

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)

**Compliance with the requirement to obtain the auditor's agreement before publication of the preliminary results announcement ensures that such announcements contain accurate and reliable financial information necessary for the investing public to make adequately informed investment decisions.**

**Compliance with the connected transactions requirements in the Exchange Listing Rules allows independent shareholders to vote on transactions which require their approval, and is crucial to market integrity and investors' confidence in our securities market. Thus, it is imperative for issuers and directors to take steps to implement and maintain adequate and effective internal controls for procuring such compliance with the Exchange Listing Rules.**

**Directors are ultimately responsible for the Company's compliance with the Exchange Listing Rules. Over-reliance on one individual to procure the Company's Exchange Listing Rule compliance, without regular supervision and/or proper reporting to the board, is insufficient to discharge each director's own duty to use their best endeavours to ensure that the Company has adequate and effective internal controls.**

**The Listing Committee of the Exchange ("Listing Committee")**

#### **CENSURES:**

- (1) **Yorkshine Holdings Limited** (previous Stock Code: 1048) (the listing of the Company's shares on the Exchange was cancelled with effect from 27 December 2019 under Rule 6.01A) ("**Company**"),

for (i) breaching Rule 13.49(2) of the *Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited* ("**Exchange Listing Rules**") by failing to seek its auditor's agreement prior to the publication of the Company's preliminary announcement of annual results for the year ended 30 April 2016; and (ii) for breaching Rules 14.34, 14A.34, 14A.35, 14A.36, 14A.39, 14A.46, 14A.49, 14A.53, 14A.55, 14A.56 and 14A.57 of the Exchange Listing Rules by failing to comply with the relevant requirements for discloseable and/or continuing connected transactions;

#### **FURTHER CENSURES:**

- (2) **Mr Chow Kin Wa** ("**Mr Chow**"), former executive director ("**ED**") and Chief Executive Officer of the Company; and
- (3) **Mr Yu Wing Keung Dicky** ("**Mr Yu**"), former ED and Chairman of the Company,

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for breaching (i) Rule 3.08(f), (ii) their obligations under the *Declaration and Undertaking with regard to Directors* given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (the “**Undertaking**”) to comply with the Exchange Listing Rules to the best of their ability, and (iii) their Undertakings to use their best endeavours to ensure the Company’s compliance with the Exchange Listing Rules and that the Company had adequate and effective internal controls;

## AND:

(4) **Mr Foo Teck Leong (“Mr Foo”)**, former independent non-executive director (“**INED**”) of the Company, and

(5) **Mr Tang Chi Loong (“Mr Tang”)**, former INED of the Company,

for breaching their obligations under their Undertakings to use their best endeavours to ensure that the Company had adequate and effective internal controls.

## AND CRITICISES:

(6) **Mr Chow Kin San**, former ED of the Company,

for breaching his obligations under his Undertaking to use his best endeavours to ensure that the Company had adequate and effective internal controls.

(The directors identified at (2) to (6) above are collectively referred to as the “**Directors**”.)

For the avoidance of doubt, the Exchange confirms that the sanctions and directions in this news release apply only to the Company and the Directors, and not to any other past or present members of the board of directors (“**Board**”) of the Company.

## HEARING

On 13 March 2019, the Listing Committee conducted a hearing into the conduct of, among others, the Company and the Directors in relation to their obligations under the Exchange Listing Rules and the Undertakings.

On 14 October 2019, the Listing Committee conducted a disciplinary (review) hearing on the applications by, among others, Mr Foo, Mr Tang and Mr Chow Kin San for a review of the decisions of and the sanctions imposed by the Listing Committee at first instance (the “**Disciplinary (Review) Hearing**”). The Disciplinary (Review) Hearing was adjourned and reconvened on 13 December 2019.

## FACTS

This news release concerns two separate cases involving breaches of the Exchange Listing Rules by the Company, being:

- (a) Case 1 – The Company published its unaudited final results for the year ended 30 April 2016 on 29 June 2016 (“**2016 Results Announcement**”). Rule 13.49(2) requires that the preliminary announcement of annual results shall have been agreed with the Company’s auditors. The Company admitted that it breached Rule 13.49(2) of the Exchange Listing Rules in respect of the 2016 Results Announcement.
- (b) Case 2 – The Company’s subsidiary (“**Tianjin Shifa**”) entered into certain transactions with a connected party (“**Wanshida**”) during the financial years ended 30 April 2014, 30 April 2015 and 30 April 2016 (“**Transactions**”). The Transactions were subject to Chapters 14 and 14A of the Exchange Listing Rules. The Company admitted that it failed to comply with the annual review, reporting, announcement and independent shareholders’ approval requirements of the Exchange Listing Rules in respect of the Transactions.

The Company admitted that its breaches of the Exchange Listing Rules in respect of Case 2 were due to internal control deficiencies at the relevant time. The Company submitted that there were no written internal control policies in relation to compliance with Chapters 14 and 14A of the Exchange Listing Rules, and that it did not maintain a list of connected parties.

