

November 7, 2005

Brian V. Breheny, Chief  
Christina Chalk, Special Counsel  
Office of Mergers and Acquisitions  
Securities and Exchange Commission  
100 F Street, Station Place, N.E.  
Washington, D.C. 20549

**Re: Proposed Privatization of SUNDAY Communications Limited by  
PCCW Mobile Holding No. 2 Limited, File Number 5-51152**

Dear Mr. Breheny and Ms. Chalk:

We are writing on behalf of our client, PCCW Limited (“PCCW”), and its subsidiary SUNDAY Communications Limited (“SUNDAY”) to request that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission”) grant no action relief from the provisions of Rule 13e-3 (“Rule 13e-3”) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), with respect to the proposed privatization of SUNDAY by way of a scheme of arrangement under Cayman Islands law as described in this letter.

**I. Description of the Companies**

**A. SUNDAY**

SUNDAY is a company incorporated under the laws of the Cayman Islands. SUNDAY is a developer and provider of wireless communications and data services in Hong Kong.

SUNDAY is a “foreign private issuer” as defined in Rule 3b-4(c) under the Exchange Act, and files annual reports on Form 20-F and furnishes current reports on Form 6-K and other information with the Commission.

SUNDAY’s ordinary shares, par value HK\$0.10 per share, are listed on The Stock Exchange of Hong Kong Limited (the “SEHK”) and SUNDAY’s American depositary shares (“ADSs”), each representing 100 SUNDAY ordinary shares, are quoted on the Nasdaq National Market. As of September 30, 2005, there were 2,990,000,000 ordinary shares of SUNDAY outstanding.

**B. PCCW**

PCCW is a company incorporated under the laws of Hong Kong. The principal activities of PCCW are the provision of local and international telecommunications services, internet and interactive multimedia services, the sale and rental of telecommunications equipment and the provision of computer,

engineering and other technical services, mainly in Hong Kong; investment in, and development of, systems integration and technology-related businesses; and investment in, and development of, infrastructure and properties in Hong Kong and elsewhere in the People's Republic of China.

PCCW holds its interests in SUNDAY through its indirect wholly owned subsidiary PCCW Mobile Holding No. 2 Limited ("**PCCW Mobile**"), a company incorporated under the laws of the British Virgin Islands to hold PCCW's interests in SUNDAY.

PCCW is a "foreign private issuer" as defined in Rule 3b-4(c) under the Exchange Act, and files annual reports on Form 20-F and furnishes current reports on Form 6-K and other information with the Commission.

PCCW's ordinary shares, nominal value HK\$0.25 per share, are listed on the SEHK, and PCCW's ADSs, each representing ten PCCW ordinary shares, are listed on the New York Stock Exchange.

As of September 30, 2005, according to its Schedule 13D on file with the Commission, PCCW, through PCCW Mobile, beneficially owned 2,372,672,256 SUNDAY shares, representing approximately 79.4% of the voting rights in SUNDAY. PCCW and PCCW Mobile are "affiliates" of SUNDAY within the meaning of Rule 13e-3.

## **II. The Privatization**

Pursuant to purchase agreements dated June 13, 2005 between PCCW and two shareholders of SUNDAY, on June 22, 2005, PCCW Mobile acquired an aggregate of 1,790,134,000 SUNDAY shares, representing approximately 59.9% of the issued share capital of SUNDAY, for an aggregate consideration of HK\$1,163,587,100 in cash, or HK\$0.65 per share (the "**Acquisition**"). Prior to the Acquisition, these selling shareholders held approximately 46.2% and 13.7%, respectively, of the issued share capital of SUNDAY and neither PCCW nor PCCW Mobile owned any of the share capital of SUNDAY. As a result of the Acquisition, PCCW Mobile was required under The Hong Kong Code on Takeovers and Mergers (the "**Hong Kong Takeovers Code**") to make a mandatory unconditional cash offer to acquire all the SUNDAY shares not already owned or agreed to be acquired by it and parties acting in concert with it (the "**Tender Offer**"). The Tender Offer commenced on July 8, 2005 at a price of HK\$0.65 per share in cash, the same price paid by PCCW Mobile in the Acquisition. As of September 9, 2005, the final closing date of the Tender Offer, PCCW Mobile had received valid acceptances in respect of 582,538,256 SUNDAY shares, bringing its holdings in SUNDAY to 2,372,672,256 SUNDAY shares, representing approximately 79.4% of the issued share capital of SUNDAY. The offering document prepared in connection with the Tender Offer was filed with the Commission on Form CB on July 11, 2005.

