

**SECURITIES INDUSTRY COUNCIL  
PRESS STATEMENT**

**JADE TECHNOLOGIES HOLDINGS LTD**

**Background**

On 18 Feb 2008, Asia Pacific Links Ltd (the “Offeror”) announced a voluntary conditional cash offer (the “Offer”) for Jade Technologies Holdings Ltd (“Jade” or “the Company”). In the Offer announcement and the Offer document, the Offeror disclosed that it had a direct interest in 46.54% of the total issued shares of Jade. On 2 Apr 2008, the Offeror announced that it no longer held 46.54% in the Company as originally disclosed but only 16.06%. The Offeror cautioned that although sufficient financial resources were available to it to satisfy full acceptances based on the original announcement, it was unable to confirm that sufficient financial resources were available to it to satisfy full acceptances based on its reduced shareholdings.

2 The Offeror subsequently withdrew the Offer on 4 Apr 2008, with the consent of the Securities Industry Council (“SIC” or “the Council”), on the following grounds. Under the new circumstances, the Offeror was required to have available additional financial resources of approximately S\$67 m to satisfy full acceptances of the Offer. Given the turn of events, the Offeror was not able to obtain an unconditional confirmation from an appropriate third party that available funds had been earmarked to satisfy full acceptances of the Offer as required by Rule 23.8 of the Code.

3 Rule 4 of the Code states that an offeror cannot withdraw his offer without the Council’s consent. This is to prevent an offeror from

unilaterally withdrawing his offer without good reason. SIC consented to the withdrawal of the Offer only after it was clear that the Offeror was unable to provide any acceptable assurance that it was able to secure the requisite third-party confirmation of availability of resources within a reasonable time. To have allowed the Offer to continue in the circumstances would have been untenable given the uncertainty over whether the Offeror could have implemented the Offer in full and the risk of creating a false market in Jade shares.

### **Hearing**

4 Following the withdrawal of the Offer, the SIC began investigations on 11 Apr 2008 into the circumstances surrounding the withdrawal. In accordance with the Code, the Council decided to convene a hearing to enquire into possible breaches of the Code and appointed a hearing committee comprising the following SIC members:

- (a) Mr John Lim (Chairman);
- (b) Mr Daniel Ee;
- (c) Mr Andrew Khoo;
- (d) Mr Ronald Ong; and
- (e) Mr Hans Tjio.

5 The hearing committee issued summonses to the following parties to give evidence:

- (a) Dr Anthony Soh Guan Cheow (“Dr Soh”);
- (b) Ms Tsai Ai Liang (“Ms Tsai”), Ms Ang Suat Ching (“Ms Ang”) and Mr Tan Wei Ping (“Mr Tan”) from Oversea-Chinese Banking Corporation Ltd (“OCBC Bank”);
- (c) Mr Steven Lo Pang Foo (“Mr Lo”) and Mr Christopher Koh Thong Jer (“Mr Koh”) from Messrs Allen & Gledhill LLP (“A&G”); and
- (d) Merrill Lynch International (“MLI”).

6 Dr Soh was summoned to determine whether:

- (a) Dr Soh had breached General Principle 6 of the Code by announcing, through the Offeror, the Offer on 18 Feb 2008 without being satisfied that he could and would continue to be able to implement the Offer in full;
- (b) the disclosure by Dr Soh that the Offeror and Dr Soh held in aggregate 451,172,504 shares representing 46.54% of the issued shares of Jade in the Offer announcement and the Offer document had breached Rules 3.5(c) and 23.3(c) of the Code, respectively, and/or met the standard of care required under Rule 8.2 of the Code; and
- (c) Dr Soh had breached Rule 11.2(a) by selling shares in Jade during the Offer period.

7 Ms Tsai, Ms Ang and Mr Tan from OCBC Bank were summoned to determine whether:

- (a) OCBC Bank had acted responsibly and taken all reasonable steps to assure itself that cash would be available to the Offeror to satisfy full acceptance of the Offer when OCBC Bank provided, in the Offer announcement and the Offer document, the financial resources confirmation required under Rules 3.5 and 23.8 of the Code, respectively; and
- (b) OCBC Bank's conduct as financial adviser to the Offeror in respect of the disclosure that the Offeror and Dr Soh held in aggregate 451,172,504 shares representing 46.54% of the issued shares of Jade in the Offer announcement and the Offer document had breached Rules 3.5(c) and 23.3(c) of the Code and/or met the standard of care required under Rule 8.2 of the Code.

8 Mr Lo and Mr Koh from A&G were summoned to determine whether the conduct of A&G as legal adviser to the Offeror in respect of the disclosure that the Offeror and Dr Soh held in aggregate 451,172,504 shares representing 46.54% of the issued shares of Jade in the Offer announcement and the Offer document had breached Rules 3.5(c) and 23.3(c) of the Code, respectively, and/or met the standard of care required under Rule 8.2 of the Code.

9 MLI was summoned to determine whether MLI had breached Rule 12.1 of the Code for failing to publicly disclose in accordance with Notes 4,

5 and 6 on Rule 12 of the Code its dealings in the shares of Jade during the Offer period.

10 The hearings into possible breaches were held on 29 May 2008, 3 and 4 Jun 2008. The parties also made written submissions prior to and following the hearings.

11 After the hearing committee had decided on whether the parties were in breach of the Code, it wrote to Dr Soh, OCBC Bank, A&G and MLI on 8 Aug 2008 to inform them of the findings.

12 In response to requests by the parties to be given an opportunity to make oral submissions on the appropriate sanctions to be imposed, further hearings were conducted on 8 and 9 Sep 2008. The parties also made written submissions on sanctions prior to the hearings.

