

SGX OVERHAULS ITS RULEBOOK TO STRENGTHEN GOVERNANCE AND TRANSPARENCY



The Singapore Exchange Limited (SGX) issued a consultation paper on 9 December 2009. The SGX has also invited feedback from the public on its 36 proposed changes which are intended to strengthen corporate governance and transparency within SGX listed companies (Issuers). The key changes are:

- Adequacy of Internal Control System and Risk Management Framework - Audit Committees would have to opine on the adequacy of Issuers' internal controls and risk management systems and policies. (Rules 719 and 1207).
- Appointment of a Governance Adviser - A newly listed company would be required to consider engaging a governance adviser in the first two years after its listing on the SGX to give assurance to the SGX and the investors that the support framework of corporate governance of the Issuer is firmly in place. In addition, SGX has the discretion to ask an issuer to appoint a governance adviser if and when it deems necessary (Practice Note 2.1).

The consultation period ended on 15 January 2010 and SGX is reviewing the feedback before it announces the final changes and implementation details.

ROLE OF BOARD DIRECTORS, KEY EXECUTIVE OFFICERS AND AUDITORS

SGX also proposes the following changes which are aimed at collectively enhancing corporate governance in Issuers:-

- Under specific circumstances, for example, where the Issuer is being investigated for irregularities or other wrongdoings, or where the Issuer has poor compliance records, the prior approval of SGX would be required before effecting any appointment of Directors, Chief Executive Officers and Chief Financial Officers (Rule 720);
- SGX would have the right to publicly take action such as public censure and objecting directorships against errant directors or key executive officers, if they refuse to cooperate with SGX or willfully cause a breach of rules, laws or regulations (Rule 720);

- Nominating Committee, with the concurrence of the Audit Committee, and after reasonable enquiries, would have to provide an opinion that the proposed CFO has the appropriate experience and expertise, and has the expected character and integrity, also setting out specific factors considered (Rule 246);
- An outgoing Chief Financial Officer will be required to confirm to SGX that he/she is not aware of any irregularities and he/she has no unresolved material differences in opinion with the Board and management that could materially impact the financial statements (Rule 704).
- To provide for continuity in the element of independence on the Board of Issuers, the Articles of Association of Issuers would have to provide that at least one Independent Director (ID) shall remain on the Board at all times. (Appendix 2.2).
- In addition, an Issuer with offshore principal subsidiaries would need to have at least one ID who is resident in Singapore, on the Board of its offshore principal subsidiaries (Rule 221).
- If both the Issuer and its auditor are based in a foreign jurisdiction, SGX proposes a joint sign-off with a Singapore-based accounting firm of the Issuer's audited accounts (Rule 712(3)).
- In determining the suitability of an accounting firm to serve as the auditor of an Issuer, the Issuer should consider the results of any review by the Accounting and Corporate Regulatory Authority of the accounting firm and its relevant audit partners (Rule 712(2)).
- To promote greater transparency, Issuers would have to disclose in their annual reports, the amount of audit fees and, if any, non-audit fees paid to auditors (Rule 1207(6)).

SAFEGUARD SHAREHOLDERS' INTERESTS

- Restriction on Share Transfers during Trading Suspension - As an additional safeguard to the interests of shareholders and investors, the transfer of shares would not be permitted during the period when the trading of the Issuer's shares is suspended (New Rule 729; Appendix 2.2).
- Shares held in custody - When the trading of an Issuer's shares is under a trading suspension due to financial difficulties or other irregularities, the controlling shareholders would have to deposit their shares with CDP or a custodian acceptable to SGX (New Rules 229 and 730 and Appendix 2.2).

GREATER DISCLOSURE AND TRANSPARENCY

Disclosure of Pledging Arrangements - It would be mandatory for a shareholder to notify the Issuer in writing when the shareholder's shares are pledged (Rule 728) if his holding is 30 percent or more (or 50 percent for single largest controlling shareholder) or if the enforcement of any loan covenant would result in a change/changes to controlling shareholders or would breach the Issuers' loan obligations.



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