

1st May 2014

Capital Markets Policy Division

Markets Policy and Infrastructure Department

Monetary Authority of Singapore

10 Shenton Way

MAS Building

Singapore 079117

Submitted via email to: securities@mas.gov.sg

Re: Consultation Paper No. P001-2014 – Review of Securities Market Structure and Practices

Dear Sir,

CFA Society Singapore and CFA Institute¹ welcome the opportunity to participate in this consultation paper to improve market functions and trading practices in the securities market in Singapore. We commend both Monetary Authority of Singapore (“MAS”) and Singapore Exchange Limited (“SGX”) for the comprehensive review in response to changes in market conditions.

We are pleased to share our comments relating to the proposals on improving transparency of trading restrictions imposed by securities intermediaries (Proposal 4), reinforcing the listing process of SGX and strengthening existing enforcement framework (Proposal 5). All comments made are primarily from the perspective of representing investors’ interests and enhancing financial market integrity. As for proposals 1 to 3, we agree that the corresponding actions are useful in enhancing capital market integrity.

Proposal 4: MAS and SGX seek views on:

- i. the proposal to require securities intermediaries and bank intermediaries authorized to deal in securities under the SFA to announce trading restrictions imposed for SGX listed securities on all their customers through the SGX website; and
- ii. the circumstances under which the proposed dissemination of trading restrictions on the SGX website should not apply.

¹ CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors’ interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 140 member societies. For more information, visit www.cfainstitute.org

We agree in principle with MAS and SGX on proposal 4 and support changes in this area. At the same time, however, we are concerned about the following potential repercussions.

Brokerage trade restrictions on specific counters are imposed for many reasons, some of which may not be related to the operation or management of the affected listed companies. Nevertheless, collateral reputational damage might result from the mere occurrence of a trade restriction by a single brokerage. Thus the underlying objective and rationale behind trade restrictions must be objective and made transparent.

Any additional information made available to the public should in theory lead to a more efficient price discovery process. In practice, however, investors are frequently overloaded with information from various sources. Very few have the time and patience to read into the details of every single SGX disclosure. We therefore suggest classifying trading restriction disclosures into different categories, such as:

1. Abnormal trading volume related
2. Abnormal price movement related
3. Non-abnormal market activities related

In this way, investors will be able to understand at first glance the nature of the disclosure. Do note however that the list of categories highlighted above is not meant to be exhaustive. Indeed, regulatory body need to consider very carefully the dividing line that segregate announcements as well as under what context should the discretionary power of refraining from disclosure be granted? Last but not least, the rulings should not be cast in stone and subject to strategic modifications as the market structure evolves.

Overall, proposal 4 is in line with SGX's Caveat Emptor style of regulation and also serves as a reminder to market participants that the prescriptive style of regulation will remain a thing of the past.

On the flip side, the effectiveness of this proposal in enhancing market efficiency still depend on how market participants interpret the announcements. Market participants should not expect brokerages' trading restrictions to be the silver bullet in uncovering problematic counters. They should consider circumstantial evidence before arriving at a final verdict.

Indeed, any trading restrictions imposed by brokerages that are not related to suspicious market manipulation activities on the part of the affected listed companies ought to be subject to a case-by-

case consideration, and when necessary or deserving, excluded from having to be publicised on SGX's website. But such exceptions should remain as exceptions and not the norm.

We suggest that relevant portions of the SGX rule book be converted into mandatory requirements so that financial intermediaries can use them to pre-validate the need to disclose specific trade restrictions on SGX website. As an example, in Practice Note 13.8.1, there is guidance on what might be construed as suspicious; we further suggest that the content can be laid out in a more user-friendly manner (such as a flow chart format), to assist in assessment and decision making.

While we agree that public disclosure of in-house trading restrictions can potentially enhance market efficiency, we also believe the situation can be further enhanced if market misbehaviour can be detected at the source. Based on this philosophy, we recommend regulatory bodies to go one step further: make it mandatory for intermediaries to report suspicious trading activity to the regulatory bodies.

