

Responses to Comments on Consultation Paper

Enhancements to Enforcement and Whistleblowing Frameworks

24 June 2021

Singapore Exchange

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I Introduction

1 Background

- 1.1 On 6 August 2020, SGX issued a consultation on “Enhancements to Enforcement and Whistleblowing Frameworks”. In the consultation, SGX invited feedback on changes to the SGX Listing Rules (Mainboard) (“**Mainboard Rules**”) and SGX Listing Rules (Catalist) (“**Catalist Rules**”) (collectively, the “**Listing Rules**”) relating to SGX’s enforcement framework and the whistleblowing regime, specifically, on proposals relating to (a) enhancements to the SGX’s enforcement and disciplinary framework, (b) enhancements to the whistleblowing regime, and (c) other miscellaneous amendments.
- 1.2 In October 2015, SGX established the independent Listings Advisory Committee, Listings Disciplinary Committee (“**LDC**”) and Listings Appeals Committee (“**LAPC**”) which consist of independent and experienced market professionals. The objective was to enhance the transparency and independence of SGX’s disciplinary process in order to address the perceived conflict arising from the fact that SGX is a self-regulatory organisation with dual roles as both a commercial for-profit entity and a regulator of issuers, and potential concerns arising from the introduction of enhanced powers by the LDC and LAPC to impose penalties and fines of up to \$1 million.
- 1.3 In September 2017, SGX RegCo was established to undertake all SGX’s regulatory functions. SGX RegCo is governed by a board of directors (whose appointment is subject to MAS’ approval) comprising a majority of independent directors. It performs its duties independently of the business functions of SGX and its group of companies. The independence of SGX RegCo accentuates its ability to enforce the requirements of the Listing Rules and the fulfilment of its regulatory functions, as well as the continued maintenance of market integrity and discipline.
- 1.4 Following a review of the enforcement framework, SGX RegCo was of the view that the current framework can be recalibrated to more expeditiously deliver an enforcement outcome for a majority of cases. This would also provide more certainty and clarity to the market.
- 1.5 SGX also proposed Listing Rule amendments to enhance the disclosures on whistleblowing practices and complement the disclosures required under the Code of Corporate Governance 2018 (the “**CG Code**”). Under the proposed rule, issuers will have to disclose explicitly how they have complied with the practices on whistleblowing as stated in the Listing Rules as well as the CG Code.
- 1.6 In addition, SGX proposed to amend the Listing Rules on general limitation of liability and indemnity to clarify the application of the relevant exclusions of liability and indemnity to SGX RegCo, its directors, officers, employees, representatives, agents and any other delegates. This is to enable SGX RegCo to discharge its functions independently.
- 1.7 The consultation closed on 7 September 2020. We thank all respondents for providing comments to the consultation. SGX has carefully considered all the comments received, and where appropriate, made adjustments to the proposals. The list of respondents can be found in [Appendix 1](#).
- 1.8 The amendments to the Listing Rules relating to enforcement are set out in [Appendix 2](#) and [Appendix 3](#) and the amendments to the Listing Rules relating to whistleblowing are set out in [Appendix 4](#) and [Appendix 5](#).

II Comments Received and SGX's Responses on Proposed Enhancements to Listing Rules on Enforcement

1 Enhancing SGX RegCo's Enforcement Powers

Question 1: Swifter Enforcement Outcomes

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

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?

Comments Received

- 1.1 All respondents agreed that SGX RegCo should have swifter enforcement outcomes. Key reasons cited by respondents include that the proposal will provide greater confidence in Singapore's capital markets, serve as a greater deterrence against malfeasance, enhance the protection of investors, and lend more certainty to the market.
- 1.2 Almost all respondents supported the expansion of SGX RegCo's range of enforcement powers to include the proposed additional sanctions. Key reasons cited by respondents include that the proposals will enhance public trust and confidence in the integrity of Singapore's capital markets, allowing investors to be more well informed, and provide stronger deterrent value in ensuring there are real consequences to malfeasance. Several respondents gave suggestions to enhance the enforcement framework.
- 1.3 Two respondents suggested that the sanctions imposed should be appealable. This concern was heightened by the public nature of the proposed expanded range of enforcement powers. One of the respondents suggested that the LDC continue to play a role in the enforcement process, while

the other respondent proposed that SGX RegCo set out the procedures for exercising its enforcement powers, which should minimally mirror the current procedures of the LDC.

- 1.4 One respondent sought clarification on how, in the absence of an avenue of appeal, SGX RegCo will handle situations where (a) the tribunal hearing the case had acted in bad faith, or (b) there is fresh evidence, not previously available, which would likely have affected the decision.
- 1.5 Two respondents raised concerns that sanctions such as the denial of facilities of the market may cause short to long-term liquidity problems to issuers, and consequently, their investors. These sanctions should be used sparingly, and clarification should be provided on the type of facilities of the market proposed to be denied from the issuer, and the type of conditions proposed to be imposed on the activities undertaken by the issuer.
- 1.6 A few respondents were of the view that there should be transparency and consistency in SGX RegCo's exercise of its enforcement powers, to ensure that the rules of natural justice are observed. Other respondents recommended that SGX RegCo be adequately and appropriately staffed to ensure that its resources match the additional powers and to maintain accountability, in order to achieve the aim of increasing the speed of enforcement outcomes.
- 1.7 One respondent noted that issuers with debt securities listed on the Exchange, that are not themselves listed on the Exchange ("**unlisted debt issuers**"), are only subject to limited continuing listing obligations under the Listing Rules. The respondent sought clarity as to the applicable enforcement powers for unlisted debt issuers.
- 1.8 Some respondents provided comments on the composition of the LDC. One respondent noted that the LDC needs to be independent and free from conflicts or perceived conflicts, and was of the view that the appointment of individuals who are (a) in the profession of providing listed companies with services (such as corporate finance, auditing, legal, and Catalist sponsorships), or (b) appointed as independent directors of listed companies, as members of the LDC should be avoided. In a similar vein, another respondent suggested that investors and corporate governance bodies and advocates should be better represented on the LDC and LApC.

SGX's Response

- 1.9 We note the support for swifter enforcement outcomes and the expansion in SGX RegCo's scope of enforcement powers.

Avenue of appeal

- 1.10 We note the participant feedback requesting appropriate and independent checks and balances in the exercise of SGX RegCo's enforcement powers.
- 1.11 We highlight that SGX, including SGX RegCo, is regulated by the MAS in the performance of our role as a front-line regulator and operator of the securities and derivatives markets. The MAS maintains oversight of the regulatory responsibilities performed by SGX RegCo, and conducts regular audit inspections on, among others, the internal controls and processes of the various SGX RegCo's functions.
- 1.12 We have carefully considered the appropriate calibration of allowing for appeals against sanctions imposed while ensuring that the speed and efficacy of enforcement actions is enhanced. Accordingly, subject to the fulfilment of specified grounds of appeal to be set out in a new Rule 1419(6) of the Mainboard Rules and Rule 319(6) of the Catalist Rules, we have decided to allow for appeals to the LApC against the more serious sanctions imposed by SGX RegCo, as follows:

- (a) 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/or until fulfilment of specified conditions;
- (b) the resignation of the director or executive officer from an existing position with any issuer listed on the Exchange; and
- (c) an order prohibiting any issuer for a period not exceeding 3 years from appointing or reappointing the director or executive officer, as a directors or executive officer, or both.

The remaining sanctions such as the issuance of public reprimands, as well as requiring an issuer to comply with conditions on the activities undertaken by the issuer, will not be appealable.

- 1.13 We consider this to strike an appropriate balance between achieving expeditious public enforcement outcomes, while addressing some respondents' concerns with safeguards and independent oversight. Appeals against SGX RegCo's enforcement decisions will similarly be lodged before the LApC, and the appeals proceedings under the Listings Rules would apply. SGX RegCo will also provide for a stay of execution of the appealable sanctions where an appeal is lodged.
- 1.14 In arriving at the above structure, we noted that this approach is consistent with MAS' regime under the Securities and Futures Act (Chapter 289 of Singapore). Specifically, the right of appeal is not provided for in respect of public reprimands, in contrast to the other administrative sanctions imposed by MAS, for which an appeal can be made to the Minister, and is referred to an independent Appeal Advisory Committee appointed by the Minister. Apart from the issuance of public reprimands, MAS' administrative sanctions include the issuance of prohibition order, revocation or suspension of licences, and directing the removal of a director or executive officer in a licensee.
- 1.15 As noted by one of the respondents, aggrieved parties may seek a judicial review through the Singapore courts if they hold the view that SGX RegCo has acted in a manner that is illegal, irrational, or there is procedural impropriety in the enforcement of SGX RegCo's powers.

