

Summary: SFC commenced Market Misconduct Tribunal proceedings against Yorkey Optical International (Cayman) Limited (the “Company”), its CEO, Financial Controller and Company Secretary for late disclosure of inside information

I. Background: allegations and key facts

(1) Allegations

- (a) Allegation against the Company: failure to disclose price sensitive information as soon as reasonably practicable
- (b) Allegation against (i) CEO and Executive Director; (ii) Financial Controller and Company Secretary (together the “officers”):
 - “reckless or negligent conduct” (s. 307G(2)(a) of the Securities and Futures Ordinance, as “SFO”) causing the alleged breach by the Company of the disclosure requirements; or
 - failure to take reasonable measures from time to time to ensure proper safeguards exist (s.307G(2)(b) SFO)

(2) Key Facts

- (a) The Company recorded a net profit position of US\$ 1.25 million in its interim results for the six months ended 30 June 2012 (note: already declined when compared with 2011 corresponding period)
- (b) It made a statement in its 2012 interim results statement, that it expected to see **“significant growth over that in the first half of the year, alongside with increasing profitability”**
- (c) In fact sustained material losses in 2 H and significant deterioration in financial performance (99% drop in 2012 profit as compared with 2011 results; also less than 1H 2012 profit)
- (d) Highlights of 2012 Final Results:
 - loss before tax : US\$136k (2011 profit before tax : US\$7.531m)
 - net profit (after a tax credit): US\$60k
(2011: US\$6.685m, 1H 2012: US\$1.25m)

- (e) Its share price fell 21.25% over a three-day period after its final results announcement
- (f) Internal management accounts:
- consolidated monthly management accounts showed that deterioration began in October 2012 and continued into November and December 2012. The Company incurred significant losses in all of those months
 - the monthly results for the 5 months between July and November 2012 (available around mid-December) were already sufficiently poor, and clearly indicated that the results for the second half of the year (and hence full-year 2012) would be much worse than expected
 - consolidated monthly accounts for the full six months (available around mid-January 2013) -- at the latest, the Company would have been aware of the information about the deterioration in performance
 - information about the deterioration in performance, as apparent from the figures in the above management accounts was **“inside information”**
- (g) Breach of disclosure requirement by the two officers:
- both were aware of the deterioration well before the publication of the 2012 final results (note: they became aware at different times)
 - failed to take any steps to ensure timely disclosure
 - neither took reasonable measures to ensure that safeguards exist to prevent a breach of disclosure requirement by the Company

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