

香港聯合交易所有限公司

(香港交易及結算所有限公司全資附屬公司)

THE STOCK EXCHANGE OF HONG KONG LIMITED

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

THIS DISCIPLINARY ACTION underlines the importance of keeping shareholders and the public fully informed of material changes to previously approved transactions which might affect their interests. Shareholders should not be deprived of their right to receive information and to vote on matters where they are required and/or entitled to do so.

Where announcements are made, they should be clear, accurate and complete in all material respect and not misleading or deceptive to the shareholders and the public.

The decision also highlights the importance of the directors' responsibility to ensure he/she has access to all the board papers and related materials to acquire a proper and complete understanding of the issuer's operations and business.

The Listing Committee of The Stock Exchange of Hong Kong Limited ("Listing Committee")

CENSURES:

- (1) **Natural Dairy (NZ) Holdings Limited ("Company")** (Stock Code: 462) for
 - (a) failing to announce and obtain shareholders' approval in respect of a material change in the terms of a very substantial acquisition previously announced and approved by shareholders in breach of Rule 14.36 of the Rules Governing the Listing of Securities of The Stock Exchange of Hong Kong Limited ("**Listing Rules**");
 - (b) failing to ensure the Placing Announcement and the 2013 Announcement were accurate, complete and not misleading, in breach of Rule 2.13;

FURTHER CENSURES:

- (2) **Mr Wu Neng Kun ("Mr Wu")**, a former executive director ("**ED**") and former Joint Chairman of the Company;
- (3) **Mr Zhang Han Wen ("Mr Zhang")**, a former ED of the Company;

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- (4) **Mr Yao Hai Sheng (“Mr Yao”)**, a former ED of the Company;
- (5) **Mr Luo Ji (“Mr Luo”)**, a former ED of the Company for:
- (a) failing to apply such degree of skill, care and diligence required and expected of them with respect to their respective involvement, interpretation of and their treatment of the material changes to the terms of the Acquisition, in breach of Rule 3.08(f); and
 - (b) failing to use best endeavours to procure the Company’s Listing Rules compliance and to comply with the Listing Rules to the best of their ability in breach of their obligations under the Declaration and Undertaking with regard to Directors given to The Stock Exchange of Hong Kong Limited (“**Exchange**”) in the form set out in Appendix 5 to the Listing Rules (“**Undertaking**”);

AND:

- (6) **Mr Ng Chun Ming (“Mr Ng”)**, a former ED of the Company for:
- (a) failing to apply such degree of skill, care and diligence required and expected of him in the discharge of his director’s duties in breach of Rule 3.08(f); and
 - (b) failing to comply with the Listing Rules to the best of his ability in breach of his obligations under his Undertaking;

AND:

- (7) **Mr Yao** for failing to co-operate in the investigation of the Listing Department in breach of his obligations under his Undertaking;

AND CRITICISES:

- (8) **Ms Chan Wai Kay Katherine (“Ms Chan”)**, a former ED and former Chairman of the Company for:
- (a) failing to apply such degree of skill, care and diligence required and expected of her with respect to her involvement and interpretation of the Placing Agreement and her treatment of the Placing Announcement, in breach of Rule 3.08(f); and
 - (b) failing to use best endeavours to procure the Company’s Listing Rules compliance and to comply with the Listing Rules to the best of her ability in breach of her obligations under her Undertaking.

(Mr Wu, Mr Zhang, Mr Yao, Mr Luo, Mr Ng and Ms Chan are collectively referred to as “**Directors**”)

On 8 November 2016, the Listing Committee conducted a hearing into the conduct of the Company under the Listing Rules and the Directors in relation to their obligations under the Listing Rules and their respective Undertaking.

FACTS

On 8 September 2009, the Company announced, in a circular (“**Circular**”), a very substantial transaction (“**Acquisition**”) to acquire the entire issued share capital of UBNZ Assets Holdings Limited (“**Target**”) for a consideration of NZ\$500 million (“**Consideration**”).

The Circular stated the Company signed an agreement on 22 May 2009 (“**Acquisition Agreement**”), pursuant to which the Target would own 22 farm lands (“**Properties**”) and the Company would obtain from the New Zealand Overseas Investment Office (“**OIO**”) an approval for the Acquisition.

The Circular further stated the Consideration would be solely settled by, amongst other things, the funds raised from the issue of 1 billion shares through the issue of convertible bonds (“**Convertible Bonds**”).

The terms of the Acquisition, as set out in the Circular and the Acquisition Agreement, were approved by the shareholders at an extraordinary general meeting on 2 October 2009.

