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SFC commences MMT proceedings against Magic Holdings International Limited and its directors for late disclosure of inside information

15 May 2018

The Securities and Futures Commission (SFC) has commenced proceedings in the Market Misconduct Tribunal (MMT) against Magic Holdings International Limited (Magic) and its nine directors for failing to disclose inside information as soon as reasonably practicable on the potential acquisition of its issued shares by L'Oréal S.A. (L'Oréal), a French cosmetics group in 2013 (Notes 1 & 2).

The nine directors include its chairman, Mr Stephen Tang Siu Kun, three executive directors, Mr She Yu Yuan, Mr Luo Yao Wen and Mr Cheng Wing Hong, as well as five non-executive directors, namely, Mr Sun Yan, Mr Chen Dar Cin, Mr Yan Kam Tong, Mr Yang Rude and Mr Dong Yin Mao.

The SFC found that Magic and L'Oréal had discussions related to L'Oréal's proposal to acquire the shares of Magic on several occasions since early March 2013. On one occasion, Tang, She, Luo and L'Oréal's representatives reached a preliminary agreement regarding the sale of all the issued shares of Magic during a meeting on 29 March 2013.

On 15 August 2013, Magic announced that L'Oréal had put forward a proposal of acquiring all the issued shares of Magic by way of a scheme of arrangement and upon the acquisition becoming effective, all the shares of Magic would be cancelled in exchange for \$6.3 in cash for each share. After the announcement, the share price of Magic rose 19 per cent to \$6.01 on 16 August 2013, up from its previous close of \$5.05 on 9 August 2013.

The SFC alleges that Magic had failed to comply with the requirement under the statutory corporate disclosure regime by not disclosing inside information relating to the potential acquisition by L'Oréal until August 2013 despite having reached a preliminary agreement on the structure of the potential acquisition on 29 March 2013.

The SFC further alleges that the conduct of Tang, She, Luo and Cheng had resulted in Magic's alleged breach of the disclosure requirement and that all nine directors of Magic at the material time had failed to take all reasonable measures to ensure that proper safeguards exist to prevent the alleged breach of the disclosure requirement by Magic.

End

Notes:

1. Magic was listed on the Main Board of the Stock Exchange of Hong Kong Limited on 24 September 2010 and the listing was withdrawn on 9 April 2014 when the acquisition became effective.
2. A copy of the SFC's Notice commencing the MMT proceedings is available on the MMT's website (www.mmt.gov.hk).

Page last updated : 15 May 2018

**IN THE MATTER OF THE LISTED SECURITIES OF MAGIC HOLDINGS
INTERNATIONAL LIMITED (STOCK CODE 1633)**

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

Whereas it appears to the Securities and Futures Commission (“**Commission**”) that a breach of the disclosure requirements within the meaning of sections 307B and 307G of Part XIVA of the Ordinance has or may have taken place in relation to the securities of Magic Holdings International Limited (Stock Code 1633) listed on the Stock Exchange of Hong Kong Limited, the Market Misconduct Tribunal is hereby required to conduct proceedings and determine:

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

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

- 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**”)

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

Statement for Institution of Proceedings

A. 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 24 September 2010 (stock code: 1633). On 26 July 2013, the trading of its listed securities was suspended. Trading resumed between 5 and 9 August 2013, and on 12 August 2013, trading of the Company's shares on the SEHK was suspended again. Trading resumed between 16 August 2013 and 7 April 2014. 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.

B. ACQUISITION PROPOSAL

6. Since early March 2013, the Company and L'Oreal SA ("**L'Oreal**") had discussions relating to L'Oreal's proposal to acquire the shares of the Company (the "**Acquisition Proposal**").
7. On 5 and 6 March 2013, meetings were held between L'Oreal, 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'Oreal 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.

