

20 October 2011

## **SGX Reprimands Scorpio East Holdings Ltd and its directors and management**

1. The Exchange reprimands Scorpio East Holdings Ltd (“Scorpio East” or the “Company”) and the following members of the board of directors of the Company (the “Board”) for breach of Catalist Rule 703 and failures of corporate governance:
  - (a) Mr Hady Hartanto (Executive Director of the Company from 15 March 2011 to 18 August 2011); and
  - (b) Mr Ho Ah Huat (CEO and Executive Director of the Company from 24 November 2004 to 16 March 2011).
2. The Exchange also reprimands the following persons:
  - (a) Mr Wong Teck Yenn (Executive Director of the Company from 15 March 2011 to 2 May 2011) for failures of corporate governance; and
  - (b) Mr Lim Kien Nam (Financial Controller of the Company from 1 August 2008 to 30 September 2011) for failure to properly discharge his duties and responsibilities as a Financial Controller of a SGX-listed company.
3. In March 2011, the Audit Committee of the Company learnt that several material contracts had been entered into and/or terminated by the Company and its subsidiaries (the “Group”) without the approval or knowledge of the Board. On 25 March 2011, the Board approved the appointment of Stone Forest Corporate Advisory Pte Ltd (“SFCA”) as its special auditors. On 24 August 2011, the Audit Committee received SFCA’s Special Review Report (“SFCA’s Report”).
4. In light of the findings of SFCA’s Report, the Exchange is of the view that the Company has breached Catalist Rule 703 by failing to disclose material information relating to the termination of contracts of about S\$12 million.
5. The Exchange is of the view that Hady Hartanto and Ho Ah Huat have not demonstrated the qualities expected of directors and management of SGX-listed companies as required under Catalist Rules 406(3)(b) and 720. The Exchange is also of the view that Hady Hartanto, Ho Ah Huat and Wong Teck Yenn have failed to comply with Catalist Rule 103(6) to act in the interests of shareholders as a whole.
6. SGX-listed companies are required to seek the Exchange’s approval before they appoint Hady Hartanto, Ho Ah Huat, Wong Teck Yenn and Lim Kien Nam as directors or as members of their management.

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## Exchange's Directions

7. The Exchange directs the Board to commission an independent review of the Company's internal controls and risk management system (the "Control Review"). Following the Control Review, the Company is required to announce the (i) procedures and corporate governance practices instituted to address the concerns highlighted in the SFCA's Report, and (ii) Board's and sponsor's opinions on the adequacy of the internal controls in terms of addressing financial, operational and compliance risks.
8. The Exchange notes that the Company is in the process of recruiting a Chief Executive Officer and Chief Financial Officer. According to the Company, interim measures have been put in place to ensure little disruption to the Company's day-to-day activities. The Company has announced measures to safeguard the assets of the Group.
9. SFCA's Report noted that Mr Low Shiong Jin, in his role as a personal consultant to Hady Hartanto, had a significant level of involvement in the management of the Group. In this regard, the Company acted against the Exchange's directive in the Regulatory Announcement of 13 April 2010<sup>1</sup>. Further, Low Shiong Jin is an undischarged bankrupt and should not have been involved in the management of the Company.
10. The Exchange informed Hady Hartanto, Ho Ah Huat, Wong Teck Yenn and Lim Kien Nam that it intended to issue a public reprimand and requested them to show cause why relevant disciplinary actions should not be taken against them. Hady Hartanto, Ho Ah Huat, Wong Teck Yenn and Lim Kien Nam have responded in writing. In issuing the present reprimand, the Exchange has taken into consideration the said written responses.

## SGX Refers Case to Authorities

11. The Exchange is of the view that the findings of the SFCA's Report point to possible breaches of the law. The Exchange will refer this case to the relevant authorities.

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<sup>1</sup> Low Shiong Jin was named in SGX's Regulatory Announcement of 13 April 2010 for failure to demonstrate the qualities expected of a director required under Listing Rules 210(5)(b) and 720 in relation to his role as the Executive Director of Oculus Ltd (now known as Annica Holdings Limited). The Exchange required all SGX-listed companies to consult the Exchange before they appoint any of the persons named in the SGX Regulatory Announcement as a director or member of their management.

