

## REGULATION UPDATE

### PROPOSED LISTING MANUAL AMENDMENTS TO STRENGTHEN CORPORATE GOVERNANCE PRACTICE

#### SGX holds public consultation on proposed new measures and rule amendments

The Singapore Exchange Ltd (the “**SGX**”) has issued a public consultation paper which sets out proposed amendments to the Listing Manual of the Singapore Exchange Securities Trading Ltd (the “**Listing Manual**”). The proposals are the result of the SGX’s latest rule review. Such reviews are carried out annually to keep abreast of industry developments and to enhance the standards of the listed companies.

The consultation period runs from **9 December 2009** to **15 January 2010**.

The proposals can be grouped under the following headings:

- Strengthening corporate governance standards;
- Enhancing disclosure and transparency;
- Safeguarding investors’ interests; and
- Codifying practices relating to profit forecast and right of first refusal.

#### Strengthening corporate governance standards

Recently, there has been heightened concern regarding corporate governance of listed companies due to several reports of accounting irregularities in “S-chips” (China companies listed on the SGX). The Monetary Authority of Singapore had, in November 2009, announced that it will be setting up a Corporate Governance Council which will (amongst other things) review Singapore’s Code of Corporate Governance and promote a high standard of corporate governance in Singapore-listed companies. The SGX’s proposal to amend the Rules of the Listing Manual to strengthen corporate governance standards thus reinforces Singapore’s regulatory emphasis on good corporate governance.

#### *Internal controls system and risk management framework*

The SGX proposes to require an issuer to have a robust and effective system of internal controls and risk management policies. The audit committee of an issuer company will be given the right to call for an independent audit if it is not satisfied with the system of internal controls (proposed amendment to Rule 719). The current requirement is for the

audit committee to discuss its concerns with the issuer's auditors and report the matter to the board at an appropriate time.

Under the Code of Corporate Governance, the audit committee has to review the adequacy of the issuer's internal controls and risk management policies. The SGX now proposes to require the audit committee's assessments to be disclosed in the issuer's annual report (proposed amendment to Rule 1207).

#### *Appointment of governance advisor*

Newly-listed companies will be expected to consider engaging the services of a governance adviser for two years after listing. The governance adviser's role will include reviewing and making recommendations on key areas of corporate governance such as internal controls, risk management processes, board practices and accounting and reporting systems. It is expected that the governance adviser would be one of the professionals of the applicant's initial public offering, although the SGX may consider alternative candidates (proposed amendment to Practice Note 2.1).

#### *Role of board directors, key executive officers and auditors*

The SGX's emphasis on strengthening corporate governance is also reflected in its proposed rule changes with respect to the roles of the board, key executive officers and auditors of an issuer company. These changes include:

- Providing the SGX with the right to (i) under specific circumstances (e.g. where the issuer is subject to an investigation) require the issuer to seek SGX approval for the appointment of its directors, chief executive officers and chief financial officers; and (ii) take action against directors or key executive officers if they refuse to co-operate with the SGX or if they wilfully cause a breach of any rules, laws or regulations (proposed amendment to Rule 720);
- Requiring a statement from the nominating committee of the issuer on the suitability of the appointment of the chief financial officer in a listing application or of a new chief financial officer after listing. The statement must also receive the concurrence of the audit committee of the issuer (proposed amendments to Rule 246, 610 and Appendix 7.5.1);
- Requiring a chief financial officer who is leaving the issuer company to confirm in writing that he is not aware of any irregularities and that there are no material differences in opinion with the board and the management of the issuer (proposed amendment to Rule 704);
- Requiring at least one independent director in office at all times (proposed amendment to Appendix 2.2) and, for an issuer's principal subsidiary outside Singapore, requiring at least one independent director who is resident in Singapore on the board of that subsidiary (proposed amendment to Rule 221); and

- Where both the issuer company and its auditors are based in a foreign jurisdiction, requiring a joint sign-off by the issuer's auditors and a Singapore-based accounting firm on the issuer's audited accounts (proposed amendment to Rule 712).

## Enhancing disclosure and transparency

### *Disclosure of pledging arrangements*

It is proposed that a shareholder must notify the issuer in writing when his shares are the subject of a security interest (e.g. pledge, mortgage or charge) which may result in the physical delivery of the shares under certain circumstances, including: (i) where the shares subject to the security interest make up 30% or more of the issuer's share capital, or (ii) where the shareholder is the single largest controlling shareholder and the shares subject to the security interest make up 50% or more of his shareholding interest. The issuer will have to announce this (proposed amendment to Rule 704(3)).

A related proposal is for the issuer company to disclose all loan agreements or issues of debt securities which contain conditions making reference to shareholding interests of the issuer's shareholders or placing restrictions on change of control of the issuer (proposed amendment to Rule 704(29)).

### *Disclosure of appointments/ cessations of service of key appointment holders in principal subsidiaries*

Currently, the issuer company has to announce any appointment or cessation of service of any director, chief executive officer, chief financial officer, chief operating officer, general manager or other executive officer of equivalent rank, company secretary, registrar or auditors (collectively referred to as "**key appointment holders**"). It is proposed that such requirement be extended to any appointment or cessation of a key appointment holder in a principal subsidiary (proposed amendment to Rule 704(7)).

## Safeguarding investors' interests

It is proposed that when a company is under trading suspension, all share transfers of that company's shares will be restricted (new Rule 729). Also, the SGX has suggested that controlling shareholders and their associates hold their shares in custody with the Central Depository or a depository agent who has made arrangements with the SGX to restrict transfers of shares during trading suspension (new Rules 229 and 730). These new rules aim to safeguard investors' interests and provide greater visibility over the interests of controlling shareholders.

## Codifying practices relating to profit forecast and right of first refusal

Some current regulatory practices have been codified in the proposed rule amendments. The SGX proposes to introduce new Rule 224(5) (for listed companies and business trusts) and new Rule 404(8)(d) (for real estate investment trusts ("**REITs**")) to prescribe that any right of

first refusal agreement entered into by an issuer for the purpose of mitigating conflicts must remain valid as long as conflicts of interest exist.

Also, a new Practice Note 4.1 provides guidance to REITs and business trusts on when they are expected to submit profit estimates, projections and forecasts where historical or pro forma accounts are not available.

### Similar changes to Catalist Rules

The SGX proposes to amend the Catalist Rules in a manner similar to the proposed changes to the Mainboard Rules but with the necessary adaptations.

### References:

Please click on the links below to refer to the documents:

1. [The SGX's press release dated 9 December 2009, including the full text of the consultation paper](#); and
2. [The Code of Corporate Governance](#).

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:

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