On September 27, 2005, PCCW Mobile requested the directors of SUNDAY to propose to SUNDAY shareholders (other than PCCW Mobile) a privatization of SUNDAY by means of a scheme of arrangement under Cayman Islands law (the “**Privatization Scheme**”), under which all SUNDAY shares not held by PCCW Mobile (the “**Scheme Shares**”) would be cancelled in exchange for HK\$0.65 per share in cash.

On September 23, 2005, the Hong Kong Securities and Futures Commission issued a ruling allowing PCCW Mobile to proceed with the Privatization Scheme. The Privatization Scheme was approved by the board of directors of SUNDAY on September 27, 2005. As required by the Hong Kong Takeovers Code, an independent board committee has also been appointed to consider, and make a recommendation with respect to, the Privatization Scheme. SUNDAY, PCCW and PCCW Mobile publicly announced the Privatization Scheme on September 28, 2005, which announcement was furnished to the Commission on Form 6-K on September 29, 2005.

Pursuant to the requirements of Cayman Islands law, the Hong Kong Takeovers Code and the rules of the SEHK, after review and approval by the Hong Kong Securities and Futures Commission and the SEHK, SUNDAY will send to its shareholders a document (the “**Privatization Circular**”) in connection with the Privatization Scheme containing, among other things, disclosure regarding the Privatization Scheme, SUNDAY, PCCW and PCCW Mobile, the recommendation of SUNDAY’s independent board committee in respect of the Privatization Scheme, a letter of advice from the independent board committee’s independent financial adviser regarding the fairness of the consideration offered under the Privatization Scheme, the scheme of arrangement, notice of the meeting required under Cayman Islands law convened at the direction of the Grand Court of the Cayman Islands at which holders of the Scheme Shares vote on the Privatization Scheme (the “**Court Meeting**”) and notice of the extraordinary general meeting at which SUNDAY shareholders vote on the reduction of capital resulting from the cancellation of the Scheme Shares and the immediate reinstatement of the authorized and issued share capital of SUNDAY to the amount prior to the cancellation of the Scheme Shares by applying the reserve created on the cancellation of the Scheme Shares to pay up in full and issue to PCCW Mobile a number of new SUNDAY shares equal to the number of Scheme Shares cancelled.

Consummation of the Privatization Scheme is subject to the following conditions, among others:

- approval of the Privatization Scheme by a majority in number of the holders of Scheme Shares representing not less than 75% in nominal value of the Scheme Shares of holders present and voting either in person or by proxy at the Court Meeting; *provided* that (i) the Privatization Scheme is approved by SUNDAY shareholders other than PCCW Mobile and other parties acting in concert with it (the “**Independent Shareholders**”)

holding not less than 75% in nominal value of those Scheme Shares that are voted either in person or by proxy at the Court Meeting; and (ii) the Privatization Scheme is not disapproved by Independent Shareholders at the Court Meeting holding more than 10 percent in nominal value of all the Scheme Shares held by Independent Shareholders;

- approval of the reduction of capital resulting from the cancellation of the Scheme Shares and the immediate reinstatement of the authorized and issued share capital referred to above by not less than three-fourths of the votes cast by SUNDAY shareholders, including PCCW Mobile, present and voting, in person or by proxy, at the extraordinary general meeting of SUNDAY shareholders; and
- sanction of the Privatization Scheme (with or without modifications) by the Grand Court of the Cayman Islands based on its conclusion that, among other things, (i) SUNDAY is not proposing to act illegally or ultra vires; (ii) the statutory provisions as to majority vote have been complied with; (iii) the Scheme Shareholders have been fairly represented at the Court Meeting; (iv) the Privatization Scheme is such as a businessman would reasonably approve; and (v) the Privatization Scheme would not amount to fraud on the minority.