Mr Chow and Mr Yu were both on the board of Tianjin Shifa and were aware that Wanshida was a connected party. By June 2014, both Mr Chow and Mr Yu were aware that the Transactions had possibly breached the Exchange Listing Rules, but they did not take any action or raise this with the rest of the Board. This resulted in the Company’s continued breaches of the Exchange Listing Rules in respect of the Transactions. Mr Yu admitted that he breached his Undertaking to ensure the Company’s Exchange Listing Rule compliance. Both Mr Chow and Mr Yu admitted that there were internal control deficiencies which led to the Company’s breaches.

Mr Chow Kin San placed excessive reliance on other members of the Board and the chief financial officer / company secretary of the Company (“**CFO/Company Secretary**”) to procure the Company’s compliance with the Exchange Listing Rules. Mr Foo and Mr Tang as members of the audit committee of the Company, did not take adequate steps to review the Company’s internal control system, or to ensure that the Company’s internal control procedures were being followed and regularly updated.

### **Exchange Listing Rule Requirements**

In respect of Case 1, the 2016 Results Announcement was subject to Rule 13.49(2) of the Exchange Listing Rules, which requires that the preliminary announcement of annual results shall have been agreed with the Company’s auditors.

In respect of Case 2, the Transactions were subject to the following requirements of the Exchange Listing Rules:

- (a) Rule 14.34 provides that a listed issuer must inform the Exchange and publish an announcement as soon as possible after the terms of, *inter alia*, a discloseable or a major transaction have been finalised.
- (b) Rule 14A.34 provides that a listed issuer’s group must enter into a written agreement for a connected transaction.
- (c) Rule 14A.35 provides that a listed issuer must announce a connected transaction as soon as practicable after its terms have been agreed.

- (d) Rules 14A.36, 14A.39 and 14A.46 provide that (i) a connected transaction must be conditional upon shareholders' approval at a general meeting held by the listed issuer, (ii) the listed issuer must set up an independent board committee and appoint an independent financial adviser, and (iii) a circular must be issued to shareholders.
- (e) Rule 14A.49 provides that a listed issuer must disclose its connected transactions conducted during the financial year in its annual report.
- (f) Rules 14A.53, 14A.55, 14A.56 and 14A.57 set out the requirements for continuing connected transactions, including an annual cap, review by INEDs, engaging auditors to report on the continuing connected transactions, and providing a copy of the auditors' letter to the Exchange.

Rule 3.08 provides that the Exchange expects the directors 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 include duties 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 listed issuer (Rule 3.08(f)).

The Directors were under the obligations, pursuant to their respective Undertakings, to comply to the best of their ability with the Exchange Listing Rules and to use their best endeavours to procure the Company's compliance with the Exchange Listing Rules, and to ensure that the Company had adequate and effective internal controls.

## **LISTING COMMITTEE'S FINDINGS OF BREACH**

The Listing Committee considered the written and oral submissions of the Division, the Company and the Directors and concluded as follows:

### **Company's breaches**

The Listing Committee noted that the Company admitted that it breached Rule 13.49(2) in respect of Case 1, and Rules 14.34, 14A.34, 14A.35, 14A.36, 14A.39, 14A.46, 14A.49, 14A.53, 14A.55, 14A.56 and 14A.57 in respect of Case 2, and found that the Company did breach these Rules.

### **Directors' breaches**

The Listing Committee concluded that:

- (a) Mr Chow and Mr Yu breached (i) Rule 3.08(f), (ii) their Undertakings to comply with the Exchange Listing Rules to the best of their ability, and (iii) their Undertakings to use their best endeavours to procure the Company's compliance with the Exchange Listing Rules (these breaches were admitted by Mr Chow and Mr Yu):
  - (i) Mr Chow admitted that he was aware of the Transactions and that Wanshida was a connected party. However, he failed to take any steps to ensure that the Company complied with the Exchange Listing Rules at the time of the Transactions.

- (ii) The evidence showed that, by June 2014, Mr Chow and Mr Yu were both aware of the potential breaches of the Exchange Listing Rules as a result of the Transactions. They did not take any action to consider the implications of the Company's breaches, or to ensure that the Company did not continue to breach the relevant Exchange Listing Rules. They did not discuss the Transactions with the rest of the Board, nor did they seek advice from professional parties. This resulted in the Company's continued breaches of the Exchange Listing Rules, and demonstrated a disregard for compliance with the same.
- (b) The Directors breached their respective Undertakings for failing to use their best endeavours to ensure that the Company had adequate and effective internal controls (this was admitted by Mr Chow and Mr Yu):
- (i) There was conflicting evidence about the existence of written internal control procedures on compliance with Chapters 14 and 14A of the Exchange Listing Rules. Regardless of whether written internal control procedures existed, these were clearly not implemented, followed, updated or even communicated to staff, given that the Company and most of the Directors were not aware of the existence of the same. None of the Directors demonstrated that they took an active role in implementing, reviewing and monitoring the effectiveness of the Company's internal control procedures, whether written or otherwise.
  - (ii) Even Mr Chow Kin San, who submitted that written internal control procedures existed, took no steps to ensure that these were properly implemented and updated.
  - (iii) The evidence showed that the Directors placed excessive reliance on the CFO/Company Secretary to procure the Company's compliance with the Exchange Listing Rules, and there was no evidence of any supervision and/or regular reporting to the Board. Delegation did not absolve directors from their duty to supervise the discharge of the delegated functions, for which they, collectively and individually, retained ultimate responsibility.

