,671.42	0.833333	5.33
3/11/2010	8,039,859	50,607,036.56	\$ 6.60	\$ 6.14	\$ 6.19	(3.28)	24,144.67	0.833333	5.16
4/11/2010	11,901,700	71,936,360.00	\$ 6.27	\$ 5.90	\$ 6.00	(3.07)	24,535.63	0.833333	5.00
5/11/2010	4,852,561	29,797,917.28	\$ 6.25	\$ 5.98	\$ 6.10	1.67	24,876.82	0.833333	5.08
8/11/2010	5,435,560	33,025,072.40	\$ 6.18	\$ 5.93	\$ 6.06	(0.66)	24,964.37	0.833333	5.05
9/11/2010	6,589,300	39,508,428.00	\$ 6.06	\$ 5.94	\$ 5.97	(1.49)	24,710.60	0.833333	4.98

10/11/2010	8,346,450	51,915,165.00	\$ 6.39	\$ 5.93	\$ 6.37	6.70	24,500.61	0.833333	5.31
11/11/2010	9,749,116	59,942,499.20	\$ 6.41	\$ 6.03	\$ 6.09	(4.40)	24,700.30	0.833333	5.08
12/11/2010	8,115,500	48,591,925.00	\$ 6.17	\$ 5.80	\$ 5.89	(3.28)	24,222.58	0.833333	4.91
15/11/2010	7,253,120	41,583,598.00	\$ 5.96	\$ 5.60	\$ 5.68	(3.57)	24,027.18	0.833333	4.73
16/11/2010	9,384,000	53,545,400.00	\$ 5.85	\$ 5.60	\$ 5.76	1.41	23,693.02	0.833333	4.80
17/11/2010	5,590,000	31,659,720.00	\$ 5.85	\$ 5.50	\$ 5.59	(2.95)	23,214.46	0.833333	4.66
18/11/2010	7,440,000	43,542,200.00	\$ 5.98	\$ 5.61	\$ 5.94	6.26	23,637.39	0.833333	4.95
19/11/2010	2,904,000	17,109,680.00	\$ 6.02	\$ 5.80	\$ 5.94	-	23,605.71	0.833333	4.95
22/11/2010	9,323,300	57,534,198.46	\$ 6.30	\$ 5.94	\$ 6.27	5.56	23,524.02	0.833333	5.23
23/11/2010	5,055,000	30,425,930.00	\$ 6.26	\$ 5.92	\$ 6.00	(4.31)	22,896.14	0.833333	5.00
24/11/2010	4,663,000	28,270,830.00	\$ 6.20	\$ 5.96	\$ 6.02	0.33	23,023.86	0.833333	5.02
25/11/2010	5,158,000	31,730,610.00	\$ 6.26	\$ 6.05	\$ 6.10	1.33	23,054.68	0.833333	5.08
26/11/2010	2,163,740	13,053,932.20	\$ 6.15	\$ 5.99	\$ 6.04	(0.98)	22,877.25	0.833333	5.03
29/11/2010	3,895,652	23,935,832.88	\$ 6.25	\$ 5.96	\$ 6.23	3.15	23,166.22	0.833333	5.19
30/11/2010	2,553,000	15,833,280.00	\$ 6.30	\$ 6.12	\$ 6.27	0.64	23,007.99	0.833333	5.23
1/12/2010	4,481,000	28,531,920.00	\$ 6.57	\$ 6.17	\$ 6.56	4.63	23,249.80	0.833333	5.47
2/12/2010	6,923,950	46,040,935.57	\$ 6.79	\$ 6.50	\$ 6.56	-	23,448.78	0.833333	5.47
3/12/2010	3,424,000	22,285,440.00	\$ 6.60	\$ 6.35	\$ 6.37	(2.90)	23,320.52	0.833333	5.31
6/12/2010	969,160	6,124,820.00	\$ 6.49	\$ 6.18	\$ 6.20	(2.67)	23,237.69	0.833333	5.17
7/12/2010	859,820	5,419,384.00	\$ 6.40	\$ 6.16	\$ 6.29	1.45	23,428.15	0.833333	5.24
8/12/2010	2,185,322	13,617,158.60	\$ 6.42	\$ 6.18	\$ 6.22	(1.11)	23,092.52	0.833333	5.18
9/12/2010	1,468,000	8,986,140.00	\$ 6.29	\$ 6.00	\$ 6.15	(1.13)	23,171.80	0.833333	5.13
10/12/2010	1,787,000	10,834,560.00	\$ 6.17	\$ 5.98	\$ 6.13	(0.33)	23,162.91	0.833333	5.11
13/12/2010	1,240,000	7,644,590.00	\$ 6.22	\$ 6.13	\$ 6.18	0.82	23,317.61	0.833333	5.15
14/12/2010	1,507,000	9,335,590.00	\$ 6.38	\$ 6.13	\$ 6.17	(0.16)	23,431.19	0.833333	5.14
15/12/2010	819,000	5,016,510.00	\$ 6.26	\$ 6.02	\$ 6.09	(1.30)	22,975.35	0.833333	5.08
16/12/2010	2,463,100	14,799,904.00	\$ 6.13	\$ 5.99	\$ 6.02	(1.15)	22,668.78	0.833333	5.02
17/12/2010	1,398,000	8,393,440.00	\$ 6.07	\$ 5.96	\$ 5.96	(1.00)	22,714.85	0.833333	4.97
20/12/2010	4,265,000	24,557,520.00	\$ 6.00	\$ 5.60	\$ 5.91	(0.84)	22,639.08	0.833333	4.93
21/12/2010	677,000	3,996,060.00	\$ 5.95	\$ 5.87	\$ 5.92	0.17	22,993.86	0.833333	4.93
22/12/2010	1,194,000	7,143,540.00	\$ 6.04	\$ 5.88	\$ 5.93	0.17	23,045.19	0.833333	4.94
23/12/2010	754,000	4,454,730.00	\$ 5.98	\$ 5.80	\$ 5.88	(0.84)	22,902.97	0.833333	4.90
24/12/2010	192,000	1,126,350.00	\$ 5.88	\$ 5.84	\$ 5.88	-	22,833.80	0.833333	4.90

28/12/2010	982,000	5,704,710.00	\$ 5.95	\$ 5.71	\$ 5.85	(0.51)	22,621.73	0.833333	4.88
29/12/2010	1,494,000	8,981,970.00	\$ 6.12	\$ 5.80	\$ 6.10	4.27	22,969.30	0.833333	5.08
30/12/2010	1,468,000	8,923,790.00	\$ 6.15	\$ 5.94	\$ 6.12	0.33	22,999.34	0.833333	5.10
31/12/2010	862,000	5,331,280.00	\$ 6.22	\$ 6.12	\$ 6.21	1.47	23,035.45	0.833333	5.18
3/1/2011	1,396,000	8,539,180.00	\$ 6.18	\$ 6.03	\$ 6.18	(0.48)	23,436.05	0.833333	5.15
4/1/2011	3,131,872	18,792,074.00	\$ 6.12	\$ 5.90	\$ 5.96	(3.56)	23,668.48	0.833333	4.97
5/1/2011	1,485,000	8,776,660.00	\$ 6.02	\$ 5.86	\$ 5.92	(0.67)	23,757.82	0.833333	4.93
6/1/2011	3,165,000	18,392,140.00	\$ 5.96	\$ 5.74	\$ 5.88	(0.68)	23,786.30	0.833333	4.90
7/1/2011	3,386,000	19,722,210.00	\$ 5.92	\$ 5.78	\$ 5.80	(1.36)	23,686.63	0.833333	4.83
10/1/2011	6,871,188	38,800,514.31	\$ 5.81	\$ 5.58	\$ 5.70	(1.72)	23,527.26	0.833333	4.75
11/1/2011	4,855,989	27,590,939.43	\$ 5.78	\$ 5.65	\$ 5.75	0.88	23,760.34	0.833333	4.79
12/1/2011	1,398,095	8,048,493.02	\$ 5.84	\$ 5.70	\$ 5.72	(0.52)	24,125.61	0.833333	4.77
13/1/2011	1,166,312	6,602,904.45	\$ 5.74	\$ 5.57	\$ 5.72	-	24,238.98	0.833333	4.77
14/1/2011	623,487	3,557,491.67	\$ 5.75	\$ 5.67	\$ 5.73	0.17	24,283.23	0.833333	4.78
17/1/2011	943,864	5,379,001.82	\$ 5.77	\$ 5.67	\$ 5.71	(0.35)	24,156.97	0.833333	4.76
18/1/2011	1,443,585	8,051,972.87	\$ 5.70	\$ 5.50	\$ 5.60	(1.93)	24,153.98	0.833333	4.67
19/1/2011	4,800,490	26,603,334.44	\$ 5.60	\$ 5.47	\$ 5.55	(0.89)	24,419.62	0.833333	4.63
20/1/2011	2,910,434	15,979,474.47	\$ 5.55	\$ 5.40	\$ 5.45	(1.80)	24,003.70	0.833333	4.54
21/1/2011	1,939,045	10,389,821.47	\$ 5.47	\$ 5.28	\$ 5.35	(1.83)	23,876.86	0.833333	4.46
24/1/2011	2,276,148	11,757,038.59	\$ 5.35	\$ 5.00	\$ 5.09	(4.86)	23,801.78	0.833333	4.24
25/1/2011	2,253,470	11,747,572.76	\$ 5.26	\$ 5.07	\$ 5.24	2.95	23,788.83	0.833333	4.37
26/1/2011	2,458,115	12,786,724.86	\$ 5.29	\$ 5.18	\$ 5.20	(0.76)	23,843.24	0.833333	4.33
27/1/2011	1,547,807	7,853,634.01	\$ 5.20	\$ 5.01	\$ 5.15	(0.96)	23,779.62	0.833333	4.29
28/1/2011	1,282,727	6,594,572.82	\$ 5.25	\$ 5.05	\$ 5.15	-	23,617.02	0.833333	4.29
31/1/2011	1,401,128	7,106,408.42	\$ 5.15	\$ 5.00	\$ 5.06	(1.75)	23,447.34	0.833333	4.22
1/2/2011	1,265,056	6,361,636.31	\$ 5.15	\$ 4.98	\$ 5.15	1.78	23,482.95	0.833333	4.29
2/2/2011	273,638	1,397,771.90	\$ 5.17	\$ 5.05	\$ 5.13	(0.39)	23,908.96	0.833333	4.28
7/2/2011	221,907	1,118,184.27	\$ 5.15	\$ 5.01	\$ 5.06	(1.36)	23,553.59	0.833333	4.22
8/2/2011	1,324,715	6,631,745.27	\$ 5.08	\$ 4.95	\$ 5.00	(1.19)	23,484.30	0.833333	4.17
9/2/2011	4,421,335	21,669,257.46	\$ 5.00	\$ 4.81	\$ 4.82	(3.60)	23,164.03	0.833333	4.02
10/2/2011	5,463,601	25,119,067.61	\$ 4.80	\$ 4.53	\$ 4.76	(1.24)	22,708.62	0.833333	3.97
11/2/2011	3,867,897	17,882,723.11	\$ 4.80	\$ 4.51	\$ 4.68	(1.68)	22,828.92	0.833333	3.90
14/2/2011	3,604,086	17,275,265.41	\$ 4.90	\$ 4.70	\$ 4.87	4.06	23,121.06	0.833333	4.06

