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Application No. 3 of 2014

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made by the Securities and Futures Commission under section 194 of the Securities and Futures Ordinance, Cap. 571

AND IN THE MATTER OF section 217 of the Securities and Futures Ordinance, Cap. 571

BETWEEN

SUN XIAO — Applicant

and

SECURITIES AND FUTURES COMMISSION — Respondent

Tribunal: The Hon Mr Justice Hartmann, NPJ, Chairman

Date of Hearing: 18 March 2015

Date of Determination: 22 May 2015

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REASONS FOR DETERMINATION

The application

1. This is an application for review made in terms of s.217(1) of the Securities and Futures Ordinance, Cap. 571 ('the Ordinance').

2. The applicant, Ms Sun Xiao, seeks the review of a decision of the Securities and Futures Commission ('the SFC') dated the 22 October 2014 in terms of which, pursuant to s.194(1)(iv) of the Ordinance, the applicant was prohibited for a period of 13 months from seeking to conduct all or any of the following in relation to regulated activities in the finance and securities industry; namely –

i. applying to be licensed or registered;

ii. applying to be approved as a responsible officer of a licensed corporation;

iii. applying to be given consent to act or continue to act as an executive officer of a registered institution under s.71C of the Banking Ordinance; and

iv. seeking through a registered institution to have her name entered in the register maintained by the Monetary Authority under s.20 of the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.

3. The applicant has not challenged the findings of culpability made against her by the SFC. This review is therefore limited to determining what is the appropriate sanction to be imposed in respect of her misconduct.

4. On behalf of the applicant, it has been submitted by her counsel, Mr Anson Wong SC, that the prohibition of 13 months is in all the circumstances excessive. Mr Wong has submitted that it would be fair for this Tribunal to reduce the period of prohibition from 13 months to 7 months.

5. In response, counsel for the SFC, Mr Laurence Li, has submitted that the period of 13 months prohibition is entirely appropriate.

The role of the Tribunal

6. It is now settled law that this Tribunal is required to make a full merits review, conducting the review as if it is the original decision-maker: see *Tsien Pak Cheong David v Securities and Futures Commission*.[1]

Background to the application

7. At all times relevant to her conduct under review, the applicant, Ms Sun Xiao, was licensed under the Ordinance to carry on the business of an asset manager, that is, to conduct Type 9 regulated activities. As such, she was accredited to Mount Kellett Capital (Hong Kong) Limited ('Mount Kellett'), having joined that organization in June 2008.

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[1] [2011] 3 HKLRD 533.

8. Mount Kellett conducts business as a private equity fund. It invests in private as well as public companies, doing so by way of privately negotiated investment arrangements.

9. When the applicant joined Mount Kellett, her formal position was that of Director, Co-Head of China Business. Later, being promoted, she was given the title of Director, Head of Business Development in Asia. She therefore held positions of seniority and trust. That said, it appears to be accepted that her supervisory responsibilities were minimal. The applicant's primary role was instead to source investment opportunities.

10. The process within Mount Kellett for sourcing and approving investment opportunities may be summarized as follows:

i. The sourcing professionals (such as the applicant) would identify investment opportunities;

ii. If management felt that any identified opportunity was worth pursuing, a new body of professionals - the research team - would conduct an in-depth analysis before deciding whether to make a recommendation to the investment committee;

iii. The final decision whether to take up the investment opportunity would be made by the investment committee under the stewardship of the Chief Investment Officer.

11. As a sourcing professional, the applicant was not a member of either the research team or the investment committee. In this regard, her counsel submitted[2]:

> "She was not part of the research team. Although she might be involved in discussions subsequent to the identification of the investment opportunities, her involvement in such discussions varied on a case-by-case basis and were rather limited. Further, the applicant was not a member of the investment committee and had no involvement in deciding whether the investment should proceed."

12. While the Tribunal does not reject that submission, a consideration of all the evidence does not indicate that each stage of the investigatory and decision-making process was kept watertight from the other stages. In this regard, in his written submissions, counsel for the SFC, Mr Laurence Li said[3]:

> "As the facts of the potential deals relevant to this case show, Ms Sun Xiao was often the contact person with the potential target and, within Mount Kellett, the champion of the transaction. This was only natural, since Ms Sun Xiao would have been the person who sourced and recommended the deal in the first place."