Assuming all conditions precedent are met, the Privatization Scheme is expected to become effective by the end of January 2006. Following the effective date, SUNDAY will become a wholly owned subsidiary of PCCW Mobile. It is expected that the listing of the SUNDAY shares on the SEHK and the quotation of the SUNDAY ADSs on the Nasdaq National Market will be withdrawn and that the SUNDAY shares will be deregistered under the Exchange Act pursuant to Section 12(g)(4) of the Exchange Act.

### **III. Discussion of Issues**

#### **A. Definition of Rule 13e-3 Transaction**

Rule 13e-3 under the Exchange Act requires, among other things, that an issuer or affiliate engaging in a Rule 13e-3 transaction file with the Commission (i) a Schedule 13E-3, including all exhibits, (ii) amendments to the Schedule 13E-3 reporting promptly any material changes in the information set forth in the schedule previously filed and (iii) a final amendment to Schedule 13E-3 reporting promptly the results of the Rule 13e-3 transaction.

Rule 13e-3(a)(3) defines a "Rule 13e-3 transaction" to include (A) a purchase of any equity security by the issuer of such security or by an affiliate of such issuer; (B) a tender offer for any equity security made by the issuer of such security or by an affiliate of such issuer; or (C) a solicitation subject to Regulation 14A under the Exchange Act of any proxy of any equity security holder by the issuer of such security or by an affiliate of such issuer, in connection with a merger, consolidation or similar transaction.

As described above, the acquisition of 100% of the issued SUNDAY shares by PCCW Mobile is proposed to be consummated in three steps, namely the Acquisition, the Tender Offer and the Privatization Scheme, the first two of which have been completed.

The Acquisition was not subject to the provisions of Rule 13e-3 because, among other reasons, neither PCCW nor PCCW Mobile was an affiliate of SUNDAY prior to the consummation of the Acquisition.

As a result of the Acquisition, PCCW and PCCW Mobile were affiliates of SUNDAY at the time the Tender Offer commenced. The Tender Offer was exempt from the provisions of Rule 13e-3 pursuant to Rule 13e-3(g)(6), which provides exemptions for certain "cross-border" transactions. Rule 13e-3(g)(6) provides that Rule 13e-3 shall not apply to any tender offer or business combination made in compliance with Rule 802 ("**Rule 802**") under the Securities Act of 1933, as amended (the "**Securities Act**"), or Rules 13e-4(h)(8) ("**Rule 13e-4(h)(8)**") or 14d-1(c) ("**Rule 14d-1(c)**") under the Exchange Act.

Rule 802 provides an exemption from the registration requirements of Section 5 of the Securities Act for any exchange offer for the securities of, or business combination involving, a foreign private issuer if (i) U.S. ownership of the target company is 10 percent or less of the securities that are the subject of the exchange offer or business combination (excluding from such calculation greater-than-10 percent U.S. and non-U.S. shareholders), (ii) the issuer permits U.S. holders to participate in the exchange offer or business combination on terms at least as favorable as those offered any other holder of the subject securities, subject to certain exceptions, (iii) the issuer meets certain information requirements with respect to the offer and (iv) any informational document published or disseminated to U.S. holders contains a specific legend.

Similarly, Rules 13e-4(h)(8) and 14d-1(c) provide an exemption from Rules 13e-4 and 14d-1 under the Exchange Act, as applicable, for any tender offer for the securities of a foreign private issuer if (i) U.S. holders hold 10 percent or less of the class of securities sought in the offer (excluding greater-than-10 percent U.S. and non-U.S. shareholders), (ii) the issuer permits U.S. holders to participate in the offer on terms at least as favorable as those offered any other holder of the same class of securities that is subject to the tender offer, subject to certain exceptions, (iii) the issuer meets certain information requirements with respect to the offer and (iv) the issuer of the securities that are the subject of the tender offer is not an investment company registered or required to be registered under the Investment Company Act of 1940.