15/2/2011	757,000	3,647,220.00	\$ 4.90	\$ 4.77	\$ 4.84	(0.62)	22,899.78	0.833333	4.03
16/2/2011	863,145	4,108,417.01	\$ 4.85	\$ 4.70	\$ 4.83	(0.21)	23,156.97	0.833333	4.03
17/2/2011	28,430,577	124,301,900.58	\$ 4.78	\$ 4.18	\$ 4.22	(12.63)	23,301.84	0.833333	3.52
18/2/2011	22,916,599	95,900,988.95	\$ 4.32	\$ 4.06	\$ 4.13	(2.13)	23,595.24	0.833333	3.44
21/2/2011	7,995,398	31,776,755.22	\$ 4.14	\$ 3.86	\$ 4.01	(2.91)	23,485.42	0.833333	3.34
22/2/2011	4,412,568	17,673,086.67	\$ 4.07	\$ 4.00	\$ 4.03	0.50	22,990.81	0.833333	3.36
23/2/2011	3,165,165	12,653,111.04	\$ 4.08	\$ 3.90	\$ 3.95	(1.99)	22,906.90	0.833333	3.29
24/2/2011	1,999,126	7,927,367.85	\$ 4.02	\$ 3.90	\$ 3.92	(0.76)	22,601.04	0.833333	3.27
25/2/2011	2,882,334	11,877,798.78	\$ 4.19	\$ 3.99	\$ 4.13	5.36	23,012.37	0.833333	3.44
28/2/2011	3,862,285	15,958,035.77	\$ 4.21	\$ 3.96	\$ 4.19	1.45	23,338.02	0.833333	3.49
1/3/2011	3,195,782	13,650,360.44	\$ 4.35	\$ 4.20	\$ 4.32	3.10	23,396.42	0.833333	3.60
2/3/2011	2,928,685	12,365,714.48	\$ 4.39	\$ 4.17	\$ 4.35	0.69	23,048.66	0.833333	3.63
3/3/2011	2,098,965	8,990,252.42	\$ 4.39	\$ 4.19	\$ 4.37	0.46	23,122.42	0.833333	3.64
4/3/2011	3,332,481	14,042,091.06	\$ 4.40	\$ 4.16	\$ 4.22	(3.43)	23,408.86	0.833333	3.52
7/3/2011	1,680,023	7,155,485.91	\$ 4.32	\$ 4.18	\$ 4.21	(0.24)	23,313.19	0.833333	3.51
8/3/2011	1,144,012	4,764,379.56	\$ 4.28	\$ 4.12	\$ 4.16	(1.19)	23,711.70	0.833333	3.47
9/3/2011	2,382,426	10,018,064.84	\$ 4.25	\$ 4.16	\$ 4.20	0.96	23,810.11	0.833333	3.50
10/3/2011	2,535,318	10,654,989.00	\$ 4.25	\$ 4.17	\$ 4.20	-	23,614.89	0.833333	3.50
11/3/2011	842,495	3,440,332.70	\$ 4.20	\$ 4.03	\$ 4.06	(3.33)	23,249.78	0.833333	3.38
14/3/2011	1,000,784	4,086,162.41	\$ 4.15	\$ 4.00	\$ 4.11	1.23	23,345.88	0.833333	3.43
15/3/2011	986,283	3,933,220.96	\$ 4.09	\$ 3.93	\$ 4.00	(2.68)	22,678.25	0.833333	3.33
16/3/2011	578,158	2,314,981.35	\$ 4.08	\$ 3.95	\$ 4.06	1.50	22,700.88	0.833333	3.38
17/3/2011	3,088,919	12,267,295.73	\$ 4.05	\$ 3.82	\$ 4.05	(0.25)	22,284.43	0.833333	3.38
18/3/2011	402,093	1,589,790.32	\$ 3.98	\$ 3.90	\$ 3.97	(1.98)	22,300.23	0.833333	3.31
21/3/2011	1,794,000	7,142,450.00	\$ 4.08	\$ 3.92	\$ 4.06	2.27	22,685.22	0.833333	3.38
22/3/2011	1,494,293	6,297,073.71	\$ 4.34	\$ 4.02	\$ 4.28	5.42	22,857.90	0.833333	3.57
23/3/2011	2,908,460	12,559,313.35	\$ 4.45	\$ 4.26	\$ 4.34	1.40	22,825.40	0.833333	3.62
24/3/2011	1,253,655	5,346,511.08	\$ 4.40	\$ 4.16	\$ 4.30	(0.92)	22,915.28	0.833333	3.58
25/3/2011	416,111	1,765,232.96	\$ 4.26	\$ 4.20	\$ 4.20	(2.33)	23,158.67	0.833333	3.50
28/3/2011	838,093	3,443,706.82	\$ 4.23	\$ 4.02	\$ 4.22	0.48	23,068.19	0.833333	3.52
29/3/2011	615,187	2,532,542.91	\$ 4.18	\$ 4.07	\$ 4.17	(1.18)	23,060.36	0.833333	3.48
30/3/2011	684,081	2,873,895.85	\$ 4.22	\$ 4.17	\$ 4.22	1.20	23,451.43	0.833333	3.52
31/3/2011	519,403	2,127,300.21	\$ 4.22	\$ 4.08	\$ 4.08	(3.32)	23,527.52	0.833333	3.40

1/4/2011	516,211	2,100,043.95	\$ 4.10	\$ 4.04	\$ 4.05	(0.74)	23,801.90	0.833333	3.38
4/4/2011	1,086,701	4,368,950.07	\$ 4.06	\$ 4.00	\$ 4.02	(0.74)	24,150.58	0.833333	3.35
6/4/2011	1,095,274	4,389,106.80	\$ 4.06	\$ 3.94	\$ 4.00	(0.50)	24,285.05	0.833333	3.33
7/4/2011	1,711,602	6,953,166.02	\$ 4.12	\$ 4.00	\$ 4.06	1.50	24,281.80	0.833333	3.38
8/4/2011	2,494,971	10,419,558.29	\$ 4.28	\$ 4.05	\$ 4.23	4.19	24,396.07	0.833333	3.53
11/4/2011	1,414,413	5,914,725.07	\$ 4.23	\$ 4.13	\$ 4.17	(1.42)	24,303.07	0.833333	3.48
12/4/2011	907,016	3,685,333.92	\$ 4.13	\$ 4.02	\$ 4.04	(3.12)	23,976.37	0.833333	3.37
13/4/2011	1,051,123	4,256,771.90	\$ 4.08	\$ 4.01	\$ 4.05	0.25	24,135.03	0.833333	3.38
14/4/2011	1,307,995	5,339,979.60	\$ 4.13	\$ 4.05	\$ 4.12	1.73	24,014.00	0.833333	3.43
15/4/2011	699,401	2,852,977.17	\$ 4.12	\$ 4.04	\$ 4.07	(1.21)	24,008.07	0.833333	3.39
18/4/2011	1,887,554	7,829,588.08	\$ 4.21	\$ 4.06	\$ 4.14	1.72	23,830.31	0.833333	3.45
19/4/2011	534,153	2,205,055.27	\$ 4.19	\$ 4.07	\$ 4.19	1.21	23,520.62	0.833333	3.49
20/4/2011	1,283,032	5,292,130.01	\$ 4.24	\$ 4.05	\$ 4.15	(0.95)	23,896.10	0.833333	3.46
21/4/2011	1,275,279	5,307,158.89	\$ 4.23	\$ 4.10	\$ 4.22	1.69	24,138.31	0.833333	3.52
26/4/2011	1,170,059	4,949,390.47	\$ 4.26	\$ 4.15	\$ 4.24	0.47	24,007.38	0.833333	3.53
27/4/2011	8,269,018	37,386,371.50	\$ 4.67	\$ 4.20	\$ 4.61	8.73	23,892.84	0.833333	3.84
28/4/2011	2,721,251	12,318,810.24	\$ 4.75	\$ 4.39	\$ 4.40	(4.56)	23,805.63	0.833333	3.67
29/4/2011	5,674,588	26,181,842.30	\$ 4.70	\$ 4.35	\$ 4.65	5.68	23,720.81	0.833333	3.88
3/5/2011	2,282,191	10,158,902.22	\$ 4.65	\$ 4.35	\$ 4.41	(5.16)	23,633.25	0.833333	3.68
4/5/2011	555,667	2,397,383.01	\$ 4.41	\$ 4.24	\$ 4.28	(2.95)	23,315.24	0.833333	3.57
5/5/2011	811,898	3,558,545.44	\$ 4.43	\$ 4.29	\$ 4.38	2.34	23,261.61	0.833333	3.65
6/5/2011	3,010,148	13,506,665.06	\$ 4.59	\$ 4.34	\$ 4.39	0.23	23,159.14	0.833333	3.66
9/5/2011	1,958,490	8,789,316.92	\$ 4.52	\$ 4.40	\$ 4.45	1.37	23,336.00	0.833333	3.71
11/5/2011	1,554,419	6,979,348.41	\$ 4.55	\$ 4.35	\$ 4.50	1.12	23,291.80	0.833333	3.75
12/5/2011	511,221	2,296,113.01	\$ 4.55	\$ 4.43	\$ 4.48	(0.44)	23,073.76	0.833333	3.73
13/5/2011	1,359,059	6,125,660.78	\$ 4.60	\$ 4.40	\$ 4.48	-	23,276.27	0.833333	3.73
16/5/2011	324,409	1,438,961.63	\$ 4.47	\$ 4.41	\$ 4.41	(1.56)	22,960.63	0.833333	3.68
17/5/2011	260,346	1,153,008.94	\$ 4.49	\$ 4.37	\$ 4.48	1.59	22,901.08	0.833333	3.73
18/5/2011	1,075,141	4,805,885.21	\$ 4.54	\$ 4.45	\$ 4.48	-	23,011.14	0.833333	3.73
19/5/2011	888,040	3,983,385.40	\$ 4.50	\$ 4.44	\$ 4.46	(0.45)	23,163.38	0.833333	3.72
20/5/2011	629,195	2,798,036.05	\$ 4.50	\$ 4.42	\$ 4.46	-	23,199.39	0.833333	3.72
23/5/2011	1,781,994	7,630,815.88	\$ 4.46	\$ 4.16	\$ 4.23	(5.16)	22,711.02	0.833333	3.53
24/5/2011	512,016	2,145,606.40	\$ 4.35	\$ 4.11	\$ 4.24	0.24	22,730.78	0.833333	3.53