The chief rationale for this recommendation is that there is only so much technology can do to detect the presence of unusual activities within the capital market. The trade-off between being oversensitive and too unresponsive is a common dilemma in automated regulation. Indeed, in a typical month on SGX, there can be as many as 2,000 suspicious price movements. This is where participants in the front line (Remisiers and Dealers) can play a crucial role in helping improve surveillance.

In fact, they are already compelled to do so in Australia. Australia has enacted a Suspicious Activity Reporting Law that **requires** market participants to inform the regulator of any suspicious insider trading or any trading activity that has the effect of creating or maintaining a false or misleading appearance in the market.

The Australian Securities and Investment Commission (ASIC) has gone as far as to spell out actual examples of transactions which might be reportable. These typically include transactions that make no economic sense and/or reap unusually large profits in a short space of time.

We expect this amendment to provide clarity to the quasi-regulatory role of financial intermediaries and move closer towards the concept of "Total Regulation", where various stakeholders within the ecosystem come together to play a part in upholding capital market integrity.

At our meeting on 11th April 2014, we also like to thank you for giving us some insights on the surveillance work carried out by the MAS and SGX. In particular, we applaud MAS proactive stance in investigating all poison pen letters and issues highlighted by whistle blowers. Perhaps, the regulators could consider sharing with the public the extent of surveillance work undertaken. This could be in the

form of creating a section in the MAS website that sets out in a prescribed manner the steps undertaken by MAS upon receipt of a poison pen letter or letter from a whistle blower. In addition, it may be appropriate to showcase a couple of case studies as evidence that MAS does not brush aside such letters as frivolous. The regulators could even sponsor a TV documentary or Mediacorp drama. The use of media could serve as an outreach to the public to educate on the respective roles undertaken by MAS and SGX as well as set out the role that the public could potentially play to assist the regulators.

Proposal 5: MAS and SGX seek views on:

- i. the proposals to establish the Listings Advisory Committee (LAC), Listings Disciplinary Committee (LDC) and Listings Appeals Committees (LApC); and
- ii. the proposed expansion of SGX's range of sanctions for listing rule breaches, to:
 - a. Include powers for the LDC and LApC to issue public reprimands, impose fines on issuers, and impose conditions/restrictions on activities that issuers may undertake; and
 - b. Widen SGX's range of disciplinary actions to include offers of compositions for minor and technical listing rule breaches, and widening the range of remedial actions for non-compliance.

We applaud MAS and SGX for this set of proposals that attempts to reduce the perceived conflict of interest due to SGX's dual roles in regulation and commercial activity.

With respect to the establishment of the listings advisory committee (LAC), the consultation paper has outlined very clearly the standard operating procedure of how a typical listing proposal will be handled.

The only portion which we feel deserves better explanation and greater transparency is listing criteria. Indeed, many industry participants have lamented the "black box" nature of MAS and SGX's listing criterias.

In response to that, we are not suggesting that MAS and SGX make a full disclosure down to the last detail of the criterias used internally in making listing assessments, just as no one would demand an examiner or exam board to disclose the full grading scheme.

It would be helpful, however, if both MAS and SGX could share with the public the key guidelines and areas considered during the screening process. For example, SGX could elaborate in greater detail how the Exchange assesses the business model of a potential company during the pre-listing process as well as what parameters are used in gauging the degree of professionalism of the board of directors.

With respect to the section on strengthening the listings enforcement framework, we are concerned about the inherent conflict of interest if the fines collected were to be used to fund the running of the various listing committees. We suggest allocating such funds collected towards investor education.

A number of details on implementation are also lacking. Questions to be addressed include:

- 1) Will each member on the various committees be serving a staggered term?
- 2) Is there a set of qualifying criteria during nomination, and if so, what are these criteria?
- 3) How would committee members be remunerated for their duties, and by how much?
- 4) How would their remuneration be financed?

We believe the above-mentioned details will be ironed out in due course and hope they would be disclosed before implementation.

