

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)

The purpose of a prospectus is to help investors assess the risks and returns associated with the shares of an applicant for the initial public offering and make informed investment decisions.

Rules 2.13(2) and 11.07 impose unambiguous disclosure obligation on an applicant for listing to make accurate and complete disclosure in the prospectus, so as to provide the information necessary for investors to appraise the position of the applicant and make an informed decision as to whether to make an investment. In particular, where the applicant and its directors fail to take steps to ensure that there is reasonable basis for making a statement of “*no material adverse change*” in the applicant’s financial or trading position or prospects since the end of the period reported on in the accountant’s report, the disclosure in the prospectus is highly likely to be inaccurate, incomplete and misleading, as was the case here.

Accurate information to investors is of vital importance to the investors’ confidence in the market. Primary responsibility for ensuring compliance with this pivotal obligation rests with the directors.

The Listing (Disciplinary Review) Committee of The Stock Exchange of Hong Kong Limited (“Exchange”)

CENSURES:

- (1) **NNK Group Limited (“Company”)** (Stock Code:3773) for breaching Rules 2.13(2) and 11.07 of the Rules Governing the Listing of Securities of The Stock Exchange of Hong Kong Limited (“**Exchange Listing Rules**”) for failing to make accurate and complete disclosure in the prospectus for the Company’s initial public offering issued on 24 December 2015 (“**Prospectus**”);

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FURTHER CENSURES:

- (2) **Mr Huang Jun Muo** (“**Mr Huang**”) and **Mr Yang Hua** (“**Mr Yang**”), executive directors of the Company; and
- (3) **Mr Luo Ming Xing** (“**Mr Luo**”), former executive director of the Company,

for breaching Rule 3.08(f) of the Exchange Listing Rules and their respective Undertakings given to the Exchange in the form set out in Appendix 5 Form B to the Exchange Listing Rules (“**Undertaking**”), by failing to apply the degree of skill, care and diligence required and expected of them in the discharge of their directors’ duties; to comply with the Exchange Listing Rules to the best of their ability and to use their best endeavours to procure the Company’s compliance with Rules 2.13(2) and 11.07 of the Exchange Listing Rules, as described below.

(The directors identified at (2) and (3) above are collectively referred to as “**Relevant Directors**”)

For the avoidance of doubt, the Exchange confirms that the above sanctions 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.

On 17 April 2018, the Listing Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the Exchange Listing Rules and their respective Undertakings.

On 15 August 2018, the Listing (Disciplinary Review) Committee conducted a disciplinary (review) hearing on the application by the Company and the Relevant Directors for a review of the findings of breaches and the sanctions imposed by the Listing Committee at first instance (“**Disciplinary (Review) Hearing**”).

BACKGROUND/FACTS

On 24 December 2015, the Company issued the Prospectus, which disclosed:

- (a) the audited results for the track record period (ie the years ended 31 December 2012, 31 December 2013 and 31 December 2014, as well as the nine months ended 30 September 2015 (“**Audited 2015 Q3 Results**”));
- (b) the unaudited results for the nine months ended 30 September 2014 (“**Unaudited 2014 Q3 Results**”);

- (c) the Audited 2015 Q3 Results were better than the Unaudited 2014 Q3 Results (see extract below):

	Unaudited 2014 Q3 Results RMB '000	Audited 2015 Q3 Results RMB '000
Revenue	161,840	182,820
Gross profit	79,670	93,139
Net profit	34,177	36,478
Adjusted profit*	39,405	50,220

* Adjusted profit: add back one-off listing expenses for the relevant period

- (d) the following statements (“**Prospectus Statements**”):
- (i) “Save for the above, our business model, revenue structure and cost structure remained unchanged since September 30, 2015. Our business maintains a stable growth and is in line with our historical record”; and
- (ii) “Our Directors confirm that, as of [18 December 2015], there had been no material adverse change in our financial or trading position or prospects since September 30, 2015, being the date of our latest audited financial statements, and up to the date of the prospectus, and there had been no industry, market or regulatory development or other events since September 30, 2015 and up to the date of this prospectus that would materially affect the information in the Accountants’ Report set forth in ... this prospectus”; and
- (e) the Relevant Directors’ confirmation that “[t]his [Prospectus], for which our Directors collectively and individually accept full responsibility ... for the purpose of giving information with regard to our company. Our Directors, having made all reasonable enquiries, confirm that to the best of their knowledge and belief, the information contained in this [Prospectus] is accurate and complete in all material respects and not misleading or deceptive, and there are no other matters the omission of which would make any statement herein or this [Prospectus] misleading”.