13. Mr Li went on to make the point that even after she had made her recommendations she would be kept "in the loop". As such, even if her ability to influence further decision-making was limited, she would have been able to follow the progress of her recommendations, certainly through the important research stage.

14. As an employee of Mount Kellett, the applicant was contractually bound to adhere to the company's Compliance Manual and

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2 See paragraph 10 of counsel's written submissions.

3 See paragraphs 2.5 and 2.6.

Code of Ethics. As such, one of her principal obligations was to keep the company informed (by way of the submission of regular returns) of the nature and extent of her own private dealing in securities. This she did in respect of a number of her accounts.

15. Clearly, one of the reasons for placing this obligation on employees was to avoid conflicts of interest, particularly any potential conflict arising out of the fact that an employee (such as the applicant) would acquire shares in a company that was being studied as a potential investment opportunity. To illustrate the importance placed by Mount Kellett on avoiding conflicts of interest, it is to be noted that, if it took a particular interest in any investment target, that target would be placed on its Restricted Trading List, prohibiting staff from dealing in its shares.

16. In March 2010, the applicant opened a margin trading account with TD Waterhouse Canada Inc. ('the TD Waterhouse Account'). While she declared other accounts, at no time did she voluntarily disclose the existence of this account or the trading conducted through it. That she intended to keep the account secret may in part be gleaned from the fact that in the account opening documents she named her employer as 'Galaxy Investments' and described her position in that organization as 'Managing Director'.

17. As to the nature of the trading conducted through the TD Waterhouse Account, counsel for the SFC, Mr Laurence Li, said that the applicant traded in the shares of "several companies which she had, or would, recommend to Mount Kellett for potential investment". Such

trading was conducted without the knowledge of Mount Kellett. There were four such stocks[4].

18. In respect of two of those four – that is, Baffinland Iron Mines Corporation and Champion Minerals Incorporated – Mount Kellett's interest in concluding an investment deal went as far as entering into non-disclosure agreements with the target companies and placing their shares on its Restricted Trading List[5].

19. In respect of the remaining two – that is, Cline Mining Corporation and Duluth Metals Limited – it appears that the applicant informally recommended these by email to a more senior member of the Mount Kellett staff. The recommendations, however, while considered, were not pursued.

20. In respect of Baffinland Iron Mines and Champion Minerals, the records reveal that the applicant traded in their shares through her TD Waterhouse Account both before and after she recommended the companies as potential investments. She further traded when the shares of both companies were on Mount Kellett's Restricted Trading List.

21. In respect of Cline Mining and Duluth Metals, the records reveal that the applicant only traded in their shares after she had recommended them as potential investments.

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[4] It is relevant to note that the applicant traded in another (5th) company, MacArthur Minerals Limited, which she did not herself originally recommend but she was a member of the 'deal team' and was a contact person for the purposes of the non-disclosure agreement reached with this company.

[5] It is to be noted that in the end result Mount Kellett chose not to invest in either company.

22. As outlined by Mr Li, counsel for the SFC, a study of the applicant's activities in respect of Baffinland Iron Mines, a Canadian corporation, illustrates the manner in which the applicant's professional duties became intermingled with her prohibited purchase of securities: the result constituting a conflict of interest -

i. It was the applicant who recommended Baffinland Iron Mines.

ii. By April 2010 Mount Kellett was actively working on investment terms – bringing in another securities company as a co-investor, going on site visits, employing experts – with the applicant having a role in this investigatory stage.

iii. On 3 May 2010, Mount Kellett put the Canadian corporation on its internal Restricted Trading List (prohibiting staff from purchasing its shares), that position enduring for a year. At the same time it entered into a non-disclosure agreement with the corporation, the agreement also enduring for a year. A few days later an electronic data room was set up in order to share confidential information. The applicant was given access to that database.

iv. Between 30 April and 10 December 2010, while specifically prohibited from dealing in shares in the corporation, the applicant made two buy orders (purchasing 10,000 shares) and two sell orders (selling 10,000 shares) through her TD Waterhouse Account, the total value of her transactions being C$14,821.

23. In October 2013, Mount Kellett compliance personnel discovered the existence of the TD Waterhouse Account. When asked about the account, the applicant admitted its existence but said that it was dormant. When asked to log into the account to retrieve the records of any possible trading, the applicant said that she had forgotten the password.

24. The applicant's employment with Mount Kellett was terminated forthwith. The applicant has been out of the finance and securities industry since that time.

