

## Former GEM-listed group finance manager jailed for four months for insider dealing

19 Feb 2019

The Eastern Magistrates' Court today sentenced Mr Au-Yeung Siu Pang, a former group finance manager of China CBM Group Company Limited (China CBM), to four months of imprisonment and fined him \$120,000 after he was convicted of insider dealing in China CBM shares in a prosecution brought by the Securities and Futures Commission (SFC) (Note 1).

The SFC's investigation found that, by around 27 March 2012, Au-Yeung, who was involved in the audit process related to China CBM's financial results for the year ended 31 December 2011, became aware of two pieces of information relating to the company which was not yet disclosed to the public at the time, namely, (i) China CBM suffered an unaudited loss of about RMB 52 million in 2011 and (ii) China CBM was at the risk of having trading in its shares suspended because it could not resolve all outstanding audit issues before 30 March 2012 for the company's 2011 annual results to be published on time (Information).

Au-Yeung, who was in possession of the Information, counselled or procured his father to sell 500,000 China CBM shares at \$0.44 per share on 28 March 2012. Au-Yeung himself also sold 600,000 China CBM shares at \$0.40 per share on the following day (Note 2).

On 30 March 2012, China CBM announced that it was unable to prepare its audited results in time and trading of China CBM shares on the Growth Enterprise Market (GEM) of The Stock Exchange of Hong Kong was suspended on the same day. China CBM did not publish its audited results for 2011 until 3 October 2012, and the audited results disclosed a loss of about RMB 49 million.

On 4 October 2012, trading in China CBM shares resumed. The share price of China CBM dropped 20 per cent to \$0.26 from the last traded closing price of \$0.325 before trading suspension.

The SFC alleged that the resulting notional losses avoided by Au-Yeung and via his father were \$84,000 and \$90,000, respectively.

In reaching the verdict, the Court found that:

- the Information constituted "relevant information" as defined in the Securities and Futures Ordinance (SFO) (Note 3);
- Au-Yeung, being a person connected with China CBM, knew the information constituted "relevant information" but still dealt in, and counselled and procured his father to deal in, China CBM shares whilst in possession of such relevant information; and
- Au-Yeung's claim that the sale of China CBM shares at the material time were wholly unconnected with the "relevant information" was incredible.

The Court also ordered Au-Yeung to pay for the SFC's investigation costs in the sum of \$33,365.

The Court granted Au-Yeung's application for bail pending his appeal against his conviction and sentence.

End

Notes:

1. The Court convicted Au-Yeung of two insider dealing offences under section 291 of the SFO on 12 February 2019. The four months of imprisonment comprises three months of imprisonment for each count of offence with two months of imprisonment for the second count running concurrently with the first count.
2. The shares of China CBM sold by Au-Yeung's father on 28 March 2012 were beneficially owned by Au-Yeung but held in his father's securities account.
3. Under section 285 of the SFO applicable at the material time, "relevant information" means specific information that is about the corporation and is not generally known to the person who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities. The SFO has been amended since 1 January

2013. The term “relevant information” has been changed to “inside information”. The definition and the constituent elements remain the same.

4. Please see the SFC’s press releases dated [7 September 2017](#) and [8 December 2017](#).

Page last updated : 19 Feb 2019

主頁 ▶ 新聞稿及公布 ▶ 新聞稿 ▶ 執法消息

## 前創業板上市集團財務經理因內幕交易被判監四個月

2019年2月19日

東區裁判法院今天判處中國煤層氣集團有限公司（中國煤層氣）前集團財務經理歐陽少鵬（男）監禁四個月，並命令他支付120,000元的罰款。歐陽早前在證券及期貨事務監察委員會（證監會）對他提出的檢控中，被裁定就中國煤層氣股份進行內幕交易的罪名成立（註1）。

證監會的調查發現，歐陽參與了有關中國煤層氣截至2011年12月31日止年度財務業績的審計過程，故他大約在2012年3月27日或之前已獲悉關於該公司當時尚未向公眾披露的兩項消息，即(i)中國煤層氣在2011年錄得大約人民幣5,200萬元的未經審核虧損；及(ii)中國煤層氣面臨其股份遭暫停買賣的風險，原因是該公司無法在2012年3月30日之前化解所有未能解決的審計事項，以便按時公布該公司的2011年度業績（該等資料）。

歐陽在掌握了該等資料的情況下，慫使或促致其父親於2012年3月28日以每股0.44元的價格出售500,000股中國煤層氣股份，而歐陽本人也在翌日以每股0.40元的價格出售了600,000股中國煤層氣股份（註2）。

2012年3月30日，中國煤層氣宣布無法及時擬備其經審核的業績，該公司在香港聯合交易所創業板（創業板）上市的股份於同日暫停買賣。中國煤層氣直至2012年10月3日才公布其2011年度的經審核業績，當中披露了公司有大約人民幣4,900萬元的虧損。

中國煤層氣股份於2012年10月4日恢復買賣。該公司的股價由暫停買賣前的最後收市價0.325元下跌20%至0.26元。

證監會指，歐陽藉此及透過其父親分別避免了84,000元及90,000元的名義虧損。

法院在達致有關裁決時裁定：

- 該等資料構成《證券及期貨條例》所界定的“有關消息”（註3）；
- 歐陽身為與中國煤層氣有關連的人，知道該等資料構成“有關消息”，但仍在掌握該等有關消息的情況下，買賣並慫使和促致其父親買賣中國煤層氣股份；及
- 歐陽聲稱在關鍵時間出售中國煤層氣股份一事與“有關消息”完全無關的說法令人難以信服。

法院亦命令歐陽繳付證監會總額為33,365元的調查費用。

法院批准了歐陽的保釋申請，以待他就有關定罪和判刑提出上訴。

完

備註：

1. 法院在2019年2月12日根據《證券及期貨條例》第291條，裁定歐陽的兩項內幕交易罪名成立。歐陽須就兩項控罪各入獄三個月，由於第二項控罪的其中兩個月刑期與第一項控罪的刑期同時執行，故共須入獄四個月。
2. 歐陽的父親於2012年3月28日所出售的中國煤層氣股份，是透過歐陽的父親的股票戶口而代為持有，歐陽才是實益擁有人。
3. 根據於關鍵時間適用的《證券及期貨條例》第285條，“有關消息”指關於該法團而並非普遍為慣常（或相當可能會）進行該法團上市證券交易的人所知的具體消息或資料，但該等消息或資料如普遍為他們所知，則相當可能會對該等證券的價格造成重大影響。自《證券及期貨條例》於2013年1月1日作出修訂後，“有關消息”一詞已被改為“內幕消息”，但釋義及構成要素維持不變。
4. 請參閱證監會2017年9月7日及2017年12月8日的新聞稿。

最後更新日期：2019年2月19日