### **Findings and Sanctions**

13 The hearing committee made its final decision after considering all the oral and written representations of the parties. The basis for the hearing committee's findings and sanctions are contained in the Grounds of Decision issued by the hearing committee on 14 Oct 2008 (please see Annex).

14 In summary, the hearing committee's final decision is as follows.

*Dr Soh*

15 Dr Soh is found to have breached General Principle 6, Rule 3.5(c), Rule 8.2, Rule 23.3(c) and Rule 11.2. In view of Dr Soh's multiple and serious breaches of the Code, Dr Soh is censured and:

- (a) prohibited from making a takeover offer in Singapore for a period of 5 years from 14 Oct 2008; and
- (b) denied the facilities to buy and sell shares through Singapore Exchange Securities Trading Limited without the Council's consent for a period of 3 years from 14 Oct 2008.

In view of his breaches of the Code, the hearing committee considers Dr Soh unsuited to be a director of any company listed in Singapore for a period of 5 years from 14 Oct 2008.

*OCBC Bank*

16 OCBC Bank is found to have breached Rule 3.5 and Rule 23.8 in respect of its financial resources confirmation and Rule 3.5(c), Rule 23.3(c) and Rule 8.2 in respect of the disclosure of shareholdings.

17 The hearing committee accepts that Dr Soh's reticence and breaches of the Code deprived OCBC Bank of the opportunity to detect his failings and to advise him properly. Further, OCBC Bank's breaches were relatively less culpable than Dr Soh's overall conduct. Nonetheless, there were serious lapses on the part of OCBC Bank which led to multiple

breaches of the Code that are important to promoting an efficient, competitive and informed market. As the financial adviser and indeed, the issuer of the Offer announcement and Offer document, OCBC Bank had a key responsibility for ensuring compliance with the Code.

18 As acts of contrition for its breaches of the Code, OCBC Bank has volunteered (without any admission of legal liability) to:

- (a) abstain from undertaking financial advisory work on take-overs for a period of 6 months from 1 Sep 2008; and
- (b) donate a sum of S\$1 million towards the cause of educating and promoting awareness among members of the public on lessons which may be learnt from this episode.

19 In addition, OCBC Bank has, on its own accord, not accepted any new financial advisory work on take-overs from 11 Apr 2008. The total period of abstention from financial advisory work on take-overs is therefore approximately 11 months.

20 In the circumstances, the hearing committee accepts OCBC Bank's offer of the self-imposed abstention and censures OCBC Bank.

#### *A&G*

21 A&G is found to have breached Rule 8.2 in relation to the Offeror and Dr Soh's disclosures of their interest in Jade shares in the Offer announcement and the Offer document pursuant to Rule 3.5(c) and Rule 23.3(c), respectively.

22 The hearing committee accepts that primary responsibility for accurate disclosure of Dr Soh and the Offeror's level of shareholdings in Jade did rest with Dr Soh. The hearing committee also notes that as between the advisers, OCBC Bank had the leading role as the financial adviser, compared to A&G.

23 Mr Lo, the partner from A&G in charge of advising the Offeror on the Offer, has volunteered (without any admission of legal liability) to abstain from work related to the Code for a period of 6 months from 1 Sep 2008. In addition, Mr Lo had, on his own accord, ceased accepting new Code related work since 11 Apr 2008. Hence, the total period of abstention is approximately 11 months.

24 In the circumstances, the hearing committee accepts Mr Lo's self imposed abstention from Code related work and takes no further action against A&G.

#### *MLI*

25 MLI is found to be in breach of Rule 12.1 for failing to disclose, in accordance with the requirements of the Code, its seizure and sale of Jade shares during the Offer period when it enforced its rights as a secured creditor of Opes.

26 The hearing committee accepts that MLI was acting in good faith in realising its security interests and that its breaches were neither opportunistic nor intentional. MLI had taken steps to notify Jade and the Singapore Exchange in discharge of its disclosure obligations under the Companies Act and Securities and Futures Act before it started trading in



Jade shares on 1 April 2008. In the circumstances, the hearing committee takes no further action against MLI.

Issued by Securities Industry Council

14 October 2008

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Notes to Editor:

The Singapore Code on Take-overs and Mergers is administered and enforced by the Securities Industry Council whose members comprise representatives mostly from the private sector and some from the public sector. The Council has powers under the law to investigate any dealing in securities that is connected with a take-over or merger transaction. The duty of the Council is the enforcement of good business standards and not the enforcement of law. The Council expects prompt co-operation from those to whom enquiries are directed to ensure efficient administration of the Code. The Council, as the administering body, performs its day-to-day business through its Secretariat headed by the Secretary to the Council.

If there appears to be a breach of the Code, the Secretary will summon the alleged offender to appear before the Council for a hearing. Every alleged offender will have the opportunity to answer allegations and to call witnesses. The Council may also summon witnesses. As a rule, the Council's proceedings are informal and parties appearing before the Council, whether for disciplinary or other purposes, should present their case in person and lodge written submissions in their own name. While

alleged offenders and witnesses may consult their legal advisers during hearings before the Council, these advisers may not examine or cross-examine witnesses nor answer questions on behalf of their clients.

If the Council finds that there has been a breach of the Code, it may have recourse to private reprimand or public censure or, in a flagrant case, to further action designed to deprive the offender temporarily or permanently of its ability to enjoy the facilities of the securities market. If the Council finds evidence to show that a criminal offence has taken place whether under the Companies Act, the Securities and Futures Act or under the criminal law, it will refer the matter to the appropriate authority.

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