Types of sanctions

- 1.16 We wish to clarify that the imposition of conditions on the activities undertaken by the issuer is not a punitive sanction but functions as a safeguard for investor protection. We also wish to highlight that fines, which are more severe and pecuniary in nature, continue to be reserved for the LDC.
- 1.17 In relation to the denial of market facilities, we wish to clarify that such sanction is not intended to be a delisting of the issuer. Rather, it will include withholding approval of matters that require approval from SGX RegCo, such as the issuance of shares. Circumstances warranting the imposition of this sanction will include, but is not limited to, situations where the issuer has repeatedly committed multiple breaches of the Listing Rules. To ensure that active action is taken by the issuer to remedy the issues which gave rise to the breaches, we may also extend the duration of this sanction to last until the issuer has fulfilled specified conditions (e.g. to remedy the breach).

Clarity and guidance in updated Enforcement Handbook

- 1.18 We note the feedback given concerning transparency and for clear guidance to be provided on the use of SGX RegCo's enhanced enforcement powers. As mentioned in the Consultation Paper, we are mindful of the need to ensure that the show cause process pursuant to SGX RegCo's exercise of its enhanced enforcement powers continues to be robust, and conform to the rules of natural justice. Accordingly, the updated Enforcement Handbook to be issued by SGX RegCo will provide detailed guidance on SGX RegCo's use of its enforcement powers, as well as clarity on the robust show cause process involved prior to SGX RegCo's determination on liability and the appropriate sanctions.

Relevant factors and considerations for exercising SGX RegCo's enforcement powers, and illustrative examples of their application, as well as sentencing principles and guidance, will also be provided.

1.19 The Enforcement Handbook will set out, among others, the following processes:

- (a) the initial show cause process, informing the Relevant Persons of the potential breaches of the Listing Rules, and allowing them the opportunity to make representations on the events leading up to the alleged breaches;
- (b) the charge process following the show cause process:
 - (i) beginning with the issuance of a notice of breach(es), and allowing the Relevant Persons to provide a defence to the charge(s) within a reasonable time period;
 - (ii) followed by the issuance of the notice of enforcement action, and allowing the Relevant Persons to provide submissions on mitigation within a reasonable time period; and
 - (iii) lastly, the issuance of final sanctions, and providing the relevant considerations for each enforcement action taken by SGX RegCo, with key factors assessed at each stage; and
- (c) the constitution of an internal committee comprising senior members of various functions within SGX RegCo to review and approve each milestone of the enforcement process to ensure a holistic assessment of each case.

1.20 In response to a query, we also wish to highlight that all public disciplinary actions taken by SGX RegCo are currently published on the SGX website. Moving forward, the intention is to continue publishing such information to ensure that the market is apprised of serious breaches of the Listing Rules, and that stakeholders can use the information as a guide to avoid similar incidents of non-compliance.

Unlisted debt issuers

1.21 We wish to highlight that unlisted debt issuers are subject to the continuing obligations stipulated as applicable to such issuers in the Listing Rules and consequently, will be subject to the enforcement powers applicable to issuers.

Composition of LDC

1.22 We took into consideration the feedback for better representation by corporate governance bodies and advocates as well as representatives of investor groups in the LDC and LApC, and will take steps to include individuals with such relevant backgrounds to improve the diversity of the LDC and LApC. We agree that this inclusion will better enable the LDC and LApC to incorporate market expectations of corporate governance and compliance standards in their assessment of Listing Rule breaches.

2 Exchange's Approval for Appointment of Director, Chief Executive Officer and Chief Financial Officer

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)?

Comments Received

- 2.1 All respondents supported the proposal. Key reasons cited by respondents include that the proposals will ensure that potentially culpable individuals are not being appointed or allowed to remain on an issuer's board or management team, and avoid further harm and wrongdoing by culpable individuals (such as disposing of evidence) during the course of investigations, which may take time.
- 2.2 One respondent noted that certain issuers are supervised or regulated by statutory authorities. For example, financial institutions are regulated by the MAS, whose prior approval is required for the appointment and re-appointment of directors and the appointment of key officers. There are well-established criteria (e.g. MAS' Guidelines for Fit and Proper Criteria) and processes for reviewing such director and key officer candidates. The respondent proposed having an exception in the Listing Rules for issuers that are licensed or approved by MAS or such other statutory authority as may be determined by the Exchange, given that such statutory authorities would be better placed to regulate the appointment of directors and key officers of regulated listed issuers.
- 2.3 Two respondents suggested further clarity to the circumstances under which SGX RegCo will exercise the relevant power. One respondent recommended providing a definition of an "investigation" in the Listing Rules, and to state clearly whether an internal review (mandated by the issuer's board of directors) and special audit required by the authorities will be considered an investigation. The other respondent observed that increasingly, "independent reviewers" are being appointed instead of "special auditors", and suggested that the relevant rules should also include circumstances where an independent reviewer is appointed.
- 2.4 One of the respondents queried whether SGX RegCo would consider expanding its powers, in the case of errant individuals, to also require its prior approval for the appointment or re-appointment of such an individual as a director or executive officer in any issuer listed on SGX, and not just in the case of an issuer subject to an enforcement action. Alternatively, in the event other issuers appoint such individuals, the respondent proposed that issuers disclose the reasons why such individuals are the best fit as a director or executive officer.

SGX's Response

- 2.5 We note that certain issuers are regulated by statutory authorities and require the approval of such statutory authorities for the appointment of their directors and key officers. As the front-line regulator for SGX-ST, SGX RegCo's determination in respect of the directors and key executive officers relate to their suitability to serve in such positions in a listed company. The decision-making process of such statutory authorities do not serve the same purpose, being based on a determination of the suitability of the relevant person to serve as a director or executive officer in the relevant regulated industry, and may be based on factors and considerations that differ from SGX RegCo. As such, we are of the view that it is not necessary to create a carve out for issuers that are regulated by statutory authorities.
- 2.6 "Investigation" has the plain meaning of the word. In addition, under the proposed Rule 720(3) of the Mainboard Rules and Rule 720(2) of the Catalist Rules, all investigations into the affairs of the issuer by a special auditor, or a regulatory agency or enforcement agency, will warrant the use of the Exchange's powers. In situations where an internal review (mandated by the issuer's board of directors) leads to the conduct of a special audit or an independent review, the Exchange will assess whether it is appropriate to exercise its powers on a case-by-case basis, having regard to the intent of this power. As a general guide, if the objective of the special audit or independent review is to determine whether there are any irregularities or improprieties by the issuer, its directors or key management in connection with the affairs of the issuer, the Exchange may exercise its power under this rule regardless of the party appointing the special auditor or independent reviewer.
- 2.7 To address the technical issue where the term "independent reviewer" may be used in place of the term "special auditor", we will amend Rule 720(3)(b)(i) of the Mainboard Rules and Rule 720(2)(b)(i) of the Catalist Rules to include situations of an "independent reviewer appointed by the issuer or the Exchange", to ensure that the substance of the Rule is preserved.
- 2.8 Given that the intent of this power is to ensure that only suitable persons are appointed by errant issuers (as opposed to individuals) to steer them back on track, we are of the view that cases of errant individuals will be more appropriately dealt with under Rule 1405(1)(e) of the Mainboard Rules and Rule 305(1)(d) of the Catalist Rules (as discussed in Section 3 below).

3 Enhancing SGX RegCo's Administrative Powers

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?

Comments Received

- 3.1 Almost all respondents supported the proposed enhancements of SGX RegCo's administrative powers. A key reason cited by respondents is that the proposals will prevent individuals with questionable character and integrity, or errant individuals, from serving on the boards or management teams of issuers.
- 3.2 Two respondents were of the view that the Exchange should not take pre-emptive action while investigations are ongoing, because until an individual is proven guilty, it would be premature and potentially unjust for the Exchange to require the issuer to suspend such individual. Should there be an unavoidable need for the Exchange to have the power to require the suspension of an individual under investigation, one respondent asked that the Listing Rules set out the appropriate safeguards in respect of the exercise of such power (for instance, that such power may only be exercised in the face of strong evidence of culpability), while the other respondent sought clarification on the point in an investigation at which it is appropriate for SGX RegCo to object to the re-appointment or to require the suspension of an officer.
- 3.3 One respondent sought clarification on the meaning of "suspend", the effect of a suspension on a director, and whether the name of the suspended individual will be disclosed in the "Directors and Executive Officers' Watchlist", or whether there will be a separate list on the SGX website.
- 3.4 Another respondent noted that an order for an issuer to suspend its directors or executive officers may cause the issuer to breach its contractual obligations under the respective service agreements. Also, the respondent sought clarification on whether the issuer can appoint suspended individuals as advisers, especially if the issuer is highly dependent on the suspended individuals in its day-to-day operations and the suspension may adversely affect its operations.
- 3.5 While most respondents supported the proposal to remove the requirement of wilfulness under Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules, a few respondents were of the view that the requirement of wilfulness should be retained as an appropriate threshold for intervention, in order that the Listing Rules not be unduly onerous.

