

SFC commences MMT proceedings against former senior executive of ENN Energy over alleged insider dealing

25 Jul 2016

The Securities and Futures Commission (SFC) has commenced proceedings in the Market Misconduct Tribunal (MMT) against Mr Cheng Chak Ngok, former executive director, chief financial officer and company secretary of ENN Energy Holdings Limited (ENN Energy), over alleged insider dealing in the shares of China Gas Holdings Limited (China Gas) (Notes 1, 2 & 3).

On 12 December 2011, ENN Energy and China Petroleum & Chemical Corporation issued a joint Pre-Conditional Voluntary General Offer (PVGO) announcement regarding their offer to acquire all of the outstanding shares of China Gas at \$3.50, representing a premium of 25 per cent to the previous closing price of China Gas' shares.

The SFC alleges that Cheng, who was aware of the details of the PVGO since mid-November 2011, purchased China Gas' shares via a nominee account between mid-November 2011 and early December 2011. The shares were sold shortly after the announcement was made at a profit of around \$3 million.

The SFC also alleges Cheng was aware that the details of the PVGO was information material to the share price of China Gas and was not publicly known before the issue of the announcement.

End

Notes:

1. ENN Energy has been listed on the Main Board of The Stock Exchange of Hong Kong Limited (SEHK) since June 2002.
2. Cheng tendered his resignation from his positions with effect from 28 September 2012.
3. China Gas has been listed on the Main Board of SEHK since October 1995.
4. The Notice to the MMT which contains the statement setting out the grounds for commencing the MMT proceedings is available on the MMT's website (www.mmt.gov.hk).

Page last updated : 25 Jul 2016

**IN THE MATTER OF THE LISTED SECURITIES OF
CHINA GAS HOLDINGS LIMITED
(STOCK CODE 384)**

**NOTICE TO THE MARKET MISCONDUCT TRIBUNAL
PURSUANT TO SECTION 252(2) OF AND SCHEDULE 9 TO THE
SECURITIES AND FUTURES ORDINANCE CAP. 571 (THE “ORDINANCE”)**

Whereas it appears to the Securities and Futures Commission that market misconduct within the meaning of section 270 of Part XIII of the Ordinance has or may have taken place arising out of certain dealings in the securities of China Gas Holdings Limited (Stock Code 384) (the “**Company**”), the Market Misconduct Tribunal is hereby required to conduct proceedings and determine:-

- (a) whether any market misconduct in the nature of insider dealing or otherwise has taken place;
- (b) the identity of any person who has engaged in the market misconduct found to have been perpetrated; and
- (c) the amount of any profit gained or loss avoided as a result of the market misconduct found to have been perpetrated.

Person suspected to have engaged in market misconduct activities

Mr. CHENG Chak Ngok (“**Mr. Cheng**”)

Statement for institution of proceedings

1. The Company is and was at all material times listed on the Stock Exchange of Hong Kong Limited (“**SEHK**”) with stock code number 384.
2. ENN Energy Holdings Limited (“**ENN**”) is and was at all material times listed on the SEHK with stock code number 2688. Mr. Cheng was the Executive Director, Chief Financial Officer and Company Secretary of ENN at all material times.
3. In early 2011, ENN contemplated acquiring the Company and tried to find a partner to fund a takeover (“**Project 128**”). Initial talks were held with China National Offshore Oil Corporation but failed in May 2011, after which ENN approached China Petroleum & Chemical Corporation (“**Sinopec**”).
4. In around the end of October/early November 2011, Sinopec agreed to form a consortium with ENN for Project 128.

5. Mr. Cheng was involved in Project 128 and was responsible for negotiating a financing proposal for ENN in connection with the takeover of the Company.
6. On 7 December 2011, before the market opened, trading in the Company's shares was suspended pending the release of a price sensitive information announcement.
7. On 12 December 2011, ENN and Sinopec issued a joint Pre-Conditional Voluntary General Offer announcement (the "**Announcement**") regarding their offer to acquire all of the outstanding shares in the Company at HK\$3.50, representing a premium of 25% to the previous closing price of the Company's shares.
8. On 13 December 2011, trading in the Company's shares resumed and the share price jumped 20.4% from the previous closing price of HK\$2.80 to close at HK\$3.37.
9. As the alleged market misconduct took place from 15 November 2011 to 6 December 2011, the Ordinance in force at the material time would be the version before the commencement on 1 January 2013 of the Securities and Futures (Amendment) Ordinance 2012¹.

Mr. Cheng was a connected person

10. Mr. Cheng was connected with the Company within the definition of section 247(1) of the Ordinance by virtue of his position in ENN and his involvement in Project 128 as set out in paragraphs 2 to 5 above.

Relevant information

11. On 11 November 2011, the following facts were made known to Mr. Cheng during a meeting:-
 - (1) Sinopec would be ENN's partner for Project 128;
 - (2) The respective shareholding percentages to be acquired by ENN and Sinopec in the Company;

¹ For the purpose of this case there was no material difference between the insider dealing provisions in the version of the Ordinance in force at the material time and the current version of the Ordinance, save that the term "relevant information" has been replaced by "inside information" (while the substantive definition remains the same). References to the "Ordinance" in the rest of this Notice shall be construed as referring to the version in force at the material time of the alleged market misconduct.