25. Having left her employment with Mount Kellett, the applicant was no longer accredited. That is why the sanction imposed upon her by the SFC[6] did not seek to suspend her licence but rather to prohibit her from re-entering the industry for the stated period of 13 months.

26. Some seven months after her employment with Mount Kellett had been terminated, by letter dated 3 June 2014, the SFC issued what is called a Notice of Proposed Disciplinary Action, advising the applicant that it was considering disciplinary action pursuant to s.194 of the Ordinance. The SFC informed the applicant that, on the information available to it, it was of the preliminary view that she was not a fit and proper person to be licensed. This preliminary view was based on the fact that she appeared to have:

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[6] The terms of the sanction are set out in paragraph 2 above.

i. maintained a personal securities trading account (the TD Waterhouse Account) and conducted personal trades through that account without informing her former employer, Mount Kellett; and

ii. failed to avoid potential conflicts of interest in that, first, she had recommended target companies to Mount Kellett without disclosing that she held shares in those companies and, second, that she had traded in shares in target companies after she had recommended them to Mount Kellett as potential investment opportunities.

27. The SFC was of the preliminary view that this conduct constituted breaches of General Principles 1 (which requires honesty and fairness) and 6 (which requires avoidance of conflicts of interest) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission[7]. It was of the provisional view that a prohibition of 15 months would be appropriate.

28. In response, among other matters, the applicant pointed to the fact that she had a clean disciplinary record; that she had been co-operative with the SFC, accepting that her conduct fell short of the standards required of a licensed person; that her dealings had been relatively small with no financial gain made and that she had at the relevant times been under considerable stress of work with her judgment impaired. The applicant further pointed to the fact that she had been out

[7] General Principle 1 reads: "In conducting its business activities, a licensed or registered person should act honestly, fairly and in the best interests of its clients and the integrity of the market". General Principle 6 reads: "A licensed or registered person should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that its clients are fairly treated".

of the industry since her employment with Mount Kellett had been terminated.

29. The SFC issued its Decision Notice on 22 October 2014. Having taken into account the applicant's representations and her acceptance of her failures, the SFC reduced the period of prohibition from 15 months to 13 months.

30. As stated earlier, this application for review has been brought on the basis that, when all relevant circumstances are taken into account, the sanction of 13 months is excessive.

Considering the applicant's submissions

A. Virtually no risk of prejudice arising out of the applicant's position of conflict

31. Mr Anson Wong submitted that, in assessing the degree of the applicant's blameworthiness, it was necessary to consider matters in context. In this regard, he said, significant weight should be given to the fact that the applicant had no ability to influence the investment decisions of Mount Kellett, the evidence clearly showing that "the applicant was only responsible for sourcing investment opportunities … and that Mount Kellett would carefully assess and consider such opportunities by a separate research team and by its investment committee. Accordingly, whilst the applicant accepted that she had failed to avoid potential conflict of interest by failing to disclose her TD Waterhouse Account, the reality was that the risk of Mount Kellett being prejudiced by such failure was virtually zero."[8]

[8] See paragraphs 25 and 26 of Mr Wong's written submissions.

32. In the view of the Tribunal, this states the matter in terms that are too definitive. As earlier observed, the three internal stages employed by Mount Kellett were not entirely isolated from each other. As the person who had sourced the investment opportunity and was therefore the person who was the original recipient of a range of relevant information, it would have been counter-productive thereafter to entirely exclude the applicant from the process going forward. To repeat Mr Laurence Li's submission, she was often kept "in the loop". She was therefore not only in a position to formally recommend investments but was also in a position to use her powers of persuasion to advance them through the further investigatory stages, even if only to a limited extent.

33. What also needs to be taken into account is the real potential for harm arising out of the applicant's particularly privileged position. To use racing terminology, she was, for example, in a position not simply to 'bet' or 'back on' her own recommendations but was also in a position to continue to follow the advance of her recommendations and to exploit the on-going increase in knowledge thus gained for her own potential benefit or indeed for the benefit of others.

34. While the Tribunal is therefore prepared to accept – as the SFC itself accepted – that there is no evidence of Mount Kellett being actually prejudiced, it is unable to accept Mr Anson Wong's submission that there was no real *risk* of prejudice.

