



**THE STOCK EXCHANGE OF HONG KONG LIMITED**  
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)  
(the “Exchange”)

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**NEWS RELEASE**

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28 May 2013

**The Listing Committee of The Stock Exchange of Hong Kong Limited (the “Listing Committee”) censures:**

- (1) Ausnutria Dairy Corporation Ltd (the “Company”) (Stock Code: 1717) for its breaches of:**
  - (a) the then Rule 13.09 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Listing Rules”), which required an issuer to disclose, as soon as reasonably practicable, any information which (i) was necessary to enable shareholders and the public to appraise the position of the group; (ii) was necessary to avoid the establishment of a false market in the issuer’s securities; or (iii) might be reasonably expected materially to affect market activity in and the price of its securities; and**
  - (b) the then Rule 10.06(2)(e) which prohibited share repurchase on the Exchange by an issuer after a price sensitive development had occurred until such time as the information was made publicly available; and**
- (2) Mr Chen Yuanrong, an executive director and the chief executive officer of the Company (“Mr Chen”) for his breach of his obligation under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5b to the Listing Rules in failing to use best endeavours to procure the Company’s Listing Rules compliance (the “Undertaking”).**

**The Listing Committee further criticises three executive directors of the Company:**

- (3) Mr Wu Yueshi (“Mr Wu”);**
- (4) Ms Ng Siu Hung (“Ms Ng”); and**
- (5) Mr Yan Weibin (“Mr Yan”)**

**(collectively, Mr Chen, Mr Wu, Ms Ng and Mr Yan are referred to as the “Executive Directors”) for their breach of the Undertakings.**

## Settlement

The Company and the Executive Directors do not contest their respective breaches asserted by the Division and accept the sanctions and directions imposed on them by the Listing Committee as set out below.

## Facts

The Company's shares were listed on the Exchange on 8 October 2009. The Company's 2010 Interim Results for six months ended 30 June 2010 announced on 30 August 2010 reported RMB294 million revenue and RMB59 million net profit, representing a respective 8.23 per cent and 8.46 per cent decline compared to first half of 2009. It is noted that profit before tax was RMB64 million, representing 26 per cent decline year-on-year. With a reduced tax payment in first half of 2010, net profit decline narrowed to 8.46 per cent decline year-on-year.

Performance of Ausnutria Dairy (China) Co., Ltd ("**Ausnutria China**"), the Group's main operating subsidiary, was highly representative of the business performance of the Company and its subsidiaries (the "**Group**") as a whole. At all material times, three Executive Directors of the Company, namely, Mr Chen, Mr Yan and Mr Wu were also directors of Ausnutria China.

In second half of 2010, monthly management accounts of Ausnutria China ("**Monthly Accounts**") were prepared and sent to Mr Chen, an Executive Director and Chief Executive Officer of the Company. The Group's financial statements were prepared quarterly and circulated to board members.

Mr Chen was primarily responsible for the day-to-day management and operations of the Group. He attended the weekly management meetings of Ausnutria China in which the business/financial performance of Ausnutria China was discussed. Mr Yan occasionally joined those weekly management meetings. He would report and discuss verbally with Mr Wu and Ms Ng the findings and results of those meetings and his discussion with Mr Chen whenever necessary.

The July to December Monthly Accounts of Ausnutria China of second half of 2010 recorded year-to-date revenue drop of between 13.7 per cent and 35 per cent year-on-year and year-to-date net profit drop of between 33.7 per cent and 76.7 per cent year-on-year. Mr Chen was aware of the financial position of Ausnutria China at all material times from the Monthly Accounts sent to him each month.

At the board meeting of 12 November 2010 ("**November Board Meeting**"), the then CFO and joint company secretary of the Company, Mr Lam Hiu Fung, gave an update on the Group's third quarter of 2010 results for nine months ended 30 September 2010. A copy of the Group's third quarter of 2010 results had been circulated to all of the directors of the Company (the "**Directors**") beforehand and was tabled at the meeting. The Board however was not provided with information as to the Group's 2009 third quarter results for comparison, hence no information as to year-on-year change was available. Mr Chen also gave a presentation on the third quarter of 2010 results of Ausnutria China, which showed a decline in both revenue and net profit compared to third quarter of 2009 and identified the year-on-year decline. Mr Chen also made a representation to the members of the Board at the meeting that:

- (1) The sales of Ausnutria China for fourth quarter of 2010 would stabilise based on the positive response to the business sale model under consideration and the sales orders on hand and the sale revenue for the month of November 2010 so far were encouraging.
- (2) While there was a drop in profit at the end of third quarter of 2010, Mr Chen and members of senior management had confidence that the profit decline for the Group for the year ended 31 December 2010 would not exceed 30 per cent compared to 2009.

