

Consultation Paper

# Enhancements to Enforcement and Whistleblowing Frameworks

6 August 2020

**Singapore Exchange**

## Responding to this Consultation Paper

Singapore Exchange Regulation invites comments on this consultation paper.

Please send your responses through any of the following means:

Mode	Correspondence Details
Email	<a href="mailto:listingrules@sgx.com">listingrules@sgx.com</a>
Mail	Singapore Exchange Regulation 11 North Buona Vista Drive #06-07, The Metropolis Tower 2 Singapore 138589 (Attention: Listing Policy & Product Admission)

Responses should include a summary of the major points, a statement of interest and reasoned explanations. Please identify the specific policy or rule proposal on which a comment is made. Please also include your full name and, where relevant, the organisation you are representing, as well as your email address or contact number so that we may contact you for clarification. Anonymous responses may be disregarded.

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

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

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

SGX requests all comments by **7 September 2020**.

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# I Introduction

## 1 Scope of this Consultation Paper

1.1 In this consultation paper, Singapore Exchange Limited (“**SGX**”) proposes 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. Part II of this paper sets out the proposals relating to the proposed enhancements to the SGX’s enforcement and disciplinary framework. Part III of this paper sets out the proposals to enhance the whistleblowing regime. Part IV of this paper sets out the proposals for other miscellaneous amendments.

### *Enforcement framework*

1.2 As SGX’s independent subsidiary undertaking all of SGX’s regulatory functions, Singapore Exchange Regulation Pte. Ltd. (“**SGX RegCo**”) is guided by the interests of market participants, including both investors and issuers, in carrying out its duties. This includes monitoring and ensuring compliance with the Listing Rules, enhancing corporate governance, and holding regulated entities (including issuers, directors, key executive officers, issue managers, sponsors, and registered professionals) accountable. In this regard, SGX RegCo seeks to ensure that its enforcement framework continues to stay relevant and effective in upholding its regulatory goals by being able to deliver efficient and timely regulatory outcomes.

1.3 An effective enforcement framework comprises early detection and immediate containment of breaches, followed by swift and decisive disciplinary action to deal with such misconduct. It is imperative that the enforcement framework must be able to deal quickly with any malfeasance to provide clarity to the market, particularly in a volatile market environment. This would serve to deter and punish wrongdoing as well as maintain the trust and confidence of the investing public.

1.4 Responsive regulation requires an effective enforcement strategy that differentiates between the severity of violations.<sup>1</sup> Enforcement action that promotes compliance among the vast majority should be distinguished from those that target clearly criminal ones.<sup>2</sup> Given that statutory regulators have more coercive powers than SGX, SGX RegCo can place more emphasis on speed and clarity of enforcement outcomes, in order to maximise compliance levels.

1.5 In order to meet the above regulatory objectives, SGX is consulting the public on amendments to the Listing Rules to refine SGX’s enforcement framework.

### *Whistleblowing*

1.6 In addition to having effective internal controls, whistleblowing aids in uncovering misconduct or wrongdoing that may form larger risk patterns in an organisation, and reveals areas that require immediate attention. Timely detection of a misconduct or wrongdoing can address the transgression more quickly. In the context of the securities market, rapid remedial action may be critical to preserve the integrity and confidence of the market.

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<sup>1</sup> OECD, “Regulatory Enforcement and Inspections” (2014), Principle 4.

<sup>2</sup> OECD, “Regulatory Enforcement and Inspections Toolkit” (2018), Criterion 4.

- 1.7 Whistleblower protection is essential to encourage reports of misconduct or wrongdoing. A common concern for whistleblowers is the fear of reprisal actions, or that their reports will not be taken seriously. As such, it is essential for issuers to have in place a robust whistleblowing framework that both facilitates and follows through on the reports.
- 1.8 SGX RegCo recognises the importance of whistleblowing in encouraging the reporting of wrongdoing and improving corporate culture and governance. The Whistleblowing Office was established by SGX RegCo in January 2020 to facilitate whistleblowing relating to improper, unethical or fraudulent conduct in the wider framework of the securities market. However, these efforts must be supplemented by equivalent frameworks at the company level. SGX RegCo therefore proposes 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.