SGX's Response

- 3.6 We wish to highlight that the purpose of the administrative power to object to an appointment or re-appointment of a director or executive officer is for the protection of investors, by preventing individuals with questionable character and integrity from serving on the boards or management teams of issuers. In this connection, we are of the view that the proposed range of offences triggering this power are serious enough to call into question the individual's suitability to serve as a director of listed companies. It is necessary for SGX RegCo to have the discretion to take pre-emptive action to prevent the appointment or re-appointment of such individuals in situations where it may be prejudicial to a listed company for such individuals to continue serving.
- 3.7 The specific circumstances triggering the administrative power to object to an appointment or re-appointment of a director or executive officer under Rule 1405(2) of the Mainboard Rules (and equivalent Rule 305(2) of the Catalist Rules) are intended to be as follows:

- (a) where the director or executive officer has contravened 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, when there is an enforcement outcome against the individual personally relating to the aforementioned offences; and
- (b) where the director or executive officer is being investigated or is the subject of proceedings for 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, when the individual is:
 - (i) arrested (with or without bail) and/or charged for an offence; or
 - (ii) not contactable or has absconded, or is wanted by the regulatory authorities for cooperation and investigation.

3.8 Having considered the various feedback received, we have decided not to proceed with the inclusion of the proposed suspension powers in the Listing Rules, for the following reasons:

- (a) we are of the view that generally, the powers to prevent the appointment or re-appointment of individuals under specified circumstances as aforementioned are sufficient to address the need to prevent individuals with questionable character and integrity from serving on the boards or management teams of issuers; and
- (b) the issuer's nominating committee ("**NC**") should continue to hold the responsibility to assess the suitability of the issuer's directors and executive officers on a continuous basis. This is in line with the duties of the NC under the CG Code, which provides that the NC shall, amongst others, decide if a director is able to and has been adequately carrying out his or her duties as a director of the issuer. Accordingly, in the event that the issuer becomes aware that one of its directors or executive officers is being investigated or is the subject of proceedings, the NC should readily assess and decide whether such individual is suitable to remain on the issuer's board or management team. The NC would also be better placed to decide on the necessary and appropriate safeguards to be applied to the affected individual.

3.9 In this regard, we will be making relevant amendments to Practice Note 7.1 of the Mainboard Rules and Practice Note 7A of the Catalist Rules to provide further clarity on SGX RegCo's expectations, including as follows:

- (a) where investigations involving directors or executive officers are on-going, such directors and executive officers must continue to provide updates to the board on material developments relating to the investigations, including the conclusion of investigations;
- (b) in determining whether information is material for disclosure, the board should consider, among others:
 - (i) whether the information is material to the affairs of the issuer;
 - (ii) whether the investigation would affect the information previously disclosed in accordance with Rule 704(7)(a) or the assessment of the character and integrity of the director or executive officer; and
 - (iii) the severity of the potential breach;

- (c) to give clarity on the content of an announcement made pursuant to paragraph (b);
- (d) where a person is a director or executive officer in multiple listed issuers, the onus is on the person to notify the boards of all these listed issuers of his involvement in an ongoing investigation, in order for the relevant NC to assess the suitability of the continued appointment of the relevant director or executive officer; and
- (e) in the case where the issuer itself is involved in an investigation, the market should similarly be updated in a timely manner.

3.10 With regard to the requirement of wilfulness, we noted that a number of respondents have agreed with the proposal to remove the requirement of wilfulness under Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules, and expressed the view that such requirement is difficult to establish and poses a high threshold to determine malfeasance. Coupled with the proposed amendments to narrow the scope of Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules to apply only to the most material contraventions relating to fraud, dishonesty, the securities or futures industry, corruption or breaches of fiduciary duties, we are of the view that it is unnecessary to further limit the application of the rule by requiring wilfulness.

III Comments Received and SGX’s Responses on Proposed Enhancements to Whistleblowing Regime

1 Companies to Establish and Maintain Whistleblowing Policy

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.

Comments Received

- 1.1. Most respondents agreed with SGX RegCo’s proposal to mandate that listed companies disclose the arrangements in place to receive and investigate into whistleblowing allegations, as well as the proper provisions for protection of the whistleblower within the company. None of the respondents objected to the proposal.
- 1.2. Most respondents also agreed with the proposal for all issuers to establish and maintain a whistleblowing policy that sets out the procedures for a whistleblower to report on misconduct or wrongdoing related to the issuer or its officers. Respondents were also in agreement with the proposed best practices.
- 1.3. A respondent suggested that while the identity of the whistleblower should generally be kept confidential, there should be exceptions where reasonable, such as in the context of disclosures for investigation, disclosure required by authorities, or where the reports are frivolous, bad faith, or malicious, and where such reports are made by an employee, there should be allowance for disciplinary action for frivolous, mischievous or malicious allegations.

- 1.4. One respondent suggested that the whistleblowing policy should also allow the whistleblower to report to the external auditor especially on matters that may have an impact on the financial statements of the company, and the external auditor's contact details should be provided.
- 1.5. Respondents also provided some suggestions to enhance the whistleblowing policies of issuers. They are:
- (a) whistleblowing policy and access to the whistleblowing contact should be published on the issuer's website;
 - (b) explanation of how whistleblowers will be kept apprised of the progress of investigations and how outcomes will be communicated (if appropriate);
 - (c) disclosure of how complaints are reviewed and who reviews them to determine whether they are substantive;
 - (d) publish summary statistics with a qualitative description of the whistleblowing cases, their nature, status, and actions taken on a periodic basis; and
 - (e) periodic reviews and audit of the whistleblowing policy and its procedures.

SGX's Response

Whistleblowing policy

- 1.6. We will mandate that all issuers must establish and maintain a whistleblowing policy. To entrench this requirement, issuers will be required to disclose in their annual reports that a whistleblowing policy, which sets out the procedures for a whistleblower to make a report on the issuer on misconduct or wrongdoing related to the issuer or its officers, has been established.

Implementation of whistleblowing requirements

- 1.7. In the consultation paper published on 6 August 2020, SGX proposed that issuers provide a statement on whether and how issuers have complied with the best practices on whistleblowing. These best practices are (a) designating an independent function to investigate whistleblowing reports, (b) ensuring that the whistleblower's identity is kept confidential, (c) disclosure of the commitment to ensure protection of the whistleblower against detrimental or unfair treatment, and (d) the Audit Committee to be responsible for oversight and monitoring of whistleblowing. Respondents agreed with the proposed best practices.
- 1.8. These best practices are intended to reflect the fundamental principles of an effective whistleblowing framework, and we recognise that issuers may differ in their approach to implementing them. To encourage issuers to develop a robust whistleblowing framework, we are of the view that the proposed best practices should not be overly prescriptive. Issuers should have the flexibility to operationalise their whistleblowing policies and demonstrate how they meet these best practices. Issuers will however be required to explain in their annual reports how these practices have been implemented.

Instances where the veil of confidentiality should be lifted

- 1.9. We believe the Listing Rules need not be prescriptive in setting out details of the whistleblowing policy. Issuers should have discretion in how to adhere to the principle of confidentiality, and may choose to highlight in their whistleblowing policies, the limited circumstances where disclosure may be necessary, for example, when required by law or regulatory authorities.

Reporting to the external auditor

- 1.10. We are of the view that this suggestion is not practical as not all complaints will pertain to audit matters. A more practicable approach is for the whistleblower to report to the independent function designated to investigate whistleblowing report as required under the new Rule 1207(18B)(b) of the Mainboard Rules and Rule 1204(18B)(b) of the Catalist Rules, as this function should have the necessary resources and capability to conduct the investigation.
- 1.11. In any case, the Audit Committee, to whom the independent function reports, will be responsible for oversight and monitoring of whistleblowing as required under the new Rule 1207(18B)(d) of the Mainboard Rules and Rule 1204(18B)(d) of the Catalist Rules. Furthermore, Rule 719(2) of the Mainboard Rules and Rule 719(2) of the Catalist Rules require that if the Audit Committee becomes aware of any suspected fraud or irregularity, or suspected infringement of any Singapore laws or regulations or rules of the Exchange or any other regulatory authority in Singapore, which has or is likely to have a material impact on the issuer's operating results or financial position, it must discuss such matter with the external auditor. On this basis, we are of the view that there are sufficient safeguards to ensure that whistleblowing reports channelled through the issuer's whistleblowing function will receive the appropriate attention by the Audit Committee and external auditor.

Other suggestions from respondents

- 1.12. We are of the view that as these suggestions relate to the implementation and operationalization of whistleblowing policies, the same will not be prescribed in the Listing Rules. Nonetheless, these are useful suggestions for issuers' consideration when developing their whistleblowing processes.

IV Comments Received and SGX's Responses on Other Proposed Changes

1 Exclusion of Liability of SGX RegCo

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.

