

SFC commences MMT proceedings against Yorkey Optical International (Cayman) Limited, its CEO and Financial Controller for late disclosure of inside information

6 Apr 2016

The Securities and Futures Commission (SFC) has commenced proceedings in the Market Misconduct Tribunal (MMT) against Yorkey Optical International (Cayman) Limited (Yorkey) for failing to disclose price sensitive information as soon as reasonably practicable (Note 1).

The SFC has also commenced proceedings in the MMT against Mr Nagai Michio, the Chief Executive Officer and Executive Director of Yorkey, and Mr Ng Chi Ching, Financial Controller and Company Secretary of Yorkey, for their reckless or negligent conduct causing the alleged breach by Yorkey of the provisions of the statutory corporate disclosure regime or their failure to take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the alleged breach (Note 2).

The SFC found that, contrary to the published expectations of Yorkey's management of significant growth and increasing profitability for the second half of 2012 as compared to the first half of 2012, Yorkey in fact sustained material losses in the second half of 2012 and its financial performance deteriorated significantly with the result that there was a substantial year-on-year decline in its 2012 profits on a full-year basis (Note 3).

The information about Yorkey's material losses in the second half of 2012 and the significant deterioration in its financial performance were apparent from the figures contained in the internal management accounts. These figures would have been a clear indication to the senior management of Yorkey that the results for the second half of 2012, and hence the full year of 2012, would be much worse than expected. This information came to the knowledge of Yorkey and its CEO from around mid-December 2012 or mid-January 2013 at the latest. However, it was not disclosed to the public until the publication of Yorkey's audited annual results for the year ended 31 December 2012 (2012 Final Results) on 25 March 2013.

The SFC alleges that the information about Yorkey's material losses in the second half of 2012 and the significant deterioration in its financial performance was specific information regarding Yorkey, price sensitive and not generally known to the public at the material time. Had the information been known to the investing public, it would be likely to materially affect the share price of Yorkey (Note 4).

End

Notes:

1. Yorkey was listed on the Main Board of The Hong Kong Stock Exchange on 10 February 2006.
2. The statutory corporate disclosure regime under the Securities and Futures Ordinance came into effect on 1 January 2013.
3. Yorkey recorded a net profit of US\$1.25 million in its unaudited interim results for six months ended 30 June 2012 and a net profit of US\$60,000 in its 2012 Final Results. The net profit of US\$60,000 for 2012 represented a decline of 99% when compared to the net profit of US\$6.685 million in 2011.
4. The share price of Yorkey fell 21.25% over a three-day period from HK\$0.80 on 25 March 2013 to HK\$0.63 on 28 March 2013.
5. A copy of the SFC's Notice commencing the MMT proceedings is available on the MMT's website (www.mmt.gov.hk).

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**IN THE MATTER OF THE LISTED SECURITIES OF
YORKEY OPTICAL INTERNATIONAL (CAYMAN) LTD
(STOCK CODE 2788)**

**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 307A, 307B and 307G of Part XIVA of the Ordinance has or may have taken place in relation to the securities of Yorkey Optical International (Cayman) Ltd (Stock Code 2788) listed on the Stock Exchange of Hong Kong Limited (“**SEHK**”), 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) Yorkey Optical International (Cayman) Ltd (“**Yorkey**”)
- (2) Nagai Michio (“**Michio**”)
- (3) Ng Chi Ching (“**Ng**”)

Statement for Institution of Proceedings

1. Yorkey has been listed on the Main Board of the SEHK since February 2006. Yorkey mainly makes and sells plastic and metallic parts and components of optical and optoelectronic products. Its main operating subsidiary is Dongguan Yorkey Optical Machinery Components Ltd.
2. At all material times, Michio was the Chief Executive Officer and Executive Director of Yorkey and Ng was the Financial Controller and Company Secretary of Yorkey. Michio and Ng were “officers” of Yorkey as defined in Schedule 1, Part 1 of the Ordinance by virtue of their positions at Yorkey.
3. At all material times, Yorkey’s auditors were Deloitte Touche Tohmatsu (“**Deloitte**”).
4. On 16 August 2012, Yorkey released its unaudited interim results for six months ended 30 June 2012 (“**2012 Interim Results**”). Compared to the corresponding period in 2011, Yorkey’s revenue decreased by 12.1%, from US\$54.4 million to US\$47.8 million, and its net profit decreased by 62%, from US\$3.3 million to US\$1.25 million. Yorkey however expressly stated in the 2012 Interim Results that regarding its results for the second half of 2012 it expected to see “*significant growth over that in the first half of the year, alongside with increasing profitability*”.
5. Contrary to the purported expectations of the management, rather than there being significant growth and increasing profitability as compared to the first half of 2012, Yorkey in fact sustained material losses in the second half of 2012 and its financial performance deteriorated significantly (“**Deterioration**”). On a full year basis, there was a substantial decline in

its 2012 profits as compared against its 2011 results *and* against its results for the first half of 2012.