As further described in Section IV below, because PCCW determined, pursuant to Instruction 2 to paragraphs (c) and (d) of Rule 14d-1 under the Exchange Act, that U.S. holders held less than 10 percent of the outstanding SUNDAY shares (excluding shares held by greater-than-10 percent shareholders) as of June 8, 2005, the date 30 days prior to the commencement of the Tender Offer, and the other requirements of Rule 14d-1(c) as described in the preceding paragraph were

complied with, the Tender Offer was exempt from the requirements of Rule 13e-3 pursuant to Rule 14d-1(c).

Because (i) the Privatization Scheme does not constitute a tender offer and (ii) the solicitation of proxies by SUNDAY and PCCW Mobile in connection with the Privatization Scheme is not subject to Regulation 14A because SUNDAY is a foreign private issuer, neither clause (B) nor clause (C) of the definition of a Rule 13e-3 transaction would apply to the Privatization Scheme. However, because the Privatization Scheme could be deemed to be a purchase of SUNDAY shares under clause (A) of the definition of a Rule 13e-3 transaction by PCCW Mobile, an affiliate of SUNDAY, and is expected to result in SUNDAY becoming a wholly owned subsidiary of PCCW Mobile and the withdrawal of the SUNDAY ADSs from quotation on the Nasdaq National Market, absent the requested relief, the Privatization Scheme would seem to be subject to the provisions of Rule 13e-3.

### **B. Request for No Action Relief from Rule 13e-3**

PCCW and SUNDAY are requesting that the Staff confirm that it will not take action if they do not comply with the requirements of Rule 13e-3 in connection with the Privatization Scheme based on the cross-border exemptions pursuant to Rule 13e-3(g)(6) applicable to transactions similar to the Privatization Scheme. Rule 13e-3(g)(6) would not, on its face, be available for a transaction, such as the Privatization Scheme, which meets the other requirements of the exemption but is structured neither as a tender offer (which could be exempt under Rule 13e-4(h)(8) or Rule 14d-1(c) regardless of the form of consideration used), nor as a statutory merger or other form of business combination for consideration including securities (which could be exempt under Rule 802). PCCW and SUNDAY are applying for such no action relief subject to the conditions that (i) U.S. holders of SUNDAY shares hold no more than 10 percent of SUNDAY's outstanding shares (as determined pursuant to Rule 800(h) under the Securities Act, Instruction 2 to paragraph (h)(8) and paragraph (i) of Rule 13e-4 under the Exchange Act and Instruction 2 to paragraphs (c) and (d) of Rule 14d-1 under the Exchange Act) and (ii) PCCW and SUNDAY otherwise comply, to the extent applicable, with the conditions set forth in such Rules.<sup>1</sup>

If the Staff grants no action relief to PCCW and SUNDAY from complying with the provisions of Rule 13e-3, PCCW and SUNDAY will comply, to the extent applicable, with the conditions of Rules 802, 13e-4(h)(8) and 14d-1(c) as if such Rules applied to the Privatization Scheme. In particular, as discussed in more detail in Section IV below, U.S. holders of SUNDAY's shares hold no more than 10 percent of such shares (as determined pursuant to Rule 800(h) under the Securities Act, Instruction 2 to paragraph (h)(8) and paragraph (i) of Rule 13e-4

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<sup>1</sup> We note that the Staff has previously granted such relief in a similar situation. Please see Equant N.V., SEC No-Action Letter (April 18, 2005).

under the Exchange Act and Instruction 2 to paragraphs (c) and (d) of Rule 14d-1 under the Exchange Act). In addition, PCCW and SUNDAY will:

- permit U.S. shareholders to participate in the Privatization Scheme on terms at least as favorable as those offered to other shareholders;
- disseminate the Privatization Circular to U.S. shareholders, including any amendments thereto, in English, on a comparable basis to that provided to shareholders in Hong Kong; and
- furnish the Privatization Circular, including any amendments thereto, in English, to the Commission on Form CB and Form 6-K by the first business day after dissemination.

