

## Executive Statement

27 November 2013

### The Takeovers Executive of the SFC sanctions Daqing Dairy Holdings Limited and its directors for failure to issue an offeree circular to its shareholders

#### Sanctions

1. The SFC announces today that the following disciplinary action has been taken against Daqing Dairy Holdings Limited (“**Daqing Dairy**”) and its directors, Mr Wang De Lin (“**Mr Wang**”) and Mr Stephen Chiang Chi Kin (“**Mr Chiang**”) for breaching the Code on Takeovers and Mergers (“**Takeovers Code**”):
  - (a) The Executive has imposed an order denying Mr Wang direct or indirect access to the Hong Kong securities markets (a “**Cold Shoulder Order**”) for 24 months commencing on 28 November 2013 to 27 November 2015.
  - (b) The Executive also publicly censures Daqing Dairy, Mr Wang and Mr Chiang in relation to their conduct in this matter.
2. At all relevant times, Mr Wang and Mr Chiang were respectively Daqing Dairy’s only executive director and only independent non-executive director.

#### Background and key facts

3. Daqing Dairy’s shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited. Daqing Dairy is principally engaged in the production, marketing and sales of dairy products and the operation and management of ecological farm and related business in the PRC. Trading of its shares has been suspended since 22 March 2012 due mainly to its failure to publish the financial results for the year ended December 2011 and subsequent periods.
4. On 18 April 2013, Daqing Dairy announced jointly with Radiant State Limited (“**Offeror**”) that the Offeror had acquired a 52.16% interest in Daqing Dairy from its former controlling shareholder, Mr Zhao Yu and that the Offeror would make a general offer for the shares in Daqing Dairy pursuant to Rule 26.1 of the Takeovers Code. Both the Offeror and Daqing Dairy stated their intention to despatch the offer document and the offeree board circular separately.
5. After the publication of the joint announcement, the Executive repeatedly reminded the board about the requirements to despatch the offeree board circular within the timetable set out in Rule 8.4 of the Takeovers Code and urged the board to do everything necessary to meet the despatch deadline.
6. On 9 May 2013, the Offeror announced a delay in despatch of the offer document to on or before 8 June 2013.
7. On 7 June 2013, the Offeror despatched the offer document. According to the timetable set out in the offer document, the offer was due to close on 5 July 2013.
8. On 25 June 2013, Daqing Dairy announced that it had failed to despatch the offeree board circular by the deadline of 21 June 2013 imposed by Rule 8.4 of the Takeovers Code due to “*the lack of financial and staff resources*”. Daqing Dairy stated that it had only been able to confirm the engagement of a financial adviser

and legal adviser but had yet to engage an independent financial adviser and other professional advisers to collate and compile the relevant information to be set out in the offeree board circular.

9. On 27 June 2013, Daqing Dairy announced the appointment of the independent financial adviser. It stated that the offeree board circular was expected to be despatched on or before 2 July 2013.
10. On 2 July 2013, Daqing Dairy announced that no offeree board circular would be issued, due to “insufficient time” to compile updated financial information for the period since 30 June 2011.
11. On 5 July 2013, the Offeror announced the close of the general offer.

### **Relevant provisions under the Takeovers Code**

12. Rule 8.4 of the Takeovers Code requires that:

#### *“8.4 Timing and contents of offeree board circular*

*The offeree company should send to its shareholders within 14 days of the posting of the offer document a circular containing the information set out in Schedule II, together with any other information it considers to be relevant to enable its shareholders to reach a properly informed decision on the offer. The Executive’s consent is required if the offeree board circular may not be posted within this period. Such consent will only be given if the offeror agrees to an extension of the first closing date (see Rule 15.1) by the number of days in respect of which the delay in the posting of the offeree board circular is agreed. If such consent is granted, the time restrictions under Rules 15.4, 15.5 and 16 will be extended by the same number of days. In that case the offer should be kept open for at least 14 days after despatch of the delayed offeree board circular to allow shareholders sufficient time to consider the offeree board circular.*

*The offeree board circular must include the views of the offeree company’s board or its independent committee on the offer and the written advice of its financial adviser as to whether the offer is, or is not, fair and reasonable and the reasons therefor. Reference is made in this regard to Rule 2. If the offeree company’s financial adviser is unable to advise whether the offer is, or is not, fair and reasonable the Executive should be consulted.*