Comments Received

- 1.1 In the main, respondents were generally supportive of the intent behind the proposed rules. Some respondents noted that sufficient protection is necessary to safeguard independent decision making. However, a number of respondents expressed reservations over the specific proposals. In particular, these respondents were opposed to the proposed Rules 122 to 124 of the Mainboard Rules and

proposed Rules 120 to 122 of the Catalist Rules (the “**Indemnity Rule**”), relating to the provision of indemnity to SGX RegCo in respect of any loss or liability incurred as a result of or in connection with any breach by an issuer, listing applicant, issue manager, sponsor or sponsor applications (the “**Indemnifying Persons**”). Respondents also provided feedback on the drafting of the proposed Rule 121 of the Mainboard Rules and proposed Rule 119 of the Catalist Rules relating to SGX RegCo’s liabilities (the “**Liability Rule**”).

1.2 With respect to the proposed Indemnity Rule, the main reservations expressed by respondents are summarised below:

- (a) The exclusion of liability being proposed is already sufficient to safeguard SGX RegCo. An additional indemnity should not be necessary in this regard.
- (b) It is not the norm for a securities exchange to mandate in its listing rules that listing applicants, issuers, issue managers, and sponsors provide an indemnity to the exchange and parties related to the exchange. If implemented, this could dampen the attractiveness and competitiveness of Singapore’s capital market.
- (c) Banks typically have in place policies governing the provision of indemnities, and some issue managers may be prohibited as a matter of policy from providing such broad indemnity of this nature, or may even be prohibited from providing any indemnity.
- (d) It is very unlikely for SGX RegCo to suffer loss or liability due to a breach or wilful, unlawful, reckless or negligent acts or omissions by the Indemnifying Persons.
- (e) The scope of the indemnity, extending to any of SGX’s delegates, is too wide and should be strictly limited to the Exchange¹ and SGX RegCo.

SGX’s Response

1.3 We note the feedback from the respondents. The proposed Liability Rule was intended to enable SGX RegCo, as the regulatory subsidiary of SGX, to discharge its functions independently without fear or favour by clarifying SGX RegCo’s authority to exercise the rights, powers, authorities, and discretions of SGX and its regulated entities under the Listing Rules, and to allow SGX RegCo to delegate and assign those rights, powers, authorities, and discretions to any other person or entity.

1.4 The proposed Indemnity Rule was intended to address the scenario where SGX RegCo is made liable to a third party as a result of a breach of the Listing Rules by the Indemnifying Persons. In such situations, the proposed indemnity provides a separate contractual claim where the Indemnifying Persons will bear the full financial consequences of their breach through the operation of the proposed Indemnity Rule. The provision of an indemnity by persons subject to the Listing Rules is also not novel. The existing Rule 117 of the Mainboard Rules and Rule 115 of the Mainboard Rules provide that when the Exchange publishes or releases announcements on behalf of issuers, issuers shall indemnify the Exchange for any losses, damages or costs that may arise as a result of publishing the announcement or disseminating the information in the announcement. These rules cover specific acts by which SGX (and its related entities) is acting on issuers’ instructions and should therefore be indemnified in the event of any lawsuit arising from the announcement posted on the issuer’s instruction.

¹ Under the Definitions and Interpretations in the Listing Rules, “Exchange” refers to Singapore Exchange Securities Trading Limited (“**SGX-ST**”), a regulated subsidiary of SGX. SGX RegCo is a subsidiary of SGX that undertakes the regulatory functions on behalf of SGX and its regulated subsidiaries.

- 1.5 Having reviewed the feedback and having regard to the provisions of the Securities and Futures Act (“SFA”), we are of the view that no amendment is required in the Listing Rules. For the avoidance of doubt, the persons who act on behalf of SGX-ST as stated in the SFA may include SGX RegCo, its board, its delegate or any of their respective directors, officers, employees or agents.

V Implementation of Amendments to Listing Rules

1 Implementation of Changes

- 1.1 The amendments to the Listing Rules set out in [Appendix 2](#) and [Appendix 3](#) will take effect from 1 August 2021. For the avoidance of doubt, the amended Listing Rules relating to the expansion of SGX RegCo’s range of enforcement powers will only take effect for Listing Rule breaches occurring after the effective date of the amendments.
- 1.2 The amendments to the Listing Rules set out in [Appendix 4](#) and [Appendix 5](#) will take effect from 1 January 2022. For the avoidance of doubt, the amended Listing Rules relating to the whistleblowing policy requirements will take effect for companies in respect of annual reports relating to financial years commencing from 1 January 2021.

Appendix 1 Respondents to the Consultation

SGX received comments from 16 respondents for the questions raised in the Consultation, of which 3 requested confidentiality. The respondents who agreed to be named are:

Allen & Gledhill LLP

Asia Securities Industry & Financial Markets Association – Asset Management Group

BK Tan

CFA Society Singapore

Charles Sim

Chartered Secretaries Institute of Singapore

Institute of Chartered Accountants Singapore

KPMG Services Pte Ltd

Mak Yuen Teen

Michael Kwan Shiquan

SAC Capital Private Limited

Securities Investors Association (Singapore)

WongPartnership LLP

Appendix 2 Amendments to Mainboard Rules on Enforcement Powers

Legend: Deletions are struck-through and insertions are underlined.

Chapter 7

Part IV Equity Securities – Other Obligations

Directors and Management

720

(3)

- (a) The Exchange may require an issuer to obtain the prior approval of the Exchange for the appointment or reappointment of a director, a chief executive officer and chief financial officer (or its equivalent rank).
- (b) The circumstances under which the Exchange may effect Rule 720(3)(a) include but are not limited to:—
 - (i) Where the issuer is the subject of an investigation into the affairs of the issuer by a special auditor or an independent reviewer appointed by the issuer and/or the Exchange appointed under Rule 704(14), or a regulatory or enforcement agency;

Chapter 14 Disciplinary and Appeals Procedures, and Enforcement Powers of the Exchange

Part II Types of Committees

Appeals Committee

1404

- (1) The Appeals Committee shall hear and decide appeals arising from:
 - (a) decisions of the Disciplinary Committee; ~~and~~
 - (b) decisions of the Exchange relating to any of the following matters:
 - (i) rejection of an application for the extension of time to allow an issuer to restore its percentage of securities in public hands to at least 10% under Rule 724;
 - (ii) rejection of a proposal by a cash company to meet requirements for a new listing under Rule 1018;
 - (iii) rejection of an application for extension of time to meet requirements for a new listing under Rule 1018;
 - (iv) rejection of a resumption proposal under Rule 1304;

- (v) rejection of an application for extension of time to submit or implement a resumption proposal under Rule 1304;
- (vi) removal of an issuer from the Official List under Rule 1305;
- (vii) rejection of a proposal by an issuer to voluntarily delist under Rule 1307;
- (viii) rejection of an application to exit from the watch-list under Rule 1314; and
- (ix) rejection of an application for extension of time to submit an application to exit from the watch-list under Rule 1315; and

(c) the enforcement actions taken by the Exchange under Rules 1405(3)(c)(x), (xvii) and (xviii).

...

(6) The chairman of the Appeals Committee has the following powers:

...

- (g) determining if an appeal has satisfied the bases for appeal required under Rule 1419(4), ~~or~~ Rule 1419(5) or Rule 1419(6); and

Part III Administrative and Enforcement Powers of the Exchange

1405

- (1) The Exchange may exercise administrative powers for the purposes of ensuring that the market is fair, orderly and transparent, and that the Exchange does not act contrary to the interests of the investing public, including the powers to:
 - (d) require an issuer to obtain the prior approval of the Exchange under Rule 720(3)(a), for a period not exceeding 3 years, for the appointment or reappointment of a director or an executive officer;
 - (e) object to the appointments or reappointments of individual directors or executive officers in any issuer for a period not exceeding 3 years;
- (2) The circumstances under which the Exchange may exercise its powers under Rule 1405(1)(e) include:
 - (a) where the director or executive officer has refused to extend cooperation to the Exchange or other regulatory agencies on regulatory matters; ~~and~~
 - (b) where the director or executive officer has ~~willfully~~ contravened any relevant laws, ~~rules and 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~~
 - (c) where the director or executive officer is being investigated or is the subject of proceedings for 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.

