

## RULE UPDATE

### FURTHER MEASURES TO FACILITATE FUND RAISING

The Singapore Exchange Limited (the “**SGX**”), in consultation with the Monetary Authority of Singapore (the “**MAS**”), has introduced several new measures to facilitate listed companies’ fund raising efforts in the current challenging market conditions. These measures are in addition to those already announced by the SGX on 12 January 2009 (click [here](#) to refer to our summary of the earlier measures).

The new measures, which take effect from 20 February 2009, are as follows:

- (a) allowing renounceable pro-rata share issuance up to 100% of the issuer’s issued share capital;
- (b) increasing the discount limit for share placements;
- (c) permitting scrip dividend schemes to be implemented without shareholders’ approval;
- (d) allowing placements to certain substantial shareholders without specific shareholders’ approval;
- (e) allowing non-major shareholders to sub-underwrite rights issues; and
- (f) introduction of “when-issued” trading for rights issues.

The arrangements in (a) to (c) above will be available until 31 December 2010, after which their effectiveness will be reviewed.

#### Renounceable pro-rata share issuance

Currently, the Rules of the Listing Manual of the Singapore Exchange Securities Trading Limited (the “**SGX-ST Rules**”) provide that a general mandate may be given by an issuer’s shareholders for the issuance of new shares on a pro-rata basis, but this mandate is subject to a limit of 50% of the issued share capital (excluding treasury shares) at the time of the passing of the resolution approving the mandate (Rule 806). The SGX observed that the time needed to obtain shareholders’ approval to issue shares above the 50% threshold hampers issuers’ and underwriters’ fundraising efforts in the current difficult economic situation.

The SGX has therefore decided to permit issuers to issue up to 100% of their issued share capital via a pro-rata renounceable rights issue.

An issuer would however still be required to observe the following conditions:

- make periodic announcements on its use of the proceeds as the funds are disbursed; and
- provide a status report on the use of the proceeds in its annual report.

It would also still have to comply with any other applicable legal requirements (such as provisions in the Companies Act or Business Trusts Act) and any limitations imposed in any existing general mandate from shareholders. If the issuer's articles of association or existing general mandate contain provisions more restrictive than what the new measure allows, it might have to convene a shareholders' meeting to amend its articles of association or seek a new general mandate.

This new measure is also applicable to real estate investment trusts ("**REITs**"). They will be required to comply with the provisions of their trust deeds, any applicable legal requirements and any limitations in their existing mandate from unitholders. When applied to issue of units in a REIT, the 100% threshold will be based on the number of units in issue at the end of the last financial year, unlike the position for shares, where the reference limit is based on the number of shares in issue at the time of passing of resolution approving the mandate.

(Note: There was a proposal in a consultation paper dated 10 July 2008 to amend the reference limit for units (currently found in Rule 887) to the number of units issued at the time of passing of the resolution approving the mandate, but this has not been formally adopted by the SGX yet.)

#### Discount limit for share placements

The SGX is aware that the current maximum discount of 10% for share placements undertaken using the general share issue mandate (Rule 811) may affect the viability of placement exercises. It has therefore decided to allow issuers to undertake placements of new shares discounted up to 20% of the weighted average price for trades of that issuer done on the date the placement agreement is signed, on condition that:

- the issuer seeks shareholders' approval in a separate resolution at general meeting if it wants to issue new shares on a non pro-rata basis at a discount which exceeds 10% but does not exceed 20% of the market price; and
- any general mandate resolution for issuance of shares on a non pro-rata basis is not conditional to the afore-mentioned resolution.

#### Scrip dividend schemes

A listed issuer may pay its dividends through a scrip dividend scheme (an "**SDS**") without the need for shareholders' approval, subject to its compliance with the Companies Act and other legal requirements. However, the SDS must contain an option for shareholders to elect to receive all their dividends in cash (there does not appear to be an option to receive dividends in part scrip and part cash). This is to safeguard their interests.

### Placements to certain substantial shareholders permitted without specific shareholders' approval

Placements of shares may now be made to substantial shareholders without obtaining shareholders' approval if the following conditions are complied with:

- the substantial shareholder does not have:
  - (i) representation on the board of the issuer; or
  - (ii) control or influence over the issuer in connection with the day-to-day affairs of the issuer and the terms of the placement;
- the placement is effected through an independent process such as book-building;
- the placement is made to more than one placee; and
- the proportion of issued shares held by the substantial shareholder immediately after the placement is not more than the proportion of issued shares held by it immediately before the placement.

The last-mentioned requirement means that an existing substantial shareholder cannot subscribe for or purchase more placement shares than the number necessary to maintain his proportionate shareholding interest in the issuer.

### Sub-underwriting by non-major shareholders

Further to the SGX announcement on 12 January 2009 that major shareholders were, subject to certain conditions, allowed to sub-underwrite rights issues, non-major shareholders are now also entitled to sub-underwrite, subject to those same conditions. Listed issuers who wish to adopt such sub-underwriting arrangements are to inform The Central Depository (Pte) Ltd (the "CDP") immediately upon the announcement of the issue and provide an offer window of at least 5 days from the start of the rights offer period for these other shareholders to subscribe for their entitlements.

### Introduction of "when-issued" trading for rights issue

In order to shorten the market exposure period for holders of rights issues, the SGX will permit the commencement of trading of rights shares on the next business day following the close of the rights offer. Issuers who wish to take advantage of this "when-issued" trading arrangement should inform the CDP immediately after they announce the rights issue.

## References

Please click [here](#) to view the SGX News Release on the above subject.

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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