The Company was listed on the Main Board of the Exchange on 7 January 2016. On 29 February 2016 (less than two months after listing), the Company issued a profit warning announcement in relation to its annual results for the year ended 31 December 2015 (“**2015 Annual Results**”), disclosing that the Company and its subsidiaries (“**Group**”) expected to record a significant decline in its net profit from continuing operations for 2015 as compared with the corresponding period for 2014. Such decrease was primarily attributable to:

- (a) the non-recurring expenses in connection with the listing; and
- (b) the growth rate of revenue for 2015 as compared to 2014 was lower than that for the nine months ended 30 September 2015 as compared to the nine months ended 30 September 2014 given the following circumstances (“**Circumstances**”):

- (i) the increasing promotion campaigns carried out and/or discounts offered by the competitors resulting in the decrease in transaction volume in the fourth quarter of 2015, which in turn decreased revenue; and
- (ii) the decrease of the discount rate the Group received from PRC telecommunication operators and their distributors in the fourth quarter of 2015.

On 22 March 2016, the Company announced its 2015 Annual Results, which recorded a drop of 50.8 per cent in the Company's net profit from the annual results for the year ended 31 December 2014 (ie from RMB 54.5 million to RMB 26.8 million).

The Prospectus disclosed certain risk factors which might or would affect the business of the Group, including risks relating to the Circumstances. However, the Prospectus did not disclose the declining results already experienced by the Company in November 2015 and the impact of those results on the Group's business.

The evidence showed that at the time when the Prospectus was being prepared, the Company's monthly management accounts were generally available around five to six weeks after the end of each month. During the application for listing, the Company prepared five profit forecast memoranda in April, July, September, November and December 2015 respectively. During the investigation of this matter, it was revealed that the Company manually calculated the monthly results of the Group for June, August and October 2015 for the July, September and November 2015 profit forecast memoranda respectively, but did not manually calculate the November results for inclusion in the December 2015 profit forecast memorandum.

Mr Luo, together with the finance manager of the Company, was responsible for preparing and verifying the financial data contained in the profit forecast memoranda. Those memoranda were discussed amongst the Relevant Directors and approved by Mr Huang and Mr Yang.

The Relevant Directors approved the December 2015 profit forecast memorandum and the Prospectus. The Relevant Directors approved the April 2015 profit forecast memorandum in April 2015. When the December 2015 forecast was compared against the April 2015 forecast, the estimated revenue and net profit were reduced by approximately 16 per cent and approximately 36 per cent respectively.

RELEVANT EXCHANGE LISTING RULES AND REQUIREMENTS

Under Rule 2.13(2), documents published pursuant to the Exchange Listing Rules must be accurate and complete in all material respects and not misleading or deceptive.

Rule 11.07 requires all listing documents issued by a new applicant to contain all information necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position and prospects of the issuer and of its profits and losses.

Paragraph 38 of Part A of Appendix 1 to the Exchange Listing Rules requires the inclusion in the listing documents of a statement by the directors of any material adverse change in the financial or trading position of the group since the end of the period reported on in the accountant's report, or an appropriate negative statement.

The Exchange's Guidance Letter (HKEX-GL41-12) provided guidance on the disclosure in a prospectus of material changes in financial, operational and/or trading position after the trading record period. GL41-12 was withdrawn in July 2018 (as part of the Exchange's guidance letter and listing decision consolidation exercise) and has been superseded by Guidance Letter HKEX-GL98-18.

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. These duties include a duty to 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 office within the issuer (Rule 3.08(f)).

LISTING (DISCIPLINARY REVIEW) COMMITTEE'S FINDINGS OF BREACH

The Listing (Disciplinary Review) Committee considered the written and oral submissions of the Listing Department, the Company and the Relevant Directors, and concluded:

(1) **The Company breached Rules 2.13(2) and 11.07:**

- (a) The Company's Prospectus was dated 24 December 2015 and the Company was listed on the Main Board of the Exchange on 7 January 2016.
- (b) On 29 February 2016, the Company issued a profit warning announcement stating:

"The ... Group is expected to record a significant decline in its net profit from continuing operation for the year ended 31 December 2015 as compared with the corresponding period of 2014. Such decrease was primarily attributable to (1) the non-recurring expenses recognised during the year ended 31 December 2015 in connection with the listing of the shares of the Company on the main board of the Stock Exchange; and (2) the growth rate of the revenue for the year ended 31 December 2015 as compared to the year ended 31 December 2014 is lower than that for the nine months ended 30 September 2015 as compared to the nine months ended 30 September 2014 given that (i) the increasing promotion campaigns carried out and/or discounts offered by the competitors in the e-commerce platforms resulting in the decrease in the number of transaction volume in the fourth quarter of 2015 which in turns decreased the revenue; and (ii) the decrease of the discount rate the Group received from the PRC telecommunication operators and their distributors in the fourth quarter of 2015."