- (3) The Exchange may exercise investigative and enforcement powers for the purposes of enforcing the Exchange's listing rules, including the powers to:
- (a) initiate and conduct investigations against a Relevant Person;
 - (b) initiate disciplinary proceedings against a Relevant Person;
 - (c) take enforcement action against a Relevant Person including the following:
 - (i) issuing a private warning to a Relevant Person;
 - (ii) ~~issuing a public reprimand to a Relevant Person; offering a composition sum to an issuer;~~
 - (iii) ~~offering a composition sum to an issuer; requiring an issuer to implement an effective education or compliance programme;~~
 - (iv) ~~requiring an issuer to appoint special auditors, compliance advisers, legal advisers or other independent professionals for specified purposes; requiring an issuer's directors or executive officers to undertake a mandatory education or training programme;~~
 - (v) ~~requiring an issuer to implement an effective education or compliance programme; requiring an issuer to undertake an independent review of internal controls and processes;~~
 - (vi) ~~requiring an issuer to appoint independent advisers to minority shareholders; requiring an issuer to obtain the prior approval of the Exchange, for a period not exceeding 3 years, for the appointment of a director or an executive officer;~~
 - (vii) ~~requiring an issuer's directors or executive officers to undertake a mandatory education or training programme; objecting to the appointments of individual directors or executive officers in any issuer for a period not exceeding 3 years;~~
 - (viii) ~~requiring an issuer to undertake an independent review of internal controls and processes; requiring an issuer to appoint independent advisers to minority shareholders;~~
 - (ix) ~~requiring a Relevant Person to perform other remedial action to rectify the consequences of contraventions; requiring an issuer to appoint special auditors, compliance advisers, legal advisers or other independent professionals for specified purposes;~~
 - (x) ~~denying an issuer of facilities of the market, prohibiting an issuer from accessing the facilities of the market for a specified period or until fulfilment of specified conditions; requiring a Relevant Person to perform other remedial action to rectify the consequences of contraventions;~~
 - (xi) ~~requiring an issuer to comply with conditions on the activities undertaken by the issuer; imposing conditions on the accreditation of an issue manager;~~

- (xii) ~~halting or suspending trading of listed securities of an issuer; suspending or restricting the activities of an issue manager if the integrity of the market may be adversely affected or if the Exchange thinks it necessary in the interests of the public or for the protection of investors. The Exchange will refer the matter to the Disciplinary Committee within 14 days from the date of suspension or restriction, whereupon the Disciplinary Committee will determine if the suspension or restriction should be lifted or should be continued for a specified period not exceeding 3 years;~~
- (xiii) ~~removing an issuer from the Official List; halting or suspending trading of listed securities of an issuer;~~
- (xiv) ~~suspending or restricting the activities of an issue manager if the integrity of the market may be adversely affected or if the Exchange thinks it necessary in the interests of the public or for the protection of investors. The Exchange will refer the matter to the Disciplinary Committee within 14 days from the date of suspension or restriction, whereupon the Disciplinary Committee will determine if the suspension or restriction should be lifted or should be continued for a specified period not exceeding 3 years;~~ removing an issuer from the Official List; and
- (xv) ~~imposing conditions on the accreditation of an issue manager; imposing any other requirements on a Relevant Person which the Exchange considers appropriate.~~
- (xvi) ~~requiring an issuer to obtain the prior approval of the Exchange, for a period not exceeding 3 years, for the appointment or reappointment of a director or an executive officer;~~
- (xvii) ~~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;~~
- (xviii) ~~requiring the resignation of the director or executive officer from an existing position with any issuer listed on the Exchange;~~
- (xix) ~~objecting to the appointments or reappointments of individual directors or executive officers in any issuer for a period not exceeding 3 years; and~~
- (xx) ~~imposing any other requirements on a Relevant Person which the Exchange considers appropriate.~~

(4) Where a Relevant Person does not comply with requirements imposed by the Exchange set out in Part III of this Chapter, the Relevant Person shall be deemed to have contravened the Exchange's listing rules.

1405A

- (1) ~~The Exchange may allow a stay of execution of the sanctions, or an extension of the relevant timelines, which may be subject to conditions imposed by the Exchange in its absolute discretion, when:~~
 - (a) ~~a Relevant Person has filed a notice of appeal against an enforcement action by the Exchange referred to under Rule 1404(1)(c);~~

(b) if a Relevant Person requires more time to comply with the sanctions imposed; or

(c) if the Exchange is of the opinion that the circumstances warrant it.

Part IV Disciplinary Proceedings

The written grounds of the Disciplinary Committee and sanctions

1417

(2) Where the Disciplinary Committee makes a finding that the proceeded charges are made out, the Disciplinary Committee shall also include in the written grounds, the sanctions which are to be imposed against the Relevant Person. The Disciplinary Committee may impose one or more of the following sanctions:

(d) in the case of an issue manager:

(i) issuing an order for the suspension or restriction of an issue manager's activities, or for the continuation of the suspension or restriction of an issue manager's activities pursuant to Rule 1405(3)(c)(~~xix~~xiv);

(e) 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; or

(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;

Post-hearing

1418

(4) The Exchange may allow a stay of execution of the sanctions, or an extension of the relevant timelines, which may be subject to conditions imposed by the Exchange in its absolute discretion, when:

(a) a Relevant Person has filed a notice of appeal against the decision of the Disciplinary Committee;

(b) if a Relevant Person requires more time to comply with the sanctions imposed; or

(c) if the Exchange is of the opinion that the circumstances warrant it.

Part V Appeals

Initiation of proceedings

1419

(1) A party may appeal against the decision of the Disciplinary Committee, ~~or a decision of the Exchange specified under Rule 1404(1)(b),~~ or an enforcement action by the Exchange specified under Rule

1404(1)(c), by filing a notice of appeal with the Appeals Committee within 14 business days of the relevant decision. An appellant other than the Exchange shall pay a non-refundable administrative fee of \$1,500 when filing a notice of appeal.

- (2) Where a notice of appeal is filed after 14 business days of the relevant decision, the notice of appeal may only be accepted if the delay is accounted for to the satisfaction of the chairman of the Appeals Committee.
- (3) A notice of appeal shall be served on all parties involved, and shall contain the following details:
...
 - (e) the sanction imposed by the Disciplinary Committee, ~~or~~ the decision taken by the Exchange or the enforcement action by the Exchange specified under Rule 1404(1)(c); and
- (4) An appeal against a decision by the Disciplinary Committee may only be ~~heard if the chairman is of the opinion that~~ made on the following grounds:
 - (a) the Disciplinary Committee had acted in bad faith;
 - (b) there was procedural unfairness in the Disciplinary Committee's determination of the charges;
 - (c) there is fresh evidence, not previously available, which would likely have affected the decision of the Disciplinary Committee;
 - (d) the Disciplinary Committee had made a gross error in respect of a finding of fact;
 - (e) the Disciplinary Committee had made an error in respect of the interpretation of the Exchange's listing rules; or
 - (f) the sanctions imposed are manifestly excessive or inadequate.
- (5) An appeal against a decision by the Exchange referred to under Rule 1404(1)(b) may only be ~~heard if the chairman is of the opinion that~~ made on the following grounds:
 - (a) the Exchange had acted in bad faith;
 - (b) there was procedural unfairness in the Exchange's determination of the matter; or
 - (c) the Exchange had made an error in respect of the interpretation of the Exchange's listing rules.
- (6) An appeal against an enforcement action by the Exchange specified under Rule 1404(1)(c) may only be made on the following grounds:
 - (a) the Exchange had acted in bad faith;
 - (b) there was procedural unfairness in the Exchange's determination of the charges;
 - (c) there is fresh evidence, not previously available, which would likely have affected the decision of the Exchange;

- (d) the Exchange had made a gross error in respect of a finding of fact;
 - (e) the Exchange had made an error in respect of the interpretation of the Exchange's listing rules; or
 - (f) the sanctions imposed are manifestly excessive.
- (7) An appeal under Rule 1419 may be heard only if leave is given by the chairman. The chairman's decision on leave is final and not subject to any appeal.

Practice Note 7.1 Continuing Disclosure

5. Guidance on particular situations

Investigation on a director or an executive officer of the issuer

- 5.6 Under Rule 704(7)(a), an announcement of the appointment of key persons by an issuer must contain material background information as set out in Appendix 7.4.1. Such information includes, among others, whether the key person has been concerned with the management or conduct of the affairs of any corporation or entity which has been investigated, or the subject of civil or criminal proceedings (including pending proceedings), in each case, involving a breach of law or regulatory requirement as set out in Appendix 7.4.1 relating to the securities or futures industry, or involving fraud or dishonesty.
- 5.7 Under Rule 720(1), an issuer must also comply with Rule 210(5) on a continuing basis, which requires, among others, a consideration of the character and integrity of directors and management.
- ~~5.8 Any action or conduct by directors or executive officers subsequent to their appointment that would materially affect the information previously disclosed in accordance with Appendix 7.4.1, or that would bring into question their character and integrity ("relevant conduct"), this must be immediately disclosed and not put on hold until they are to be re-appointed.~~
- 5.98 Issuers should put in place internal controls to ensure that information is escalated expediently to the Board, including the Nominating Committee, where directors or executive officers are notified by a regulatory authority, an exchange, a professional body or a government agency ("relevant authority"), that they are to be interviewed or under investigation ~~for relevant conduct,~~ such information is escalated expediently to the Board, including the Nominating Committee. The Board should conduct an independent assessment of the matter and not rely solely on the representations made by the director or executive officer. Where investigations are on-going, directors and executive officers must continue to provide updates to the Board on material development relating to the investigations, including the conclusion of investigations, so long as they are not prohibited from doing so by the regulatory requirements.
- 5.109 In determining whether the information is material for disclosure, the Board should consider, among others:

- (a) the extent to which the interview or investigation for relevant conduct concerns the affairs of the issuer or the group; whether the information is material to the affairs of the issuer, taking into account factors such as:
 - (i) the extent to which the interview or investigation concerns the affairs of the issuer or the group;
 - (ii) the extent to which the issuer is reliant on the director or executive officer for the proper oversight and management of the issuer; and
 - (iii) the extent to which the director's or executive officer's ability to oversee or manage the issuer is compromised; and
- (b) whether the director or executive officer is the subject of the investigation or merely assisting in the investigation; whether the investigation would affect the information previously disclosed in accordance with Rule 704(7)(a) or the assessment of the character and integrity of the director or executive officer; and
- (c) the extent to which the issuer is reliant on the director or executive officer for the proper oversight and management of the issuer; the severity of the potential breach.
- (d) the extent to which the director's or executive officer's ability to oversee or manage the issuer is compromised; and
- (e) the severity of the potential breach.