Assuming these conditions are met, we believe that the structure of the Privatization Scheme, in particular its structure as a business combination exclusively for cash consideration, should not disqualify it for the availability of cross-border relief from Rule 13e-3. A scheme of arrangement is commonly employed in Hong Kong, and elsewhere, as an alternative to a tender offer, which is eligible for a cross-border exemption under Rule 13e-3(g)(6), for affecting agreed takeovers and privatizations. PCCW could also have structured its acquisition of the remaining 20.6% of the issued SUNDAY shares as another form of business combination for consideration including securities, which would have been eligible for an exemption. The Privatization Scheme is the third step in the acquisition of 100% of the issued shares of SUNDAY by PCCW Mobile, the first two steps of which allowed PCCW Mobile to obtain approximately 79.4% of the issued SUNDAY shares without subjecting it to the requirements of Rule 13e-3. Furthermore, other than periodic and beneficial ownership reporting requirements under the Exchange Act, the Privatization Scheme does not otherwise implicate dissemination and disclosure requirements under U.S. law. Moreover, this set of circumstances may not have been contemplated by the Commission at the time it proposed and adopted the cross-border tender offer and business combination rules.

We further submit that the Privatization Scheme does not present the concerns that Rule 13e-3 seeks to address, namely overreaching by the issuer or its affiliates and the coercive effect of going-private transactions not subject to meaningful regulatory protections. Because the Tender Offer and the Privatization Scheme will both have been completed within less than a year of the Acquisition and the price of HK\$0.65 per share in cash paid in the Tender Offer and proposed to be paid in the Privatization Scheme is the same price that was paid in the Acquisition, PCCW Mobile's acquisition of 100% of the issued shares of SUNDAY could be viewed as a unitary multi-step transaction. The terms of this multi-step transaction were the product of arms'-length bargaining because PCCW was not an affiliate at the time of the Acquisition when the terms of the transaction were set, and hence the transaction does not require the special protections of Rule 13e-3. In addition, the Independent Shareholders also enjoy meaningful protections under Cayman Islands law, the Hong Kong Takeovers

Code and the listing rules of the SEHK. U.S. and other SUNDAY shareholders will be provided with disclosure regarding the Privatization Scheme that is reviewed by the Grand Court of the Cayman Islands, the Hong Kong Securities and Futures Commission and the SEHK, including the recommendation of SUNDAY's independent board committee and the advice of the independent board committee's independent financial adviser. Furthermore, Independent Shareholders have the right to appear, be heard and vote on the Privatization Scheme at the Court Meeting. Based on the requirements of SUNDAY's articles of association, the Grand Court of the Cayman Islands is also likely to require that notice of the Court Meeting be provided at least three weeks in advance of the Court Meeting. The Privatization Scheme must also be approved by holders of the Scheme Shares and sanctioned by the Grand Court of the Cayman Islands as described in Section II above. While the Grand Court of the Cayman Islands will not seek to substitute its judgment of the commercial merits of a transaction for that of the Independent Shareholders, it will refuse to sanction a transaction if it sees "such an objection to it as that any reasonable man might say that he could not approve it"<sup>2</sup>.

We note that the Staff has previously granted no action relief from Rule 13e-3 in connection with another scheme of arrangement under Cayman Islands law sanctioned by the Grand Court of the Cayman Islands, based in part on the protections provided by the Cayman Islands court process<sup>3</sup>. The rationale for the relief granted in that no action letter was that a judicially-approved transaction involving full and fair disclosure of information obviates the need for the reporting requirements of the "Williams Act" sections of the Exchange Act. A U.S. district court has also held that the reporting requirements of Sections 13(d), 13(e), 14(d) and 14(e) of the Exchange Act and the rules promulgated under these Sections were inapplicable to a transaction exempt from registration because of adequate judicial safeguards and disclosure regarding the transaction<sup>4</sup>. We respectfully submit that the disclosure to be provided pursuant Cayman Islands and Hong Kong requirements, and the Cayman Islands court process, in connection with the Privatization Scheme already provide meaningful protection of the interests of Independent Shareholders.