The other Executive Directors (except Mr Chen), after listening to the report from Mr Chen, formed the view that a PWA was not required to inform the public of the Group's performance for the nine months ended 30 September 2010. However, the Executive Directors requested the then CFO and the joint company secretary, Mr Lam Hiu Fung, to follow up on the Company's decline in the profit and performance and update the Board of Directors on the same if necessary. However, no update was received by the Executive Directors after the November Board Meeting.

On 24 December 2010, all of the Executive Directors attended a board meeting to discuss and approve the share repurchase. Between 3 and 28 January 2011, the Company repurchased a total of 4,046,000 of its shares on the Exchange. Mr Wu conducted the share repurchases as authorized by the Board.

On 14 February 2011 after trading hours, the Company issued a profit warning announcement ("PWA") that its 2010 consolidated profit attributable to shareholders for 2010 was expected to decrease by 30 per cent to 40 per cent year-on-year due to an increase in various expenses and temporary revenue drop resulting from restructuring of the distribution system.

On 15 February 2011, the Company's share price fell by 10.19 per cent at the maximum (from previous closing price of \$2.65 to \$2.38) and closed with a 5.66 per cent drop (from \$2.65 to \$2.5). 39,331,000 shares were traded, representing 33.6 times of the average daily trading volume from 1 to 14 February 2011.

### **Allegations of breaches by the Listing Division (the "Division")**

#### Company's breach of Rule 13.09

Unless otherwise stated, reference to Rule 13.09 in this News Release refers to the rule in force in 2010 and 2011.

Rule 13.09 required issuers to disclose, as soon as reasonably practicable, any information which (a) was necessary to enable shareholders and the public to appraise the position of the group; (b) was necessary to avoid the establishment of a false market in the Company's securities; or (c) might be reasonably expected materially to affect market activity in and the price of its securities.

Note 11(ii) to Rule 13.09 further elaborated that the obligation must be discharged without delay where there was such a change in the Company's financial condition or the performance of its business or the expectation of its performance that knowledge of the change is likely to lead to substantial price movement.

The Division asserted that:

- (1) The significant deterioration in the Company's performance in second half of 2010 and in turn 2010 was not in the public domain, not within market expectation, and was price sensitive information discloseable by the Company under Rule 13.09(1).
- (2) The Company's obligation to publish an announcement disclosing the performance deterioration arose on 17 September 2010, when Mr Chen received the August Monthly Accounts reporting a year-to-date revenue and net profit of RMB269 million and RMB25.5 million respectively, representing a respective 35 per cent and 76.7 per cent drop compared to the corresponding period in 2009.
- (3) Further or in the alternative, the Division asserted that the disclosure obligation arose:
  - (a) On 20 October 2010, when Mr Chen received the September monthly accounts of Ausnutria China which reported year-to-date revenue and net profit of RMB351 million and RMB40.7 million, representing a respective 22.6 per cent and 61.8 per cent drop compared to the corresponding period in FY 2009.
  - (b) On 12 November 2010, when the Board was presented with the third quarter of 2010 results of Ausnutria China, which showed year-to-date revenue and net profit of RMB392 million and RMB55 million, representing a respective 13.47 per cent and 33.23 per cent drop compared to the corresponding period in 2009.
  - (c) On 17 November 2010, when Mr Chen received the October monthly accounts of Ausnutria China which recorded year-to-date revenue and net profit of RMB361 million and RMB38 million, representing a respective 24.3 per cent and 66.7 per cent drop compared to the corresponding period in 2009.
  - (d) On 18 December 2010, when Mr Chen received the November monthly accounts of Ausnutria China which recorded year-to-date revenue and net profit recorded were RMB472 million and RMB101.9 million, representing a respective 13.7 per cent and 34.3 per cent drop compared to the corresponding period in 2009.
  - (e) At the latest, on 21 January 2011, when Mr Chen received the December monthly accounts of Ausnutria China which recorded year-to-date revenue and net profit recorded were RMB541 million and RMB119.5 million, representing a respective 17.7 per cent and 33.7 per cent drop compared to 2009.
- (4) The Division asserted that the Company's publication of the PWA on 14 February 2011 was not disclosure made "*as soon as reasonably practicable*" or "*without delay*" as required by Rule 13.09(1) and Note 11(ii) to the rule.

