

RESPONSE TO CONSULTATION PAPER ON ENHANCEMENTS TO ENFORCEMENT AND WHISTLEBLOWING FRAMEWORKS

Singapore Exchange Regulation invites comments on this consultation paper. Please send your responses through any of the following means:

Email	listingrules@sgx.com
Mail	Singapore Exchange Regulation 11 North Buona Vista Drive #06-07, The Metropolis Tower 2 Singapore 138589 (Attention: Listing Policy & Product Admission)

Please include your full name and, where relevant, the organisation you are representing, as well as your email address or contact number so that we may contact you for clarification. Anonymous responses may be disregarded.

SGX may make public all or part of any written submission, and may disclose your identity. You may request confidential treatment for any part of the submission which is proprietary, confidential or commercially sensitive, by clearly marking such information. You may request not to be specifically identified.

Any policy or rule amendment may be subject to regulatory concurrence. For this purpose, you should note that notwithstanding any confidentiality request, we may share your response with the relevant regulator.

By sending a response, you are deemed to have consented to the collection, use and disclosure of personal data that is provided to us for the purpose of this consultation paper or other policy or rule proposals.

Please refer to the Consultation Paper for more details on the proposals.

Respondent's Information

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Statement of Interest	

Disclosure of Identity

Please check the box if you do not wish to be specifically identified as a respondent:

I/We do not wish to be specifically identified as a respondent.

Consultation Questions

Question 1: Swifter Enforcement Outcomes

Do you agree that SGX RegCo should have swifter enforcement outcomes?

Please select one option:

- Yes
 No

Please give reasons for your view:

Swifter enforcement outcomes bode well for stakeholders in the financial sector. We agree with the rationale in section 1.3 which reads: *“An effective enforcement framework comprises early detection and immediate containment of breaches, followed by swift and decisive disciplinary action to deal with such misconduct. It is imperative that the enforcement framework must be able to deal quickly with any malfeasance to provide clarity to the market, particularly in a volatile market environment. This would serve to deter and punish wrongdoing as well as maintain the trust and confidence of the investing public.”*

Question 2: Enforcement Powers of SGX RegCo

Do you agree that the expansion of SGX RegCo’s range of enforcement powers (which are not appealable) to include the following sanctions will result in swifter enforcement outcomes:

- (a) issuing a public reprimand;
- (b) in the case of an issuer:
 - (i) issuing an order for the denial of facilities of the market, prohibiting an issuer from accessing the facilities of the market for a specified period; and
 - (ii) requiring an issuer to comply with conditions on the activities undertaken by the issuer; and
- (c) in the case of a director or executive officer of an issuer:
 - (i) requiring the resignation of the director or executive officer from an existing position with any issuer listed on the Exchange; and
 - (ii) issuing an order prohibiting any issuer for a period not exceeding 3 years from appointing or reappointing the director or executive officer, as a director or executive officer, or both?

Please select one option:

- Yes
 No

Please give reasons for your view:

We are in general agreement with the proposal.

However, sanctions in (c) on an individual's reputation and livelihood can be far reaching. For SGX RegCo to administer such enforcement powers, the persons or group of persons in SGX RegCo must be competent and experienced in making such judgement. We seek clarification on how SGX RegCo intend to proceed if internal competency is insufficient to make crucial enforcement decisions.

Other questions that may also arise should the proposed amendment be adopted include:

- If external expertise is needed in an enforcement decision, who should SGX RegCo tap on considering the small community of corporate finance professionals in Singapore? Will the issues of conflict of interest surface once again?
- Will there be an independent audit on judgements?
- Is there an opportunity to redress grievances for wrong judgement?
- Will a court case ensue (which may incur unnecessary legal costs)?

Question 3: Exchange's Approval for Appointment of Director, Chief Executive Officer and Chief Financial Officer

Do you agree that the circumstances where the Exchange's approval is required for the appointment of a director, chief executive officer and chief financial officer (or its equivalent rank) should be broadened to:

- (a) include circumstances where the issuer is the subject of an investigation into the affairs of the issuer by a special auditor, or a regulatory or enforcement agency; and
- (b) include re-appointment of a director, chief executive officer and chief financial officer (or its equivalent rank)?

Please select one option:

Yes

No

Please give reasons for your view:

In circumstances where the Exchange's approval is a requirement for the appointment of director, CEO, and CFO, it would be consistent to have the powers broadened to include re-appointments in (b).

For (a) to apply, the issuer should seek approval for appointment of director, CEO, and CFO, only if the issuer is aware (or should be aware) that the issuer is the subject of a regulatory investigation, since it may not always be clear when an investigation has started.

Question 4: Administrative Powers of SGX RegCo

Do you agree that SGX RegCo's administrative powers should be enhanced as follows:

- (a) to allow SGX RegCo to object to re-appointments of individual directors or executive officers in any issuer for a period not exceeding three years under the circumstances set out in Rule 1405(2) of the Mainboard Rules and Rule 305(2) of the Catalist Rules (as may be applicable);
- (b) to include a new administrative power to require an issuer to suspend individual directors or executive officers for a period not exceeding three years under the circumstances set out in Rule 1405(2) of the Mainboard Rules and Rule 305(2) of the Catalist Rules;
- (c) to include in Rule 1405(2) of the Mainboard Rules and Rule 305(2) of the Catalist Rules circumstances where the director or executive officer is being investigated or is the subject of proceedings for the breach of any relevant laws, regulations and rules (including those of any professional or regulatory bodies) relating to fraud, dishonesty, the securities or futures industry, corruption or breaches of fiduciary duties, in Singapore or elsewhere; and
- (d) to remove the requirement of wilfulness under Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules?

Please select one option:

- Yes
- No

Please give reasons for your view:

Comments as per response to question 2 and 3.

Question 5: Issuers to Disclose Whistleblowing Practices

Do you agree that issuers should disclose how they have complied with best practices on whistleblowing? You may suggest additional best practices that may be appropriate.

Please select one option:

- Yes
- No

Please give reasons for your view:

We are in agreement to the proposal.

However, the act of establishing and maintaining whistle blowing practices is the bare minimum. Policies to protect the identity of whistleblowers must be beefed up as confidentiality is paramount to

the success of the scheme. Should whistleblowers perceive that the audit committee may not be independent, would whistleblowers then have direct access to SGX RegCo?

On a separate note, there should be a penalty on employees who misuse the whistleblowing scheme. The act of whistleblowing should be bona fide to right a misconduct, and not used as a tool for personal gain or retaliation.

Question 6: Exclusion of Liability of SGX RegCo

Do you agree with the scope of the exclusion of liability for SGX RegCo? Please state your reasons.

Please select one option:

Yes

No

Please give reasons for your view:

When powers to act are conferred on an individual or groups of people, they have to be responsible in discharging their duties. This will provide one layer of accountability and prevent abuse of power when wide ranges powers are conferred on an individual or groups of people.

We seek clarification to the reason(s) for SFA providing immunity from *'criminal and civil liability for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of SGX under the SFA or under the Listing Rules'*.