

LEGAL UPDATE

A DREW & NAPIER PUBLICATION

RULE UPDATE

SGX INTRODUCES MEASURES TO FACILITATE RIGHTS ISSUES

In a news release dated 12 January 2009, the Singapore Exchange Limited (the “**SGX**”) in consultation with the Monetary Authority of Singapore (the “**MAS**”) announced new measures to make it easier for listed issuers to carry out secondary fund-raising through rights issues. The proposed changes aim to assist listed issuers seeking equity funding from their shareholders in the current economic climate of reduced credit availability.

The changes proposed by the SGX include:

- (a) shortening of the rights issue exposure period;
- (b) allowing sub-underwriting arrangements with major shareholders;
- (c) considering the introduction of accelerated rights issues; and
- (d) allowing non-renounceable rights issues subject to conditions.

The measures take effect from 13 January 2009. The SGX has indicated that the arrangements in (b) and (d) will be available until 31 December 2010, after which their effectiveness will be reviewed.

Shortening of rights issue exposure period

The Rules of the Listing Manual of the Singapore Exchange Securities Trading Limited (the “**Rules**”) provide that an issuer who intends to make a rights issue must announce the issue promptly (Rule 814(1)). However, there is a substantial period of time between the time the announcement is made and the time when the SGX approves the issuer’s application to list the rights shares, during which the market price of the issuer’s shares may fluctuate. This is commonly referred to as the “exposure period”. In current practice, the rights issue exposure period could be as long as one and a half months or more.

The SGX proposes to shorten this exposure period by:

- (i) accepting confidential submissions for all rights issue applications prior to announcement. Currently, confidential submissions to the SGX are only allowed for underwritten rights issues (Rule 872(1));
- (ii) shortening the minimum notice of books closure date to 5 market days. The current minimum notice period is 10 market days (Rule 704(24)); and
- (iii) introducing a checklist with provisions governing rights issue to facilitate compliance by issuers and underwriters. The SGX introduced compliance checklists in June 2008 to improve time-to-

market response for routine applications. Checklists are currently available on SGXNET (the SGX's secured website for corporate announcements) for matters including rights issues, submission of annual reports, approval of employees share option schemes, interested persons transactions and others. It is envisaged that the checklist for rights issues would have to be updated pursuant to the latest announced changes.

Permitting sub-underwriting arrangements with major shareholders

Under current market conditions, underwriters may be unwilling to make a commitment to underwrite a rights issue unless the major shareholders of the issuer agree to take up their entitlement and/or sub-underwrite a portion of the excess rights shares. Such arrangements may involve fees to be paid to the major shareholders.

The Rules presently permit sub-underwriting arrangements with major shareholders but only with specific shareholder approval. This lengthens the rights issue exposure period and increases risk and uncertainty for issuers and underwriters. The SGX intends to allow major shareholders to enter into sub-underwriting arrangements without specific shareholder approval, provided that certain conditions are met. These include the following:

General conditions (first announced by the SGX on 19 December 2008)

- (i) the issuer's board of directors (the "**Board**") has to provide assurance that the terms of the sub-underwriting agreement are fair and not prejudicial to the issuer and to other shareholders. The basis for its opinion must also be included;
- (ii) the issuer's Board has to confirm that the terms agreed between the issuer and the underwriter (including the commission payable to the underwriter and the major shareholder) are at arms' length and are normal commercial terms; and
- (iii) the underwriter must be a financial institution licensed by the MAS to conduct underwriting activities;

Additional conditions to enhance transparency and accountability (announced by the SGX on 12 January 2009)

- (iv) the Board's assurance and confirmation in (i) and (ii) above, together with the basis for the opinion in (i) and a statement on whether there are any dissenting views of the Board (including the dissenting views, if any), must be announced on SGXNET;
- (v) the underwriters must confirm to the Board that the discussion on the sub-underwriting arrangement with the sub-underwriters was initiated by the underwriters, and that the underwriters will not underwrite the rights issue unless the sub-underwriters enter into the sub-underwriting arrangement (Note: It is unclear what the position would be if the underwriters were agreeable to underwrite the rights issue without sub-underwriters, but only on less favourable terms.);
- (vi) the commission that the sub-underwriters earn should not be higher than, and must be part of, the commission paid to the underwriters; and

- (vii) the fees earned by the underwriters and the sub-underwriters must be announced on SGXNET.