On 8 December 2009, the Company signed a placing agreement (“**Placing Agreement**”) and an option agreement for the purpose of issuing the Convertible Bonds. The terms of the Placing Agreement stated the funds raised from the Convertible Bonds (“**Convertible Bond Funds**”) would be applied “*to the VSA and general working capital of the Company and its subsidiaries*” (“**Change of Use**”).

On the same day, the Company issued an announcement (“**Placing Announcement**”) stating the Convertible Bond Funds “*was intended to be used for settlement of the consideration of the VSA*” without specifying the Change of Use. From December 2009 to January 2011 the Directors at the relevant times authorised HK\$805.09 million of the Convertible Bond Funds to be used as general working capital or payments for the Acquisition (other than for the payment of the Consideration), which was not approved by the shareholders (“**Non-Approved Payments**”).

On 22 December 2010, the OIO declined the Company’s application for approval of the Acquisition. The Company restructured the Acquisition (“**Restructured Acquisition**”) to avoid the need for OIO approval. The terms of the Restructured Acquisition were set out in the supplemental agreement of 8 December 2011 (“**Supplemental Agreement**”) and management agreement of 3 December 2011 (“**Management Agreement**”), pursuant to which, the consideration for the Target was reduced to NZ\$100 million and the Target was no longer required to acquire the Properties under the Supplemental Agreement. In addition, the Company would pay, on behalf of the Target, NZ\$400 million to an independent third party, Flying Max Limited, for managing and operating a dairy business under the Management Agreement (“**Revised Terms**”).

On 9 September 2013, the Company issued an announcement relating to the Supplemental Agreement and the Management Agreement (“**2013 Announcement**”).

LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee considered the written and oral submissions of the Listing Department, the Company and the Directors, and concluded:

(1) Company breached Rules 14.36 & 2.13(2)

- (a) The Revised Terms and the Change of Use constituted a material variation to the terms of the Acquisition that was subject to announcement and shareholders' approval under Rule 14.36;
- (b) The Company was obliged under Rule 14.36 to announce the Revised Terms and the Change of Use as soon as practicable as well as obtain prior shareholders' approval for the Revised Terms and the Change of Use. As the Company did not do so, it breached Rule 14.36; and
- (c) The Placing Announcement and the 2013 Announcement were inaccurate, incomplete and misleading, in breach of Rule 2.13(2).

(2) Mr Wu, Mr Zhang, Mr Yao and Mr Luo (collectively "Relevant Directors") breached Rule 3.08(f) and Undertakings

Mr Wu, Mr Zhang, Mr Yao and Mr Luo were former directors of the Company who resigned on 1 December 2016, 1 December 2016, 1 April 2014 and 2 November 2012, respectively.

Breach of Rule 3.08(f)

The Listing Committee concluded the Relevant Directors breached Rule 3.08(f) by failing to exercise skill, care and diligence reasonably required and expected of them given their knowledge, experience and position in the Company, in relation to:

- (a) their failure to understand the intention, meaning and application of the terms of the Placing Agreement and the Acquisition;
- (b) their failure to consider the application of Rule 14.36 to the Revised Terms and the Change of Use, which constituted a material variation of the terms of the Acquisition;
- (c) their failure to ensure and/or verify that the Non-Approved Payments were permitted under the terms of the Acquisition; and
- (d) the failure of Mr Wu, Mr Zhang and Mr Yao to ensure the 2013 Announcement was complete and accurate in all material aspects.

Breach of Undertakings

The Listing Committee found the Relevant Directors breached their respective Undertakings to use their best endeavours to ensure the Company's Listing Rules compliance and to comply with the Listing Rules to the best of their ability by reason of their breach of Rule 3.08(f).

(3) Ms Chan breached Rule 3.08(f) and Undertaking

Ms Chan was a former director of the Company who resigned on 25 January 2010.

Breach of Rule 3.08(f)

The Listing Committee concluded Ms Chan breached Rule 3.08(f) by failing to exercise skill, care and diligence reasonably required and expected of her given her knowledge, experience and position in the Company, in relation to:

- (a) her failure to understand the intention, meaning and application of the terms of the Placing Agreement and the Acquisition; and
- (b) her failure to ensure the Placing Announcement was complete and accurate in all material aspects.

Breach of Undertaking

The Listing Committee found Ms Chan breached her Undertaking to use her best endeavours to ensure the Company's Listing Rules compliance and to comply with the Listing Rules to the best of her ability by reason of her breach of Rule 3.08(f).

(4) Mr Ng breached Rule 3.08(f) and Undertaking

Mr Ng was a former director of the Company who resigned on 29 May 2015.

Breach of Rule 3.08(f)

The Listing Committee concluded Mr Ng breached Rule 3.08(f) by failing to exercise skill, care and diligence reasonably required and expected of him given his knowledge, experience and position in the Company, in relation to:

- (a) his failure to act in the best interest of the Company by signing documents which he did not understand; and
- (b) his failure to ensure and/or verify that the Non-Approved Payments were permitted under the terms of the Acquisition.