B. The insubstantial level of dealing in the shares

35. Mr Anson Wong pointed to the fact that, aside from the fact that the applicant did not gain financially from her dealings, the level of

the applicant's prohibited dealing was relatively insubstantial. In this regard, for indication purposes only, the total value of her dealings, that is, her purchases and sales, in Baffinland Iron Mines was less than C$15,000; in Champion Minerals it was less than C$44,000; in Duluth Metals it was less than C$30,000 and in Cline Mining it was less than C$23,000.[9]

36. During the course of submissions there was some discussion as to the nature of the applicant's dealings. The impression gained by the Tribunal was that – so the applicant submitted – she at no time had any intention of committing herself seriously to investing in the companies that she had recommended to Mount Kellett. It was rather her intention to do no more than 'mark' or 'support' her recommendations with some limited dealing that could not in any way affect the market in the shares or materially affect her own wealth.

37. In the judgment of the Tribunal, while clearly, the applicant's opening of the TD Waterhouse Account and her subsequent use of the account to carry out prohibited dealings was dishonest, the weight of the evidence does suggest that she never had an intention to materially exploit her position of privilege within the ranks of the senior personnel at Mount Kellett. That no doubt was one of the principal reasons why, despite the real risk that her prohibited dealings presented, there was in fact no actual prejudice.

38. As to the level of the applicant's prohibited dealings, what is or is not 'substantial' is of course comparative.

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[9] In his written submissions, Mr Anson Wong submitted a table of trading figures that required amendment by reason of certain dealings being in US dollars rather than Canadian dollars. The Tribunal has not attempted an exact currency exchange calculation. That is why the figures set out above are not intended to be fully accurate and are for indication purposes only.

39. In order to identify a case that provided a suitable comparison, if only by way of contrast, Mr Anson Wong made reference to *Sham Pik Yan Winda v SFC*[10], a case in which the applicant had maintained and operated a personal trading account, concealing it from her employer. In that case, it was emphasized by Mr Wong that the SFC had seen fit to impose a suspension order of just seven months despite the fact that the value of her dealing had been in excess of HK$57 million. The Tribunal in that review, he noted, had not seen fit to interfere with that penalty[11].

40. In the present case, however, Ms Sun Xiao's total dealings, calculated in Hong Kong dollars, were valued at under HK$1 million and yet, in respect essentially of the same form of dishonest dealing, she had been prohibited from re-entry to the profession for 13 months: six months longer. That, suggested counsel, showed in the starkest terms just how excessive was the sanction imposed on Ms Sun Xiao.

41. Mr Wong did accept of course that in *Sham Pik Yan Winda v SFC* the SFC had not pursued the issue of the dealings giving rise to a conflict of interest. But in the present case, he contended, any conflict of interest that exacerbated the culpability of Ms Sun Xiao's dealings had added very little to the gravity of her misconduct.

42. The Tribunal is unable to accept that it added very little. The applicant, who held a position of trust and seniority within the private

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[10] Application No. 5/2010, the decision being dated 18 February 2011.

[11] It is to be noted that *Sham Pik Yan Winda v SFC* was determined before the Court of First Instance decision in *Tsien Pak Cheong David v SFC*. It was determined therefore on the basis of a classic appeal in civil or criminal proceedings and not on the basis that this Tribunal is required to make a full merits decision as if it is the original decision-maker.

equity fund, must have understood the importance of avoiding any conflict of interest. As such, she must have appreciated that her secret dealing – in the circumstances, dishonest dealing – must have put at risk the integrity of the whole investment process. What, for example, may have been the result if the other interested parties in the potential Baffinland Iron Mines deal had learnt that there had been trading in breach of the posted Restricted Trading List and possibly the non-disclosure agreement by a senior member of the Mount Kellett team?

43. As it is, the Tribunal is of the view that *Sham Pik Yan Winda v SFC* is not on all fours with the present review and accordingly comparisons by way of contrast must be viewed with caution. In this regard, the Tribunal is satisfied that there is substance in the following observations made by Mr Li:

i. Ms Sun Xiao, he said, occupied a far more senior – and sensitive – position than Ms Sham had done, being one level below partner in a private equity fund while Ms Sham had been a *remisier* in a brokerage.

ii. Ms Sun Xiao had kept her TD Waterhouse Account secret for a span of years while Ms Sham's was kept secret for just five months.

iii. Ms Sun Xiao repeatedly submitted false information to Mount Kellett, concealing her TD Waterhouse Account while Ms Sham's transgression was contained in a single *pro forma* declaration.

iv. Ms Sun Xiao's case had given rise to at least a potential conflict of interest while in Ms Sham's case, the SFC dropped any allegations of conflict, potential or actual.