16. On 17 May 2013, Cheng forwarded L'Oreal's letter to all the members of the Board and gave notice of a meeting of the Board to be held on 24 May 2013.
17. On 24 May 2013, a meeting of the Board was held resolving that L'Oreal be allowed to conduct due diligence on the Company for a period of 30 days from 31 May 2013.
18. Between 3 June 2013 and 23 July 2013, the due diligence exercise was conducted and the structure of the Acquisition Proposal was discussed among the Company, L'Oreal and BNP Paribas.
19. On 22 July 2013, Messrs Chiu & Partners, solicitors for the Company, submitted a draft announcement to SEHK and the Commission for approval.
20. On 26 July 2013, the share price of the Company dropped about 12.4% from its previous close of HK\$5.25 to HK\$4.6. Trading in the Company's shares was suspended.
21. On the same day, L'Oreal sent an undated approach letter to the Company and increased the proposed offer price for the Acquisition Proposal to HK\$6.0 per share, which was forwarded to the Board on 29 July 2013.
22. On 31 July 2013, L'Oreal sent an undated approach letter to the Company to further increase the proposed offer price to HK\$6.30 per share. On the same day, the Company received a letter from Unilever PLC in which it indicated its interest in acquiring the entire issued share capital of the Company.
23. On 1 August 2013, L'Oreal obtained irrevocable undertakings from the Three Founders (the 2nd to 4th Specified Persons) to vote in favour of the Acquisition Proposal.
24. On 2 August 2013, the Company made an announcement that it was in the course of negotiating a possible transaction with a third party which could lead to an offer for all the issued shares of the Company, and that the Company was also approached by another potential offeror.
25. On 5 August 2013, trading of the Company's shares on the SEHK resumed but was suspended again on 12 August 2013.

26. Between 8 and 9 August 2013, L’Oreal obtained irrevocable undertakings from the institutional investors of the Company to vote in favour of the Acquisition Proposal.
27. On 15 August 2013, the Company made a joint announcement that, on 12 August 2013, L’Oreal had put forward a proposal to acquire all the issued shares of the Company by way of a scheme of arrangement, that upon the proposal being effective, all the shares of the Company would be cancelled in exchange for HK\$6.3 in cash for each share and listing of the Company’s shares on the SEHK would be withdrawn and terminated.
28. On 16 August 2013, trading of the Company’s shares on the SEHK resumed.
29. On 7 April 2014, the Acquisition Proposal became effective.
30. On 9 April 2014, the listing of the Company’s shares on the SEHK was withdrawn.

C. INSIDE INFORMATION AND LEAKAGE

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’Oreal on 15 May 2013.
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.

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.

D. FAILURE TO DISCLOSE INSIDE INFORMATION

36. Notwithstanding the leakage of inside information (and the unavailability of the safe harbour defence which permits a listed corporation to withhold disclosure of inside information pursuant to section 307D of the Ordinance), the following information concerning the Acquisition Proposal and constituting “*inside information*” within the meaning of section 307A of the Ordinance had not been adequately disclosed by the Company, namely:
- (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’Oreal 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.
38. The aforesaid discussions and offers were within the knowledge of the Three Founders (the 2nd to 4th Specified Persons) at all material time.
39. Further, they did, or alternatively, ought reasonably to have come to the knowledge of the 5th Specified Person, and/or the 6th to 10th Specified Persons as mentioned above.

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.

E. BREACH OF DISCLOSURE REQUIREMENT BY THE COMPANY

41. By reason of the matters set out above, 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.
43. By reason of the matters aforesaid, the Company was, or may have been, in breach of the disclosure requirement as provided for in section 307B of the Ordinance.

F. BREACH OF DISCLOSURE REQUIREMENT BY OFFICERS

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).
45. By reason of the matters set out above, 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.

Dated this 29th day of March 2018

Securities and Futures Commission

Magic Holdings International Limited: O

Webb-site Total Return

Zoom 1m 3m 6m YTD **1y** 3y 5y 10y All