## 2 Details of Proposals

- 2.1 The proposed amendments to the Listing Rules relating to enforcement are set out in [Appendix 1](#) and [Appendix 2](#), the amendments to the Listing Rules relating to whistleblowing are set out in [Appendix 3](#) and [Appendix 4](#), and other amendments to the Listing Rules are set out in [Appendix 5](#) and [Appendix 6](#).

# II Proposed Enhancements to Listing Rules on Enforcement

## 1 Background of SGX's Enforcement Framework

- 1.1 As the operator of Singapore Exchange Securities Trading Limited (the “**Exchange**”), an approved exchange under section 15 of the Securities and Futures Act (Chapter 289 of Singapore) (“**SFA**”), SGX is required under the SFA to operate a fair, orderly and transparent market for the trading of listed securities. The SFA further requires SGX to enforce compliance with its rules.
- 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 and to address (a) the perceived (or actual) 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 (b) concerns about the effectiveness of enforcement actions taken by SGX in relation to incidents of corporate malfeasance.<sup>3</sup> This served to balance the enhancement of SGX’s enforcement powers (which included the power 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.<sup>4</sup> 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.

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<sup>3</sup> See the Joint Consultation Paper issued by the Monetary Authority of Singapore (“**MAS**”) and SGX on the Review of Securities Market Structure and Practices on February 2014.

<sup>4</sup> Please refer to the SGX RegCo Charter (<https://api2.sgx.com/sites/default/files/2018-05/Regulations%20-%20SGX%20RegCo%20Charter.pdf>) for further information.

## **2 Review of SGX's Enforcement Framework**

- 2.1 The purpose of the enforcement framework is to set out the tools which SGX RegCo uses to carry out its role as the listing authority in regulating issuers after their admission to the securities market.
- 2.2 As the establishment of SGX RegCo has strengthened the safeguards to manage potential conflicts of interest between SGX's commercial and regulatory roles, there is scope for an adjustment of the enforcement framework in order for more effective discharge of SGX RegCo's regulatory functions.
- 2.3 Given that other regulators, such as the MAS, the Accounting and Corporate Regulatory Authority, and the Commercial Affairs Department, have the statutory authority to impose civil penalties, criminal fines, and jail terms, SGX RegCo can place more emphasis on speed and clarity of enforcement outcomes. This more effectively leverages on SGX RegCo's strengths as a frontline regulator and enables it to complement actions taken by other authorities pursuant to their statutory powers.
- 2.4 Following a review of the enforcement framework, SGX RegCo is of the view that the current framework can be recalibrated to speed up resolutions for a majority of cases. This would also provide more certainty and clarity to the market. Under the current framework, requirements to ensure the independence of the LDC members<sup>5</sup> have caused delays in constituting the requisite quorum of LDC members for a hearing. The challenge of forming a quorum is compounded by the fact that the community of corporate finance professionals in Singapore is small. This results in conflicts of interests in the form of dealings or engagements with the alleged offender or their counterparties. Such delay can be disproportionate when weighed against the entire spectrum of enforcement sanctions that can be applied for breaches that vary widely in severity. For instance, disciplinary cases in which a public reprimand is being sought would take the same length of time as cases where the maximum fine is being sought.
- 2.5 SGX RegCo also notes that market commentators have raised similar concerns that the conflict of interests amongst members of the LDC may give rise to difficulties in forming an independent quorum. This leads to further delays in the LDC process, and inevitably results in a lack of timely visible actions.
- 2.6 When enforcement interventions and outcomes are delivered in a timely manner they serve as a greater deterrence. Accordingly, there is a need for SGX RegCo to be able to independently exercise a broader range of sanctions in order to swiftly deal with breaches of the Listing Rules. This would allow SGX RegCo to maintain investor confidence and preserve market integrity.

## **3 Enhancing SGX RegCo's Enforcement Powers**

- 3.1 SGX RegCo currently has several powers conferred by Rule 1405(3) of the Mainboard Rules and Rule 305(3) of the Catalist Rules in order to enforce compliance with the Listing Rules. These enforcement powers currently include:

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<sup>5</sup> Under Rule 1416(2) of the Mainboard Rules and Rule 316(2) of the Catalist Rules, no member of the LDC shall participate in a hearing if he has a conflict of interest. Under paragraph 4.9 of the Listings Disciplinary Committee and Listings Appeals Committee Handbook, certain examples of conflicts of interests are set out, including but not limited to where an LDC member (i) is a connected person to the person or entity who is the subject of the hearing, (ii) advises the person or entity who is the subject of the hearing on a matter that is the subject of the hearing in his professional capacity, and (iii) has shares or some other forms of interest in an entity which is the subject of the hearing.