25/5/2011	297,192	1,252,590.38	\$ 4.26	\$ 4.13	\$ 4.21	(0.71)	22,747.28	0.833333	3.51
26/5/2011	158,005	670,161.10	\$ 4.29	\$ 4.16	\$ 4.27	1.43	22,900.79	0.833333	3.56
27/5/2011	490,097	2,108,216.97	\$ 4.36	\$ 4.21	\$ 4.35	1.87	23,118.07	0.833333	3.63
30/5/2011	1,801,719	8,089,304.69	\$ 4.51	\$ 4.39	\$ 4.50	3.45	23,184.32	0.833333	3.75
31/5/2011	4,232,406	18,985,247.41	\$ 4.54	\$ 4.42	\$ 4.52	0.44	23,684.13	0.833333	3.77
1/6/2011	3,000,970	13,493,855.50	\$ 4.59	\$ 4.42	\$ 4.50	(0.44)	23,626.43	0.833333	3.75
2/6/2011	664,764	2,943,429.52	\$ 4.50	\$ 4.40	\$ 4.40	(2.22)	23,253.84	0.833333	3.67
3/6/2011	341,076	1,498,760.02	\$ 4.45	\$ 4.36	\$ 4.36	(0.91)	22,949.56	0.833333	3.63
7/6/2011	276,011	1,205,746.86	\$ 4.43	\$ 4.30	\$ 4.42	1.38	22,868.67	0.833333	3.68
8/6/2011	813,355	3,467,114.25	\$ 4.43	\$ 4.18	\$ 4.25	(3.85)	22,661.63	0.833333	3.54
9/6/2011	1,014,212	4,272,469.95	\$ 4.27	\$ 4.14	\$ 4.18	(1.65)	22,609.83	0.833333	3.48
10/6/2011	772,489	3,133,058.34	\$ 4.17	\$ 3.99	\$ 4.05	(3.11)	22,420.37	0.833333	3.38
13/6/2011	362,118	1,413,092.50	\$ 3.99	\$ 3.83	\$ 3.94	(2.72)	22,508.08	0.833333	3.28
14/6/2011	458,000	1,814,920.00	\$ 4.01	\$ 3.89	\$ 3.92	(0.51)	22,496.00	0.833333	3.27
15/6/2011	422,015	1,661,317.75	\$ 4.01	\$ 3.88	\$ 3.95	0.77	22,343.77	0.833333	3.29
16/6/2011	1,093,118	4,146,473.06	\$ 3.90	\$ 3.70	\$ 3.80	(3.80)	21,953.11	0.833333	3.17
17/6/2011	964,064	3,657,219.06	\$ 3.85	\$ 3.70	\$ 3.80	-	21,695.26	0.833333	3.17
20/6/2011	1,116,725	4,099,112.73	\$ 3.78	\$ 3.61	\$ 3.70	(2.63)	21,599.51	0.833333	3.08
21/6/2011	334,224	1,238,216.42	\$ 3.73	\$ 3.60	\$ 3.73	0.81	21,850.59	0.833333	3.11
22/6/2011	386,591	1,440,767.60	\$ 3.81	\$ 3.70	\$ 3.73	-	21,859.97	0.833333	3.11
23/6/2011	162,041	607,869.65	\$ 3.80	\$ 3.71	\$ 3.80	1.88	21,759.14	0.833333	3.17
24/6/2011	239,284	938,553.93	\$ 3.96	\$ 3.83	\$ 3.95	3.95	22,171.95	0.833333	3.29
27/6/2011	184,100	719,835.00	\$ 3.98	\$ 3.86	\$ 3.95	-	22,041.77	0.833333	3.29
28/6/2011	744,966	2,984,990.33	\$ 4.15	\$ 3.91	\$ 4.14	4.81	22,061.78	0.833333	3.45
29/6/2011	327,153	1,352,405.06	\$ 4.19	\$ 4.10	\$ 4.10	(0.97)	22,061.18	0.833333	3.42
30/6/2011	1,819,790	7,755,507.73	\$ 4.32	\$ 4.15	\$ 4.26	3.90	22,398.10	0.833333	3.55
4/7/2011	1,169,005	5,075,521.45	\$ 4.35	\$ 4.31	\$ 4.34	1.88	22,770.47	0.833333	3.62
5/7/2011	404,122	1,724,997.91	\$ 4.30	\$ 4.19	\$ 4.23	(2.53)	22,747.95	0.833333	3.53
6/7/2011	245,011	1,043,315.92	\$ 4.34	\$ 4.10	\$ 4.18	(1.18)	22,517.55	0.833333	3.48
7/7/2011	301,015	1,254,912.00	\$ 4.19	\$ 4.15	\$ 4.18	-	22,530.18	0.833333	3.48
8/7/2011	398,070	1,689,691.52	\$ 4.34	\$ 4.15	\$ 4.26	1.91	22,726.43	0.833333	3.55
11/7/2011	301,812	1,273,523.99	\$ 4.33	\$ 4.18	\$ 4.20	(1.41)	22,347.23	0.833333	3.50
12/7/2011	375,099	1,521,711.05	\$ 4.20	\$ 3.98	\$ 4.00	(4.76)	21,663.16	0.833333	3.33

13/7/2011	342,005	1,391,270.00	\$ 4.09	\$ 4.05	\$ 4.07	1.75	21,926.88	0.833333	3.39
14/7/2011	1,902,094	7,612,757.65	\$ 4.10	\$ 3.98	\$ 3.99	(1.97)	21,940.20	0.833333	3.33
15/7/2011	910,649	3,735,503.25	\$ 4.15	\$ 4.02	\$ 4.10	2.76	21,875.38	0.833333	3.42
18/7/2011	1,931,531	7,767,362.35	\$ 4.18	\$ 4.00	\$ 4.05	(1.22)	21,804.75	0.833333	3.38
19/7/2011	1,868,187	7,551,562.08	\$ 4.10	\$ 3.90	\$ 4.10	1.23	21,902.40	0.833333	3.42
20/7/2011	2,330,016	9,549,654.91	\$ 4.13	\$ 4.05	\$ 4.06	(0.98)	22,003.69	0.833333	3.38
21/7/2011	314,495	1,282,198.24	\$ 4.10	\$ 4.01	\$ 4.05	(0.25)	21,987.29	0.833333	3.38
22/7/2011	481,230	1,926,851.31	\$ 4.10	\$ 3.96	\$ 4.04	(0.25)	22,444.80	0.833333	3.37
25/7/2011	206,532	852,916.72	\$ 4.16	\$ 4.01	\$ 4.02	(0.50)	22,293.29	0.833333	3.35
26/7/2011	14,057	56,506.34	\$ 4.05	\$ 4.01	\$ 4.05	0.75	22,572.08	0.833333	3.38
27/7/2011	164,248	652,989.68	\$ 4.03	\$ 3.95	\$ 4.03	(0.49)	22,541.69	0.833333	3.36
28/7/2011	555,076	2,198,306.40	\$ 4.01	\$ 3.94	\$ 3.99	(0.99)	22,570.74	0.833333	3.33
29/7/2011	1,084,000	4,413,670.00	\$ 4.10	\$ 3.94	\$ 4.10	2.76	22,440.25	0.833333	3.42
1/8/2011	2,346,534	9,408,308.22	\$ 4.10	\$ 3.99	\$ 4.04	(1.46)	22,663.37	0.833333	3.37
2/8/2011	61,099	243,881.84	\$ 4.00	\$ 3.98	\$ 4.00	(0.99)	22,421.46	0.833333	3.33
3/8/2011	737,614	2,906,313.30	\$ 4.02	\$ 3.88	\$ 4.02	0.50	21,992.72	0.833333	3.35
4/8/2011	190,016	758,713.15	\$ 4.02	\$ 3.94	\$ 3.96	(1.49)	21,884.74	0.833333	3.30
5/8/2011	559,168	2,083,937.82	\$ 3.80	\$ 3.66	\$ 3.75	(5.30)	20,946.14	0.833333	3.13
8/8/2011	3,265,272	12,017,038.22	\$ 3.77	\$ 3.53	\$ 3.75	-	20,490.57	0.833333	3.13
9/8/2011	2,843,839	10,177,441.23	\$ 3.70	\$ 3.41	\$ 3.56	(5.07)	19,330.70	0.833333	2.97
10/8/2011	1,594,674	5,529,870.77	\$ 3.80	\$ 3.36	\$ 3.42	(3.93)	19,783.67	0.833333	2.85
11/8/2011	7,783,198	24,773,292.87	\$ 3.58	\$ 3.02	\$ 3.31	(3.22)	19,595.14	0.833333	2.76
12/8/2011	383,708	1,297,579.09	\$ 3.50	\$ 3.31	\$ 3.35	1.21	19,620.01	0.833333	2.79
15/8/2011	242,041	819,407.11	\$ 3.47	\$ 3.22	\$ 3.38	0.90	20,260.10	0.833333	2.82
16/8/2011	477,206	1,602,931.59	\$ 3.40	\$ 3.29	\$ 3.38	-	20,212.08	0.833333	2.82
17/8/2011	768,429	2,503,648.81	\$ 3.33	\$ 3.20	\$ 3.20	(5.33)	20,289.03	0.833333	2.67
18/8/2011	1,525,797	4,699,431.89	\$ 3.23	\$ 3.00	\$ 3.10	(3.13)	20,016.27	0.833333	2.58
19/8/2011	1,177,650	3,586,818.92	\$ 3.15	\$ 2.97	\$ 3.09	(0.32)	19,399.92	0.833333	2.58
22/8/2011	4,085,311	11,848,189.12	\$ 3.04	\$ 2.78	\$ 2.85	(7.77)	19,486.87	0.833333	2.38
23/8/2011	944,063	2,605,404.66	\$ 2.88	\$ 2.70	\$ 2.87	0.70	19,875.53	0.833333	2.39
24/8/2011	685,034	1,982,325.18	\$ 2.95	\$ 2.72	\$ 2.87	-	19,466.79	0.833333	2.39
25/8/2011	769,023	2,228,065.78	\$ 2.91	\$ 2.87	\$ 2.87	-	19,752.48	0.833333	2.39
26/8/2011	353,162	1,010,087.90	\$ 3.00	\$ 2.85	\$ 2.85	(0.70)	19,582.88	0.833333	2.38

29/8/2011	223,000	643,230.00	\$ 2.90	\$ 2.85	\$ 2.88	1.05	19,865.11	0.833333	2.40
30/8/2011	1,227,307	3,686,466.68	\$ 3.04	\$ 2.89	\$ 3.00	4.17	20,204.17	0.833333	2.50
31/8/2011	1,194,088	3,584,950.48	\$ 3.04	\$ 2.98	\$ 3.04	1.33	20,534.85	0.833333	2.53
1/9/2011	3,015,680	9,527,419.60	\$ 3.22	\$ 3.11	\$ 3.20	5.26	20,585.33	0.833333	2.67
2/9/2011	627,029	1,989,179.54	\$ 3.38	\$ 3.00	\$ 3.23	0.94	20,212.91	0.833333	2.69
5/9/2011	362,354	1,149,640.94	\$ 3.20	\$ 3.15	\$ 3.17	(1.86)	19,616.40	0.833333	2.64
6/9/2011	208,088	639,464.11	\$ 3.12	\$ 3.03	\$ 3.12	(1.58)	19,710.50	0.833333	2.60
7/9/2011	66,000	201,790.00	\$ 3.06	\$ 3.01	\$ 3.06	(1.92)	20,048.00	0.833333	2.55
8/9/2011	299,000	906,610.00	\$ 3.12	\$ 3.02	\$ 3.11	1.63	19,912.82	0.833333	2.59
9/9/2011	147,010	455,369.45	\$ 3.11	\$ 3.02	\$ 3.11	-	19,866.63	0.833333	2.59
12/9/2011	121,094	350,734.26	\$ 2.99	\$ 2.87	\$ 2.89	(7.07)	19,030.54	0.833333	2.41
14/9/2011	437,454	1,170,439.42	\$ 2.82	\$ 2.60	\$ 2.65	(8.30)	19,045.44	0.833333	2.21
15/9/2011	262,123	724,608.31	\$ 2.85	\$ 2.46	\$ 2.68	1.13	19,181.50	0.833333	2.23
16/9/2011	764,000	2,181,660.00	\$ 2.99	\$ 2.72	\$ 2.92	8.96	19,455.31	0.833333	2.43
19/9/2011	886,263	2,508,158.56	\$ 2.93	\$ 2.72	\$ 2.89	(1.03)	18,917.95	0.833333	2.41
20/9/2011	45,059	121,586.94	\$ 2.71	\$ 2.68	\$ 2.68	(7.27)	19,014.80	0.833333	2.23
21/9/2011	1,492,088	3,967,418.80	\$ 2.70	\$ 2.65	\$ 2.65	(1.12)	18,824.17	0.833333	2.21
22/9/2011	4,416,365	10,299,297.62	\$ 2.60	\$ 2.19	\$ 2.45	(7.55)	17,911.95	0.833333	2.04
23/9/2011	2,930,099	6,829,149.61	\$ 2.38	\$ 2.25	\$ 2.35	(4.08)	17,668.83	0.833333	1.96
26/9/2011	2,924,963	5,960,259.31	\$ 2.32	\$ 1.90	\$ 2.03	(13.62)	17,407.80	0.833333	1.69
27/9/2011	9,854,177	23,733,770.08	\$ 2.60	\$ 2.21	\$ 2.31	13.79	18,130.55	0.833333	1.93
28/9/2011	3,941,421	9,066,154.01	\$ 2.41	\$ 2.11	\$ 2.12	(8.23)	18,011.06	0.833333	1.77
30/9/2011	10,309,053	23,156,121.60	\$ 2.36	\$ 2.11	\$ 2.32	9.43	17,592.41	0.833333	1.93
3/10/2011	5,623,434	12,513,653.13	\$ 2.30	\$ 2.20	\$ 2.23	(3.88)	16,822.15	0.833333	1.86
4/10/2011	3,323,106	7,325,408.01	\$ 2.25	\$ 2.19	\$ 2.20	(1.35)	16,250.27	0.833333	1.83
6/10/2011	2,565,178	5,899,105.76	\$ 2.34	\$ 2.25	\$ 2.33	5.91	17,172.28	0.833333	1.94
7/10/2011	4,864,029	11,668,506.12	\$ 2.46	\$ 2.32	\$ 2.46	5.58	17,707.01	0.833333	2.05
10/10/2011	2,163,049	5,233,315.59	\$ 2.48	\$ 2.38	\$ 2.40	(2.44)	17,711.06	0.833333	2.00
11/10/2011	5,836,672	14,433,752.96	\$ 2.60	\$ 2.44	\$ 2.50	4.17	18,141.59	0.833333	2.08
12/10/2011	2,993,017	7,631,811.77	\$ 2.63	\$ 2.45	\$ 2.60	4.00	18,329.46	0.833333	2.17
13/10/2011	2,522,044	6,799,865.72	\$ 2.78	\$ 2.61	\$ 2.77	6.54	18,757.81	0.833333	2.31
14/10/2011	1,853,011	4,965,359.70	\$ 2.83	\$ 2.58	\$ 2.63	(5.05)	18,501.79	0.833333	2.19
17/10/2011	1,678,000	4,539,030.00	\$ 2.75	\$ 2.65	\$ 2.70	2.66	18,873.99	0.833333	2.25