6. On 25 March 2013, Yorkey announced its audited annual results for the year ended 31 December 2012 (“**2012 Final Results**”). The 2012 Final Results recorded a loss before tax of US\$136,000, compared to the profit before tax of US\$7.531 million in 2011. It also recorded a net profit (after taking into account tax credit) of US\$60,000 – this represented a decline of 99% compared to a profit of US\$6.685 million in 2011. The net profit figure for the whole year was less than that reported for the first six months. Compared to the first half of 2012, Yorkey’s revenue decreased by 5.9% and gross profit margin dropped from approximately 21.2% to 18.2%.
7. The share price of Yorkey dropped a total of 21.25% over the next three days, from HK\$0.80 per share at the close of business on 25 March 2013 to HK\$0.63 per share at the close of business on 28 March 2013.
8. Between the 2012 Interim Results (published on 16 August 2012) and the 2012 Final Results (published on 25 March 2013), Yorkey did not issue any profit warning announcement, nor did it inform the public of the Deterioration, which was contrary to management’s previous published expectations.

The Deterioration coming to the knowledge of Yorkey

9. At the material time Yorkey compiled consolidated management accounts on a monthly basis (“**Consolidated Monthly Management Accounts**”). The Consolidated Monthly Management Accounts for each month would be available by the middle of the next month **and were provided to Michio for his review.**

10. The Consolidated Monthly Management Accounts showed that the Deterioration began in October 2012 and continued into November and December 2012, with Yorkey incurring significant net losses in all of those months.
11. By mid-January 2013, the December 2012 Consolidated Monthly Management Accounts and the internal management accounts for the full year of 2012 (“**2012 Internal Accounts**”) were available. These accounts were provided to Michio in mid-January 2013. Michio had therefore been aware of the Deterioration since mid-January 2013 at the latest.
12. On 25 February 2013, Deloitte sent a draft consolidated financial statement to Yorkey. This document was provided to Ng in late February 2013. Ng had therefore been aware of the Deterioration since late February 2013 at the latest.

Inside information

13. The Deterioration was apparent from the relatively low turnover and loss figures contained in the Consolidated Monthly Management Accounts for October, November and December 2012, and also from the draft consolidated financial statement prepared by Deloitte which was provided to Ng in late February 2013. The figures reported in those accounts were specific information relating to Yorkey, they were not generally known to the investing public and would, if made known to them, be likely to materially affect the share price. The monthly results for the five months between July and November 2012 were already sufficiently poor for it to have been a clear indication to management that the results for the second half 2012 (and hence also the full year of 2012) would be much worse than expected. In the premises, information about the Deterioration, as shown

by the financial figures contained in the Consolidated Monthly Management Accounts mentioned above, was inside information in relation to Yorkey.

Breach of a disclosure requirement by Yorkey

14. Information about the Deterioration as apparent from the figures contained in the internal management accounts as specified above came to the knowledge of Yorkey:
 - (i) from around mid-December 2012 when the Consolidated Monthly Management Accounts up to November 2012 had, or ought reasonably to have, come to the knowledge of Michio in the course of performing his functions as Chief Executive Officer and Executive Director of Yorkey; or
 - (ii) from around mid-January 2013 at the latest when the Consolidated Monthly Management Accounts for December 2012 and the 2012 Internal Accounts had, or ought reasonably to have, come to the knowledge of Michio in the course of performing his functions as Chief Executive Officer and Executive Director of Yorkey.

15. A reasonable person acting as an officer of Yorkey would consider that information about the Deterioration as was apparent from the figures contained in the company's internal accounts was inside information in relation to Yorkey. The information however was not disclosed to the public as soon as reasonably practicable after it came to the knowledge of Yorkey – the public was not informed of the Deterioration until the publication of Yorkey's 2012 Final Results on 25 March 2013.

16. Under s.307(A)(2) of the Ordinance, a breach of a disclosure requirement takes place if any of the requirements in, *inter alia*, s.307B is contravened in relation to a listed corporation.
17. By reason of the matters aforesaid, Yorkey was, or may have been, in breach of the disclosure requirement as provided for in s.307B of the Ordinance.

Breach of a disclosure requirement by Michio and Ng

18. It was the responsibility of Michio and Ng, as officers of Yorkey, to take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement by Yorkey under the Ordinance (s.307G(1) of the Ordinance). Moreover, as officers of Yorkey, Michio and Ng are themselves in breach of the disclosure requirement if the breach of disclosure requirement by Yorkey was the result of their reckless or negligent conduct (s.307G(2)(a) of the Ordinance), or their failure to take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach (s.307G(2)(b) of the Ordinance).
19. Both Michio and Ng were aware of the Deterioration well before the publication of the 2012 Final Results. Both failed to take any steps to ensure timely disclosure of information about the Deterioration to the investing public. Such failure amounted to reckless or negligent conduct on the part of Michio and Ng. Their reckless or negligent conduct as described above resulted in, or may have resulted in, Yorkey's breach of a disclosure requirement. In these circumstances, both Michio and Ng were, or may have been, also in breach of a disclosure requirement pursuant to section 307G(2)(a) of the Ordinance.

20. Further or alternatively, neither Michio nor Ng took reasonable measures to ensure that proper safeguards exist to prevent a breach of a disclosure requirement by Yorkey. In these circumstances, both Michio and Ng 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 2016

Securities and Futures Commission

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