Considering the introduction of accelerated rights issues

In response to market participants' suggestions, the SGX is planning the introduction of a non-traditional rights issuance through the use of an accelerated wholesale tranche. This involves having two tranches for the rights issue, the first being an accelerated wholesale tranche, while the second would be a retail tranche which follows the traditional rights issue timetable.

The benefits of implementing such a structure include:

- (i) funds may be obtained from the wholesale tranche more quickly, while all shareholders are given the opportunity to participate in the rights offer;
- (ii) the shorter wholesale tranche timetable reduces market risk exposure to issuers and underwriters; and
- (iii) the bulk of the funds to be raised can be assured within the first few days of the rights offer period.

The SGX is currently working with issuers and advisers to resolve certain issues before the implementation of such a structure.

Allowing non-renounceable rights issues subject to conditions

Non-renounceable rights issues can be undertaken by issuers if specific shareholder approval is obtained. The SGX clarified that the shareholders' mandate should set out the maximum discount at which the non-renounceable rights issue can be undertaken.

The SGX also stipulated that issuers who want to undertake non-renounceable rights issues without a specific mandate from their shareholders can only do so if the rights shares are priced at a discount of not more than 10% to the prevailing market price.

Other matters

The Securities and Futures (Market Conduct) (Exemptions) Regulations 2006 allow price stabilization actions to be undertaken for rights issues with an offer size of at least S\$25 million. It was suggested that issuers could take price stabilization actions into account when planning their fund-raising.

References

To view the SGX news releases on this subject, please click on the following links.

1. [SGX News Release dated 12 January 2009](#)
2. [SGX News Release dated 19 December 2008](#)

If you have any queries on this update, or wish to discuss how it may potentially affect you or your business, please feel free to contact the corporate and finance lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our [website](#)), or any of the following lawyers:

Gary Pryke

Director (Corporate & Finance)
T: +65 6531 4104
E: gary.pryke@drewnapier.com

Ralph Lim

Director (Corporate & Finance)
T: +65 6531 2362
E: ralph.lim@drewnapier.com

Sin Boon Ann

Director (Corporate & Finance)
T: +65 6531 2206
E: boonann.sin@drewnapier.com

Sandy Foo

Director (Corporate & Finance)
T: +65 6531 4118
E: sandy.foo@drewnapier.com

Petrus Huang

Director (Corporate & Finance)
T: +65 6531 2208
E: petrus.huang@drewnapier.com

Yeo Wee Kiong

Director (Corporate & Finance)
T: +65 6531 2500
E: weekiong.yeo@drewnapier.com

The contents of this update are only intended to provide general information on the subject covered. Nothing in this publication should be treated as specific professional legal advice concerning any particular business, operational or other situations with which you might be faced. Drew & Napier LLC accepts no liability for, and does not guarantee the accuracy of, the information contained in this publication, and does not accept any liability for any loss or damage arising from any reliance thereon.

OUR BUSINESS GROUPS AND PRACTICE AREAS

BANKING

David Ang
T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

Valerie Kwok

T +65 6531 2222
F +65 6535 4864
E valerie.kwok@drewnapier.com

Sandy Foo

T +65 6531 4118
F +65 6535 4864
E sandy.foo@drewnapier.com

BIOMEDICAL SCIENCES**Tony Yeo**

T +65 6531 2512
F +65 6220 0324
E tony.yeo@drewnapier.com

BUILDING & CONSTRUCTION**Tan Liam Beng**

T +65 6531 4139
F +65 6533 3591
E liambeng.tan@drewnapier.com

CAPITAL MARKETS**Sin Boon Ann**

T +65 6531 2206
F +65 6535 4906
E boonann.sin@drewnapier.com

Petrus Huang

T +65 6531 2208
F +65 6535 4906
E petrus.huang@drewnapier.com

CHINA BUSINESS GROUP**David Chin**

T +65 6531 2304
F +65 6535 1952
E david.chin@drewnapier.com

COMPETITION LAW**Cavinder Bull, SC (contentious)**

T +65 6531 2416
F +65 6533 3591
E cavinder.bull@drewnapier.com

Lim Chong Kin (non-contentious)