18/10/2011	2,806,042	7,070,902.48	\$ 2.59	\$ 2.45	\$ 2.55	(5.56)	18,076.46	0.833333	2.13
19/10/2011	595,316	1,557,763.68	\$ 2.67	\$ 2.55	\$ 2.67	4.71	18,309.22	0.833333	2.23
20/10/2011	58,000	149,520.00	\$ 2.61	\$ 2.52	\$ 2.55	(4.49)	17,983.10	0.833333	2.13
21/10/2011	691,278	1,809,407.82	\$ 2.65	\$ 2.56	\$ 2.61	2.35	18,025.72	0.833333	2.18
24/10/2011	621,023	1,667,989.80	\$ 2.74	\$ 2.61	\$ 2.70	3.45	18,771.82	0.833333	2.25
25/10/2011	582,059	1,536,651.63	\$ 2.69	\$ 2.61	\$ 2.61	(3.33)	18,968.20	0.833333	2.18
26/10/2011	1,062,000	2,851,110.00	\$ 2.73	\$ 2.61	\$ 2.73	4.60	19,066.54	0.833333	2.28
27/10/2011	1,611,828	4,709,099.92	\$ 3.07	\$ 2.76	\$ 3.00	9.89	19,688.70	0.833333	2.50
28/10/2011	915,772	2,769,747.04	\$ 3.16	\$ 2.91	\$ 2.93	(2.33)	20,019.24	0.833333	2.44
31/10/2011	312,000	901,360.00	\$ 2.93	\$ 2.86	\$ 2.90	(1.02)	19,864.87	0.833333	2.42
1/11/2011	187,053	548,072.64	\$ 3.04	\$ 2.78	\$ 2.88	(0.69)	19,369.96	0.833333	2.40
2/11/2011	1,717,733	4,728,554.99	\$ 2.80	\$ 2.69	\$ 2.75	(4.51)	19,733.71	0.833333	2.29
3/11/2011	1,110,010	3,004,166.90	\$ 2.79	\$ 2.65	\$ 2.70	(1.82)	19,242.50	0.833333	2.25
4/11/2011	1,552,150	4,396,834.23	\$ 2.91	\$ 2.75	\$ 2.85	5.56	19,842.79	0.833333	2.38
7/11/2011	1,075,384	3,067,331.94	\$ 2.91	\$ 2.75	\$ 2.79	(2.11)	19,677.89	0.833333	2.33
8/11/2011	3,224,000	9,475,070.00	\$ 3.00	\$ 2.84	\$ 2.92	4.66	19,678.47	0.833333	2.43
9/11/2011	2,045,155	6,055,663.90	\$ 3.00	\$ 2.92	\$ 2.95	1.03	20,014.43	0.833333	2.46
10/11/2011	2,041,186	5,717,122.95	\$ 2.85	\$ 2.70	\$ 2.73	(7.46)	18,963.89	0.833333	2.28
11/11/2011	940,000	2,634,340.00	\$ 2.84	\$ 2.75	\$ 2.78	1.83	19,137.17	0.833333	2.32
14/11/2011	1,478,334	4,132,069.26	\$ 2.85	\$ 2.78	\$ 2.78	-	19,508.18	0.833333	2.32
15/11/2011	692,255	1,891,425.55	\$ 2.80	\$ 2.69	\$ 2.74	(1.44)	19,348.44	0.833333	2.28
16/11/2011	2,480,011	6,771,419.15	\$ 2.76	\$ 2.68	\$ 2.73	(0.36)	18,960.90	0.833333	2.28
17/11/2011	341,641	912,242.30	\$ 2.73	\$ 2.65	\$ 2.66	(2.56)	18,817.47	0.833333	2.22
18/11/2011	740,964	1,942,512.89	\$ 2.66	\$ 2.59	\$ 2.63	(1.13)	18,491.23	0.833333	2.19
21/11/2011	1,276,260	3,304,682.60	\$ 2.70	\$ 2.55	\$ 2.61	(0.76)	18,225.85	0.833333	2.18
22/11/2011	655,000	1,701,900.00	\$ 2.65	\$ 2.57	\$ 2.61	-	18,251.59	0.833333	2.18
23/11/2011	601,000	1,537,700.00	\$ 2.61	\$ 2.51	\$ 2.56	(1.92)	17,864.43	0.833333	2.13
24/11/2011	387,000	985,620.00	\$ 2.60	\$ 2.50	\$ 2.57	0.39	17,935.10	0.833333	2.14
25/11/2011	194,000	501,250.00	\$ 2.60	\$ 2.53	\$ 2.56	(0.39)	17,689.48	0.833333	2.13
28/11/2011	661,000	1,761,440.00	\$ 2.75	\$ 2.62	\$ 2.72	6.25	18,037.81	0.833333	2.27
29/11/2011	2,123,005	5,956,893.80	\$ 2.84	\$ 2.73	\$ 2.84	4.41	18,256.20	0.833333	2.37
30/11/2011	2,762,010	7,764,237.40	\$ 2.91	\$ 2.77	\$ 2.90	2.11	17,989.35	0.833333	2.42
1/12/2011	1,323,179	3,925,817.65	\$ 3.04	\$ 2.90	\$ 2.96	2.07	19,002.26	0.833333	2.47

2/12/2011	924,588	2,785,297.18	\$ 3.08	\$ 2.94	\$ 3.07	3.72	19,040.39	0.833333	2.56
5/12/2011	425,220	1,308,346.60	\$ 3.18	\$ 3.00	\$ 3.10	0.98	19,179.69	0.833333	2.58
6/12/2011	1,632,467	5,036,174.96	\$ 3.13	\$ 3.00	\$ 3.13	0.97	18,942.23	0.833333	2.61
7/12/2011	1,363,029	4,429,562.22	\$ 3.36	\$ 3.11	\$ 3.35	7.03	19,240.58	0.833333	2.79
8/12/2011	2,666,403	9,111,552.65	\$ 3.55	\$ 3.18	\$ 3.44	2.69	19,107.81	0.833333	2.87
9/12/2011	1,319,684	4,520,604.41	\$ 3.50	\$ 3.30	\$ 3.43	(0.29)	18,586.23	0.833333	2.86
12/12/2011	1,851,615	6,466,998.70	\$ 3.60	\$ 3.35	\$ 3.44	0.29	18,575.66	0.833333	2.87
13/12/2011	564,000	1,915,600.00	\$ 3.47	\$ 3.31	\$ 3.33	(3.20)	18,447.17	0.833333	2.78
14/12/2011	834,488	2,753,095.04	\$ 3.45	\$ 3.21	\$ 3.30	(0.90)	18,354.43	0.833333	2.75
15/12/2011	712,065	2,356,685.19	\$ 3.35	\$ 3.24	\$ 3.27	(0.91)	18,026.84	0.833333	2.73
16/12/2011	625,005	2,121,996.55	\$ 3.45	\$ 3.36	\$ 3.39	3.67	18,285.39	0.833333	2.83
19/12/2011	765,081	2,556,266.49	\$ 3.36	\$ 3.30	\$ 3.35	(1.18)	18,070.21	0.833333	2.79
20/12/2011	1,498,000	4,319,410.00	\$ 3.15	\$ 2.80	\$ 2.83	(15.52)	18,080.20	1	2.83
21/12/2011	1,424,023	4,084,084.40	\$ 2.95	\$ 2.82	\$ 2.90	2.47	18,416.45	1	2.90
22/12/2011	810,768	2,278,718.96	\$ 2.90	\$ 2.79	\$ 2.79	(3.79)	18,378.23	1	2.79
23/12/2011	1,524,000	4,127,050.00	\$ 2.84	\$ 2.56	\$ 2.84	1.79	18,629.17	1	2.84
28/12/2011	1,149,078	3,155,641.38	\$ 2.80	\$ 2.69	\$ 2.80	(1.41)	18,518.67	1	2.80
29/12/2011	1,137,017	3,205,086.41	\$ 2.86	\$ 2.75	\$ 2.80	-	18,397.92	1	2.80
30/12/2011	2,978,444	8,694,397.11	\$ 3.05	\$ 2.80	\$ 2.94	5.00	18,434.39	1	2.94
3/1/2012	188,211	557,231.90	\$ 3.02	\$ 2.92	\$ 2.97	1.02	18,877.41	1	2.97
4/1/2012	121,000	347,090.00	\$ 2.95	\$ 2.82	\$ 2.93	(1.35)	18,727.31	1	2.93
5/1/2012	1,407,000	4,105,280.00	\$ 2.95	\$ 2.88	\$ 2.93	-	18,813.41	1	2.93
6/1/2012	3,181,199	9,213,886.46	\$ 2.90	\$ 2.85	\$ 2.90	(1.02)	18,593.06	1	2.90
9/1/2012	1,459,000	4,222,390.00	\$ 2.90	\$ 2.85	\$ 2.90	-	18,865.72	1	2.90
10/1/2012	1,529,000	4,424,730.00	\$ 2.92	\$ 2.86	\$ 2.90	-	19,004.28	1	2.90
11/1/2012	1,834,000	5,319,680.00	\$ 2.92	\$ 2.83	\$ 2.90	-	19,151.94	1	2.90
12/1/2012	3,224,000	9,343,720.00	\$ 2.90	\$ 2.88	\$ 2.90	-	19,095.38	1	2.90
13/1/2012	1,906,000	5,633,570.00	\$ 3.00	\$ 2.90	\$ 2.95	1.72	19,204.42	1	2.95
16/1/2012	1,053,611	3,042,360.66	\$ 2.95	\$ 2.80	\$ 2.89	(2.03)	19,012.20	1	2.89
17/1/2012	543,560	1,573,089.75	\$ 2.90	\$ 2.86	\$ 2.90	0.35	19,627.75	1	2.90
18/1/2012	515,406	1,491,318.98	\$ 2.90	\$ 2.87	\$ 2.90	-	19,686.92	1	2.90
19/1/2012	1,620,154	4,695,496.22	\$ 2.90	\$ 2.89	\$ 2.90	-	19,942.95	1	2.90
20/1/2012	153,367,134	460,225,910.75	\$ 3.26	\$ 2.83	\$ 2.92	0.69	20,110.37	1	2.92

