

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against Agritrade Resources Limited
(Delisted, Previous Stock Code: 1131) and five directors

SANCTIONS AND DIRECTIONS

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

CENSURES:

- (1) **Agritrade Resources Limited** (Delisted, previous stock code: 1131) (**Company**, together with its subsidiaries, **Group**);

IMPOSES A PREJUDICE TO INVESTORS' INTERESTS STATEMENT against:

- (2) **Mr Ashok Kumar Sahoo**, former executive director (**ED**) and chief financial officer (**CFO**) of the Company (**Mr Sahoo**);
- (3) **Mr Ng Say Pek**, former ED and Chairman of the Company (**Mr Ng SP**);
- (4) **Ms Lim Beng Kim Lulu**, former ED of the Company (**Ms Lim**);
- (5) **Mr Cheng Yu**, independent non-executive director (**INED**) of the Company (**Mr Cheng**);

AND CENSURES:

- (6) **Mr Ng Xin Wei**, former ED and chief executive officer of the Company (**Mr Ng XW**).

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

The statements made in respect of Mr Sahoo, Mr Ng SP, Ms Lim and Mr Cheng are made in addition to a public censure against them. The Prejudice to Investors' Interests Statement is a statement that, in the Exchange's opinion, (a) had Mr Sahoo, Mr Ng SP and Ms Lim remained on the board of directors of the Company, the retention of office by them would have been prejudicial to the interests of investors; and (b) the retention of office by Mr Cheng is prejudicial to the interests of investors.

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AND FURTHER DIRECTS:

Mr Ng XW to attend 15 hours of training on regulatory and legal topics and Listing Rule compliance, as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange. The training must include at least three hours on each of (i) directors' duties and (ii) the Corporate Governance Code.

SUMMARY OF FACTS*Relevant Transactions*

In November 2018, a wholly-owned subsidiary of the Company (**Entwickeln**) acquired a company in India (**SKS**). At the time, SKS owned a thermal power plant in India, which was valued at around US\$521 million (approximately HK\$4.09 billion). The acquisition was completed in March 2019.

Between August 2019 and March 2020, unbeknown to the board of directors (**Board**) of the Company, the following transactions (**Relevant Transactions**) were carried out by Entwickeln and/or SKS:

- (1) In August 2019, via a securities purchase agreement (**Securities Purchase Agreement**), Entwickeln sold compulsorily convertible debentures in SKS to a company outside the Group which was beneficially owned by Mr Sahoo and his wife (**BGML**). At the time, if converted into shares, the compulsorily convertible debentures would constitute approximately 15 per cent of SKS's shareholding, with a value of approximately US\$75 million (approximately HK\$585 million) based on SKS's valuation of US\$521 million. The consideration payable by BGML for the compulsorily convertible debentures was INR7,500,000 (equivalent to approximately US\$100,000).

Further, it appeared from available records, that in or around the time of the Securities Purchase Agreement, a sum of US\$100,000 was transferred by a wholly-owned subsidiary of the Company to BGML (**Transfer**). The Transfer was effected by a blank fund transfer form signed by Mr Ng XW with the payment details (payee and transfer amount) subsequently inserted by Mr Sahoo.

- (2) In August 2019, SKS, BGML, Entwickeln and others entered into a shareholders' agreement, under which BGML was entitled to appoint directors to the board of directors of SKS and exercise powers of veto in respect of various matters concerning the management and corporate actions of SKS. The Articles of Association of SKS were amended in February 2020 to give effect to the rights granted to BGML.

- (3) In February 2020, the board of directors of SKS resolved to issue and allot up to 8,400,000 of its shares to BGML at INR15 per share for an aggregate amount of US\$3 million by way of private placement. After this was approved in the general meeting, in March 2020, 57,537 new shares in SKS (representing approximately 0.1 per cent of its entire shareholding) were allotted to BGML for INR1,438,425 (equivalent to around US\$19,000) (**Share Issue**).

On 24 February 2020, Mr Sahoo tendered his resignation as a director and the CFO of the Company.

The Relevant Transactions were discovered by the Board in around April 2020. They were announced by the Company on 3 August 2020. In the announcement, the Company also accepted that the Securities Purchase Agreement constituted a discloseable and connected transaction of the Company, and that the Share Issue constituted a connected transaction for the Company. The Securities Purchase Agreement was subject to announcement, circular and independent shareholders' approval requirements, and the Share Issue was subject to announcement and written agreement requirements. The Company did not comply with these requirements under the Listing Rules.

Publication and despatch of the FY19/20 Annual Results and Report

The Company failed to publish its annual results and despatch its annual report for the financial year ended 31 March 2020 (**FY19/20 Annual Results and Report**) on 30 June 2020 and 31 July 2020 respectively. As a result of the delay in publication, trading in the Company's shares was suspended on 2 July 2020.

The Company was delisted on 31 January 2022, following the Company's continued inability to fulfill the resumption guidance and resume trading. The FY19/20 Annual Results and Report remain outstanding.