44. As a footnote, it is also to be noted that the Tribunal in *Sham Pik Yan Winda v SFC* considered the sanction imposed on Ms Sham to be lenient[12].

45. By way of summary, therefore, direct comparisons between the present review and that of *Sham Pik Yan Winda v SFC* are of very limited value.

46. Nor can it be said that the applicant's dealings – viewed in isolation – were insignificant, little more than 'good luck tokens' to support her recommendations. The total value of her dealings – both buying and selling – approached HK$1 million. As Mr Li pointed out, on 8 February 2012 the applicant sold 8,000 shares in Champion Minerals for US$14,738 (an amount in excess of HK$110,000) and on 24 April 2013 bought four different shares for over HK$140,000.

C. General mitigating factors

47. It was submitted by Mr Wong that the SFC in its Decision Notice of 22 October 2014 had not taken into account a number of materially important mitigation factors in assessing an appropriate sanction; namely –

i. that the applicant had a clean disciplinary record;

[12] The Tribunal in *Sham Pik Yan Winda v SFC* commented: "The lack of complaints against Ms Sham, and her clear record and successful trading record are sufficient to justify a lenient penalty of seven months suspension in respect of what would otherwise have been a very serious case of a breach of plain rules."

ii. that she had been co-operative with the SFC in its investigations;

iii. that she had made no financial gain out of her non-disclosure; and

iv. that she had been out of the industry since the termination of her employment with Mount Kellett.

48. As to the first matter, that of the clean disciplinary record, in its Notice of Proposed Disciplinary Action dated 3 June 2014, the SFC said that, in considering a proposed sanction, it had taken into account the applicant's "otherwise clean disciplinary record"[13]. In addition, in its Decision Notice, the SFC said again that it had taken the applicant's clean disciplinary record into account.[14] There is therefore nothing in this point.

49. As to the second matter, that is, the applicant's co-operation[15] with the SFC, the degree of that co-operation is open to debate. While the applicant accepted what was really indisputable, namely, that she had secretly opened and operated the TD Waterhouse Account, she made a number of explanations to attempt to place her misconduct into a more favourable light that had the opposite effect. By way of example, she said that her failure to declare her TD Waterhouse Account was not down to an intended course of action to maintain its secrecy but was rather

[13] See paragraph 52.d.

[14] See paragraph 22.b.

[15] See paragraph 7.10.

because she was busy with a "high pressure job" and that making compliance reports was "not my priority". Or that Mount Kellett should share the blame for not having an in-house compliance officer for a period of two years. Or that she simply did not get around to making the required declarations. The applicant, however, must have appreciated the importance of making all necessary declarations as to her personal share holdings and share dealings, hardly a complex procedure but one critical to ensure the transparency and integrity of the internal operations of the private equity fund.

50. As to the third matter, namely, that she had made no financial gain out of dealings, as Mr Li, for the SFC, put it: "Whether she made a gain or a loss is serendipitous and due to her own investment strategies. In fact, as one can see from her counsel's table, she frequently made money. She has not (yet) made an overall gain because she is still holding a lot of her shares in Cline Mining and Duluth Metals."

51. As to the fourth matter, that is, that she had been out of the industry since the termination of her employment by Mount Kellett, this Tribunal, in *Chan Pik Ha Jenny v SFC* accepted that a period of *de facto* suspension may be taken into account when assessing an appropriate sanction. In that case, the applicant had applied to the SFC to transfer her accreditation to a new employer, a process that normally took a few days. However, because the SFC was investigating the applicant's misconduct with her former employer, the process took some four and a half months. In the result, the applicant was unable to take up employment with her new employer for that extended period of time. In its Reasons For Determination, the Tribunal said (at paragraph 68):

> "This is not to say that there must be a form of mathematical set-off. It should be taken into account, however, as a relevant factor and given such weight as the Tribunal deems appropriate in the circumstances of the case. In this regard it is to be remembered that, if a licensed dealer leaves employment to take up another job while investigations into alleged regulatory misconduct are taking place, delays in the approval of transfer of accreditation may be inevitable. It is part of the price to be paid for the necessary protection of the industry."

52. In the present case, however, no evidence has been placed before the Tribunal to the effect that the applicant had obtained employment with a new employer which, by reason of delay by the SFC in its investigatory process, had in some manner been frustrated.