For the foregoing reasons, we believe that granting relief in the context of the Privatization Scheme is consistent in all respects with the policy underlying Rules 802, 13e-4(h)(8) and 14d-1(c) and the extension of the exemptions provided by

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<sup>2</sup> Per Lindley L.J. in *Re Alabama, New Orleans, Texas and Pacific Junction Ry.* [1891] 1 Ch. 213, 239.

<sup>3</sup> Please see *LAC Minerals Ltd.*, SEC No-Action Letter (March 19, 1991).

<sup>4</sup> Please see *Brucker v. Thyssen-Bornemisza Europe N.V.*, 424 F. Supp 697 (S.D.N.Y. 1976), *aff'd sub nom.*, *Brucker v. Indian Head Inc.*, 559 F.2d 1202 (2d Cir. 1977), *cert. denied*, *Rome v. Indian Head, Inc.*, 434 U.S. 897 (1977). See also *Gilbert v. Bagley*, 492 F. Supp. 714 (M.D.N.C. 1980).



those Rules to transactions subject to Rule 13e-3 and, assuming compliance with the other conditions set forth in such Rules, would not be subject to abuse.

#### **IV. Calculation of the Percentage of SUNDAY Shares Held by U.S. Holders**

In accordance with Instruction 2 to paragraphs (c) and (d) of Rule 14d-1, PCCW calculated the U.S. ownership of SUNDAY as of June 8, 2005, the date 30 days prior to the commencement of the Tender Offer, which is the first step of the transaction involving PCCW and PCCW Mobile as affiliates of SUNDAY. Rule 14d-1 requires a company, in calculating U.S. ownership, to "look through" nominees in (i) the United States; (ii) the jurisdiction of incorporation of the issuer or target (in the case of SUNDAY, the Cayman Islands); and (iii) if different, the jurisdiction in which the issuer's or target's primary trading market is located (in the case of SUNDAY, Hong Kong).

As a Cayman Islands company, SUNDAY is required to maintain its principal share register in the Cayman Islands. As a company whose shares are listed on the SEHK, SUNDAY is also required to maintain a branch register in Hong Kong. Only those shares listed on the branch register in Hong Kong may be traded on the SEHK. Shares listed on the principal register in the Cayman Islands can only be issued in certificated form in the name of the relevant shareholder. Shares of SUNDAY listed on the branch register in Hong Kong can either be issued (i) in certificated form, in which case the shares are registered in the branch register in the name of the relevant shareholder; or (ii) in electronic form through the Central Clearing and Settlement System ("**CCASS**") maintained and operated by the Hong Kong Securities and Clearing Company Limited ("**HKSCC**"), in which case the shares are registered in the branch register in the name of HKSCC Nominees Limited ("**HKSCC Nominees**"). Shares registered in the name of HKSCC Nominees are credited to the account of the relevant person admitted to participate in CCASS, and transfers of shares are effected by way of book entries between such CCASS participants.

In order to assist in determining whether U.S. holders of SUNDAY's shares held no more than 10 percent of such shares (excluding greater-than-10 percent shareholders), SUNDAY hired Thomson Financial Services Limited ("**Thomson**") to conduct a share investigation. Thomson conducts share investigations in the United States and abroad in a wide range of circumstances and is experienced in such investigations. Thomson has informed SUNDAY that in conducting its investigation it followed the procedures set forth below, based on the instructions provided by PCCW (and agreed by SUNDAY) prior to the commencement of the investigation.

