

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)

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against China Bright Culture Group (Stock Code: 1859) and Two Current and Former Executive Directors

SANCTIONS AND DIRECTIONS

The Stock Exchange of Hong Kong Limited (**Exchange**)

CENSURES:

- (1) **China Bright Culture Group** (Stock Code: 1859) (**Company**);
- (2) **Mr Liu Mu (Mr Liu)**, executive director of the Company;

CRITICISES:

- (3) **Mr Xia Rui (Mr Xia)**, former executive director of the Company;

AND DIRECTS:

Mr Liu to attend 20 hours of training on regulatory and legal topics and Listing Rule compliance, including at least three hours on each of (i) directors' duties; (ii) the Corporate Governance Code; and (iii) the Listing Rule requirements for Rule 2.13 and Chapter 14 (**Training**), within 90 days; and

Mr Xia to attend the Training as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange.

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SUMMARY OF FACTS

The Company was listed on 13 March 2020, raising net proceeds of US\$107 million. AMTD Global Markets Limited (**AMTD**) acted as joint global coordinator, joint bookrunner and joint lead manager of the Company's IPO. Proceeds from placees arranged by AMTD amounted to approximately US\$70.8 million.

The Company is an independent producer of variety programs in the PRC. According to the Company's prospectus, the Company intended to apply its net IPO proceeds as follows:

- (a) 85% would be used to fund the development of pipeline programs (to be released in 2020 or 2021);
- (b) 5% would be used to expand staff levels;
- (c) 10% would be used for working capital and general corporate purposes; and
- (d) "[t]o the extent that the net proceeds... are not immediately applied to the above purposes..., we intend to deposit the net proceeds into short-term demand deposits and/or money market instruments".

On the first day of listing, the Company entered into an asset management agreement (**AMA**) with AMTD and deposited a total of US\$70.8 million into an investment portfolio account for a term of 2 years with a guaranteed 2% return per annum. The guaranteed return would not apply if all or part of the investment was withdrawn in advance. The Company paid AMTD an upfront fee of 5% of the investment amount, being a management fee of 2% per annum, plus an initial 1% fee.

The entire investment amount under the AMA was used to subscribe for a 5% promissory note (**Promissory Note**) issued by a private offshore company, L.R. Capital Property Investment Limited, which was affiliated with AMTD.

The AMA and the Promissory Note constituted a major transaction of the Company, which was subject to the announcement, circular and shareholders' approval requirements under Chapter 14 of the Listing Rules. The Company did not publish an announcement in respect of the AMA until 28 August 2020. There was no mention of the AMA or the Promissory Note in the Company's prospectus, nor did the Company publish any announcement on the change in the use of its IPO proceeds in respect of the AMA/Promissory Note arrangement.

The Company announced on 24 June 2021 that it had terminated the AMA and redeemed all investment amounts under the Promissory Note. The Company did not receive any interest or return from the AMA or the Promissory Note, which meant that the Company incurred a loss as a result of entering into the AMA/Promissory Note arrangement in the amount of the 5% fee paid to AMTD (i.e. US\$3.54 million).

Mr Liu signed the AMA and the Promissory Note on behalf of the Company. Although Mr Xia did not join the Board until June 2020, he was involved in the Company's IPO and was aware of both the AMA and the Promissory Note. There was no evidence of any consideration of (i) the Listing Rule implications of the AMA and the Promissory Note, (ii) whether the intention to enter into such an arrangement should be disclosed in the prospectus, or (iii) whether the arrangement was consistent with the Company's use of proceeds disclosure in the prospectus.

LISTING RULE REQUIREMENTS

Rule 2.13(2) provides that the information contained in any announcement or corporate communication must be accurate and complete in all material respects and not be misleading or deceptive.

Rule 3A.23 provides that during the fixed period, a listed issuer must consult with and, if necessary, seek advice from its compliance adviser on a timely basis where, *inter alia*, (a) a transaction, which might be a notifiable or connected transaction, is contemplated, or (b) the listed issuer proposes to use the proceeds of the initial public offering in a manner different from that detailed in the listing document.