## Breach of Catalist Rule 703

### Failure to disclose termination of material contracts

12. Based on SFCA's Report, the Company terminated contracts with several producers of about S\$12 million (the "Scorpio Contracts") in or around March 2011. This was around the period when Ho Ah Huat handed over the executive function in the Company to Hady Hartanto. SFCA's Report further noted that both Hady Hartanto and Ho Ah Huat concurred on the termination of the Scorpio Contracts. The Scorpio Contracts, the Group's main potential source of revenue, relate to production of movies, distribution licences for dramas and concerts. The Group paid a deposit of about S\$5 million on the Scorpio Contracts (the "Company's Deposits"). The Scorpio Contracts and Company's Deposits represented about 70% and 30% of the Group's unaudited net asset value as at 31 October 2010 respectively.
13. The termination of the Scorpio Contracts is material information relating to the Company taking into consideration the value of the Scorpio Contracts, the cancellation charges and that they were the Group's main potential source of revenue. The Company failed to announce the termination of the Scorpio Contracts under Catalist Rule 703.

## Irregularities

### "Round-tripping" of Cash

14. On or around 17 March 2011, the Company entered into contracts with Alpha Entertainment Group Pte Ltd<sup>2</sup> ("Alpha Entertainment") of about S\$6 million (the "Alpha Contracts"). The Alpha Contracts relate to entertainment contracts and production of movies.
15. SFCA's Report showed that the Group was involved in "round-tripping" of cash between 17 and 21 March 2011. The "round-tripping" transactions involved the remittance of the Group's cash to Alpha Entertainment as deposits for the Alpha Contracts. Alpha Entertainment then re-deposited these monies to the Group's bank accounts purportedly as refunds of deposits from the producers of the terminated Scorpio Contracts. Out of the S\$3.2 million paid by the Group to Alpha Entertainment, only S\$2.86 million was re-deposited into Group's bank accounts.
16. SFCA's report noted that although the S\$2.86 million was not refunded from the relevant producers:
  - (a) The Group issued 2 official receipts of 17 and 18 March 2011 for an aggregate of S\$2.36 million to the producers as refund of deposits for the terminated Scorpio Contracts; and
  - (b) The Group's financial records showed that S\$2.86 million had been received as refund of deposits/investments from the producers of the terminated Scorpio Contracts.

<sup>2</sup> Alpha Entertainment is a British Virgin Island company incorporated in July 2010. Liu Woon San and Jung Jin are the registered shareholders and directors of Alpha Entertainment. Jung Jin is the spouse of Low Shiong Jin.

17. SFCA was of the view that the “round-tripping” transactions would have misled the Company’s external auditors that the Group had received the refund of deposits from the producers of the terminated Scorpio Contracts so that no impairment provision would be needed.

## **Lapses in Corporate Governance**

### Proposed material remittances without proper due diligence

18. Based on SFCA’s Report, the Company proposed to remit S\$3.3 million on 21 March 2011. The proposed remittances included (i) S\$3 million to JLC Advisors LLP and (ii) S\$0.3 million to the shareholders of Alpha Entertainment purportedly for the purpose of investment.
19. SFCA noted that the proposed remittances would have resulted in serious cashflow problems for the Group and adverse consequences on the Group’s ability to operate as a going concern. According to SFCA, the proposed remittances did not proceed as it was stopped by the Company’s Audit Committee Chairman.
20. SFCA found that the Company had neither conducted due diligence nor obtained approval from the Board on the proposed remittances.

### Execution of Alpha Contracts

21. SFCA noted that no due diligence on Alpha Entertainment was conducted of its track record and financial standing. SFCA expressed doubts on the veracity of the Alpha Contracts based on the following:
- (a) Alpha Entertainment was a newly formed company with a small paid-up share capital and a bank balance of only S\$0.2 million as at 31 March 2011 as compared to the Alpha Contracts of S\$6 million;
  - (b) The Alpha Contracts lacked pertinent details including the identities of the artistes involved; and
  - (c) Alpha Entertainment had contracted another newly incorporated company, 3R China Limited (“3R China”), to procure the services of the artiste groups for the purpose of the Alpha Contracts. There was no satisfactory evidence that 3R China and Alpha Entertainment would be able to fulfil the obligations under the Alpha Contracts.
22. The SFCA’s Report also noted that no approval had been obtained from the Board for the Alpha Contracts.

### Termination of the Scorpio Contracts

23. The Scorpio Contracts were significant investments and represented the main potential source of revenue for the Scorpio Group. SFCA was of the view that the termination of the Scorpio Contracts was not in the ordinary course of business and would require prior approval of the Board. The Company failed to seek Board's approval for the termination of the Scorpio Contracts.