- (c) The Company published its 2015 Annual Results on 22 March 2016 which recorded a drop in the Group's net profit from continuing operation from RMB54.503 million for 2014 to RMB26.803 million for 2015. Adjusting for the listing expenses incurred in 2015 (RMB24.24 million) and in 2014 (RMB7.287 million) adjusted net profit from continuing operation fell from RMB61.79 million to RMB51.043 million (a fall of about 17.4 per cent).
- (d) The respective amounts of revenue and net profit during 2015 (which were accepted by the Appellants as correct) are set out in the table below:

Management accounts for 2015	Revenue (approximately) RMB'000	Net profit (approximately) RMB'000	Adjusted profit [#] (approximately) RMB'000
January	20,018	4,739	4,854
February	21,296	4,223	5,775
March	20,601	2,654	5,561
April	18,876	3,728	4,249
May	19,785	3,941	4,133
June	21,283	5,241	6,054
July	19,557	(0.457)	4,699
August	20,076	4,841	4,992
September	21,328	7,110	9,902
October	21,710	5,346	6,562
November	14,561	1,060	1,576
December	12,278	(12,367)	(3,602)

[#] Adjusted profit: one-off listing expenses added-back for the relevant period.

- (e) The Exchange expected there to have been sufficient disclosure in the Prospectus in respect of any material changes after the trading record period (which ended on 30 September 2015) up to the date of the Prospectus. The Exchange's Guidance Letter GL38-12 states (at paragraph 9): *"The period covered by the Any Material Change Statement should be from the end of the period reported on in the accountants' report and up to the date of the document. This timeframe is in line with "expert consents" in expert reports in a listing document which are also made up to the date of a listing document ..."*.
- (f) Investors would reasonably have expected certain other relevant disclosures made by the Company in the Prospectus to have been up-to-date as at the Latest Practicable Date stated in the Prospectus (18 December 2015).

- (g) The Prospectus contained statements from which investors would reasonably have expected that the 2015 annual results would be better than, or at least in line with, the annual results for the year ended 31 December 2014. The following are examples. The audited results for the first nine months of 2015 set out in the Prospectus showed an improvement compared with the unaudited results for the first nine months of 2014 (for example, the revenue for the first nine months of 2015 was stated in the Prospectus as RMB182.82m whereas revenue for the first nine months of 2014 was stated as RMB161.84m). In addition, page 180 of the Prospectus contained the following statement: *“...we expect to maintain a stable growth of gross transaction values and therefore the revenue and profit in the future”*.
- (h) The Prospectus contained two “no material change statements”; the first on page 10 of the Prospectus in the summary section and the second on page 289 of the Prospectus.

The statement on page 289 of the Prospectus stated: *“Our Directors confirm that there has been no material adverse change in our financial or trading position or prospects since September 30, 2015, being the date of our latest audited financial statements and there is no event since September 30, 2015 which would materially affect the information shown in ‘Accountants’ Report’ in Appendix I”*.

The statement in the summary section stated: *“Our Directors confirm that, as of the Latest Practicable Date, there had been no material adverse change in our financial or trading position or prospects since September 30, 2015, being the date of our latest audited financial statements, and up to the date of the prospectus, and there had been no industry, market or regulatory development or other events since September 30, 2015 and up to the date of this prospectus that would materially affect the information in the Accountants’ Report set forth in ... this prospectus”*.

- (i) The Group’s business performance was volatile.
- (j) The Company had been adjusting the amount of the profit forecast submitted to the Exchange downwards since April 2015. The monthly results for June, August and October 2015 had been manually calculated for the July, September and November 2015 profit forecast memoranda respectively. The December 2015 profit forecast memorandum used the October 2015 monthly management accounts as the latest accounts. The October 2015 monthly accounts were also the latest monthly accounts used in the November 2015 profit forecast memorandum. That is to say, the updated profit forecast memorandum for December 2015 did not include updated management accounts compared with the November 2015 profit forecast memorandum.

- (k) It was conceded by the Appellants that the Company was able to produce accurate manually calculated monthly results for the preceding month and on or before the Latest Practicable Date (18 December 2015) could have produced such accounts for the month of November 2015. It was submitted by the Appellants that monthly accounts for November 2015 were not so prepared because, allegedly, the Company's sponsor did not specifically request this. Had the accounts for November 2015 been prepared those results would have indicated a significant drop in the Group's revenue and profit, which was a material adverse change in the financial and trading position of the Group. The Company should have been in a position to take that into account when making the Prospectus Statements and ensure that proper disclosure was made in the Prospectus as to how the material adverse change affected the financial and trading position of the Group. However, the Company failed to prepare management accounts for the month of November 2015 before the Prospectus was issued and failed to disclose in the Prospectus the decline in results for that month and the impact of such.
- (l) The Company failed to ensure the accuracy of the Prospectus Statements. The Prospectus as published:
- (i) was not accurate and complete in all material respects and was misleading; and
 - (ii) as a result, did not enable investors to make an informed assessment of, among other things, the Company's financial and trading position.

