Regulatory Action

16 June 2023

SGX RegCo reprimands former directors of Nutryfarm International Limited, Cheng Meng, Terence Luk Chung Po, Ng Poh Khoon Jimmy, Neo Chee Beng, Lee Pih Peng, Levin Lee Keng Weng and Low Chin Parn Eric

Public Reprimand: Breach of Listing Rule

1. Pursuant to Listing Rule 1405(3)(c)(ii), Singapore Exchange Regulation ("**SGX RegCo**") exercises its direct enforcement powers and reprimands the former directors of Nutryfarm International Limited[1] (the "**Company**"):

   a. Mr. Cheng Meng, former Executive Director and Chief Executive Officer;
   b. Mr. Terence Luk Chung Po, former Non-Executive Chairman;
   c. Mr. Ng Poh Khoon Jimmy, former Non-Executive and Non-Independent Director;
   d. Mr. Neo Chee Beng, former Non-Executive and Non-Independent Director;
   e. Ms. Lee Pih Peng, former Non-Executive Independent Director;
   f. Mr. Levin Lee Keng Weng, former Executive Director; and
   g. Mr. Low Chin Parn Eric, former Non-Executive Independent Director

   (collectively, the "**Former Directors**"),

   for breaching Listing Rule 703(1)(b) read with paragraph 4 of Appendix 7.1.

2. On 10 January 2022, following a fall of 36.4% (from S$0.220 to S$0.140) in the Company's share price and increased traded volume of 221%, SGX RegCo issued a trading query to the Company (the "**Trading Query**") to inquire, amongst others, the following:

   (a) "*Are you (the issuer)* ***aware of any information not previously announced*** *concerning you, your subsidiaries or associated companies,* ***which if known, might explain the trading****? Such information may include events that are potentially material and price-sensitive, such as discussions and negotiations that may lead to joint ventures, mergers, acquisitions or purchase or sale of a significant asset.*"; and

   (b) *"Are you aware of* ***any other possible explanation*** *for the trading? Such information may include public circulation of information by rumours or reports.*" (Emphasis added)

3. The Company replied on the same day, by way of an announcement released via SGXNet, that it was not aware of any material information not previously announced nor of any other possible explanation for the unusual trading.

[1] The Company has been placed under judicial management pursuant to an application filed by Corpbond IV Ltd.

4. Between 17 and 18 January 2022, the Company's share price fell by a further 31.3% to close at S$0.099. The Company called for a trading halt on 18 January 2022.

5. On 20 January 2022, the Company announced (the "**20 January 2022 Announcement**") that it was in discussion with Corpbond IV Ltd ("**Corpbond**") to explore the possibility of restructuring its loans from Corpbond which would expire between March 2022 and November 2022 (the "**Corpbond Loans**") into convertible bonds with a new maturity date beyond 2022 (the "**Proposed Restructuring**").

6. Trading resumed on 21 January 2022. By 28 January 2022, the share price had fallen to a low of S$0.066, representing a further 33.3% decrease from its closing price on 18 January 2022.

7. An issuer's obligations to provide timely disclosure of material information are set out under Listing Rule 703, read with Appendix 7.1 - Corporate Disclosure Policy ("**Appendix 7.1**") and Practice Note 7.1 – Continuing Disclosure ("**Practice Note 7.1**").

8. Listing Rule 703(1)(b) requires an issuer to announce any information known to the issuer which would be likely to materially affect the price or value of its securities.

9. Paragraph 4 of Appendix 7.1 states that "[m]*aterial information includes information ... concerning the issuer's property, assets, business, financial condition and prospects; … and any developments that affect materially the present or potential rights or interests of the issuer's shareholders*."

10. Pursuant to Listing Rule 1402(6), by causing the Company to omit to disclose information on the Proposed Restructuring on a timely basis, notwithstanding the Trading Query issued by SGX RegCo, the Company's board of directors as of 10 January 2022 (the "**Board**") had breached Listing Rule 703(1)(b) read with paragraph 4 of Appendix 7.1.

