

Press Releases

10 June 2002

SFC Sanctions Mr Chan Kin Sun, Ms Cheng Kwan Ying Jennifer, Ms Za Ah Fong, Ms Chan Lai Lan, Ms Chan Lai Lai Karen, Ms Cheng Mei Ying Michelle and Mr Yu Wing Keung (collectively referred to as the "Chan Family")

The Securities and Futures Commission announces today that the following disciplinary action has been taken against Mr Chan Kin Sun (Mr Chan) and other members of the Chan Family in relation to a breach of the Hong Kong Code on Takeovers and Mergers (Takeovers Code):

1. The Takeovers and Mergers Executive (Executive) has imposed an order denying Mr Chan direct or indirect access to the securities markets (a [Cold Shoulder Order](#)) for a period of 15 months commencing on Tuesday, 11 June 2002.
2. The Executive publicly censures Mr Chan and his family members, namely: Ms Cheng Kwan Ying Jennifer (Mr Chan's wife); Ms Za Ah Fong (Mr Chan's mother); Ms Chan Lai Lan (Mr Chan's sister); Ms Chan Lai Lai Karen (Mr Chan's sister); Ms Cheng Mei Ying Michelle (Mr Chan's sister-in-law) and Mr Yu Wing Keung (Mr Chan's brother-in-law) in relation to their conduct in this matter.
3. On Monday 10 June 2002 Mr Chan surrendered his registrations with the SFC as a securities dealer under the Securities Ordinance and commodities dealer under the Commodities Trading Ordinance for 30 months with immediate effect. Mr Chan has also undertaken not to reapply to the SFC for any registration, licence or approval for 30 months.

Background

Between 1 January 2000 and 20 February 2001 the Chan Family actively traded in shares in Truly International Holdings Limited. By 5 September 2000, the Chan Family had increased its collective holding to 35.67%. No general offer was made.

Mr Chan is registered with the SFC as a securities dealer and a commodity dealer. He acknowledges that he is the principal member and leader of the Chan Family concert group. He actively traded Truly shares during the relevant period placing various purchase orders on his own behalf as well as on behalf of other members of the Chan Family. He provided funding for most of these purchases. Other members of the Chan Family also acquired Truly shares on Mr Chan's recommendation.

The Chan Family is considered to be acting in concert for the purposes of the Takeovers Code. As a result the Chan Family has breached Rule 26.1 of the Takeovers Code in acquiring more than 35% of the shares in Truly without making a general offer. Rule 26.1 of the Takeovers Code in effect at the relevant time provided that when two or more persons are acting in concert and they collectively hold not less than 35% (this threshold was reduced to 30% on 19 October 2001) a mandatory offer obligation is triggered. The Chan Family's failure to make such an offer amounted to a breach of the Code.

The Executive considers that the conduct of Mr Chan and the Chan Family has resulted in a serious and blatant breach of a fundamental provision of the Takeovers Code that merits strong disciplinary action. Mr Chan and the Chan Family accept that they have breached the Code and accordingly that shareholders of Truly who should have received a general offer should either receive an equivalent offer or be compensated. However, neither Mr Chan nor any other member of the Chan Family has sufficient resources, and it is unlikely that they would be able to secure sufficient financing for any

such offer or compensation payment in the foreseeable future. In the circumstances, Mr Chan and the Chan Family have agreed to disciplinary action being taken against them.

The Executive wishes to take this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers and mergers in accordance with the Code. If they do not, they may find that they are subject to sanction.

In addition, the SFC has concluded that Mr Chan's conduct in this matter has a significant impact on his fitness and propriety to remain registered. The SFC has decided that Mr Chan's conduct merits a suspension of Mr Chan's registrations with the SFC for 30 months. In forming this view the SFC has taken into account Mr Chan's primary role in the breach and that he was a principal member and the leader of the concert group. Mr Chan's conduct clearly fell far short of that expected of an experienced registrant and licensee. The SFC has also taken into account the fact that this is not the first time that Mr Chan's fitness and propriety to remain registered have been called into question. On 1 November 1997 Mr Chan's registrations with the SFC were suspended for 30 months. One of the factors taken into account by the SFC at the time was that Mr Chan had failed to ensure effective controls and procedures were in place resulting in trading malpractices. The SFC considers Mr Chan's previous suspensions to be an aggravating feature.