5.10 Subject to paragraph 5.9 above, the following events are likely to require immediate disclosure:

- (a) the director or executive officer has been served with an order for the production of documents to assist in an investigation in relation to a breach of law, rule or regulation;
- (b) the director or executive officer was investigated and interviewed by the relevant authority;
- (c) the director or executive officer has surrendered his passport to a relevant authority, has been arrested (with or without posting bail) by a relevant authority, has been formally charged by a relevant authority or a relevant authority has imposed conditions or restrictions on the director or executive officer; or
- (d) the director or executive officer has been convicted or disqualified or is the subject of any judgement or ruling.

5.11 To give clarity to such events, an announcement made pursuant to paragraph 5.10 above should contain:

- (a) the name and position of the relevant director or executive officer;
- (b) the relevant fact (for example, that the director has surrendered his passport to the

relevant authority) and details of any other conditions or restrictions imposed by the relevant authority, where applicable;

(c) the alleged offences and the identity of the offender whom the authorities were investigating as stated in the order, where applicable;

(d) the Nominating Committee's assessment of the suitability of the continued appointment of the director or executive officer and continued compliance with Rule 720(1) (read with Rule 210(5)) as well as the measures (if any) put in place to safeguard against risks associated with his continued appointment, where applicable;

(e) a statement by the director or executive officer that he undertakes to inform the Board of the ongoing investigation and subsequent developments; and

(f) the Board's statement that it will continue to monitor the progress of the investigation and the Nominating Committee will continue to re-assess the suitability of the continued appointment of the relevant director or executive officer as and when there are material developments to the investigation. If no measures to safeguard against risks associated with the retention of such individual are considered necessary by the Board, this should be stated in the announcement, along with the reasons.

5.1112 ~~Clear instances that warrant disclosure include where the directors or executive officers surrender their passports to the relevant authority or if they are arrested. These indicate that the director or executive officer is the subject of the investigation as opposed to merely assisting with the investigation. If an investigation is still pending, issuers should first release a statement to that effect and follow up as and when there are material developments. Where a person is a director or executive officer in multiple listed issuers, the onus is on the person to notify the Boards of all these listed issuers of his involvement in an ongoing investigation. Where an issuer has been notified by its director or executive officer of his involvement in an ongoing investigation that does not directly concern the affairs of the issuer, the Nominating Committee must still assess the suitability of the continued appointment of the relevant director or executive officer. For instance, the Nominating Committee must assess whether the investigation is material to the issuer, and whether the investigation would affect the assessment of the character and integrity of the director or executive officer. Where the Nominating Committee opines that the investigation is material to the issuer or has a bearing on the character and integrity of the director or executive officer, the issuer must announce the Nominating Committee's assessment of the suitability of the continued appointment of the relevant director or executive officer and continued compliance with Rule 720(1) (read with Rule 210(5)) as well as the measures (if any) put in place to safeguard against the risks associated with his continued appointment. If no measures are considered necessary by the Board, this should be stated in the announcement, along with the reasons.~~

5.13 Where the Nominating Committee finds that it is not in the best interest of the Company for the relevant director or executive officer to continue with his current appointment, an

announcement should be made on the suspension or cessation of service pursuant to Rule 704(7)(a) and the reason for the suspension or cessation.

- 5.1214 On the other hand, where a relevant conduct ~~is likely to result in or~~ has resulted in a private sanction by the relevant authority, such information need not be disclosed as the ~~likely or actual~~ breach is likely to be of a less serious nature and the relevant authority has deemed it appropriate for the sanction to remain confidential.

Investigation on an issuer

5.15 In the case where the issuer itself is involved in an investigation, the market should similarly be updated in a timely manner. In determining whether the information is material for disclosure, the Board should consider, among others:

- (a) whether the information is material to the affairs of the issuer; and
- (b) the severity of the potential breach.

5.16 Subject to paragraph 5.15 above, the following events are likely to require immediate disclosure:

- (a) the issuer has been contacted by a relevant authority or served with an order for the production of documents to assist in an investigation in relation to a breach of law, rule or regulation; or
- (b) the issuer has been informed or becomes aware that any of its subsidiaries or associated companies are under investigation by a relevant authority.

5.17 To give clarity to such events, an announcement made pursuant to paragraph 5.15 above should contain:

- (a) the name of the relevant subsidiary or associated company, where applicable;
- (b) the relevant fact and details of any other conditions or restrictions imposed by the relevant authority, where applicable;
- (c) the alleged offences and identity of the offender whom the authorities was investigating as stated in the order, where applicable; and
- (d) the Board's statement that it will continue to monitor the progress of the investigation and to provide updates on material developments.

Appendix 3 Amendments to Catalist Rules on Enforcement Powers

Legend: Deletions are struck-through and insertions are underlined.

Chapter 3 Disciplinary and Appeals Procedures, and Enforcement Powers of the Exchange

Part II Types of Committees

Appeals Committee

304

- (1) The Appeals Committee shall hear and decide appeals arising from:
- (a) decisions of the Disciplinary Committee; ~~and~~
 - (b) decisions of the Exchange relating to any of the following matters:
 - (i) rejection of an application for the extension of time to allow an issuer to restore its percentage of securities in public hands to at least 10% under Rule 723;
 - (ii) removal of an issuer from the Official List under Rule 746(5);
 - (iii) rejection of a proposal by a cash company to meet requirements for a new listing under Rule 1017(2);
 - (iv) rejection of an application for extension of time to meet requirements for a new listing under Rule 1017(2);
 - (v) rejection of a resumption proposal under Rule 1304;
 - (vi) rejection of an application for extension of time to submit or implement a resumption proposal under Rule 1304;
 - (vii) removal of an issuer from the Official List under Rule 1305;
 - (viii) rejection of a proposal by an issuer to voluntarily delist under Rule 1307;
 - (ix) suspension or restriction of activities undertaken by a sponsor or registered professional under Rule 305(3)(c)(xii); and
 - (x) revocation of the authorization of a sponsor or cancellation of the registration of a registered professional under Rule 305(3)(c)(xiii); and
 - (c) the enforcement actions taken by the Exchange under Rules 305(3)(c)(x), (xix) and (xx).

...

- (6) The chairman of the Appeals Committee has the following powers:

...

- (g) determining if an appeal has satisfied the bases for appeal required under Rule 319(4), ~~or Rule 319(5) or Rule 319(6)~~; and

Part III Administrative and Enforcement Powers of the Exchange

305

- (1) The Exchange may exercise administrative powers for the purposes of ensuring that the market is fair, orderly and transparent, and that the Exchange does not act contrary to the interests of the investing public, including the powers to:
- (c) require an issuer to obtain the prior approval of the Exchange under Rule 720(2)(a), for a period not exceeding 3 years, for the appointment or reappointment of a director or an executive officer;
 - (d) object to the appointments or reappointments of individual directors or executive officers in any issuer for a period not exceeding 3 years;
- (2) The circumstances under which the Exchange may exercise its powers under Rule 305(1)(d) include:
- (a) where the director or executive officer has refused to extend cooperation to the Exchange or other regulatory agencies on regulatory matters; ~~and~~
 - (b) where the director or executive officer has ~~wilfully~~ contravened any relevant laws, ~~rules and 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~~
 - (c) where the director or executive officer is being investigated or is the subject of proceedings for 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.
- (3) The Exchange may exercise investigative and enforcement powers for the purposes of enforcing the Rules, including the powers to:
- (a) initiate and conduct investigations against a Relevant Person;
 - (b) initiate disciplinary proceedings against a Relevant Person;
 - (c) take enforcement action against a Relevant Person including the following:
 - (i) issuing a private warning to a Relevant Person;
 - (ii) issuing a public reprimand to a Relevant Person; ~~offering a composition sum to an issuer, sponsor or registered professional;~~
 - (iii) offering a composition sum to an issuer, sponsor or registered professional; ~~requiring an issuer to implement an effective education or compliance programme;~~
 - (iv) requiring an issuer to appoint special auditors, compliance advisers, legal advisers or other independent professionals for specified purposes; ~~requiring an issuer's~~

