



## **THE STOCK EXCHANGE OF HONG KONG LIMITED**

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

29 March 2007

### **CENSURE**

#### **OF**

**Asia Aluminum Holdings Limited (“the Company”)\***

**for a breach of Paragraph 2(1) of the Listing Agreement in force in July 2003**

**and**

### **CRITICISM**

#### **OF**

**Dr Chan Yiu Tsuan, Benby (“Dr Chan”)**

**for a breach of (1) Rule 3.08(f) of the Listing Rules and (2) Director’s Undertaking**

The Stock Exchange of Hong Kong Limited (the “Exchange”) hereby

- (1) publicly censures the Company for its breach of Paragraph 2(1) of the Listing Agreement as in force at the time in July 2003, namely uneven disclosure of price-sensitive information through Dr Chan at an interview with two reporters on 14 July 2003;
- (2) publicly criticises Dr Chan for his breach of Rule 3.08(f) of the Listing Rules in failing to act with the degree of skill, care and diligence that may be reasonably expected of him as a Director of the Company whilst conducting the interview; and his Director’s Undertaking for failing to (a) use his best endeavours to procure the Company’s compliance with Paragraph 2(1) of the Listing Agreement; and (b) comply with the Listing Rules to the best of his ability.

### **Facts**

On 14 July 2003 Dr Chan, an Executive Director and Managing Director of the Company, was interviewed by two reporters from a financial services media company. In the course of the interview, Dr Chan disclosed the following information to the reporters:

- (a) The net profit of the Company was expected to double in the year ended 30 June 2003 (“Year 2003”);
- (b) the net earnings of the Company for Year 2003 were expected to reach \$270 million, a growth of over 100 per cent from a year ago; and
- (c) the Company was expected to have a dividend pay-out ratio of 40 per cent for Year 2003.

collective the (“**Information**”)

On 15 July 2003 a press report written by one of the reporters present at the interview was posted on www.quamnet.com at around 14:49 hours Hong Kong time.

The Company’s annual results for Year 2003 were announced on 29 October 2003.

### **Exchange’s Investigations**

Following investigation into this matter, the Exchange had formed the view that:

1. the Company has breached Paragraph 2(1) of the Listing Agreement as:
  - a. the Information was, at the time of the interview, unpublished price-sensitive information under Paragraph 2(1) of the Listing Agreement;
  - b. the Company had not preserved secrecy of the Information as required in Paragraph 2(1) pursuant to which disclosure of the Information was required to be made by way of announcement; and
  - c. Dr Chan’s disclosure of the Information in the interview constituted the Company’s uneven dissemination of price-sensitive information; and
2. by reason of his disclosure of the Information to the reporters at the interview, Dr Chan has breached:
  - a. Rule 3.08(f) of the Listing Rules for failing to act with the degree of skill, care and diligence that may be reasonably expected of him as a Director of the Company whilst conducting the interview; and
  - b. his Director’s Undertaking for failing to (a) use his best endeavours to procure the Company’s compliance with Paragraph 2(1) of the Listing Agreement; and (b) comply with the Listing Rules to the best of his ability.

### **Settlement**

As a consequence of a settlement,

1. the Company agreed not to contest the Exchange’s allegation that it had breached Paragraph 2(1) of the Listing Agreement; and
2. Dr Chan agreed not to contest the Exchange’s allegations that he had breached Rule 3.08(f) of the Listing Rules and his Director’s Undertaking as referred to above.

### **Sanction**

Accordingly, the Exchange hereby:

1. publicly censures the Company for breaching Paragraph 2(1) of the Listing Agreement; and
2. publicly criticises Dr Chan for breaching Rule 3.08(f) and his Director’s Undertaking to the Exchange.

For the avoidance of doubt, the Exchange confirms that:

1. the Exchange has not made any allegations that any of the breaches by the Company and Dr Chan as referred to above was intentionally or knowingly committed;
2. other than the Company and Dr Chan, the Exchange has not made any allegations against any other past or present members of the Board of the Directors of the Company in relation to the matters leading to the publication of this news release; and
3. this public censure applies only to the Company and the public criticism only applies to Dr Chan. Neither of these sanctions applies to any other past or present member of the Board of Directors of the Company.

Head of Listing, Richard Williams said in reference to this case, “Fair disclosure requires that potentially price-sensitive information must be disclosed to the whole market (and not just a segment of it) in a fair, timely and structured way and in the manner prescribed by the Listing Rules. Whether selective disclosure results from sloppy careless acts and practices, or was deliberate, it may nevertheless carry similar adverse consequences for market confidence and integrity. Selective disclosure is unacceptable. As a consequence, the Exchange does and will continue to view any departure from the principle of fair and even disclosure in a serious light and enforcement action will follow in appropriate circumstances.

This case reinforces the need for issuers and those authorised to communicate with the media, analysts and investors to take all reasonable care to avoid selective disclosure of non-public price-sensitive information. In the context of conducting press or analyst briefing the Exchange recommends that Company executives should exercise great caution and should decline to answer questions which could elicit information alone or cumulatively which may represent unpublished price-sensitive information. If a Company executive errs and there is a risk of a false market or there is otherwise a leak of price-sensitive information the Company is under an obligation to correct the position with a clear and unambiguous announcement to the market without delay.

Directors of listed issuers are encouraged to consider the guidance provided by the Exchange as to our expectations in “The Guide on Disclosure of Price-sensitive Information” published in January 2002 and the principles concerning release of price-sensitive information articulated in the announcement of the Exchange dated 11 September 2006. Both these publications can be found in Chinese and English on the Exchanges website.”

- \* The securities of the Company ceased to be listed on the Exchange with effect from 4:00 pm on 24 May 2006.

## Notes to Editor

Paragraph 2(1) of the then Listing Agreement imposed an obligation on issuers to keep the Exchange, members of the issuers and other holders of its listed securities informed as soon as practicable of any information relating to the Company and its subsidiaries (the “Group”) which met the following conditions:

- a. information which is necessary to enable them and the public to appraise the position of the Group;
- b. information which is necessary to avoid the establishment of a false market in its securities; and
- c. information which might be reasonably expected materially to affect market activity in and the price of its securities

The Listing Rules currently in force stipulates the same requirements in Rule 13.09.

Rule 3.08(f) of the Listing Rules, in force currently and at the material times, requires, inter alia, that a director must, in performance of his duties as a director apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the listed issuer.

The form of the Director’s Undertaking is Part 2 Form B of Appendix 5 of the Listing Rules.