Details of the Listing Rule breach

11. On 3 August 2021, the Company announced, among other things, that it was in the midst of discussions with Corpbond for a possible restructuring of the Corpbond Loans (the "**3 August 2021 Announcement**"). These Corpbond Loans represented a significant payment obligation within the next 12 months.

12. The 3 August 2021 Announcement was made in response to queries posed to the Company by SGX RegCo. In it, the Company made no mention that the key objectives of these discussions with Corpbond were for deferring the dates and potentially the quantum of the scheduled repayments and maturity date of the Corpbond Loans.

13. Between September 2021 and December 2021, the Company and Corpbond engaged in discussions on the Proposed Restructuring. In November 2021, a draft convertible bond agreement drafted by the Company's lawyers was circulated to the Former Directors (excluding one who had yet to be appointed) for comments.

14. On 3 December 2021, the Former Directors (excluding one who had yet to be appointed) held a meeting where they discussed the Proposed Restructuring and the convertible bond agreement. Through this meeting, they were updated on the status of the Proposed Restructuring.

15. On 29 December 2021, the Company requested, and Corpbond's representative agreed to provide, a written confirmation from Corpbond's underlying investors with respect to their in-principle support for the Proposed Restructuring.

16. Following the 3 August 2021 Announcement and for five months till 10 January 2022, the Company did not announce any further updates on the possible restructuring of the Corpbond Loans to the public. On 10 January 2022, unusual trading activity was observed in the Company's shares, where there was a significant fall of 36.4% in the share price and increased traded volume by 221%. This prompted SGX RegCo to issue the Trading Query.

17. On the same day, the Board was informed about the Trading Query and that information concerning the Proposed Restructuring had yet to be disclosed. According to the Board, they had made arrangements to check with the Corpbond representative on whether the unusual trading activity could have been due to leakage of information relating to the Proposed Restructuring, and if there had been any change of position with respect to the ongoing negotiations.

18. However, based on available contemporaneous records, there was no indication of any substantive checks done to confirm whether leakage of information had occurred. What appeared to be notified to the Board was that the Corpbond representative had indicated his preference for the disclosure to be made only after an agreement was signed. It was also indicated to the Board that there was no certainty that any agreement would be signed because the terms had not been negotiated, and the director of Corpbond had not confirmed the final position of his underlying investors.

19. In response to the Trading Query, the Company released an SGXNet announcement to state that it was not aware of any material information not previously announced nor of any other possible explanation for the unusual trading.

20. Between 17 and 18 January 2022, after the Company's share price fell by a further 31.3% to close at S$0.099, the Company called for a trading halt on 18 January 2022. The Board then made a further assessment of the situation, following which, they decided to make the 20 January 2022 Announcement.

Assessment by the Exchange

21. The Former Directors took the position that as at 10 January 2022, there was no new information which was required to be announced by the Company as information concerning the Company's discussions with Corpbond had already been disclosed in the 3 August 2021 Announcement.

22. While the 3 August 2021 Announcement had disclosed that the Company was in the midst of discussions with Corpbond for a possible restructuring of the Corpbond Loans, it made no reference that there were on-going negotiations to restructure the Corpbond Loans into convertible bonds. As the convertible bonds, if converted to equity, would have a material dilutive effect on the shareholdings of the Company's existing shareholders, this new development was material information under Listing Rule 703(1)(b), given that it could "*affect materially the present or potential rights or interests of the issuer's shareholders*". Accordingly, this material information on the Proposed Restructuring should have been promptly disclosed in light of the unusual trading activity on 10 January 2022.

23. The Former Directors also asserted that the exception in Listing Rule 703(3) applied in this case, in which the Proposed Restructuring, being an incomplete proposal or negotiation, was not subject to disclosure under Listing Rule 703(1). Alternatively, that the existing Listing Rules do not require them to disclose information concerning the Proposed Restructuring if they were unable to determine that the Proposed Restructuring was the cause of the unusual trading activity.