### Breach of Rule 10.06(2)(e)

Unless otherwise stated, reference to Rule 10.06 in this News Release refers to the rule in force in 2010 and 2011.

- (5) The Division also asserted that the Company had breached Rule 10.06(2)(e) which prohibited share repurchase by the Company “*on the Exchange... after a price sensitive development has occurred...until such time as the price sensitive information is made publicly available...* ”.
- (a) The Company’s significant performance deterioration during the course of second half of 2010 was a “*price sensitive development*” which had occurred and become discloseable under Rule 13.09 on one or more of the dates referred to above. The decline in performance was however disclosed only on 14 February 2011.
- (b) By repurchasing its own shares between 3 and 28 January 2011 when the performance deterioration had yet to be disclosed, the Company breached Rule 10.06(2)(e).

### Breach of Undertakings by the Executive Directors

- (6) The Division asserted that the Executive Directors had breached their Undertakings by failing to use their best endeavours to procure the Company’s compliance with Rule 13.09(1) in that:
- (a) Having knowledge of the performance deterioration at all material times in second half of 2010 from his receipt and review of the Monthly Accounts and his attendance at the weekly management meetings of Ausnutria China, Mr Chen has failed to ensure the Company’s publication of the PWA in a timely manner.
- (b) Although Mr Wu, Ms Ng and Mr Yan might not possess the same level of knowledge about the business operations and performance of Ausnutria China compared with Mr Chen, they should nonetheless be aware of the performance deterioration no later than the November Board Meeting. Notwithstanding this knowledge, they had also failed to take steps to ensure the Company’s publication of the PWA as soon as reasonably practicable.
- (7) The Division further asserted that the Executive Directors breached their Undertakings by failing to use their best endeavors to procure the Company’s compliance with Rule 10.06(2)(e) in that they approved the Company’s share repurchase on 17 December 2010. However at the time, they should already be aware of the performance deterioration. None of them considered and discussed at any time whether a “*price sensitive development*” might have/had occurred under Rule 10.06(2)(e), in particular whether the performance deterioration constituted price sensitive development such that until its disclosure, the Company was or might have been prohibited from conducting share repurchases.

## **Settlement**

The Company and the Executive Directors do not contest the breaches asserted by the Division above and accept the sanctions and directions imposed on them by the Listing Committee as set out below.

## **Findings of breach by the Listing Committee**

On the basis of the facts and circumstances set out above and that the Company and the Executive Directors do not contest the assertions of breach made by the Division, the Listing Committee finds that:

- (1) The Company breached Rules 13.09 and 10.06(2)(e); and
- (2) Each Executive Director breached his or her Undertaking in the manner described above.

## **Regulatory concern**

The Listing Committee would stress that the Hong Kong securities market is disclosure based. Investors and shareholders rely on information in the public domain to make their investment decisions. Timely disclosure by listed issuers of relevant information about their financial performance is thus crucial to enable shareholders and investors to make informed investment decisions. The Listing Committee notes with concern that:

- (1) Shortly after listing on 8 October 2009, in the course of second half of 2010, the Monthly Accounts had reported a significant deterioration in the Company's business and financial performance: Turnover and net profit decline in the region of 13.7 per cent – 35 per cent and 33.7 per cent - 76.7 per cent respectively compared to the corresponding period in FY2009.
- (2) Unknown to the market, by 17 September 2010, the Company already had information about the significant deterioration in financial performance.
- (3) It appears that information available in the market at the relevant time (whilst offering mixed views as to the Company's future prospects and performance), could not have clearly prepared the investors and shareholders of the Company to expect significant deterioration of the magnitude as actually experienced in second half of 2010.
- (4) There was a significant delay in publishing the PWA. Investors and shareholders of the Company who traded in the Company's shares between 17 September 2010 and 14 February 2011 did so on an uninformed basis. They have been prejudiced by the failure to timely disclose the deterioration in financial performance.
- (5) Between 3 and 28 January 2011, the Company conducted share repurchase on 13 days when it was prohibited from doing so, given it had yet to disclose its performance deterioration in second half of 2010 and in turn 2010. The Company's share repurchases represented between 2.6 per cent to 25 per cent of the total trading volume on each of those 13 days.

- (6) Whilst the Company made the disclosure of the share repurchases required by the Rules, concern lingers that whilst investors and market were deprived of the crucial (negative) information of significant performance deterioration in the course of second half of 2010, the Company's share repurchases in breach of Rule 10.06(2)(e) have boosted the trading of the Company's shares and might have had the effect of supporting the share price.