- (3) Citigroup Global Markets Asia Limited (“Citi”) would be the financial advisor for Project 128; and
 - (4) There would be a kick off meeting for Project 128 on 17 November 2011.
12. On 14 November 2011, Mr. Cheng received a draft Powerpoint presentation by email from Citi containing an offer price range of HK\$3.00 to HK\$3.75 for a voluntary general offer for the shares of the Company.
 13. On 17 November 2011, Mr. Cheng came to know the details of Project 128 during the kick off meeting, including the offer price of HK\$3.75 contemplated by ENN and Sinopec for the shares of the Company.
 14. On 5 December 2011, Mr. Cheng received emails suggesting that ENN and Sinopec were about to proceed with the proposed general offer and that the formal announcement of the general offer would be imminent.
 15. On 6 December 2011, Mr. Cheng received an email confirming that Citi had received final approval from its credit committee on the bridging loan to ENN for the general offer.
 16. The information set out in paragraphs 12 and 13 above is within the definition of ‘relevant information’ in section 245(2) of the Ordinance, in that it was specific information about the Company which was not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the Company but would if generally known to them be likely to materially affect the price of the listed securities.
 17. Mr. Cheng, by virtue of his position in ENN and his background and experience, must have known the above information to be relevant information. Mr. Cheng was therefore in possession of relevant information since 14 November 2011 through to the trading suspension in the Company’s shares on 7 December 2011 and the Announcement on 12 December 2011.

Dealing in shares of the Company by Mr. Cheng

18. Whilst in possession of the relevant information concerning the takeover of the Company by ENN and Sinopec, Mr. Cheng used the securities account of one Li Wei (“Ms. Li”) to purchase the Company’s shares, provided the funds for the purchase of the Company’s shares, and received the proceeds from the subsequent sale of the Company’s shares.

19. Various bid orders for the Company's shares were placed via the securities account of Ms. Li, a resident of Mainland China and former consultant of the ENN Group, from 15 November 2011 to 6 December 2011. A total of 4,930,000 shares of the Company were purchased for HK\$13,763,605.60.
20. Trading in the Company's shares was suspended on 7 December 2011, followed by the Announcement on 12 December 2011. Trading in the Company's shares resumed on 13 December 2011.
21. From 13 to 16 December 2011, all of the Company's shares held in Ms. Li's securities account and purchased during 15 November to 6 December 2011 were sold for a total of HK\$16,752,442.26. A total profit of around HK\$3 million was made.
22. The Commission relies on the following to infer that Mr. Cheng used/controlled Ms. Li's securities account to purchase the Company's shares:-
 - (1) All the internet orders from Ms. Li's securities account for shares of the Company were placed via an IP address belonging to the office of ENN in Hong Kong. Ms. Li was not in Hong Kong at the time the shares were purchased and thus could not have made the purchases;
 - (2) Among the staff working in the office of ENN in Hong Kong, Mr. Cheng was the only person who knew Ms. Li personally and was in close association with Ms. Li at all material times, including the period in which there were fund transfers for the purchase and sale of the Company's shares;
 - (3) Mr. Cheng was in Hong Kong during the dates when the internet transactions took place;
 - (4) Phone calls from the ENN office to Ms. Li were made during the period in which orders for the shares of the Company were made from Ms. Li's account. It could be inferred that it was Mr. Cheng who made those calls as he was the only person among the staff of ENN in Hong Kong who knew Ms. Li personally and the calls were made at a time when Mr. Cheng's time card suggests that he was in the ENN office;
 - (5) A CPA firm in Hong Kong, M Square CPA Ltd, used by Mr. Cheng for receiving correspondence was also used to receive all of Ms. Li's bank correspondence and investment account statements. Such correspondence was passed on to Mr. Cheng. Mr. Cheng thus had possession and control of, and access to, Ms. Li's securities account

statements during the period in which orders for the shares of the Company were made from such account; and

- (6) The timing of the orders for the Company's shares coincides with Mr. Cheng's knowledge of the relevant information. The orders started on 15 November 2011, which was very close to the time when Mr. Cheng started to possess relevant information. Further, a relatively large number of shares were purchased on 5 and 6 December 2011, just before the trading in the Company's shares was suspended and the general offer went public.
23. Of the HK\$13.7 million used to purchase the Company's shares via Ms. Li's securities account, Mr. Cheng had provided at least HK\$8 million for the purchase. The HK\$8 million was transferred by Xinao HK Holdings Limited ("Xinao"), a BVI company owned by Mr. Cheng, to Mr. Fong Man Chun Alen ("Mr. Fong", Mr Cheng's acquaintance), who then transferred the money to Ms. Li's bank savings account with Bank of China (Hong Kong) Limited for settlement of the purchases of the Company's shares.
24. In relation to the sale proceeds of the Company's shares, HK\$14.17 million of the HK\$16.7 million was transferred by Ms. Li to Mr. Fong, who then transferred at least HK\$615,233 to Mr. Cheng.
25. By reason of the above matters, Mr. Cheng engaged or may have engaged in market misconduct, namely insider dealing, contrary to section 270 of the Ordinance.

Dated this 14th day of July 2016.


Securities and Futures Commission