24. The exception in Listing Rule 703(3) applies only when all three (3) conditions are satisfied, one of which is that the information is confidential. Listing Rule 703(3) is set out as follows:

"*Rule 703(1) does not apply to particular information while each of the following conditions applies.*

Condition 1: a reasonable person would not expect the information to be disclosed;

Condition 2: the information is confidential; and

Condition 3: one or more of the following applies:

(a) the information concerns an incomplete proposal or negotiation;

(b) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;

(c) the information is generated for the internal management purposes of the entity;

(d) the information is a trade secret."

25. Issuers are also bound by the provisions in the Corporate Disclosure Policy set out in Appendix 7.1 with respect to their disclosure obligations. As set out in paragraph 10 of Appendix 7.1, "*Confidentiality also means that no one in possession of the information is entitled to trade in that issuer's listed securities.* ***In this regard, unusual activity in the issuer's securities may suggest that the information is no longer confidential. If so, this condition is not met***." (Emphasis added)

26. Additionally, as highlighted in paragraph 4.3 of Practice Note 7.1 and paragraph 20 of Appendix 7.1, an issuer is required to announce any material, non-public information that has leaked to the market even though it was covered by the exemptions in Listing Rule 703(3) (for example, regardless of whether the transaction is still undergoing negotiations). Where there is (a) material information that has not been publicly disclosed, and (b) unusual trading activity in an issuer's securities, such unusual trading indicates a real possibility that a "leak" has occurred. Unless the issuer is certain that there was no "leak", or that there were other factors which can account for the unusual trading activity, it should assume that the "leak" caused the unusual trading activity, and announce the information in question promptly. Alternatively, the issuer could issue a holding statement to sufficiently explain its position or request a trading halt, if the issuer is not ready to confirm the information that was potentially leaked.

27. In the present case, SGX RegCo notes that on 10 January 2022, there was a significant fall of 36.4% in the Company's share price coupled with an increase of 221% in the traded volume, which could not be explained by information which was publicly available then. This trading activity was so unusual that it prompted SGX RegCo to issue the Trading Query. The Trading Query specifically required the Company to consider and disclose if it was "*aware of any other possible explanation for the trading*". Given the prevailing circumstances at the point in time, the Board had little basis to presume that the information on the Proposed Restructuring continued to be confidential. They were fully aware that the Company was involved in confidential discussions with Corpbond and that this could be a potential reason for the unusual trading activity. The most obvious inference is that the information on the Proposed Restructuring could have been leaked at the material time, causing the unusual trading activity.

28. SGX RegCo notes that the Board had continued to monitor the share price and made a further assessment after the share price fell further between 17 and 18 January 2022, which prompted the 20 January 2022 Announcement on the Proposed Restructuring. However, this does not detract from the fact that on 10 January 2022, there was no valid basis for the Board to assume or conclude that there was no "leak" of information relating to the Proposed Restructuring. The Board should have announced this information then, but chose not to do so.

Regulatory Concerns

29. On 10 January 2022, SGX RegCo issued the Trading Query after the Company's share price fell by 36.4%, from S$0.220 to S$0.140, on increased traded volume. Despite the Company's response

that there was no undisclosed material information, the share price fell by a further 31.3% to close at S$0.099 on 18 January 2022. By this time, the share price had fallen by a significant 55%. The continuous price fall prompted the Company to request a trading halt and subsequently release the 20 January 2022 Announcement. Following the 20 January 2022 Announcement, the Company's share price fell even lower to S$0.066 on 28 January 2022. Within three weeks, the Company's share price fell by a total of 70% (from S$0.220 to S$0.066).