T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

CORPORATE**David Ang**

T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

CORPORATE (cont'd)**Gary Pryke**

T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

Sin Boon Ann

T +65 6531 2206
F +65 6535 4906
E boonann.sin@drewnapier.com

Yeo Wee Kiong

T +65 6531 2500
F +65 6535 4864
E weekiong.yeo@drewnapier.com

CORP INSOLVENCY & RESTRUCTURING**Sushil Nair**

T +65 6531 2410
F +65 6533 9029
E sushil.nair@drewnapier.com

Manoj Sandrasegara

T +65 6531 4156
F +65 6533 9029
E manoj.sandra@drewnapier.com

EMPLOYMENT & IMMIGRATION**Indranee Rajah, SC**

T +65 6531 4100
F +65 6532 7149
E indranee.rajah@drewnapier.com

FAMILY & MATRIMONIAL**Randolph Khoo**

T +65 6531 2418
F +65 6532 7149
E randolph.khoo@drewnapier.com

FUND MANAGEMENT, REIT & PRIVATE**EQUITY****Petrus Huang**

T +65 6531 2208
F +65 6535 4906
E petrus.huang@drewnapier.com

INSURANCE & REINSURANCE**Gary Pryke**

T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

IP**Morris John (Patents)**

T +65 6531 2503
F +65 6533 0694
E mj@drewnapier.com

Dedar Singh Gill (Trade Marks)

T +65 6531 2507
F +65 6533 0694
E dedar.singh@drewnapier.com

INT'L ARBITRATION**Jimmy Yim, SC**

T +65 6531 2504/2505
F +65 6533 9029
E jimmy.yim@drewnapier.com

LITIGATION**Jimmy Yim, SC**

T +65 6531 2504/2505
F +65 6533 9029
E jimmy.yim@drewnapier.com

Indranee Rajah, SC

T +65 6531 4100
F +65 6532 7149
E indranee.rajah@drewnapier.com

PROJECT FINANCE**Gary Pryke**

T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

Valerie Kwok

T +65 6531 2222
F +65 6535 4864
E valerie.kwok@drewnapier.com

Sandy Foo

T +65 6531 4118
F +65 6535 4864
E sandy.foo@drewnapier.com

PROPERTY**David Chin**

T +65 6531 2304
F +65 6535 1952
E david.chin@drewnapier.com

SHIPPING & INT'L TRADE**Ian Koh**

T +65 6531 2436
F +65 6533 3591
E ian.koh@drewnapier.com

TAX & PRIVATE CLIENT SERVICES**Ong Sim Ho**

T +65 6531 2250
F +65 6535 4864
E simho.ong@drewnapier.com

TMT**Lim Chong Kin**

T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

TRANSNATIONAL & CROSS-**BORDER WORK****Julian Kwek**

T +65 6531 2485
F +65 6533 9029
E julian.kwek@drewnapier.com

OTHER OFFICES**Shanghai Office**

#2501 Office Tower
Bund Center
222 Yan An Road East
Shanghai 200002
China
T +86 21 6335 1628
F +86 21 6335 0638
E china@drewnapier.com

**Drewmarks Patents & Designs
(Malaysia) Sdn Bhd**

9th floor
Bangunan Getah Asli (Menara)
148 Jalan Ampang
50450 Kuala Lumpur, Malaysia
T +603 2162 2522/2162 2529
F +603 2162 2804
E drewmark@tm.net.my

PT Drewmarks Konsultama

Correspondence address:
20 Raffles Place
#17-00 Ocean Towers
Singapore 048620
T +65 6531 2503/6531 2504
F +65 6533 0694
E ip@drewnapier.com

DrewCorp Services Pte Ltd

20 Raffles Place
#09-01 Ocean Towers
Singapore 048620
ROC No. 200102492H
T +65 6531 2266
F +65 6533 1542/6533 7649
E services@drewcorpservices.com

Copyright in this publication is owned by Drew & Napier LLC. This publication may not be reproduced or transmitted in any form or by any means, in whole or in part, without prior written approval. Drew & Napier LLC accepts no liability for, and does not guarantee the accuracy of information or opinion contained in this publication. This publication covers a wide range of topics and is not intended to be a comprehensive study of the subjects covered nor is it intended to provide legal advice. It should not be treated as a substitute for specific advice on specific situations.