### **Lack of internal controls**

24. The termination of the Scorpio Contracts, execution of the Alpha Contracts, "round-tripping" transactions and the proposed material remittances purportedly took place within a short time period from 15 March to 21 March 2011. SFCA expressed concern over the appalling laxity in which significant sums of monies were paid out/proposed to be paid out of the Group without Board's authorization.
25. SFCA noted that the "round-tripping" transactions resulted in creation of official receipts to producers and the relevant accounting entries when no such refunds have been made by the producers.
26. The above findings by SFCA, in the Exchange's view, raise concerns on the existence and adequacy of the Group's internal controls relating to the Group's payments and receipts.

#### **A. Hady Hartanto**

27. In the opinion of the Exchange, Hady Hartanto has not demonstrated the qualities expected of a director and member of the management of a SGX-listed company as required under Catalist Rules 406(3)(b) and 720. Hady Hartanto had breached Catalist Rule 103(6) for failure to act in the interests of shareholders as a whole. The Exchange reprimands Hady Hartanto for breaches of these Catalist Rules.
28. Based on SFCA's Report, Hady Hartanto signed the Alpha Contracts. Hady Hartanto did not ensure that any due diligence was carried out on Alpha Entertainment, including on its financial standing. He did not consult the Board nor assess the commercial viability of the Alpha Contracts before signing the Alpha Contracts.
29. SFCA noted that Hady Hartanto approved the termination of the Scorpio Contracts.
30. SFCA also noted that Hady was in favour of and involved in the "round-tripping" transactions. The "round-tripping" were transactions purportedly to mislead the Company's external auditors and were recorded as refunds from the producers of the terminated Scorpio Contracts when no such refunds had been received from the producers.

**B. Ho Ah Huat**

31. In the opinion of the Exchange, Ho Ah Huat has not demonstrated the qualities expected of a director and member of the management of a SGX-listed company as required under Catalist Rules 406(3)(b) and 720. Ho Ah Huat has breached Catalist Rule 103(6) for failure to act in the interests of shareholders as a whole. The Exchange reprimands Ho Ah Huat for breaches of these Catalist Rules.
32. SFCA noted that Ho Ah Huat had taken steps to terminate the Scorpio Contracts. SFCA also noted that there was no prior Board's approval for the said termination.
33. After Ho Ah Huat stepped down as CEO and Executive Director on 16 March 2011, he continued as a consultant to the Company until 15 June 2011. SFCA's Report revealed that Ho Ah Huat directed the finance staff to issue two official receipts of 17 and 18 March 2011 to the producers of the terminated Scorpio Contracts arising from the "round-tripping" transactions. This was done despite his knowledge that no such refunds had been made by the relevant producers.

**C. Wong Teck Yenn**

34. The Exchange reprimands Wong Teck Yenn for failing to act in the interests of the shareholders as a whole under Catalist Rule 103(6).
35. SFCA noted that Wong Teck Yenn had signed the remittance forms authorising remittances of S\$3.2 million to Alpha Entertainment without ascertaining that the remittances had been duly authorised. Further, he had done so prior to his appointment as an Executive Director of the Company. In addition, he had signed a cheque for S\$300,000 prior to being appointed a cheque signatory of the Company.
36. Furthermore, SFCA's Report highlighted that Wong Teck Yenn did not attend any of the Company's Board Meetings convened during his appointment as an Executive Director of the Company.

**D. Lim Kien Nam**

37. The Exchange reprimands Mr Lim Kien Nam for failing to properly discharge his duties and responsibilities as a Financial Controller of a SGX-listed company.
38. In his capacity as a Financial Controller, Lim Kien Nam is expected to exercise due care and diligence in oversight of the Company's financial position. Lim Kien Nam gave instructions to his staff to prepare the proposed remittance of S\$3 million when the Group's cash position was only about S\$2.2 million. A remittance of S\$3 million would have resulted in serious cashflow problems for the Group, which in turn would have affected the Group's ability to continue as a going concern. SFCA noted that he had failed to warn or inform the Board that the proposed remittance would have had a significant adverse impact on the Group's ability to continue as a going concern. The Exchange is of the view that he had failed to exercise the standard of care and diligence expected of a Financial Controller of a SGX-listed company.

End

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