26/1/2012	832,261	2,478,682.26	\$ 3.02	\$ 2.90	\$ 3.00	2.74	20,439.14	1	3.00
27/1/2012	221,519	662,209.62	\$ 3.01	\$ 2.97	\$ 2.98	(0.67)	20,501.67	1	2.98
30/1/2012	419,704	1,232,653.60	\$ 2.96	\$ 2.92	\$ 2.92	(2.01)	20,160.41	1	2.92
31/1/2012	1,268,671	3,708,795.06	\$ 2.97	\$ 2.90	\$ 2.93	0.34	20,390.49	1	2.93
1/2/2012	1,045,281	3,108,309.23	\$ 3.00	\$ 2.93	\$ 3.00	2.39	20,333.37	1	3.00
2/2/2012	2,243,826	6,904,294.74	\$ 3.18	\$ 3.00	\$ 3.17	5.67	20,739.45	1	3.17
3/2/2012	1,379,600	4,307,720.00	\$ 3.17	\$ 3.08	\$ 3.17	-	20,756.98	1	3.17
6/2/2012	736,521	2,325,051.41	\$ 3.20	\$ 3.10	\$ 3.12	(1.58)	20,709.94	1	3.12
7/2/2012	881,211	2,739,773.51	\$ 3.18	\$ 3.07	\$ 3.10	(0.64)	20,699.19	1	3.10
8/2/2012	2,051,159	6,467,189.07	\$ 3.20	\$ 3.10	\$ 3.18	2.58	21,018.46	1	3.18
9/2/2012	3,478,921	11,517,395.70	\$ 3.47	\$ 3.15	\$ 3.31	4.09	21,010.01	1	3.31
10/2/2012	1,449,680	4,740,127.44	\$ 3.32	\$ 3.24	\$ 3.24	(2.11)	20,783.86	1	3.24
13/2/2012	344,539	1,104,036.15	\$ 3.24	\$ 3.16	\$ 3.18	(1.85)	20,887.40	1	3.18
14/2/2012	589,448	1,869,696.56	\$ 3.24	\$ 3.10	\$ 3.15	(0.94)	20,917.83	1	3.15
15/2/2012	1,566,004	5,051,414.14	\$ 3.29	\$ 3.15	\$ 3.25	3.17	21,365.23	1	3.25
16/2/2012	1,643,000	5,359,630.00	\$ 3.30	\$ 3.21	\$ 3.26	0.31	21,277.28	1	3.26
17/2/2012	2,801,603	9,530,453.99	\$ 3.50	\$ 3.26	\$ 3.40	4.29	21,491.62	1	3.40
20/2/2012	1,335,016	4,526,421.85	\$ 3.40	\$ 3.36	\$ 3.40	-	21,424.79	1	3.40
21/2/2012	575,812	1,948,882.02	\$ 3.40	\$ 3.34	\$ 3.39	(0.29)	21,478.72	1	3.39
22/2/2012	1,799,614	6,049,018.62	\$ 3.40	\$ 3.30	\$ 3.35	(1.18)	21,549.28	1	3.35
23/2/2012	790,177	2,655,060.47	\$ 3.38	\$ 3.33	\$ 3.37	0.60	21,380.99	1	3.37
24/2/2012	4,174,000	14,121,694.00	\$ 3.42	\$ 3.33	\$ 3.35	(0.59)	21,406.86	1	3.35
27/2/2012	2,023,430	6,907,593.16	\$ 3.47	\$ 3.38	\$ 3.41	1.79	21,217.86	1	3.41
28/2/2012	992,486	3,362,992.94	\$ 3.42	\$ 3.33	\$ 3.37	(1.17)	21,568.73	1	3.37
29/2/2012	4,127,941	14,226,325.98	\$ 3.53	\$ 3.37	\$ 3.45	2.37	21,680.08	1	3.45
1/3/2012	2,940,813	10,048,174.46	\$ 3.50	\$ 3.36	\$ 3.42	(0.87)	21,387.96	1	3.42
2/3/2012	1,537,093	5,184,098.61	\$ 3.44	\$ 3.29	\$ 3.39	(0.88)	21,562.26	1	3.39
5/3/2012	4,812,000	16,125,490.00	\$ 3.54	\$ 3.25	\$ 3.25	(4.13)	21,265.31	1	3.25
6/3/2012	2,592,355	8,697,775.36	\$ 3.40	\$ 3.25	\$ 3.38	4.00	20,806.25	1	3.38
7/3/2012	650,022	2,186,136.38	\$ 3.40	\$ 3.30	\$ 3.37	(0.30)	20,627.78	1	3.37
8/3/2012	994,120	3,370,138.40	\$ 3.42	\$ 3.32	\$ 3.38	0.30	20,900.73	1	3.38
9/3/2012	364,127	1,231,336.03	\$ 3.45	\$ 3.34	\$ 3.38	-	21,086.00	1	3.38
12/3/2012	178,141	597,525.30	\$ 3.40	\$ 3.34	\$ 3.36	(0.59)	21,134.18	1	3.36

13/3/2012	472,433	1,587,448.69	\$ 3.40	\$ 3.34	\$ 3.34	(0.60)	21,339.70	1	3.34
14/3/2012	1,472,731	4,784,157.18	\$ 3.37	\$ 3.15	\$ 3.16	(5.39)	21,307.89	1	3.16
15/3/2012	558,768	1,811,075.72	\$ 3.39	\$ 3.16	\$ 3.20	1.27	21,353.53	1	3.20
16/3/2012	344,220	1,102,852.44	\$ 3.29	\$ 3.18	\$ 3.19	(0.31)	21,317.85	1	3.19
19/3/2012	596,000	1,858,750.00	\$ 3.20	\$ 3.10	\$ 3.12	(2.19)	21,115.29	1	3.12
20/3/2012	2,104,460	6,314,483.24	\$ 3.09	\$ 2.90	\$ 2.95	(5.45)	20,888.24	1	2.95
21/3/2012	1,420,476	4,138,411.36	\$ 2.99	\$ 2.89	\$ 2.95	-	20,856.63	1	2.95
22/3/2012	533,807	1,567,477.88	\$ 2.97	\$ 2.89	\$ 2.90	(1.69)	20,901.56	1	2.90
23/3/2012	379,606	1,098,076.98	\$ 2.91	\$ 2.80	\$ 2.90	-	20,668.80	1	2.90
26/3/2012	469,000	1,333,190.00	\$ 2.90	\$ 2.70	\$ 2.84	(2.07)	20,668.86	1	2.84
27/3/2012	2,133,000	6,235,840.00	\$ 3.01	\$ 2.88	\$ 2.93	3.17	21,046.91	1	2.93
28/3/2012	770,000	2,223,920.00	\$ 3.01	\$ 2.80	\$ 2.85	(2.73)	20,885.42	1	2.85
29/3/2012	2,122,013	6,089,185.88	\$ 2.95	\$ 2.79	\$ 2.87	0.70	20,609.39	1	2.87
30/3/2012	722,800	2,062,536.00	\$ 2.90	\$ 2.82	\$ 2.87	-	20,555.58	1	2.87
2/4/2012	289,000	842,500.00	\$ 2.98	\$ 2.84	\$ 2.86	(0.35)	20,522.26	1	2.86
3/4/2012	630,200	1,790,410.00	\$ 2.87	\$ 2.81	\$ 2.83	(1.05)	20,790.98	1	2.83
5/4/2012	421,656	1,184,643.68	\$ 2.89	\$ 2.74	\$ 2.86	1.06	20,593.00	1	2.86
10/4/2012	3,766,207	10,301,932.18	\$ 2.83	\$ 2.52	\$ 2.77	(3.15)	20,356.24	1	2.77
11/4/2012	250,000	680,120.00	\$ 2.76	\$ 2.70	\$ 2.76	(0.36)	20,140.67	1	2.76
12/4/2012	255,264	708,287.52	\$ 2.84	\$ 2.72	\$ 2.82	2.17	20,327.32	1	2.82
13/4/2012	1,027,000	2,926,930.00	\$ 2.89	\$ 2.80	\$ 2.80	(0.71)	20,701.04	1	2.80
16/4/2012	222,036	617,488.64	\$ 2.81	\$ 2.70	\$ 2.79	(0.36)	20,610.64	1	2.79
17/4/2012	94,206	261,594.14	\$ 2.79	\$ 2.74	\$ 2.79	-	20,562.31	1	2.79
18/4/2012	356,406	1,018,566.80	\$ 2.90	\$ 2.79	\$ 2.85	2.15	20,780.73	1	2.85
19/4/2012	98,627	279,455.60	\$ 2.86	\$ 2.81	\$ 2.86	0.35	20,995.01	1	2.86
20/4/2012	1,515,035	4,459,549.75	\$ 3.00	\$ 2.87	\$ 2.99	4.55	21,010.64	1	2.99
23/4/2012	1,319,012	3,971,984.80	\$ 3.09	\$ 2.93	\$ 3.03	1.34	20,624.39	1	3.03
24/4/2012	1,174,994	3,476,232.78	\$ 3.08	\$ 2.86	\$ 2.87	(5.28)	20,677.16	1	2.87
25/4/2012	899,194	2,638,014.30	\$ 2.96	\$ 2.91	\$ 2.95	2.79	20,646.29	1	2.95
26/4/2012	565,200	1,642,472.00	\$ 2.97	\$ 2.85	\$ 2.95	-	20,809.71	1	2.95
27/4/2012	837,200	2,473,580.00	\$ 3.00	\$ 2.92	\$ 2.97	0.68	20,741.45	1	2.97
30/4/2012	517,429	1,570,603.05	\$ 3.15	\$ 2.96	\$ 3.03	2.02	21,094.21	1	3.03
2/5/2012	192,880	575,330.41	\$ 3.03	\$ 2.96	\$ 2.96	(2.31)	21,309.08	1	2.96

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3/5/2012	1,251,020	3,661,208.40	\$ 3.00	\$ 2.85	\$ 2.94	(0.68)	21,249.53	1	2.94
4/5/2012	1,037,838	3,107,447.60	\$ 3.08	\$ 2.93	\$ 3.03	3.06	21,086.00	1	3.03
7/5/2012	442,800	1,266,676.00	\$ 2.91	\$ 2.81	\$ 2.85	(5.94)	20,536.65	1	2.85
8/5/2012	201,004	568,281.20	\$ 2.88	\$ 2.79	\$ 2.82	(1.05)	20,484.75	1	2.82
9/5/2012	1,031,000	2,874,270.00	\$ 2.82	\$ 2.74	\$ 2.82	-	20,330.64	1	2.82
10/5/2012	498,141	1,354,623.65	\$ 2.83	\$ 2.69	\$ 2.70	(4.26)	20,227.28	1	2.70
11/5/2012	903,600	2,399,870.00	\$ 2.70	\$ 2.60	\$ 2.62	(2.96)	19,964.63	1	2.62
14/5/2012	2,128,100	5,392,542.00	\$ 2.65	\$ 2.39	\$ 2.50	(4.58)	19,735.04	1	2.50
15/5/2012	4,077,333	10,361,527.50	\$ 2.60	\$ 2.50	\$ 2.60	4.00	19,894.31	1	2.60
16/5/2012	393,697	994,636.74	\$ 2.56	\$ 2.48	\$ 2.50	(3.85)	19,259.83	1	2.50
17/5/2012	2,983,000	7,604,140.00	\$ 2.58	\$ 2.45	\$ 2.54	1.60	19,200.93	1	2.54
18/5/2012	3,277,154	7,956,244.22	\$ 2.52	\$ 2.37	\$ 2.40	(5.51)	18,951.85	1	2.40
21/5/2012	7,479,000	17,813,320.00	\$ 2.47	\$ 2.33	\$ 2.35	(2.08)	18,922.32	1	2.35
22/5/2012	3,192,842	7,722,460.28	\$ 2.48	\$ 2.38	\$ 2.44	3.83	19,039.15	1	2.44
23/5/2012	2,691,891	6,617,016.22	\$ 2.51	\$ 2.40	\$ 2.46	0.82	18,786.19	1	2.46
24/5/2012	230,027	587,096.15	\$ 2.57	\$ 2.47	\$ 2.54	3.25	18,666.40	1	2.54
25/5/2012	1,380,000	3,590,260.00	\$ 2.68	\$ 2.55	\$ 2.60	2.36	18,713.41	1	2.60
28/5/2012	999,218	2,622,552.44	\$ 2.78	\$ 2.59	\$ 2.62	0.77	18,800.99	1	2.62
29/5/2012	3,058,076	8,185,067.14	\$ 2.78	\$ 2.52	\$ 2.75	4.96	19,055.46	1	2.75
30/5/2012	785,000	2,134,590.00	\$ 2.77	\$ 2.68	\$ 2.74	(0.36)	18,690.22	1	2.74
31/5/2012	306,000	828,640.00	\$ 2.75	\$ 2.69	\$ 2.70	(1.46)	18,629.52	1	2.70
1/6/2012	1,310,200	3,666,330.00	\$ 2.86	\$ 2.70	\$ 2.80	3.70	18,558.34	1	2.80
4/6/2012	737,911	2,006,694.37	\$ 2.80	\$ 2.65	\$ 2.70	(3.57)	18,185.59	1	2.70
5/6/2012	894,596	2,471,541.43	\$ 2.88	\$ 2.72	\$ 2.72	0.74	18,259.03	1	2.72
6/6/2012	865,000	2,410,680.00	\$ 2.85	\$ 2.76	\$ 2.78	2.21	18,520.53	1	2.78
7/6/2012	474,246	1,353,603.54	\$ 2.90	\$ 2.79	\$ 2.81	1.08	18,678.29	1	2.81
8/6/2012	772,000	2,191,570.00	\$ 2.89	\$ 2.79	\$ 2.81	-	18,502.34	1	2.81
11/6/2012	1,820,034	5,091,423.50	\$ 2.85	\$ 2.72	\$ 2.78	(1.07)	18,953.63	1	2.78
12/6/2012	335,200	938,854.00	\$ 2.82	\$ 2.77	\$ 2.80	0.72	18,872.56	1	2.80
13/6/2012	387,141	1,082,244.93	\$ 2.89	\$ 2.73	\$ 2.89	3.21	19,026.52	1	2.89
14/6/2012	323,829	938,427.80	\$ 3.00	\$ 2.86	\$ 2.86	(1.04)	18,808.40	1	2.86
15/6/2012	1,021,006	2,968,786.86	\$ 2.92	\$ 2.81	\$ 2.90	1.40	19,233.94	1	2.90
18/6/2012	1,480,034	4,382,478.94	\$ 3.00	\$ 2.91	\$ 2.94	1.38	19,427.81	1	2.94