At the Disciplinary (Review) Hearing, the Listing Committee on review considered that Mr Foo and Mr Tang also breached their respective Undertakings for failing to use their best endeavours to ensure that the Company had adequate and effective, in that although the 2016 Annual Report expressly contained a note that Tianjin Shifa had made an interest-free advance of approximately US\$5.6 million to a related party during that financial year, Mr Foo (the chairman of the audit committee) and Mr Tang (a member of the audit committee) both failed to identify the connected transactions or raise queries about the large advance. The Listing Committee on review noted that the Division in fact made enquiries about the advance after the 2016 Annual Report was published on 30 August 2016.

The Listing Committee on review decided to uphold the decision of the Listing Committee at first instance that Mr Chow Kin San, Mr Foo and Mr Tang breached their respective Undertakings for failing to use their best endeavours to ensure that the Company had adequate and effective internal controls. The Listing Committee on review: (i) endorsed the sanction of public statement which involves criticism imposed on Mr Chow Kin San; and (ii) imposed a public censure and directors' training on Mr Foo and Mr Tang as set out below.

**REGULATORY CONCERN**

This case reveals a serious concern over the Company's corporate governance, the Directors' ability to procure the Company's Exchange Listing Rule compliance, and the adequacy and effectiveness of the Company's internal control system in relation to compliance with Chapters 14 and 14A of the Exchange Listing Rules.

In Case 1, the Company's failure to comply with Rule 13.49(2) of the Exchange Listing Rules arose from the Directors' misunderstanding of the requirements of Rule 13.49(2). The rationale behind Rule 13.49(2) is to ensure that the preliminary results announcement published by listed issuers contain accurate and reliable financial information.

In Case 2, the Company's failure to comply with Chapters 14 and 14A of the Exchange Listing Rules in relation to the Transactions were attributable to (i) Mr Chow's and Mr Yu's conduct, and (ii) the Company's internal control deficiencies. The Company's breaches of disclosure obligations, announcement and shareholders' approval requirements in Case 2 deprived the Company's investors and shareholders of their timely receipt of information in relation to the Transactions, and for shareholders, their right to vote on those Transactions. As a consequence, the rights and interests of the shareholders of the Company had been prejudiced.

The evidence in this case suggested there were internal control deficiencies and over-reliance on the CFO/Company Secretary by the Directors, which contributed in part to the Company's breaches of the Exchange Listing Rules. An adequate and effective internal control system includes the proper implementation of the relevant procedures, which is fundamental in ensuring the Company's compliance with the Exchange Listing Rules.

The Listing Committee is concerned about Mr Chow and Mr Yu's failure to take action to ensure the Company's compliance with the Exchange Listing Rules, particularly after they became aware that the Transactions had possibly breached the Exchange Listing Rules. This illustrates a disregard for compliance on the part of Mr Chow and Mr Yu.

**SANCTIONS AND DIRECTIONS**

Having made the findings of breach stated above, the Listing Committee decided to:

- (1) censure the Company for its breach of Rule 13.49(2) in respect of Case 1 and Rules 14.34, 14A.34, 14A.35, 14A.36, 14A.39, 14A.46, 14A.49, 14A.53, 14A.55, 14A.56 and 14A.57 in respect of Case 2;
- (2) censure Mr Chow and Mr Yu for their breach of Rule 3.08(f) and their respective Undertakings;
- (3) censure Mr. Foo and Mr. Tang for their breach of their respective Undertakings;
- (4) criticise Mr Chow Kin San for his breach of the Undertaking.

The Listing Committee further directed:

- (5) as a pre-requisite of any future appointment as a director of any company listed on the Exchange, each of Mr Foo and Mr Tang, who is not currently a director of any company listed on the Exchange to (a) attend 40 hours of training on Exchange Listing Rule compliance and director's duties, of which not less than 20 hours of training on the requirements under the Exchange Listing Rules in respect of director's duties and corporate governance (the "Training"), to be provided by institutions such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Division. The Training is to be completed before the effective date of any such appointment; and (b) to provide the Division with the Training provider's written certification of full compliance; and
- (6) following the publication of this news release, any changes necessary and any administrative matters which may emerge in the management and operation of the directions set out in paragraph (5) above are to be directed to the Division for consideration and approval. The Division should refer any matters of concern to the Listing Committee on review for determination.

Hong Kong, 27 February 2020