(2) **Mr Huang, Mr Yang and Mr Luo breached Rule 3.08(f) and Undertakings:**

- (a) Despite being aware of the need to make the Prospectus Statements in the Prospectus and the significance of such statements, and taking into account the nature of the business (including the high transaction volume, low margin and discount rate and high volatility), the Relevant Directors did not act to procure the manual calculation of the November 2015 management accounts. Further, the Relevant Directors did not take steps to ascertain the Company's business performance subsequent to 31 October 2015, which would have shown the significant decline in revenue and profit in November 2015.
- (b) The Relevant Directors were aware of the downward adjustments of the estimated revenue and net profit in each of the profit forecast memoranda prepared by the Directors in July 2015, September 2015 and November 2015. Given the above knowledge and the volatility of the Company's business, it was incumbent on the Relevant Directors to obtain the most up-to-date financial, trading and operating information (and at least the manually calculated November 2015 management accounts) for accurate and complete disclosure in the Prospectus.

- (c) The Relevant Directors failed to ensure that proper disclosure was made in the Prospectus about the declining financial and trading performance in November 2015 and its impact on the Group's business, and failed to ensure that there was reasonable and justifiable basis for making the Prospectus Statements.
- (d) The Relevant Directors failed to ensure the Company's compliance with Rules 2.13(2) and 11.07, in breach of Rule 3.08(f) and their Undertakings to comply with the Exchange Listing Rules to the best of their ability and to use their best endeavours to procure the Company's compliance with Rules 2.13(2) and 11.07.

The Listing (Disciplinary Review) Committee considered that the Relevant Directors failed to take steps to make enquiries about the Company's business performance subsequent to 31 October 2015 in order to be in a position to make accurate and complete disclosure in the Prospectus. The Relevant Directors were aware that monthly results for June, August and October 2015 had been manually calculated for the July, September and November 2015 profit forecast memoranda respectively. The December 2015 profit forecast memorandum used the October 2015 monthly management accounts as the latest monthly accounts. The October 2015 monthly accounts were used in the November 2015 profit forecast memorandum as the latest monthly accounts. That is to say, the updated profit forecast memorandum for December 2015 did not include updated management accounts compared with the November 2015 profit forecast memorandum. According to the Relevant Directors, they did not clarify or confirm with the sponsor regarding the latest monthly results to be used for the December 2015 profit forecast memorandum. If the monthly results for November 2015 had been manually calculated, the Relevant Directors should have been in a position to take into account the material deterioration in the Group's revenue and profits in November 2015 when making the Prospectus Statements and ensure that proper disclosure was made in the Prospectus.

REGULATORY CONCERNS

- (1) The Hong Kong securities market is primarily disclosure-based. Rules 2.13(2) and 11.07 of the Exchange Listing Rules impose unambiguous disclosure obligations on an applicant for listing to make accurate and complete disclosure in the Prospectus, so as to enable investors to appraise the position of the applicant and make an informed assessment of its activities, assets and liabilities, financial position and prospects, and of its profits and losses. This was also reinforced by the Exchange's Guidance Letter HKEX-GL41-12 which has now been superseded by the Guidance Letter HKEX-GL98-18.
- (2) These Exchange Listing Rules are designed to ensure that investors have confidence in the market and they are kept fully informed by disclosure made by listed issuers and applicants for listing.

- (3) Where the applicant and its directors fail to take steps to ensure that there is reasonable basis for making a statement of “*no material adverse change*” in the applicant’s financial or trading position or prospects since the end of the period reported on in the accountant’s report, the disclosure in the prospectus is highly likely to be inaccurate, incomplete and misleading (as it was in this case). Any breach of the disclosure requirements under the Exchange Listing Rules is a serious matter as they serve to safeguard the interests of investors, which in turn contributes to an orderly, informed and fair market for the trading of securities listed on the Exchange.
- (4) The primary responsibility for ensuring compliance with this pivotal disclosure obligation rests with the directors.

SANCTIONS

Having made the findings of breach stated above, and having concluded the breaches were serious, the Listing Committee decided to:

CENSURE:

- (1) the Company for its breach of Rules 2.13(2) and 11.07 of the Exchange Listing Rules; and
- (2) the Relevant Directors for their breach of Rule 3.08(f) of the Exchange Listing Rules and their respective Undertakings.

The Listing (Disciplinary Review) Committee on review decided to endorse the sanctions imposed on the Company and the Relevant Directors by the Listing Committee at first instance.

Hong Kong, 15 October 2018