LISTING RULE REQUIREMENTS

Under Rule 13.49(1) and 13.46(2)(a), the Company was required to publish and despatch its FY19/20 Annual Results and Report by 30 June and 31 July 2020 respectively.

Rule 14.34 requires the Company to publish an announcement as soon as possible after the terms of a discloseable transaction have been finalised.

Rule 14A.34 requires the Company to enter into a written agreement for a connected transaction.

Rule 14A.35 requires the Company to publish an announcement as soon as practicable after the terms of a connected transaction have been agreed.

Rule 14A.36 provides that a connected transaction must be conditional on independent shareholders' approval at a general meeting held by the Company.

Rule 14A.46 provides, amongst other things, that the Company must send a circular to its shareholders at the same time or before the listed issuer gives notice of the general meeting if the connected transaction is to be approved by shareholders in a general meeting.

Under Rules 3.08, 3.16 and 13.04, the board of directors is collectively responsible for the issuer's management and operations, and the directors are collectively and individually responsible for the listed issuer's compliance with the Listing Rules.

Rule 3.08 provides that the Exchange expects 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. Amongst other things, directors are required to act honestly and in good faith in the interests of the company as a whole, avoid conflicts of interest and duty, and apply such degree of skill, care and diligence as may reasonably be expected of a person of his/her knowledge and experience and holding his/her office within the issuer.

Pursuant to the Declaration and Undertaking with regard to Directors in the form set out in Appendix 5B to the Listing Rules (**Director's Undertaking**), each director is required to, amongst others,

- (a) comply to the best of his/her ability with the Listing Rules;
- (b) use his/her best endeavours to procure the company to comply with the Listing Rules;
- (c) cooperate in any investigation conducted by the Division; and
- (d) keep the Exchange informed of his/her up-to-date contact information for a period of 3 years after the cessation of office.

LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee found as follows:

- (1) The Company breached Rules 13.49(1) and 13.46(2)(a) by failing to publish and despatch its FY19/20 Annual Results and Report by the relevant deadlines. The Company had the financial resources to settle the fees of its auditor for the audit carried out for the financial year ended 31 March 2019, but failed to do so.
- (2) The Company breached Rules 14.34, 14A.34, 14A.35, 14A.36 and 14A.46 in respect of the Securities Purchase Agreement and Share Issue.
- (3) The Relevant Directors breached Rule 3.08 and/or their Director's Undertakings.
 - (a) Mr Sahoo was a director of SKS, Entwickeln and the Company. His family and friends were appointed to the board of directors of SKS/Entwickeln upon his recommendations. Mr Sahoo and his appointees signed the documents for the Relevant Transactions on behalf of SKS, Entwickeln and/or BGML. The Relevant Transactions were prejudicial to the commercial interest of the Company. In particular, the consideration paid by BGML (which was beneficially owned by Mr Sahoo and his wife) for the stake in SKS under the Securities Purchase Agreement was at a steep discount. In light of the above, Mr Sahoo knowingly put himself into a position of conflict between his personal interests and his duty to act in the best interests of the Company and the Group companies as required under Rule 3.08. Further, Mr Sahoo failed to disclose the Relevant Transactions to the Board, and failed to take steps to procure the Company's compliance with the Listing Rules in respect of the Relevant Transactions (which were subject to the Listing Rule requirements). The failure of Mr Sahoo was wilful and persistent, and warrants a Prejudice to Investors' Interests Statement.

- (b) Mr Ng XW was a director of SKS as well as the Company. He was appointed to the board of directors of SKS to monitor the power plant operation in India on behalf of the Company and provide a check and balance for the exercise of power by Mr Sahoo. He failed to discharge his duty in this respect. The evidence showed that Mr Ng XW failed to take an active interest in the affairs of SKS. He did not have any meaningful participation in the board of directors of SKS, and had wholly relied on Mr Sahoo to supervise the power plant project. Although it appeared that Mr Ng XW did not attend the relevant board meetings of SKS in which the Relevant Transactions were considered and approved, it was noted that information about the Securities Purchase Agreement was recorded in the draft minutes of meetings of the board of directors of SKS, which were circulated to him in around June and August 2019. However, Mr Ng XW did not pay attention to the documents sent to him, and failed to raise objections in a timely manner. His signing of the blank transfer application form in relation to the Transfer also exposed the Group's assets to unnecessary risk and demonstrated his lack of corporate governance awareness. Further, given Mr Ng XW's above supervisory role in SKS, his action was primarily responsible for the Company's internal control inadequacies relating to the lack of check and balance of the exercise of power by Mr Sahoo, and fell below the standard of a reasonable director.
- (c) Mr Ng SP, Ms Lim and Mr Cheng breached their Director's Undertakings to cooperate in the Exchange's investigation and/or to keep the Exchange informed of their up-to-date contact information (as the case may be). Their breaches were wilful and/or persistent, and warrant a Prejudice to Investors' Interests Statement.

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 and the Relevant Directors, and not to any other past or present members of the board of directors of the Company.

Hong Kong, 16 January 2023