

# SFC commences disciplinary proceedings against Chow Yei Ching and others for alleged breach of Takeovers Code

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The Securities and Futures Commission's (SFC) Takeover Executive has today commenced disciplinary proceedings before the Takeovers and Mergers Panel (Takeovers Panel) against the chairman of Chevalier Group, Mr Chow Yei Ching (Chow); his son, Mr Oscar Chow Vee Tsung, and Mr Joseph Leung Wing Kong over a serious breach of the Code on Takeovers and Mergers and Share Repurchases (Takeovers Code) (Notes 1 and 2).

The SFC alleges that the three actively co-operated to assist the late Ms Nina Kung to obtain or consolidate control of ENM Holdings Limited (ENM) and avoid the triggering of a mandatory general offer under the Takeovers Code (Notes 3, 4, and 5).

At the relevant time, Kung was the largest shareholder of ENM. She was also the chairwoman and the sole beneficial owner of the Chinachem Group (Note 6).

Chow, his son, and Leung were closely connected to Kung. Chow had known Kung as a close friend and business partner with numerous commercial dealings for more than 40 years. Oscar Chow is alleged to have acted in concert with his father under the Takeovers Code. Leung was a trusted friend and close business associate of Kung. He has been working at the Chinachem Group as a director since April 1987 (Note 7).

Between 2000 and 2002, Chow acquired a total of 160 million shares of ENM (approximately 9.69% of ENM's issued share capital) on Kung's behalf and at her request. Chow paid for the purchase of the ENM shares and was subsequently reimbursed by Kung. The reimbursement was handled by Oscar Chow and Leung.

Chow held the ENM shares under four British Virgin Island (BVI) companies he owned through the issuance of bearer shares until December 2009. To comply with the changes to BVI law requiring greater transparency in the ownership of bearer shares, Chow arranged for the ownership of the 160 million ENM shares to be split equally between one of his daughters and Oscar Chow in December 2009.

The Takeovers Code treats persons acting in concert as being the equivalent of a single person and aggregates their shareholdings. Chow's acquisitions increased the collective shareholding of the concert group in ENM from 34.64% to 44.33%, thereby triggering a mandatory general offer obligation under the Takeovers Code. However, none of the share acquisitions in ENM by Chow on Kung's behalf were publicly disclosed and remained undisclosed for a protracted period.

This type of arrangement, which is commonly known as "warehousing", enabled Kung to secretly hold the ENM shares and avoid an obligation under the Takeovers Code to make a general offer. In consequence ENM shareholders were deprived of their fundamental right to receive a general offer to buy their shares.

Chow brought the matter to the SFC's attention after receiving a letter in late April 2012 from the joint administrators of Kung's estate making enquiries about shares of ENM that belonged to the estate.

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Notes:

1. The Takeovers Code is issued by the SFC as one of its functions under the Securities and Futures Ordinance. The Takeovers Code is designed principally to afford fair treatment for shareholders by requiring equality of treatment of shareholders of the same class.
2. Takeovers Executive means the Executive Director of the Corporate Finance Division of the SFC or any delegate of the Executive Director.
3. The Takeovers Code regards two or more persons as acting in concert in respect of a company if pursuant

to an agreement or understanding they actively co-operate, through the acquisition of shares by any of them, to obtain or consolidate control of that company.

4. Rule 26 is the overriding rule in the Takeovers Code and provides the circumstances in which a mandatory general offer must be made. This reflects General Principle 1 of the Takeovers Code and underpins the requirement for equal treatment of shareholders. Failure to make an offer that is required to be made under Rule 26.1 constitutes a serious breach of the Takeovers Code.

Rule 26.1 (in force in December 2000) required a mandatory general offer to be made for all the shares in the company if a person or group of persons acting in concert acquired shares resulting in either:

(i) the person or concert group collectively holding 35% or more of the voting rights (known as the "trigger"). The trigger threshold was reduced to 30% on 19 October 2001; or

(ii) the person or concert group collectively holding between 35% and 50% of the shares and then going on to acquire, either individually or as a group, more than 5% in any 12 month period (known as the "creeper"). The creeper threshold was reduced to 2% on 19 October 2001.

5. ENM (formerly known as e-New Media Company Limited) is principally engaged in wholesale and retail fashion wear and accessories, resort and recreational club operations, investment holding and securities trading. The shares of ENM are listed on the Main Board of the Stock Exchange of Hong Kong Limited.
6. At the relevant time, Kung, also known as Nina T H Wang, held 34.64% interest in ENM. She passed away on 7 April 2007.
7. Chow is the founder and chairman of Chevalier Group. He is also the controlling shareholder, chairman, and executive director of Chevalier International Holdings Limited, a company listed on the Main Board of the Stock Exchange.

Oscar Chow is an executive director of Chevalier International Holdings Limited.

Leung is the chairman, executive director and acting chief executive officer of ENM. He became a director of ENM in December 2000.

8. The disciplinary proceedings before the Takeovers Panel will be held in public. [Details of the proceedings](#) can be found in the "Regulatory functions – Listings & takeovers – Takeovers & Mergers – Disciplinary proceedings before the Takeovers and Mergers Panel" section of the SFC website at [www.sfc.hk](http://www.sfc.hk). The procedures for disciplinary hearings before the Takeovers Panel are set out in section 13 of the Introduction to the [Takeovers Code](#) and in the [Rules of Procedure for disciplinary hearings](#).

If the Takeovers Panel finds there has been a breach of the Takeovers Code it is empowered to issue a range of sanctions including imposing a "cold shoulder order" which would deny the person being sanctioned direct or indirect access to the Hong Kong securities markets for a period of time specified by the Takeovers Panel.