*Note to Rule 8.4:*

#### *Preparation of circular*

*It is the responsibility of the offeree company’s board and its advisers to start preparation of the offeree board circular as soon as an offer is announced so as to minimise the possibility of any delay in meeting this timetable. If the offeree company’s board considers that all the information required may not be available in time, it must consult the Executive immediately. In any event the Executive will require that, within this timetable, a circular is sent to the shareholders of the offeree company containing all the information available at that time with a clear statement of the information not available, the reasons for the delay in producing it and when it will be available.”*

13. The purpose of Rule 8.4 is to give shareholders of an offeree company sufficient information, advice and time to consider an offer. It reflects General Principle 5 of the Takeovers Code which provides that shareholders should be given sufficient information, advice and time to reach an informed decision on an offer. To minimise the possibility of any delay in meeting the 14-day requirement, the Note to Rule 8.4 stipulates that it is the responsibility of the offeree company's board and its advisers to start preparation of the offeree board circular as soon as an offer is announced.
14. The failure to despatch the offeree board circular within the time prescribed in Rule 8.4 prejudiced the interests of Daqing Dairy's shareholders as well as the investing public. As Daqing Dairy failed to provide its shareholders with its latest corporate and financial information, the board's recommendation and the advice of an independent financial adviser with respect to the general offer as required by the Takeovers Code, shareholders were unable to reach a properly informed decision on the general offer as envisaged by the Takeovers Code.

### **Sanctions against Daqing Dairy and its directors**

15. The Executive has carefully considered the evidence in this case and Mr Wang's and Mr Chiang's representations. Both Daqing Dairy and its directors, namely Mr Wang and Mr Chiang, accept that they have breached Rule 8.4 of the Takeovers Code as described. Their non-compliance constitutes a breach of a fundamental provision of the Takeovers Code which is designed to protect the investing public. They have agreed to the disciplinary action taken against them under section 12.3 of the Introduction to the Takeovers Code.
16. The Executive is imposing more severe sanctions against Mr Wang to reflect his overall role in causing the breach of Rule 8.4 of the Takeovers Code. At all relevant times, Mr Wang was the only executive director of Daqing Dairy. He had a clear responsibility to ensure that Daqing Dairy fully complied with the Takeovers Code. Despite repeated requests by the Executive to do so, Daqing Dairy failed to issue an offeree board circular to shareholders in respect of the general offer.
17. In arriving at the sanctions against Mr Chiang, the Executive has taken into consideration Mr Chiang's overall role as the only independent non-executive director of Daqing Dairy. Mr Chiang submitted that as an independent non-executive director, he was not involved in the daily operations of Daqing Dairy and was not in a position to influence the executive functions and decisions of the board. The sanction against Mr Chiang reflects his role in the breach. Whilst Mr Chiang states that he reminded the board of the need to comply with the relevant requirements following the receipt of a letter from the Executive dated 5 June 2013, he failed to take sufficient action to ensure that the offeree board circular was issued in compliance with Rule 8.4.
18. The Executive takes this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers and mergers in accordance with the Takeovers Code. If they do not, they may find by way of sanction, that the facilities of such markets are withheld in order to protect those who participate in Hong Kong's securities markets.

Ends

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## SECURITIES AND FUTURES COMMISSION

### Order pursuant to section 12 of the Introduction to the Hong Kong Codes on Takeovers and Mergers and Share Repurchases

#### Mr Wang De Lin

The Executive Director of the Corporate Finance Division of the SFC ("Executive Director") hereby **REQUIRES** that all licensed corporations, licensed representatives and registered institutions within the meaning of the Securities and Futures Ordinance (Cap. 571) and relevant individuals within the meaning of section 20(10) of the Banking Ordinance (Cap. 155) shall not, without the prior consent of the Executive in writing:

- act or continue to act directly or indirectly in their capacity as licensed corporations, licensed representatives and registered institutions or relevant individuals for Mr Wang De Lin or any corporation controlled by him (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Repurchases); or
- knowingly assist directly or indirectly in a breach of this Order;

during the period commencing on 28 November 2013 and ending on 27 November 2015.

BY ORDER

Brian Ho

Executive Director

27 November 2013