- ~~directors or executive officers to undertake a mandatory education or training programme;~~
- (v) ~~requiring an issuer to implement an effective education or compliance programme;~~~~requiring an issuer to undertake an independent review of internal controls and processes;~~
 - (vi) ~~requiring an issuer to appoint independent advisers to minority shareholders;~~~~requiring an issuer to obtain the prior approval of the Exchange, for a period not exceeding 3 years, for the appointment of a director or an executive officer;~~
 - (vii) ~~requiring an issuer's directors or executive officers to undertake a mandatory education or training programme;~~~~objecting to the appointments of individual directors or executive officers in any issuer for a period not exceeding 3 years;~~
 - (viii) ~~requiring an issuer to undertake an independent review of internal controls and processes;~~~~requiring an issuer to appoint independent advisers to minority shareholders;~~
 - (ix) ~~requiring an issuer to perform other remedial action to rectify the consequences of contraventions;~~~~requiring an issuer to appoint special auditors, compliance advisers, legal advisers or other independent professionals for specified purposes;~~
 - (x) ~~denying an issuer of facilities of the market, prohibiting an issuer from accessing the facilities of the market for a specified period or until fulfilment of specified conditions;~~~~requiring a Relevant Person to perform other remedial action to rectify the consequences of contraventions;~~
 - (xi) ~~requiring an issuer to comply with conditions on the activities undertaken by the issuer;~~~~imposing conditions on the authorization of a sponsor or registration of a registered professional;~~
 - (xii) ~~halting or suspending trading of listed securities of an issuer;~~~~suspending or restricting the activities of a sponsor or registered professional;~~
 - (xiii) ~~removing an issuer from the Official List;~~~~revoking the authorisation of a sponsor or cancelling registration of a registered professional;~~
 - (xiv) ~~imposing conditions on the authorisation of a sponsor or registration of a registered professional;~~~~requiring an education program to be undertaken by a sponsor or registered professional;~~
 - (xv) ~~revoking the authorisation of a sponsor or cancelling registration of a registered professional;~~~~halting or suspending trading of listed securities of an issuer;~~
 - (xvi) ~~suspending or restricting the activities of a sponsor or registered professional;~~~~removing an issuer from the Official List; and~~
 - (xvii) ~~requiring an education program to be undertaken by a sponsor or registered professional;~~~~imposing any other requirements on a Relevant Person which the Exchange considers appropriate.~~

- (xviii) requiring an issuer to obtain the prior approval of the Exchange, for a period not exceeding 3 years, for the appointment or reappointment of a director or an executive officer;
- (xix) 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;
- (xx) requiring the resignation of the director or executive officer from an existing position with any issuer listed on the Exchange;
- (xxi) objecting to the appointments or reappointments of individual directors or executive officers in any issuer for a period not exceeding 3 years; and
- (xxii) imposing any other requirements on a Relevant Person which the Exchange considers appropriate.

- (4) Where a Relevant Person does not comply with requirements imposed by the Exchange set out in Part III of this Chapter, the Relevant Person shall be deemed to have contravened the Rules.
- (5) The Exchange may charge, and the Disciplinary Committee may exercise its powers against, a sponsor or registered professional who:
 - (a) breaches any Rule, or any condition or restriction imposed by the Exchange;
 - (b) breaches any provisions involving fraud or dishonesty, whether in or out of Singapore;
 - (c) breaches director's duties; or
 - (d) engages in conduct detrimental to the financial integrity, reputation or interests of the Exchange.

305A

- (1) The Exchange may allow a stay of execution of the sanctions, or an extension of the relevant timelines, which may be subject to conditions imposed by the Exchange in its absolute discretion, when:
 - (a) a Relevant Person has filed a notice of appeal against an enforcement action by the Exchange referred to under Rule 1404(1)(c);
 - (b) if a Relevant Person requires more time to comply with the sanctions imposed; or
 - (c) if the Exchange is of the opinion that the circumstances warrant it.

Part IV Disciplinary Proceedings

The written grounds of the Disciplinary Committee and sanctions

317

- (2) Where the Disciplinary Committee makes a finding that the proceeded charges are made out, the Disciplinary Committee shall also include in the written grounds, the sanctions which are to be

imposed against the Relevant Person. The Disciplinary Committee may impose one or more of the following sanctions:

- (c) in the case of an issuer:
 - (iv) requiring an issuer's directors or ~~key~~ executive officers to undertake a mandatory education or training programme;
- (e) in the case of a director or executive officer of an issuer:
 - (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;

Post-hearing

318

- (5) The Exchange may allow a stay of execution of the sanctions, or an extension of the relevant timelines, which may be subject to conditions imposed by the Exchange in its absolute discretion, when:
 - (a) a Relevant Person has filed a notice of appeal against the decision of the Disciplinary Committee;
 - (b) if a Relevant Person requires more time to comply with the sanctions imposed; or
 - (c) if the Exchange is of the opinion that the circumstances warrant it.

Part V Appeals

Initiation of proceedings

319

- (1) A party may appeal against the decision of the Disciplinary Committee, an enforcement action by the Exchange specified under Rule 304(1)(c), or a decision of the Exchange specified under Rule 1404(1)(b), by filing a notice of appeal with the Appeals Committee within 14 business days of the relevant decision. An appellant other than the Exchange shall pay a non-refundable administrative fee of \$1,500 when filing a notice of appeal.
- (2) Where a notice of appeal is filed after 14 business days of the relevant decision, the notice of appeal may only be accepted if the delay is accounted for to the satisfaction of the chairman of the Appeals Committee.
- (3) A notice of appeal shall be served on all parties involved, and shall contain the following details:
 - ...
 - (e) the sanction imposed by the Disciplinary Committee or the Exchange, or the decision taken by the Exchange; and

- (4) An appeal against a decision by the Disciplinary Committee may only be ~~heard if the chairman is of the opinion that~~ made on the following grounds:
- (a) the Disciplinary Committee had acted in bad faith;
 - (b) there was procedural unfairness in the Disciplinary Committee's determination of the charges;
 - (c) there is fresh evidence, not previously available, which would likely have affected the decision of the Disciplinary Committee;
 - (d) the Disciplinary Committee had made a gross error in respect of a finding of fact;
 - (e) the Disciplinary Committee had made an error in respect of the interpretation of the Rules; or
 - (f) the sanctions imposed are manifestly excessive or inadequate.
- (5) An appeal against a decision by the Exchange referred to under Rule 304(1)(b) may only be ~~heard if the chairman is of the opinion that~~ made on the following grounds:
- (a) the Exchange had acted in bad faith;
 - (b) there was procedural unfairness in the Exchange's determination of the matter; or
 - (c) the Exchange had made an error in respect of the interpretation of the Rules.
- (6) An appeal against an enforcement action by the Exchange referred to under Rule 304(1)(c) may only be made on the following grounds:
- (a) the Exchange had acted in bad faith;
 - (b) there was procedural unfairness in the Exchange's determination of the charges;
 - (c) there is fresh evidence, not previously available, which would likely have affected the decision of the Exchange;
 - (d) the Exchange had made a gross error in respect of a finding of fact;
 - (e) the Exchange had made an error in respect of the interpretation of the Exchange's listing rules; or
 - (f) the sanctions imposed are manifestly excessive.
- (7) An appeal under Rule 319 may be heard only if leave is given by the chairman. The chairman's decision on leave is final and not subject to any appeal.

Chapter 7 Continuing Obligations

Part IV Equity Securities — Other Obligations

Directors and Management

720 Directors and Management

(2)

- (a) The Exchange may require an issuer to obtain the prior approval of the Exchange for the appointment or reappointment of a director, a chief executive officer and chief financial officer (or its equivalent rank)
- (b) The circumstances under which the Exchange may effect Rule 720(2)(a) include but are not limited to:—
 - (i) Where the issuer is the subject of an investigation into the affairs of the issuer by a special auditor or an independent reviewer appointed by the issuer and/or the Exchange appointed under Rule 704(13), or a regulatory or enforcement agency;

Practice Note 7A Continuing Disclosure

5. Guidance on particular situations

Investigation on a director or an executive officer of the issuer

- 5.6 Under Rule 704(6)(a), an announcement of the appointment of key persons by an issuer must contain material background information as set out in Appendix 7F. Such information includes, among others, whether the key person has been concerned with the management or conduct of the affairs of any corporation or entity which has been investigated, or the subject of civil or criminal proceedings (including pending proceedings), in each case, involving a breach of law or regulatory requirement as set out in Appendix 7F relating to the securities or futures industry, or involving fraud or dishonesty.
- 5.7 Under Rule 720(1), an issuer must also comply with Rule 406(3) on a continuing basis, which requires, among others, a consideration of the character and integrity of directors and management.
- ~~5.8 Any action or conduct by directors or executive officers subsequent to their appointment that would materially affect the information previously disclosed in accordance with Appendix 7F, or that would bring into question their character and integrity (“relevant conduct”), this must be immediately disclosed and not put on hold until they are to be re-appointed.~~
- 5.98 Issuers should put in place internal controls to ensure that information is escalated expediently to the Board, including the Nominating Committee, where directors or executive officers are notified by a regulatory authority, an exchange, a professional body or a government agency (“relevant authority”), that they are to be interviewed or under investigation for relevant conduct, such information is escalated expediently to the Board, including the Nominating Committee. The Board should conduct an independent assessment of the matter and not rely solely on the representations made by the director or executive officer. Where investigations are on-going, directors and executive officers must continue to provide updates to the Board on material development relating to the investigations, including the conclusion of investigations, so long as they are not prohibited from doing so by the regulatory requirements.