19/6/2012	785,000	2,256,670.00	\$ 2.97	\$ 2.80	\$ 2.82	(4.08)	19,416.67	1	2.82
20/6/2012	70,206	199,372.68	\$ 2.88	\$ 2.82	\$ 2.82	-	19,518.85	1	2.82
21/6/2012	1,263,034	3,529,681.12	\$ 2.81	\$ 2.73	\$ 2.78	(1.42)	19,265.07	1	2.78
22/6/2012	506,000	1,387,620.00	\$ 2.80	\$ 2.70	\$ 2.72	(2.16)	18,995.13	1	2.72
25/6/2012	788,000	2,100,120.00	\$ 2.70	\$ 2.64	\$ 2.67	(1.84)	18,897.45	1	2.67
26/6/2012	285,000	791,540.00	\$ 2.80	\$ 2.74	\$ 2.78	4.12	18,981.84	1	2.78
27/6/2012	269,206	748,300.02	\$ 2.82	\$ 2.67	\$ 2.78	-	19,176.95	1	2.78
28/6/2012	874,107	2,405,268.90	\$ 2.82	\$ 2.70	\$ 2.71	(2.52)	19,025.27	1	2.71
29/6/2012	894,786	2,461,259.40	\$ 2.80	\$ 2.69	\$ 2.70	(0.37)	19,441.46	1	2.70
3/7/2012	662,413	1,796,175.10	\$ 2.79	\$ 2.62	\$ 2.65	(1.85)	19,735.53	1	2.65
4/7/2012	706,820	1,940,897.60	\$ 2.78	\$ 2.68	\$ 2.75	3.77	19,709.75	1	2.75
5/7/2012	52,722,206	152,628,066.20	\$ 2.85	\$ 2.74	\$ 2.76	0.36	19,809.13	1	2.76
6/7/2012	426,200	1,168,272.00	\$ 2.81	\$ 2.72	\$ 2.76	-	19,800.64	1	2.76
9/7/2012	629,646	1,707,201.00	\$ 2.80	\$ 2.68	\$ 2.71	(1.81)	19,428.09	1	2.71
10/7/2012	317,844	836,933.84	\$ 2.69	\$ 2.60	\$ 2.69	(0.74)	19,396.36	1	2.69
11/7/2012	760,622	2,037,188.30	\$ 2.73	\$ 2.60	\$ 2.73	1.49	19,419.87	1	2.73
12/7/2012	399,600	1,051,398.00	\$ 2.70	\$ 2.61	\$ 2.65	(2.93)	19,025.11	1	2.65
13/7/2012	169,000	453,390.00	\$ 2.70	\$ 2.64	\$ 2.65	-	19,092.63	1	2.65
16/7/2012	199,206	519,091.18	\$ 2.69	\$ 2.54	\$ 2.63	(0.75)	19,121.34	1	2.63
17/7/2012	262,012	690,470.96	\$ 2.65	\$ 2.59	\$ 2.63	-	19,455.33	1	2.63
18/7/2012	107,800	285,940.00	\$ 2.69	\$ 2.60	\$ 2.65	0.76	19,239.88	1	2.65
19/7/2012	426,600	1,148,646.00	\$ 2.77	\$ 2.65	\$ 2.67	0.75	19,559.05	1	2.67
20/7/2012	643,206	1,740,442.08	\$ 2.74	\$ 2.67	\$ 2.72	1.87	19,640.80	1	2.72
23/7/2012	53,225,057	154,190,504.46	\$ 2.94	\$ 2.71	\$ 2.86	5.15	19,053.47	1	2.86
24/7/2012	929,606	2,684,404.98	\$ 2.90	\$ 2.86	\$ 2.88	0.70	18,903.20	1	2.88
25/7/2012	887,000	2,531,800.00	\$ 2.88	\$ 2.81	\$ 2.86	(0.69)	18,877.33	1	2.86
26/7/2012	1,488,259	4,111,586.05	\$ 2.85	\$ 2.74	\$ 2.76	(3.50)	18,892.79	1	2.76
27/7/2012	551,311	1,515,153.70	\$ 2.79	\$ 2.71	\$ 2.74	(0.72)	19,274.96	1	2.74
30/7/2012	139,098	387,299.76	\$ 2.83	\$ 2.73	\$ 2.79	1.82	19,585.40	1	2.79
31/7/2012	329,613	913,823.44	\$ 2.80	\$ 2.71	\$ 2.79	-	19,796.81	1	2.79
1/8/2012	589,123	1,627,856.28	\$ 2.79	\$ 2.72	\$ 2.76	(1.08)	19,820.38	1	2.76
2/8/2012	10,413	28,680.32	\$ 2.79	\$ 2.69	\$ 2.79	1.09	19,690.20	1	2.79
3/8/2012	690,412	1,925,922.40	\$ 2.85	\$ 2.74	\$ 2.75	(1.43)	19,666.18	1	2.75

6/8/2012	553,738	1,570,318.98	\$ 2.86	\$ 2.77	\$ 2.80	1.82	19,998.72	1	2.80
7/8/2012	939,870	2,584,674.00	\$ 2.81	\$ 2.70	\$ 2.78	(0.71)	20,072.55	1	2.78
8/8/2012	252,275	712,854.87	\$ 2.88	\$ 2.77	\$ 2.77	(0.36)	20,065.52	1	2.77
9/8/2012	928,681	2,630,293.56	\$ 2.84	\$ 2.80	\$ 2.82	1.81	20,269.47	1	2.82
10/8/2012	473,600	1,350,486.00	\$ 2.90	\$ 2.80	\$ 2.84	0.71	20,136.12	1	2.84
13/8/2012	101,000	285,440.00	\$ 2.84	\$ 2.79	\$ 2.84	-	20,081.36	1	2.84
14/8/2012	367,278	1,030,633.38	\$ 2.84	\$ 2.75	\$ 2.78	(2.11)	20,291.68	1	2.78
15/8/2012	69,000	191,490.00	\$ 2.82	\$ 2.74	\$ 2.82	1.44	20,052.29	1	2.82
16/8/2012	976,000	2,737,860.00	\$ 2.85	\$ 2.70	\$ 2.74	(2.84)	19,962.95	1	2.74
17/8/2012	83,038	229,901.84	\$ 2.80	\$ 2.75	\$ 2.76	0.73	20,116.07	1	2.76
20/8/2012	29,400	82,244.00	\$ 2.83	\$ 2.76	\$ 2.80	1.45	20,104.27	1	2.80
21/8/2012	553,176	1,546,920.48	\$ 2.84	\$ 2.77	\$ 2.79	(0.36)	20,100.09	1	2.79
22/8/2012	287,000	803,650.00	\$ 2.83	\$ 2.76	\$ 2.77	(0.72)	19,887.78	1	2.77
23/8/2012	965,618	2,636,317.14	\$ 2.79	\$ 2.68	\$ 2.71	(2.17)	20,132.24	1	2.71
24/8/2012	583,000	1,572,530.00	\$ 2.75	\$ 2.66	\$ 2.66	(1.85)	19,880.03	1	2.66
27/8/2012	74,449	200,536.38	\$ 2.72	\$ 2.67	\$ 2.70	1.50	19,798.67	1	2.70
28/8/2012	377,007	1,010,538.48	\$ 2.70	\$ 2.65	\$ 2.67	(1.11)	19,811.80	1	2.67
29/8/2012	45,000	118,550.00	\$ 2.68	\$ 2.60	\$ 2.68	0.37	19,788.51	1	2.68
30/8/2012	609,000	1,577,140.00	\$ 2.65	\$ 2.55	\$ 2.64	(1.49)	19,552.91	1	2.64
31/8/2012	290,000	763,170.00	\$ 2.67	\$ 2.58	\$ 2.60	(1.52)	19,482.57	1	2.60
3/9/2012	91,000	243,940.00	\$ 2.70	\$ 2.60	\$ 2.65	1.92	19,559.21	1	2.65
4/9/2012	172,000	457,720.00	\$ 2.69	\$ 2.62	\$ 2.62	(1.13)	19,429.91	1	2.62
5/9/2012	161,000	415,560.00	\$ 2.59	\$ 2.56	\$ 2.60	(0.76)	19,145.07	1	2.60
6/9/2012	94,000	244,510.00	\$ 2.65	\$ 2.58	\$ 2.58	(0.77)	19,209.30	1	2.58
7/9/2012	1,458,347	3,797,428.78	\$ 2.65	\$ 2.54	\$ 2.63	1.94	19,802.16	1	2.63
10/9/2012	633,200	1,706,740.00	\$ 2.72	\$ 2.60	\$ 2.70	2.66	19,827.17	1	2.70
11/9/2012	622,206	1,668,801.78	\$ 2.70	\$ 2.65	\$ 2.66	(1.48)	19,857.88	1	2.66
12/9/2012	92,413	246,965.80	\$ 2.69	\$ 2.64	\$ 2.68	0.75	20,075.39	1	2.68
13/9/2012	1,746,000	4,694,500.00	\$ 2.70	\$ 2.62	\$ 2.63	(1.87)	20,047.63	1	2.63
14/9/2012	1,066,000	2,828,060.00	\$ 2.72	\$ 2.59	\$ 2.60	(1.14)	20,629.78	1	2.60
17/9/2012	1,368,206	3,573,867.66	\$ 2.69	\$ 2.57	\$ 2.58	(0.77)	20,658.11	1	2.58
18/9/2012	2,648,122	7,105,166.29	\$ 2.76	\$ 2.61	\$ 2.63	1.94	20,601.93	1	2.63
19/9/2012	2,855,000	7,610,270.00	\$ 2.70	\$ 2.63	\$ 2.66	1.14	20,841.91	1	2.66