The Listing Committee also concluded that the breach of Undertakings by the Directors was serious warranting public sanctions:

- (1) At the relevant time, Mr Chen was the Chief Executive Officer primarily responsible for the business operation and performance of the Group. He was the only board member who received the Monthly Accounts and he attended weekly management meetings of Ausnutria China. At all material times in second half of 2010, he had intimate knowledge of the Company's performance deterioration. Notwithstanding that knowledge, Mr Chen failed to ensure the Company's publication of the PWA as soon as reasonably practicable. Mr Chen was the most responsible among the Executive Directors for the Company's Rule 13.09 breach.

Although Mr Wu, Mr Yan and Ms Ng might not possess the same level of knowledge about the business operations and performance of Ausnutria China as Mr Chen, they were Executive Directors of the Company. The office carries responsibility for the day-to-day management and operations of the Group. In any event, they should be aware of the performance deterioration no later than at the November Board Meeting. Whilst they received Mr Chen's representations at the meeting and it may or may not be reasonable for them to rely on those representations, nonetheless with their knowledge of the performance deterioration no later than at the November Board Meeting, they should have actively followed up, made enquiries and requested updates regarding the Group's business and financial performance and considered whether a PWA was required. They did not take any steps and received Mr Chen's notification of the draft 2010 results and the 2010 net profit drop only in late January 2011.

- (2) There is nothing to suggest that all of the Executive Directors, by approving the share repurchase, were aware of the requirements of Rule 10.06(2)(e) and had taken steps to ensure that the Company's share purchases would comply with that rule.

### **Sanctions**

Accordingly, having made the findings of breach against the Company and each of the Executive Directors on the bases as stated above including that the the Company and each of the Executive Directors do not contest the breaches asserted by the Division against them, respectively, the Listing Committee:

- (1) censures the Company for its breaches of Rules 13.09 and 10.06(2)(e);
- (2) censures Mr Chen for his breach of Undertaking; and
- (3) criticises each of Mr Wu, Ms Ng and Mr Yan for their respective breaches of Undertaking.

Further, the Listing Committee directs as follows:

- (1) Trading in the Company's shares (which currently remains suspended) is not to resume unless all resumption conditions and requirements set out in the Division's letter of 26 June 2012 (as disclosed in the Company's announcement of 3 July 2012) are fulfilled to the satisfaction of the Division under Rule 2A.09(10). In particular, the Company should:
  - (a) ensure the independent professional adviser engaged by the Special Review Committee of the Company to conduct forensic audit and investigation to address all the unresolved issues raised in the letter from Ernst & Young dated 29 March 2012;
  - (b) inform the market of all information (including those matters highlighted in the letter from Ernst & Young and the findings of the independent professional adviser in this regard) that is necessary to appraise the Group's position, including their implications to the Group's assets, financial and operational position;
  - (c) publish all outstanding financial results and report, and address any concerns raised by the Company's auditors through qualifications in their audit report or otherwise; and
  - (d) demonstrate that there are no significant deficiencies in the Group's corporate governance, and that the Company has put in place adequate financial reporting procedures and internal control systems to meet obligations under the Listing Rules.
- (2) The Company appoints a Compliance Adviser for consultation on compliance with the Listing Rules for a period for two years within two weeks from the publication of the News Release. The Company is to submit the proposed scope of retainer to the Division for comment before appointment of the Compliance Adviser. The Compliance Adviser shall be accountable to the Audit Committee of the Company.
- (3) Mr Chen, Mr Wu, Mr Yan and Ms Ng who are current directors of the Company to attend 24 hours of training covering 8 core topics together with 4 hours on continuing obligations provided by the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Division, to be completed within 90 days from the publication of the News Release. The Company is to provide the Division with the training provider's written certification of full compliance with this training requirement by these directors within two weeks after their full compliance with the training requirement.
- (4) The Company is to publish an announcement to confirm that each of the directions in sub-paragraph (2) and (3) above has been fully complied with within two weeks after the respective fulfillment of each of those directions. The last announcement required to be published under this requirement is to include the confirmation that all directions in sub-paragraphs (2) and (3) above have been complied with.



- (5) The Company is to submit drafts of the announcements referred to in sub-paragraph (4) above for the Division's comment and may only publish the announcements after the Division has confirmed it has no further comment on them.

For the avoidance of doubt, the Exchange confirms that this public censure and public criticism apply only to the Company and the Executive Directors identified above and not to any other past or present members of the Board of Directors.