An SFC spokesman said: "Any registrant who fails to abide by the codes or guidelines issued by the SFC or other applicable laws would cast serious doubts on whether he is fit and proper to remain registered. The SFC considers such matters important in maintaining a fair and orderly market and in protecting investors' interests, and will not hesitate to take disciplinary actions against the registrant accordingly."

Page last updated: 10 June 2002

證監會對陳建新、鄭群英、徐亞鳳、陳麗蘭、陳麗麗、鄭美英及余詠強(統稱為"陳氏家族")施加制裁

2002年6月10日

證券及期貨事務監察委員會今天宣布，本會已因陳建新(陳氏)及陳氏家族其他成員違反《香港公司收購及合併守則》(《收購守則》)的規定而對該等人士採取以下紀律行動：

1. 收購及合併委員會執行人員(執行人員)已發出命令，禁止陳氏直接或間接使用證券市場設施([冷淡對待令](#))，為期15個月，由2002年6月11日(星期二)起生效。
2. 執行人員公開譴責陳氏及其家族成員，即：鄭群英(陳氏的妻子)、徐亞鳳(陳氏的母親)、陳麗蘭(陳氏的妹妹)、陳麗麗(陳氏的妹妹)、鄭美英(陳氏的姨子)及余詠強(陳氏的妹夫)在此事中的行為。
3. 在2002年6月10日(星期一)，陳氏交回其在證監會所取得的根據《證券條例》作為證券交易商及根據《商品交易條例》作為商品交易商的註冊，為期30個月，即時生效。陳氏亦承諾在30個月之內不會再向證監會提出任何註冊、牌照或認可申請。

背景

在2000年1月1日至2001年2月20日期間，陳氏家族積極買賣信利國際有限公司的股份。截至2000年9月5日時，陳氏家族的合共持股量已增至35.67%，但卻沒有提出全面收購要約。

陳氏是證監會的註冊證券交易商及商品交易商。陳氏承認其為陳氏家族一致行動集團的主要成員及領袖。陳氏在有關期間積極買賣信利股份，替自己及陳氏家族其他成員發出多項購買有關股份的指示。陳氏亦為大部份購入交易提供資金。陳氏家族其他成員亦由於陳氏的建議而購入信利股份。

陳氏家族被認為是《收購守則》所指的一致行動的人。因此，陳氏家族在購入超過35%的信利股份而沒有提出全面收購要約時，已違反《收購守則》規則26.1。根據在當時生效的規則26.1規定，當兩名或以上的人士一致行動及合共持有某家上市公司不少於35%的股份(有關百分率由2001年10月19日起降至30%)，便會觸發須作出強制要約的責任。陳氏家族不作出有關要約，已違反了該守則。

執行人員認為陳氏及陳氏家族的行為公然及嚴重地違反《收購守則》其中一項根本條文，應受到嚴厲的紀律處分。陳氏及陳氏家族同意其已違反該守則，及認同本應收到全面收購要約的信利股東是應該獲得同等要約或賠償的。可是，無論陳氏及陳氏家族其他成員在可見將來都沒有足夠資源或有可能獲得足夠融資去作出這樣的要約或賠償。在這樣的情況下，陳氏及陳氏家族同意接受執行人員對其採取紀律行動。

執行人員希望藉此機會提醒有意利用香港證券市場的業界人士及有關人士，在進行有關收購合併行動時，必須遵守該守則的規定，否則便會受到制裁。

此外，證監會認為陳氏在今次事件中的操守亦嚴重影響到其是否適宜繼續獲得註冊。證監會已決定陳氏的行為足以使本會暫時吊銷其在本會的註冊30個月。證監會在達致該決定時，已考慮到陳氏在有關違規行為中擔任主要的角色，以及陳氏為該一致行動集團的主要成員及領袖。陳氏的行為明顯未能符合資深的註冊人及持牌人應有的操守。證監會亦考慮到今次並非陳氏首次被證監會質疑其是否適宜繼續獲得註冊。在1997年11月1日，陳氏在證監會的註冊被暫時吊銷30個月。證監會當時考慮的其中一個因素，是陳氏未有確保其公司設立有效的監控措施及程序，以致不當交易活動得以發生。證監會認為陳氏的註冊以前曾經被暫時吊銷一事，足以使本會有需要對其施加更嚴厲的處分。

證監會發言人表示："任何註冊人如未能遵守證監會發表的守則或指引或其他適用法例，將使人嚴重質疑其是否適宜繼續獲得註冊。證監會認為這些事情對於維持公平有序的市場及保障投資者的權益相當重要。本會將會毫不猶疑地對註冊人採取相應的紀律處分"。