20/9/2012	1,389,632	3,726,412.36	\$ 2.71	\$ 2.66	\$ 2.66	-	20,590.92	1	2.66
21/9/2012	719,000	1,927,640.00	\$ 2.70	\$ 2.67	\$ 2.67	0.38	20,734.94	1	2.67
24/9/2012	443,000	1,177,760.00	\$ 2.68	\$ 2.64	\$ 2.64	(1.12)	20,694.70	1	2.64
25/9/2012	1,012,170	2,677,738.60	\$ 2.66	\$ 2.63	\$ 2.66	0.76	20,698.68	1	2.66
26/9/2012	4,389,341	11,549,079.78	\$ 2.66	\$ 2.57	\$ 2.64	(0.75)	20,527.73	1	2.64
27/9/2012	12,322,036	32,706,901.78	\$ 2.71	\$ 2.60	\$ 2.70	2.27	20,762.29	1	2.70
28/9/2012	1,968,000	5,316,560.00	\$ 2.74	\$ 2.67	\$ 2.73	1.11	20,840.38	1	2.73
3/10/2012	4,597,397	13,305,337.97	\$ 3.05	\$ 2.67	\$ 2.93	7.33	20,888.28	1	2.93
4/10/2012	3,295,000	9,484,580.00	\$ 2.94	\$ 2.85	\$ 2.89	(1.37)	20,907.95	1	2.89
5/10/2012	2,825,600	8,093,856.00	\$ 2.91	\$ 2.83	\$ 2.88	(0.35)	21,012.38	1	2.88
8/10/2012	5,468,599	15,991,422.58	\$ 2.95	\$ 2.88	\$ 2.92	1.39	20,824.56	1	2.92
9/10/2012	4,827,670	14,378,088.40	\$ 3.00	\$ 2.92	\$ 2.97	1.71	20,937.28	1	2.97
10/10/2012	2,049,206	6,100,221.52	\$ 3.00	\$ 2.95	\$ 2.96	(0.34)	20,919.60	1	2.96
11/10/2012	2,418,358	7,112,881.04	\$ 2.97	\$ 2.92	\$ 2.94	(0.68)	20,999.05	1	2.94
12/10/2012	1,448,000	4,220,460.00	\$ 2.96	\$ 2.90	\$ 2.94	-	21,136.43	1	2.94
15/10/2012	1,047,763	3,076,937.44	\$ 2.96	\$ 2.90	\$ 2.94	-	21,148.25	1	2.94
16/10/2012	2,708,759	8,055,050.00	\$ 3.00	\$ 2.93	\$ 2.98	1.36	21,207.07	1	2.98
17/10/2012	1,929,401	5,763,607.07	\$ 3.04	\$ 2.94	\$ 2.98	-	21,416.64	1	2.98
18/10/2012	3,319,600	9,678,243.00	\$ 2.98	\$ 2.89	\$ 2.91	(2.35)	21,518.71	1	2.91
19/10/2012	2,175,413	6,307,509.44	\$ 2.95	\$ 2.88	\$ 2.90	(0.34)	21,551.76	1	2.90
22/10/2012	6,176,400	17,875,878.00	\$ 2.92	\$ 2.84	\$ 2.90	-	21,697.55	1	2.90
24/10/2012	3,450,897	10,120,543.51	\$ 2.99	\$ 2.87	\$ 2.97	2.41	21,763.78	1	2.97
25/10/2012	3,967,156	11,862,251.08	\$ 3.02	\$ 2.94	\$ 2.99	0.67	21,810.23	1	2.99
26/10/2012	2,652,361	7,901,393.41	\$ 3.00	\$ 2.94	\$ 2.99	-	21,545.57	1	2.99
29/10/2012	1,096,283	3,267,843.53	\$ 3.00	\$ 2.96	\$ 2.97	(0.67)	21,511.05	1	2.97
30/10/2012	1,600,958	4,756,096.94	\$ 2.99	\$ 2.94	\$ 2.95	(0.67)	21,428.58	1	2.95
31/10/2012	884,169	2,626,747.79	\$ 2.99	\$ 2.96	\$ 2.97	0.68	21,641.82	1	2.97
1/11/2012	1,670,283	4,908,011.29	\$ 2.98	\$ 2.91	\$ 2.94	(1.01)	21,821.87	1	2.94
2/11/2012	2,672,863	7,894,354.07	\$ 2.98	\$ 2.92	\$ 2.95	0.34	22,111.33	1	2.95
5/11/2012	2,273,297	6,579,114.69	\$ 2.95	\$ 2.86	\$ 2.90	(1.69)	22,006.40	1	2.90
6/11/2012	819,778	2,349,737.84	\$ 2.91	\$ 2.84	\$ 2.91	0.34	21,944.43	1	2.91
7/11/2012	1,385,000	4,086,180.00	\$ 2.98	\$ 2.91	\$ 2.98	2.41	22,099.85	1	2.98
8/11/2012	3,609,584	10,883,766.84	\$ 3.08	\$ 2.92	\$ 3.02	1.34	21,566.91	1	3.02

9/11/2012	2,431,206	7,258,210.66	\$ 3.08	\$ 2.94	\$ 2.94	(2.65)	21,384.38	1	2.94
12/11/2012	764,108	2,249,829.08	\$ 2.98	\$ 2.91	\$ 2.92	(0.68)	21,430.30	1	2.92
13/11/2012	685,206	1,963,960.92	\$ 2.94	\$ 2.81	\$ 2.87	(1.71)	21,188.65	1	2.87
14/11/2012	735,709	2,090,092.29	\$ 2.90	\$ 2.80	\$ 2.88	0.35	21,441.99	1	2.88
15/11/2012	1,927,000	5,418,640.00	\$ 2.87	\$ 2.80	\$ 2.82	(2.08)	21,108.93	1	2.82
16/11/2012	984,206	2,751,016.50	\$ 2.82	\$ 2.78	\$ 2.80	(0.71)	21,159.01	1	2.80
19/11/2012	833,580	2,312,631.53	\$ 2.82	\$ 2.75	\$ 2.82	0.71	21,262.06	1	2.82
20/11/2012	1,162,964	3,332,846.77	\$ 2.91	\$ 2.83	\$ 2.90	2.84	21,228.28	1	2.90
21/11/2012	1,477,206	4,323,130.04	\$ 3.00	\$ 2.87	\$ 2.92	0.69	21,524.36	1	2.92
22/11/2012	2,094,202	6,240,156.62	\$ 3.02	\$ 2.96	\$ 2.97	1.71	21,743.20	1	2.97
23/11/2012	2,924,039	8,730,464.32	\$ 3.02	\$ 2.95	\$ 2.99	0.67	21,913.98	1	2.99
26/11/2012	3,180,240	9,531,574.52	\$ 3.03	\$ 2.97	\$ 2.98	(0.33)	21,861.81	1	2.98
27/11/2012	434,000	1,287,850.00	\$ 2.99	\$ 2.95	\$ 2.98	-	21,844.03	1	2.98
28/11/2012	138,413	408,401.83	\$ 2.97	\$ 2.93	\$ 2.97	(0.34)	21,708.98	1	2.97
29/11/2012	1,563,222	4,587,354.90	\$ 3.01	\$ 2.85	\$ 3.00	1.01	21,922.89	1	3.00
30/11/2012	1,156,807	3,503,030.35	\$ 3.10	\$ 2.98	\$ 3.00	-	22,030.39	1	3.00
3/12/2012	583,056	1,722,992.40	\$ 3.00	\$ 2.93	\$ 2.96	(1.33)	21,767.85	1	2.96
4/12/2012	1,043,626	3,066,100.90	\$ 2.97	\$ 2.90	\$ 2.95	(0.34)	21,799.97	1	2.95
5/12/2012	2,679,058	8,010,090.92	\$ 3.06	\$ 2.88	\$ 3.04	3.05	22,270.91	1	3.04
6/12/2012	1,580,961	4,743,508.55	\$ 3.05	\$ 2.96	\$ 2.98	(1.97)	22,249.81	1	2.98
7/12/2012	1,513,921	4,472,679.49	\$ 3.01	\$ 2.93	\$ 2.98	-	22,191.17	1	2.98
10/12/2012	1,154,237	3,474,917.39	\$ 3.03	\$ 2.99	\$ 3.02	1.34	22,276.72	1	3.02
11/12/2012	368,012	1,103,705.52	\$ 3.02	\$ 2.97	\$ 3.01	(0.33)	22,323.94	1	3.01
12/12/2012	576,006	1,717,437.28	\$ 3.02	\$ 2.96	\$ 3.02	0.33	22,503.35	1	3.02
13/12/2012	3,839,548	11,829,799.54	\$ 3.19	\$ 3.00	\$ 3.13	3.64	22,445.58	1	3.13
14/12/2012	6,605,568	21,219,966.77	\$ 3.43	\$ 3.11	\$ 3.16	0.96	22,605.98	1	3.16
17/12/2012	1,570,199	4,887,026.74	\$ 3.19	\$ 3.09	\$ 3.11	(1.58)	22,513.61	1	3.11
18/12/2012	1,125,108	3,530,356.44	\$ 3.18	\$ 3.06	\$ 3.14	0.96	22,494.73	1	3.14
19/12/2012	4,247,295	13,852,607.66	\$ 3.35	\$ 3.14	\$ 3.30	5.10	22,623.37	1	3.30
20/12/2012	1,408,026	4,697,244.13	\$ 3.39	\$ 3.25	\$ 3.32	0.61	22,659.78	1	3.32
21/12/2012	1,910,468	6,303,561.00	\$ 3.38	\$ 3.20	\$ 3.26	(1.81)	22,506.29	1	3.26
24/12/2012	765,200	2,509,310.00	\$ 3.33	\$ 3.21	\$ 3.25	(0.31)	22,541.18	1	3.25
27/12/2012	2,908,325	9,715,078.04	\$ 3.39	\$ 3.25	\$ 3.38	4.00	22,619.78	1	3.38