53. Mr Wong, on behalf of the applicant, said that the principle should apply whether or not there has been an application to move to a new employer and that not to extend the principle would be unduly technical.

54. The Tribunal does not agree. If the principle is to be extended in the manner suggested, what, for example, is to be done if an applicant, rather than seeking and gaining new employment, decides to take a sabbatical? How can that sabbatical be described as a period of *de facto* suspension? In the judgment of the Tribunal, the principle is only to be applied in the circumstances in which it was applied in *Chan Pik Ha Jenny v SFC*; that is, if an applicant can show that he has obtained new employment but, by reason of the SFC investigations, has been shut out of that employment.

Conclusion

55. Since the 2008 upheavals in the world of finance and securities, upheavals that threatened to destroy global market economies,

the critical importance of the integrity and trustworthiness of the finance and securities industry has been visited upon regulators worldwide. Hong Kong is no exception.

56. That being the case, while what is fair and appropriate in each individual case must always be the touchstone as to the imposition of sanctions for regulatory misconduct, in determining appropriate sanctions for such misconduct, a fundamental principle to be taken into account is the need to uphold the reputation of the finance and securities industry. In this regard, see, for example, the observations of the Tribunal in *Chan Pik Ha Jenny v SFC*[16]:

> "The securities industry is of incalculable importance to Hong Kong. This has been remarked upon time and again by our courts. The industry, however, stands or falls on its reputation. If members of the investing public lose confidence in the integrity and professional competence of those who are employed in the industry they will cease to employ its services. Accordingly, whether licensed members of the securities industry can with technical accuracy be described as members of a profession or not is not to the point. The point is that, as with members of a profession, the public is entitled to expect of them "unquestionable integrity, probity and trustworthiness"…In the view of this Tribunal, that is why the reputation of the securities industry is more important than the fortunes of any individual member".

57. Oversight or negligence can never be entirely avoided but, in an industry in which all its members are expected to demonstrate unquestionable integrity, probity and trustworthiness, dishonest conduct must necessarily come at the top end of the spectrum of gravity.

58. In the present case, the evidence points clearly to the fact that the applicant opened her TD Waterhouse Account in secrecy and

[16] Application No. 8/2013, the decision being dated 9 June 2014.

operated it in secrecy, knowing that she had an obligation to declare the existence of the account and her dealings in it. She had an obligation to understand the contents of Mount Kellett's Compliance Manual and Code of Ethics. The Tribunal is satisfied on all the evidence that she did understand them and, in respect of her actions under consideration, intentionally avoided their constraints. Put plainly, her actions were dishonest.

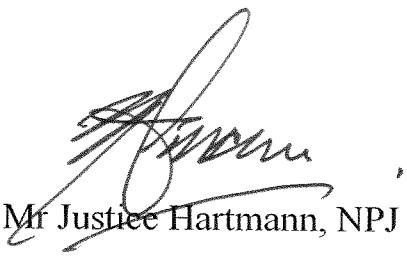
59. The applicant must also have appreciated that her secret share dealings in companies at a time when she was using the discretion given to her by Mount Kellett to promote those companies as viable investment vehicles gave rise to a conflict of interest. That the applicant continued to deal in Baffinland Iron Mines at a time when that company was on Mount Kellett's Restricted Trading List and when a non-disclosure agreement was in place illustrates that she must have felt secure in her secret dealings.

60. While the applicant's secret dealings were relatively insubstantial, as earlier indicated, they were not insignificant.

61. In all the circumstances, taking into account the many matters canvassed in these Reasons For Determination, the Tribunal is satisfied that, approaching this review *de novo*, that is, as the original decision-maker, an appropriate sanction to be visited on the applicant is the sanction imposed by the SFC in its Decision Notice of 22 October 2014, namely, that the applicant should be subject to the prohibitions set out in paragraph 2 of these Reasons for a period of 13 months.

Costs

62. As matters stand, the Tribunal sees no reason why costs should not follow the event. Accordingly, there will be an order *nisi* that the costs of the SFC are to be paid by the applicant, such order to be made final if no application is made for a different order within 14 days of the handing down of these Reasons.



The Hon Mr Justice Hartmann, NPJ
Chairman, Securities and Futures Appeals Tribunal

Mr Anson Wong SC, instructed by Brandt Chan & Partners Solicitors, for the Applicant

Mr Laurence Li, instructed by the Securities and Futures Commission, for the Respondent