30. The most obvious inference of the unusual trading activity is that the information on the Proposed Restructuring could have been leaked. The significant adverse market reaction further made it clear that information on the Proposed Restructuring was material information that a reasonable person would expect to be disclosed, and ought to have been disclosed in a timely manner.

31. As a result of the Company's failure to disclose information about the Proposed Restructuring in its response to the Trading Query on 10 January 2022, investors who purchased the Company's shares thereafter until the release of the 20 January 2022 Announcement were not able to make an informed decision.

32. In a disclosure-based regime, it is crucial for issuers to provide timely disclosure of material information to enable shareholders and investors to make informed investment decisions and the onus is on the issuer's board of directors to provide the public with timely disclosure of material information. The board of directors, as the controlling mind of the issuer, would need to exercise vigilance, especially in situations where the issuer's share price exhibits signs of volatility.

33. Issuers and directors should bear in mind that when they are involved in confidential and material discussions, they must closely monitor the trading of their securities and be prepared to make an immediate public announcement if necessary. Where there is unusual trading activity which cannot be explained by publicly available information, SGX RegCo will query issuers to elicit the announcement of any material undisclosed information. In such circumstances, a trading query issued by SGX RegCo would warrant the board of directors to consider its disclosure obligations including the need to issue an immediate full announcement or a holding statement, or request a trading halt.

34. The Board did not meet the standard expected of them as directors of an issuer. Despite being aware that information about the ongoing negotiations concerning the Proposed Restructuring was not in the public domain, they were not circumspect in their response when queried of the unusual trading activity. The Board should have considered if there was any material information which had not been publicly disclosed that could explain the trading behaviour. Even though there was little basis to assume that the information on the Proposed Restructuring continued to remain confidential, the Board made this assumption regardless, and did not err on the side of caution by taking the necessary appropriate action - such as making an immediate full announcement or a holding statement or requesting a trading halt.

Public reprimand of the Former Directors

35. Listing Rule 1402(6) provides that a director is deemed to have contravened a Listing Rule when he or she caused the issuer to omit to do an act which resulted in a breach of the said Listing Rule. The Former Directors are therefore brought to task for failing to ensure the Company's compliance with its disclosure obligations under the Listing Rules.

36. Public enforcement action was not brought against one Non-Executive Independent Director ("**NEID**") after SGX RegCo took into consideration the factors raised by the director in the mitigation provided to SGX RegCo. In the mitigation, this director made clear that as the director had only been appointed five working days before the Trading Query was issued, the director had insufficient time to get a full appraisal of the situation and was not presented with any red flags to

go against the collective decision of the other directors. The director also asked for consideration that despite utmost efforts to keep abreast of the developments that took place between August 2021 and December 2021, five working days were simply insufficient for the director to be apprised of those events, as well as the fact that this was the director's first directorship. Having considered the key mitigating factors raised and in light of the unique circumstances of the matter, SGX RegCo is satisfied that public enforcement action against this director for the breach of Rule 703(1)(b) is not necessary.

37. On the other hand, SGX RegCo is reprimanding another NEID who was similarly appointed around the same time. This director actively claimed that the price fall and the Proposed Restructuring were unrelated, and that it was premature to disclose the Proposed Restructuring, during the Board's discussion on the Trading Query. There was no apparent basis given by him in taking these positions. His actions were significant in influencing the Board's decision in replying to the Trading Query in the way it did. This director also had several years of experience as a director of two other SGX-listed issuers, and ought to have been familiar with the Company's disclosure obligations under the Listing Rules.

38. SGX RegCo notes that throughout the entire disciplinary process, Mr. Cheng Meng had remained unresponsive despite various opportunities accorded to him to provide his defence and submissions on mitigation. This exhibits a recalcitrant attitude and a cavalier attitude towards his obligations under the Listing Rules, as a director of a listed company. SGX RegCo frowns upon Mr. Cheng Meng's conduct and blatant disregard of his obligations to extend necessary cooperation during the disciplinary process.

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