28/12/2012	2,460,206	8,489,884.87	\$ 3.51	\$ 3.37	\$ 3.47	2.66	22,666.59	1	3.47
31/12/2012	1,499,413	5,325,807.62	\$ 3.57	\$ 3.42	\$ 3.55	2.31	22,656.92	1	3.55
2/1/2013	2,600,531	9,325,866.82	\$ 3.68	\$ 3.43	\$ 3.44	(3.10)	23,311.98	1	3.44
3/1/2013	3,801,246	13,135,034.96	\$ 3.55	\$ 3.41	\$ 3.53	2.62	23,398.60	1	3.53
4/1/2013	2,397,525	8,435,473.50	\$ 3.57	\$ 3.43	\$ 3.48	(1.42)	23,331.09	1	3.48
7/1/2013	14,173,034	45,062,777.10	\$ 3.45	\$ 3.00	\$ 3.21	(7.76)	23,329.75	1	3.21
8/1/2013	8,329,000	26,652,690.00	\$ 3.26	\$ 3.16	\$ 3.19	(0.62)	23,111.19	1	3.19
9/1/2013	16,767,813	50,987,269.96	\$ 3.19	\$ 2.96	\$ 3.15	(1.25)	23,218.47	1	3.15
10/1/2013	4,489,554	14,316,727.93	\$ 3.25	\$ 3.13	\$ 3.19	1.27	23,354.31	1	3.19
11/1/2013	3,954,711	12,451,423.37	\$ 3.20	\$ 3.09	\$ 3.19	-	23,264.07	1	3.19
14/1/2013	3,628,255	11,789,553.64	\$ 3.28	\$ 3.15	\$ 3.26	2.19	23,413.26	1	3.26
15/1/2013	3,888,716	12,421,724.30	\$ 3.28	\$ 3.15	\$ 3.22	(1.23)	23,381.51	1	3.22
16/1/2013	1,912,634	6,107,294.76	\$ 3.22	\$ 3.16	\$ 3.20	(0.62)	23,356.99	1	3.20
17/1/2013	2,170,492	6,936,686.44	\$ 3.22	\$ 3.15	\$ 3.22	0.63	23,339.76	1	3.22
18/1/2013	2,948,410	9,534,815.74	\$ 3.27	\$ 3.21	\$ 3.26	1.24	23,601.78	1	3.26
21/1/2013	2,540,196	8,372,973.10	\$ 3.33	\$ 3.26	\$ 3.30	1.23	23,590.91	1	3.30
22/1/2013	1,179,339	3,866,096.61	\$ 3.31	\$ 3.22	\$ 3.22	(2.42)	23,658.99	1	3.22
23/1/2013	689,049	2,232,356.80	\$ 3.28	\$ 3.23	\$ 3.25	0.93	23,635.10	1	3.25
24/1/2013	3,677,868	11,792,237.27	\$ 3.27	\$ 3.15	\$ 3.20	(1.54)	23,598.90	1	3.20
25/1/2013	5,671,000	18,007,290.00	\$ 3.22	\$ 3.15	\$ 3.18	(0.63)	23,580.43	1	3.18
28/1/2013	4,417,407	14,055,074.98	\$ 3.21	\$ 3.14	\$ 3.15	(0.94)	23,671.88	1	3.15
29/1/2013	2,870,943	9,160,396.93	\$ 3.22	\$ 3.15	\$ 3.19	1.27	23,655.17	1	3.19
30/1/2013	1,068,427	3,411,766.96	\$ 3.22	\$ 3.15	\$ 3.20	0.31	23,822.06	1	3.20
31/1/2013	934,000	2,939,780.00	\$ 3.18	\$ 3.13	\$ 3.17	(0.94)	23,729.53	1	3.17
1/2/2013	1,101,000	3,459,260.00	\$ 3.20	\$ 3.11	\$ 3.15	(0.63)	23,721.84	1	3.15
4/2/2013	788,723	2,499,501.36	\$ 3.20	\$ 3.14	\$ 3.16	0.32	23,685.01	1	3.16
5/2/2013	588,800	1,855,554.00	\$ 3.17	\$ 3.13	\$ 3.16	-	23,148.53	1	3.16
6/2/2013	1,806,620	5,703,168.20	\$ 3.18	\$ 3.12	\$ 3.15	(0.32)	23,256.93	1	3.15
7/2/2013	1,909,341	5,862,299.10	\$ 3.15	\$ 3.02	\$ 3.14	(0.32)	23,177.00	1	3.14
8/2/2013	1,401,620	4,312,093.40	\$ 3.12	\$ 3.04	\$ 3.11	(0.96)	23,215.16	1	3.11
14/2/2013	218,612	676,494.30	\$ 3.12	\$ 3.07	\$ 3.10	(0.32)	23,413.25	1	3.10
15/2/2013	639,206	1,993,611.54	\$ 3.15	\$ 3.08	\$ 3.12	0.65	23,444.56	1	3.12
18/2/2013	1,509,000	4,768,470.00	\$ 3.23	\$ 3.10	\$ 3.23	3.53	23,381.94	1	3.23

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19/2/2013	2,342,325	7,479,879.89	\$ 3.25	\$ 3.10	\$ 3.21	(0.62)	23,143.91	1	3.21
20/2/2013	1,832,097	5,992,616.36	\$ 3.33	\$ 3.20	\$ 3.25	1.25	23,307.41	1	3.25
21/2/2013	570,000	1,811,640.00	\$ 3.24	\$ 3.15	\$ 3.19	(1.85)	22,906.67	1	3.19
22/2/2013	1,096,206	3,421,292.42	\$ 3.19	\$ 3.05	\$ 3.12	(2.19)	22,782.44	1	3.12
25/2/2013	2,084,982	6,746,600.80	\$ 3.28	\$ 3.18	\$ 3.23	3.53	22,820.08	1	3.23
26/2/2013	2,471,400	7,765,709.00	\$ 3.30	\$ 3.10	\$ 3.13	(3.10)	22,519.69	1	3.13
27/2/2013	2,017,678	6,209,405.24	\$ 3.13	\$ 3.06	\$ 3.13	-	22,577.01	1	3.13
28/2/2013	5,836,220	17,856,553.60	\$ 3.15	\$ 3.01	\$ 3.08	(1.60)	23,020.27	1	3.08
1/3/2013	2,022,100	6,154,879.00	\$ 3.09	\$ 3.02	\$ 3.03	(1.62)	22,880.22	1	3.03
4/3/2013	3,550,108	10,617,975.52	\$ 3.05	\$ 2.91	\$ 3.04	0.33	22,537.81	1	3.04
5/3/2013	2,185,123	6,690,961.02	\$ 3.12	\$ 2.99	\$ 3.11	2.30	22,560.50	1	3.11
6/3/2013	1,532,213	4,784,592.52	\$ 3.18	\$ 3.05	\$ 3.08	(0.96)	22,777.84	1	3.08
7/3/2013	1,375,619	4,196,699.94	\$ 3.15	\$ 3.02	\$ 3.08	-	22,771.44	1	3.08
8/3/2013	1,588,120	4,980,483.60	\$ 3.16	\$ 3.08	\$ 3.16	2.60	23,091.95	1	3.16
11/3/2013	2,920,827	9,333,702.98	\$ 3.22	\$ 3.14	\$ 3.19	0.95	23,090.82	1	3.19
12/3/2013	2,849,000	9,063,940.00	\$ 3.26	\$ 3.14	\$ 3.15	(1.25)	22,890.60	1	3.15
13/3/2013	991,120	3,108,507.60	\$ 3.20	\$ 3.10	\$ 3.15	-	22,556.65	1	3.15
14/3/2013	537,760	1,687,402.80	\$ 3.16	\$ 3.12	\$ 3.16	0.32	22,619.18	1	3.16
15/3/2013	683,206	2,165,624.78	\$ 3.19	\$ 3.14	\$ 3.17	0.32	22,533.11	1	3.17
18/3/2013	1,093,206	3,399,963.42	\$ 3.14	\$ 3.08	\$ 3.09	(2.52)	22,083.36	1	3.09
19/3/2013	346,858	1,082,822.20	\$ 3.15	\$ 3.10	\$ 3.15	1.94	22,041.86	1	3.15
20/3/2013	2,417,000	7,556,510.00	\$ 3.16	\$ 3.10	\$ 3.12	(0.95)	22,256.44	1	3.12
21/3/2013	2,515,400	7,884,990.00	\$ 3.22	\$ 3.10	\$ 3.20	2.56	22,225.88	1	3.20
22/3/2013	594,000	1,874,515.00	\$ 3.20	\$ 3.11	\$ 3.19	(0.31)	22,115.30	1	3.19
25/3/2013	509,062	1,612,337.82	\$ 3.20	\$ 3.15	\$ 3.17	(0.63)	22,251.15	1	3.17
26/3/2013	608,600	1,929,082.00	\$ 3.18	\$ 3.15	\$ 3.18	0.32	22,311.08	1	3.18
27/3/2013	826,504	2,628,904.88	\$ 3.20	\$ 3.16	\$ 3.19	0.31	22,464.82	1	3.19
28/3/2013	451,000	1,432,090.00	\$ 3.19	\$ 3.16	\$ 3.18	(0.31)	22,299.63	1	3.18
2/4/2013	3,456,217	11,116,234.40	\$ 3.25	\$ 3.17	\$ 3.20	0.63	22,367.82	1	3.20
3/4/2013	4,252,454	13,939,344.36	\$ 3.30	\$ 3.24	\$ 3.28	2.50	22,337.49	1	3.28
5/4/2013	3,201,447	10,291,995.41	\$ 3.30	\$ 3.11	\$ 3.20	(2.44)	21,726.90	1	3.20
8/4/2013	1,765,200	5,573,824.00	\$ 3.20	\$ 3.13	\$ 3.16	(1.25)	21,718.05	1	3.16
9/4/2013	2,505,000	7,942,027.00	\$ 3.23	\$ 3.13	\$ 3.17	0.32	21,870.34	1	3.17

APPENDIX D

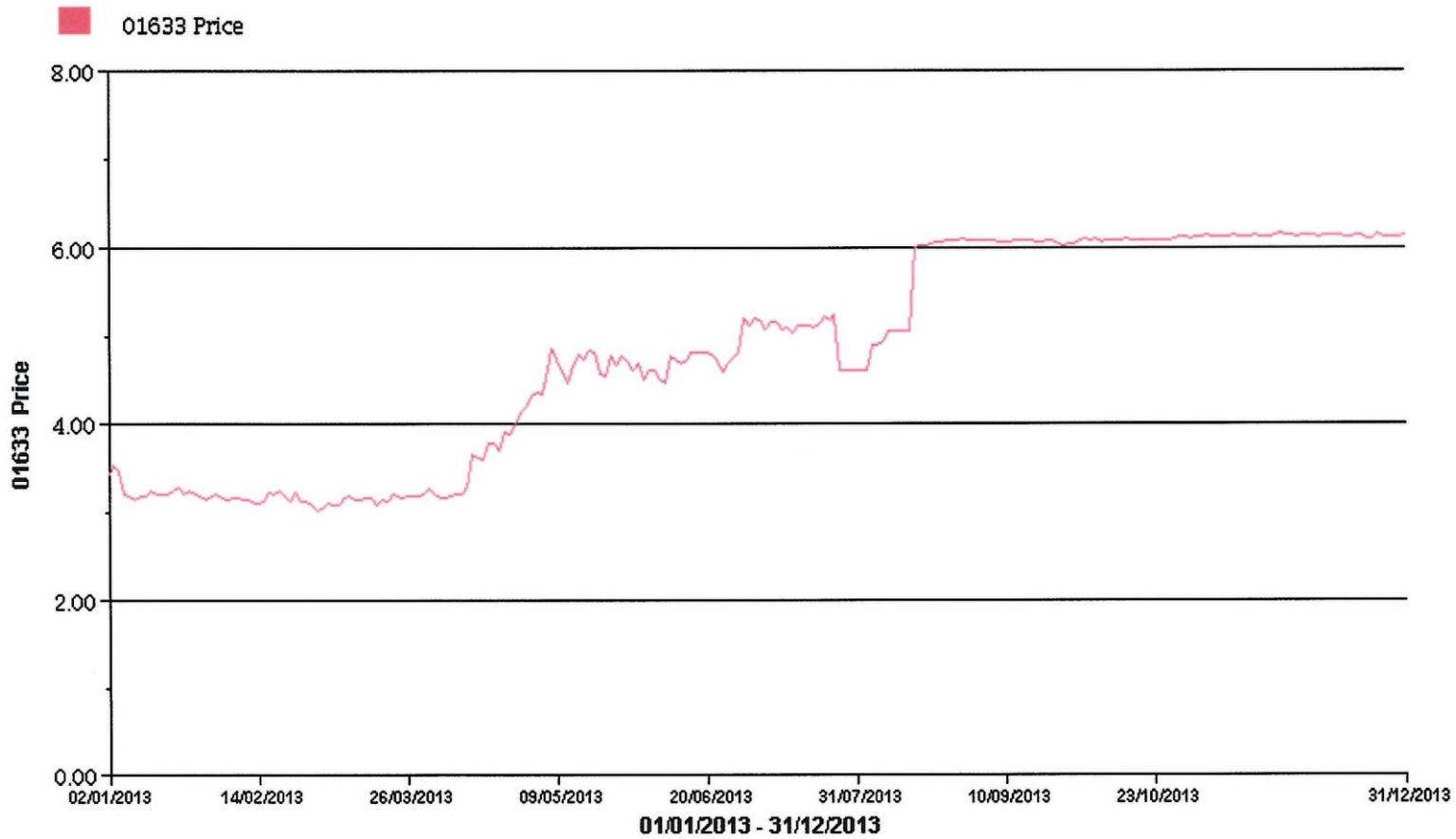
A Magic Stock/Index Price Chart

Stock / Index Price Chart

Stock **01633 - MAGIC HOLDINGS**
Date (dd/mm/yyyy) **01/01/2013 - 31/12/2013**

Historical Data

Stock / Index Price Chart
01633 - MAGIC HOLDINGS



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