Rule 14.34 provides that a listed issuer must publish an announcement as soon as possible after the terms of, *inter alia*, a discloseable or a major transaction have been finalised.

Rules 14.38A and 14.40 provide that a listed issuer which has entered into a major transaction must send a circular to its shareholders, and the transaction must be made conditional on approval by shareholders.

Appendix 16 sets out the minimum financial information that an issuer shall include in, *inter alia*, its preliminary announcements of results, interim reports, and annual reports. Paragraph 11(8) of Appendix 16 provides that, in the case of any issue for cash of equity securities, an issuer shall disclose the total funds raised from the issue and details of the use of proceeds, including whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reasons for any material change or delay in the use of proceeds.

The then prevailing Guidance Letter GL86-16 (Part I), paragraph 3.13 provides that any material change of use of proceeds is generally price sensitive and, if such information was not previously disclosed in the listing document, an applicant must make an announcement to notify investors of the change after listing.

Rule 3.08 provides that the Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. These duties include a duty to 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 issuer (Rule 3.08(f)).

Each of the Relevant Directors is subject to the obligations in the Declaration and Undertaking with regard to Directors given to the Exchange in Form B, Appendix 5 to the Listing Rules (**Directors' Undertaking**), which provides, *inter alia*, that he undertakes to comply with the Listing Rules to the best of his ability, and to use his best endeavours to procure the Company's Listing Rule compliance.

LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee was unable to accept explanations and/or submissions (both written and/or verbal) made by the Company, Mr Liu and/or Mr Xia with regard to the circumstances around the entering into of, and the commercial rationale for, the AMA/Promissory Note arrangement with AMTD. The Listing Committee found, on the basis of the submissions presented to it and without further consideration of the *bona fides* of the AMA/Promissory Note arrangement, as follows:

- (1) The Company breached Rules 3A.23, 14.34, 14.38A and 14.40. The Company admitted that it failed to comply with the announcement, circular and shareholders' approval requirements in respect of the AMA and the Promissory Note, and that it failed to consult its compliance adviser in respect of the same.
- (2) The Company breached Rule 2.13(2) by failing to disclose its intention to enter into the AMA and/or the acquisition of the Promissory Note in its prospectus; or alternatively, the Company failed to disclose a change in the use of its IPO proceeds with reference to the provisions of Guidance Letter GL86-16 (Part I).
- (3) The Company breached paragraph 11(8), Appendix 16 to the Listing Rules. The Company admitted that it failed to reflect the change in use of IPO proceeds in its 2020 annual results announcement, 2020 annual report, and 2021 interim results announcement.

(4) Mr Liu breached Rule 3.08 and his Directors' Undertaking, as he admitted, by failing to:

- (i) procure the Company's compliance with the Listing Rules in respect of the AMA and the Promissory Note, in particular, to ensure that the Company's use of its IPO proceeds was consistent with the use of proceeds disclosed in the Company's prospectus and/or to procure the Company's compliance with the disclosure requirements under Rule 2.13(2) and paragraph 11(8) of Appendix 16 to the Listing Rules;
- (ii) ensure that there was a proper commercial rationale for the Company's intended investment in the AMA and the Promissory Note; and
- (iii) procure the Company to consult its compliance adviser or other professional advisers in respect of the Company's intended investment in the AMA and Promissory Note, and to ensure that there was proper consideration of the same by the Board.

(5) Mr Xia breached Rule 3.08 and his Directors' Undertaking, as he admitted, by failing to:

- (i) consider the Company's compliance with the Listing Rules in respect of the AMA and the Promissory Note after he joined the Board in June 2020;
- (ii) procure the Company to consult its compliance adviser or other professional advisers in respect of the AMA and the Promissory Note, and to bring the AMA and the Promissory Note to the attention of the other directors; and
- (iii) procure the Company's compliance with the disclosure requirements under paragraph 11(8) of Appendix 16 to the Listing Rules.

CONCLUSION

The Listing Committee decided to impose the sanctions and directions set out in this Statement of Disciplinary Action.

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

Hong Kong, 21 November 2022