As a reference, this guide from the Hong Kong Stock Exchange could be useful: The Hong Kong Stock Exchange (HKSE) currently utilized an independent listing committee. Recently, they have just concluded a new round of candidate nomination. Details such as candidate background, remuneration and duties can be found on the following hyperlink:

<http://www.hkex.com.hk/eng/newsconsul/hkexnews/2014/1402282news.htm>

Any regulatory structure no matter how rigorous may lose credibility if it does not come with enforcement power. It is understood that SGX does not have the power to seize books or interview witnesses; hence, it would be useful for the public to understand the process in which SGX conduct its investigation.

Another worthy consideration is the possibility of a mechanism that redirects the fines collected to remediate victims in compensation for the losses they have suffered. This would go a long way towards upholding capital market integrity.

In all, we believe the establishment of the three committees provides a good balance as it will successfully dilute the perceived conflict of interest inherent within a dual-role regulator while at the same time, allowing SGX to continue leveraging on its proximity to the industry and respond proactively to changes in the business environment. We therefore support the majority of the content outlined in proposal 5 of the consultation paper.

Other remarks:

We recognize that the consultation paper focuses only on the trading volatility of shares. We note, however that volatile share price is typically event driven. Generally, companies who appear to come under questionable trading activities involve loss-making companies looking to undertake reverse takeovers (“RTO”) or substantial acquisitions of businesses totally different from their prevailing core businesses. Often the terms of such RTOs or acquisitions are still in a preliminary stage of negotiation. To generate market interest, the broad terms for such RTOs or acquisitions announced would be very attractive. Notwithstanding, months later, such lucrative transactions may not materialize. The deals will fall through and companies attribute it to failed negotiations or inability to obtain SGX’s approval. Meanwhile, the share price would have been traded up and down many times. The unwitting retail investor would have been caught in the masquerade. There is nothing in the SGX’s Continuing Listing Obligations that prohibit companies from making such announcements. On the contrary, in the spirit of transparency and good corporate governance, companies are encouraged to announce any major transactions. It would appear that the intent of the SGX’s regulation has been exploited.

To mitigate such exploitation of the SGX’s Continuing Listing Obligation, the regulators may want to consider suspending the counter from trading activities a week after the announcement of RTO or substantial acquisitions. Upon announcement of a RTO or substantial acquisitions, investors are given 1 week to trade in or out of the counter. Thereafter, the counter would be suspended and trading lifted until the deal is to be consummated. This is to prevent any companies from making frivolous announcements to manipulate its share price.

Concluding remarks

CFA Society Singapore and CFA Institute² welcome the proactive effort undertaken by SGX and MAS in seeking public consultation prior to rolling out the proposed regulatory changes. We certainly look forward to the favorable impact on market integrity after the eventual deployment of these measures.

Yours sincerely,

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and

Alan Lok, CFA
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² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors’ interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 140 member societies. For more information, visit www.cfainstitute.org

Appendix: Hong Kong Stock Exchange Listing Committee Candidate Nomination Criteria

Scope: open to public applications (latest round of nominations just ended 7 April).

Size and composition: comprises 28 members, at least 8 of whom must represent the interests of investors, another 1 being the Hong Kong Stock Exchange (HKSE) Chief Executive, and 19 other appointed members which must reflect a fair proportion of the remaining aspect of the industry.

Tenure: appointments starts in May/June for a 12-month term, individuals can serve up to maximum of 6 years

Who make the final decision: appointments are decided by the listing nominating committee (LNC)

Composition of the LNC: chairman and two executive directors of the Security and Futures Commission (SFC), and three non-executive members of the Board of HKSE.

Desirable characteristics of committee members:

1. Diversity and representative: members "who would be able to represent the views of listed issuers, market practitioners (including lawyers, accountants, corporate finance advisers and Exchange Participants) and investors.
2. Technical skill set: applicants should have an understanding of the Listing Rules and the context in which listing decisions are made.

Duties and remuneration:

1. The Listing Committee meets at least weekly
2. Members are generally expected to attend half of the regular meetings plus special meetings such as quarterly policy meetings, disciplinary meetings and review meetings.
3. HKSE offers Listing Committee members a fixed annual fee of HK\$80,000 on account of attendance at and preparation for regular, policy, disciplinary and review meetings.