Breach of Undertaking

The Listing Committee found Mr Ng breached his Undertaking to comply with the Listing Rules to the best of his ability by reason of his breach of Rule 3.08(f).

(5) Mr Yao breached Co-Operation Undertaking

- (a) In the course of the Listing Department's investigation, the Exchange sent an enquiry letter to Mr Yao by post at his last known (residential) address.
- (b) Mr Yao did not respond to the Exchange's enquiry letter, despite having responded to an earlier enquiry letter issued by the Exchange.
- (c) The Listing Committee found Mr Yao failed to respond to the Exchange's enquiry without reasonable or valid reasons and therefore breached his Undertaking to co-operate with the Listing Department's investigation ("**Co-operation Undertaking**"). Such a breach will be taken into account in the Exchange's consideration of suitability of Mr Yao to be appointed as directors of listed issuers in Hong Kong in future under Rule 3.09 which requires that each director of listed issuer must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of a listed issuer.

REGULATORY CONCERNS

The Listing Committee regards the breaches in this matter serious:

- (1) The Listing Rules are designed to ensure that investors have a continued confidence in the market and they are kept fully informed by the Company. The purpose and intention of Rule 14.36 is aimed to achieve this purpose, to which, the Company has failed to do by not disclosing the material variations of the terms of the Acquisition and not allowing shareholders the opportunity to vote on the variation of the terms of the VSA that they had previously approved.
- (2) The Company failed to ensure its board of directors had a balance of skill and experience appropriate for the Company's business. In the instant case, the Company failed to ensure its Relevant Directors had the skills and experience to run the Company's business, when they admitted to relying on their own observations and discretionary judgments about the Acquisition without verifying whether their observations and judgments were in accordance with the Company's intentions (which had been approved by shareholders).
- (3) The Placing Announcement and the 2013 Announcement were incomplete, inaccurate and misleading for it failed to contain the Change of Use and proper explanation of the Restructured Acquisition, respectively. It is imperative that any announcements required under the Listing Rules comply with Rule 2.13(2) so as to provide transparency to the shareholders and the market.

- (4) Ms Chan was a key director involved in the Acquisition and the Placing Agreement. Her failure to understand the intention, meaning and application of the terms of the Placing Agreement and the Acquisition and her failure to ensure the Placing Announcement was complete and accurate in all material aspects created a knock-on effect for subsequent directors to be placed in a position of breaching the Listing Rules and their Undertakings.
- (5) The Relevant Directors' passive attitude towards properly understanding the underlying intentions of the Acquisition, and adaptation of their own observations and discretionary judgment, caused the Non-Approved Payments and the failure to identify the Revised Terms as a material variation of the terms of the Acquisition.
- (6) Mr Ng's reckless attitude in failing to understand the documents he was asked to sign undermines the principle that he is to act in the interest of the Company's shareholders as a whole.
- (7) Mr Yao made no effort to supply information and documents which the Exchange requested in discharge of its regulatory objective. The performance by a director of his Co-operation Undertaking to the Exchange underpins the Exchange's ability to regulate issuers listed on the Exchange. Failure to comply with the Exchange's requests in connection with the investigation of possible Listing Rules breaches without reasonable excuse is viewed in a very serious light.

SANCTIONS

Having made the findings of breach stated above, and having concluded the breaches are serious, the Listing Committee is highly critical of and decides to:

- (1) Censure the Company for its breach of Rules 2.13(2) and 14.36;
- (2) Censure Mr Wu, Mr Zhang, Mr Yao, Mr Luo and Mr Ng for their breach of Rule 3.08(f) and their respective Undertakings;
- (3) Censure Mr Yao for breach of his Co-operation Undertaking; and
- (4) Criticise Ms Chan for her breach of Rule 3.08(f) and her Undertaking.

The Listing Committee further directs that as a prerequisite of any further appointment as a director of any company listed on the Exchange, each of Mr Wu, Mr Zhang and Mr Luo to (a) attend 24 hours of training on the Listing Rules compliance, director's duties and corporate governance matters together with four hours on the Listing Rules Chapter 2 and Chapter 14 compliance requirements (including in particular Rules 2.13 and 14.36) (altogether 28 hours, "**Training**") provided by the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Listing Department; and (b) provide the Listing Department with the training provider's written certification of full compliance within two weeks after training completion.

For the avoidance of doubt, the Exchange confirms that the above sanctions and directions apply only to the Company and Directors and not to any other past or present members of the board of directors of the Company.

Hong Kong, 13 January 2017