To identify U.S. holders of SUNDAY shares, Thomson reviewed SUNDAY's shareholders' registers and the list of holders provided by CCASS. Because the CCASS list of holders includes first-level intermediaries who hold securities on behalf of others, many of whom are often themselves nominee holders for other beneficial owners, Thomson conducted a "look-through" analysis to determine the beneficial ownership of SUNDAY shares held by the nominee holders included

on the CCASS list. Thomson conducted the "look-through" analysis by mailing informational requests to its contacts at the financial intermediaries between June 27, 2005 and June 30, 2005. Based on its own database, at the same time it sent out information to the first-level nominees identified in the CCASS list, Thomson also sent informational requests to second-level nominees who Thomson understands often have their shares held by the first-level nominees identified in the CCASS list. Thomson then began following up with phone calls to financial intermediaries that did not respond to the informational requests or whose responses required clarification. Based on the results of such investigation, PCCW determined that U.S. holders held less than five percent of SUNDAY's shares (excluding shares held by greater-than-10 percent shareholders) as of June 8, 2005.

We believe that it is appropriate for PCCW and SUNDAY to rely on the calculation of U.S. ownership of SUNDAY shares made as of June 8, 2005 for the purposes of our present request for no action relief from the requirements of Rule 13e-3 for the Privatization Scheme. Because this calculation indicated that substantially less than 10 percent of SUNDAY's shares (excluding shares held by greater-than-10 percent shareholders) were held by U.S. shareholders and we have no reason to believe that this is no longer the case, we believe the calculation made as of June 8, 2005 is still relevant for the determination of U.S. ownership in the context of the Privatization Scheme. Moreover, we respectfully submit that it is unduly burdensome for a foreign company to conduct this analysis more than once in a period of less than half a year in the context of a multi-step transaction.

The response to Question 9 in Section E "Determining U.S. Beneficial Ownership" in the Third Supplement to the Manual of Publicly Available Telephone Interpretations indicates a new calculation of U.S. ownership need not be made in a multi-step transaction if such calculation was made for a prior step in the transaction, *provided* (i) the disclosure document for the first step discloses the offeror's intent to conduct the subsequent step and the terms of the subsequent transaction and (ii) the subsequent step is consummated within a reasonable time following the first step. With respect to the first proviso, the offering document in connection with the Tender Offer disclosed that in the event PCCW Mobile acquired at least 90% of the SUNDAY shares in respect of which the Tender Offer was made and which were held by accepting shareholders other than PCCW Mobile and persons acting in concert with it by the close of the Tender Offer, it would consider a compulsory acquisition under Cayman Islands law to acquire the remaining SUNDAY shares. Because PCCW Mobile did not reach the 90% threshold in the Tender Offer, a compulsory acquisition is not available to it. However, the Privatization Scheme would have the same effect as a compulsory acquisition under Cayman Islands law by allowing PCCW Mobile to acquire 100% of the issued SUNDAY shares. Moreover, unlike the Privatization Scheme, a compulsory acquisition under Cayman Islands law would not have required shareholder approval. The offering document in connection with the Tender Offer also disclosed that in the event PCCW Mobile did not proceed with a compulsory acquisition, it might still seek to withdraw the listing of SUNDAY shares from the SEHK. With respect to the second proviso, the Privatization Scheme is scheduled

to become effective by the end of January 2006. After the Tender Offer closed on September 9, 2005, PCCW Mobile promptly sought, and was granted, a ruling under the Hong Kong Takeovers Code allowing it to proceed with the Privatization Scheme. SUNDAY, PCCW and PCCW Mobile then publicly announced the Privatization Scheme on September 28, 2005. PCCW and SUNDAY are working to consummate the Privatization Scheme as soon as possible, and given the complexity of an acquisition of a public company that must be conducted in compliance with the regulatory regimes of three principal jurisdictions, we respectfully submit that the Privatization Scheme is expected to be consummated within a reasonable time following the Tender Offer.

## **V. Conclusion**

For the reasons set forth above, to the extent that the requirements of Rule 13e-3 apply to the Privatization Scheme, PCCW and SUNDAY respectfully request that the Staff grant no action relief from such requirements if PCCW and SUNDAY comply with the conditions set forth in the relevant rules as described above.

Should you have any questions relating to this no action request, please do not hesitate to contact the undersigned at (852) 2533-3303.

Very truly yours,

/s/ William F. Barron

William F. Barron

cc: Paul M. Dudek,  
Securities and Exchange Commission

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