5.109 In determining whether the information is material for disclosure, the Board should consider, among others:

- (a) the extent to which the interview or investigation for relevant conduct concerns the affairs of the issuer or the group; whether the information is material to the affairs of the issuer, taking into account factors such as:
 - (i) the extent to which the interview or investigation concerns the affairs of the issuer or the group;
 - (ii) the extent to which the issuer is reliant on the director or executive officer for the proper oversight and management of the issuer; and
 - (iii) the extent to which the director's or executive officer's ability to oversee or manage the issuer is compromised; and
- (b) whether the director or executive officer is the subject of the investigation or merely assisting in the investigation; whether the investigation would affect the information previously disclosed in accordance with Rule 704(6)(a) or the assessment of the character and integrity of the director or executive officer; and
- (c) the extent to which the issuer is reliant on the director or executive officer for the proper oversight and management of the issuer; the severity of the potential breach.
- (d) the extent to which the director's or executive officer's ability to oversee or manage the issuer is compromised; and
- (e) the severity of the potential breach.

5.10 Subject to paragraph 5.9 above, the following events are likely to require immediate disclosure:

- (a) the director or executive officer has been served with an order for the production of documents to assist in an investigation in relation to a breach of law, rule or regulation;
- (b) the director or executive officer was investigated and interviewed by the relevant authority;
- (c) the director or executive officer has surrendered his passport to a relevant authority, has been arrested (with or without posting bail) by a relevant authority, has been formally charged by a relevant authority or a relevant authority has imposed conditions or restrictions on the director or executive officer; or
- (d) the director or executive officer has been convicted or disqualified or is the subject of any judgement or ruling.

5.11 To give clarity to such events, an announcement made pursuant to paragraph 5.10 above should contain:

- (a) the name and position of the relevant director or executive officer;
- (b) the relevant fact (for example, that the director has surrendered his passport to the relevant authority) and details of any other conditions or restrictions imposed by the relevant authority, where applicable;
- (c) the alleged offences and the identity of the offender whom the authorities were investigating as stated in the order, where applicable;
- (d) the Nominating Committee's assessment of the suitability of the continued appointment of the director or executive officer and continued compliance with Rule 720(1) (read with Rule 406(3)) as well as the measures (if any) put in place to safeguard against risks associated with his continued appointment, where applicable;
- (e) a statement by the director or executive officer that he undertakes to inform the Board of the ongoing investigation and subsequent developments; and
- (f) the Board's statement that it will continue to monitor the progress of the investigation and the Nominating Committee will continue to re-assess the suitability of the continued appointment of the relevant director or executive officer as and when there are material developments to the investigation. If no measures to safeguard against risks associated with the retention of such individual are considered necessary by the Board, this should be stated in the announcement, along with the reasons.

5.1112 Clear instances that warrant disclosure include where the directors or executive officers surrender their passports to the relevant authority or if they are arrested. These indicate that the director or executive officer is the subject of the investigation as opposed to merely assisting with the investigation. If an investigation is still pending, issuers should first release a statement to that effect and follow up as and when there are material developments. Where a person is a director or executive officer in multiple listed issuers, the onus is on the person to notify the Boards of all these listed issuers of his involvement in an ongoing investigation. Where an issuer has been notified by its director or executive officer of his involvement in an ongoing investigation that does not directly concern the affairs of the issuer, the Nominating Committee must still assess the suitability of the continued appointment of the relevant director or executive officer. For instance, the Nominating Committee must assess whether the investigation is material to the issuer, and whether the investigation would affect the assessment of the character and integrity of the director or executive officer. Where the Nominating Committee opines that the investigation is material to the issuer or has a bearing on the character and integrity of the director or executive officer, the issuer must announce the Nominating Committee's assessment of the suitability of the continued appointment of the relevant director or executive officer and continued compliance with Rule 720(1) (read with Rule 210(5)) as well as the measures (if any) put in place to safeguard against the risks associated with his continued appointment. If no measures are considered necessary by the Board, this should be stated in the announcement, along with the reasons.

5.13 Where the Nominating Committee finds that it is not in the best interest of the Company for the relevant director or executive officer to continue with his current appointment, an announcement should be made on the suspension or cessation of service pursuant to Rule 704(6)(a) and the reason for the suspension or cessation.

~~5.12~~14 On the other hand, where a relevant conduct ~~is likely to result in or~~ has resulted in a private sanction by the relevant authority, such information need not be disclosed as the ~~likely or actual~~ breach is likely to be of a less serious nature and the relevant authority has deemed it appropriate for the sanction to remain confidential.

Investigation on an issuer

5.15 In the case where the issuer itself is involved in an investigation, the market should similarly be updated in a timely manner. In determining whether the information is material for disclosure, the Board should consider, among others:

- (a) whether the information is material to the affairs of the issuer; and
- (b) the severity of the potential breach.

5.16 Subject to paragraph 5.15 above, the following events are likely to require immediate disclosure::

- (a) it has been contacted by a relevant authority or served with an order for the production of documents to assist in an investigation in relation to a breach of law, rule or regulation; or
- (b) it has been informed or becomes aware that any of its subsidiaries or associated companies are under investigation by a relevant authority.

5.17 To give clarity to such events, an announcement made pursuant to paragraph 5.15 above should contain:

- (a) the name of the relevant subsidiary or associated company, where applicable;
- (b) the relevant fact and details of any other conditions or restrictions imposed by the relevant authority, where applicable;
- (c) the alleged offences and identity of the offender whom the authorities was investigating as stated in the order, where applicable; and
- (d) the Board's statement that it will continue to monitor the progress of the investigation and to provide updates on material developments.

Appendix 4 Amendments to Mainboard Rules on Whistleblowing

Legend: Deletions are struck-through and insertions are underlined.

Chapter 12 Circulars, Annual Reports and Electronic Communications

Part III Annual Reports

1207 The annual report must contain enough information for a proper understanding of the performance and financial conditions of the issuer and its principal subsidiaries, including at least the following:

Whistleblowing Policy

(18A) A statement that the issuer has put in place a whistleblowing policy which sets out the procedures for a whistleblower to make a report to the issuer on misconduct or wrongdoing relating to the issuer and its officers.

(18B) An explanation of how the issuer has complied with the following: —

- (a) the issuer has designated an independent function to investigate whistleblowing reports made in good faith;
- (b) the issuer ensures that the identity of the whistleblower is kept confidential;
- (c) the issuer discloses its commitment to ensure protection of the whistleblower against detrimental or unfair treatment; and
- (d) the Audit Committee is responsible for oversight and monitoring of whistleblowing.

Appendix 5 Amendments to Catalyst Rules on Whistleblowing

Legend: Deletions are struck-through and insertions are underlined.

Chapter 12 Circulars, Annual Reports and Electronic Communications

Part III Annual Reports

1204 The annual report must contain enough information for a proper understanding of the performance and financial conditions of the issuer and its principal subsidiaries, including at least the following:

Whistleblowing Policy

(18A) A statement that the issuer has put in place a whistleblowing policy which sets out the procedures for a whistleblower to make a report to the issuer on misconduct or wrongdoing relating to the issuer and its officers.

(18B) An explanation of how the issuer has complied with the following: —

- (a) the issuer has designated an independent function to investigate whistleblowing reports made in good faith;
- (b) the issuer ensures that the identity of the whistleblower is kept confidential;
- (c) the issuer discloses its commitment to ensure protection of the whistleblower against detrimental or unfair treatment; and
- (d) the Audit Committee is responsible for oversight and monitoring of whistleblowing.

Singapore Exchange
2 Shenton Way, #02-02 SGX Centre 1, Singapore 068804

main: +65 6236 8888

sgx.com

Singapore | Beijing | Chicago | Hong Kong | London | Mumbai | New York | San Francisco | Shanghai | Tokyo