- (a) initiating disciplinary proceedings against a Relevant Person (as defined in the Listing Rules);
- (b) issuing a private warning;
- (c) offering a composition sum to an issuer, sponsor or registered professional;
- (d) requiring an issuer to implement an effective education or compliance programme;
- (e) requiring an issuer's directors or executive officers to undertake a mandatory education or training programme;
- (f) requiring an issuer to undertake an independent review of internal controls and processes;
- (g) 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;
- (h) objecting to the appointments of individual directors or executive officers in any issuer for a period not exceeding 3 years;
- (i) requiring an issuer to appoint independent advisers to minority shareholders;
- (j) requiring an issuer to appoint special auditors, compliance advisers, legal advisers or other independent professionals for specified purposes;
- (k) requiring a Relevant Person to perform other remedial action to rectify the consequences of contraventions;
- (l) imposing conditions on the accreditation of an issue manager, the authorisation of a sponsor or the registration of a registered professional;
- (m) 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 LDC within 14 days from the date of suspension or restriction, whereupon the LDC will determine if the suspension or restriction should be lifted or should be continued for a specified period not exceeding 3 years;
- (n) suspending or restricting the activities of a sponsor or registered professional;
- (o) revoking the authorisation of a sponsor or cancelling registration of a registered professional;
- (p) requiring an education programme to be undertaken by a sponsor or registered professional;
- (q) halting or suspending trading of listed securities of an issuer;
- (r) removing an issuer from the Official List; and
- (s) imposing any other requirements on a Relevant Person which the Exchange considers appropriate.

- 3.2 Credible enforcement requires a strong commitment to investigate and sanction misconduct, and this includes having both robust powers and dedication to utilise them.<sup>6</sup> Given the wide range of possible breaches of Listing Rules, SGX RegCo, as the frontline regulator, should be empowered to swiftly impose a greater range of sanctions, commensurate with the severity of the breach, particularly those of a public nature to promote high standards of conduct and uphold regulatory standards. It is envisioned that more efficient and timely delivery of regulatory outcomes will help in mitigating the damage caused by the misconduct and be effective in shaping compliant behaviour by deterring others from engaging in similar misconduct. An increased public awareness of regulatory standards may also contribute to the protection of investors.
- 3.3 Under the existing enforcement framework, public enforcement actions, such as public reprimands, are only exercisable by the LDC.<sup>7</sup> SGX RegCo is of the view that the current range of direct enforcement powers that SGX RegCo can exercise without going through the LDC, which are mainly confined to private actions and hence not disclosed to the public, are thus inadequate for the purposes of enabling SGX RegCo to provide clear, transparent and robust outcomes for the wide range of disciplinary cases encountered.
- 3.4 In this regard, SGX RegCo is proposing to widen its range of direct enforcement powers to include the following, which are currently only exercisable by the LDC under Rule 1417(2) of the Mainboard Rules and Rule 317(2) of the Catalist Rules:
- (a) issuing a public reprimand against Relevant Persons;
  - (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) 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.
- 3.5 The proposed enforcement powers for SGX RegCo to include stronger sanctions will enhance SGX RegCo's disciplinary powers, deter potential misconduct, and are in line with the responsibilities of a market operator.
- 3.6 Consistent with the existing suite of direct enforcement powers, the widened scope of sanctions imposed by SGX RegCo will not be appealable. SGX RegCo will take into consideration the following principles to ensure that the enforcement action is commensurate with the severity of the breach:

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<sup>6</sup> International Organization of Securities Commissions, "Credible Deterrence in the Enforcement of Securities Regulation" (June 2015).

<sup>7</sup> Please see Rule 1417(2) of the Mainboard Rules and Rule 317(2) of the Catalist Rules for a full list of the sanctions exercisable by the LDC.

- (a) the interpretation of the rule should achieve the underlying purpose of the rule;
- (b) consistency in the application of the rule so as to provide market certainty and to allow market participants the opportunity to understand the application of the rule;
- (c) the application of the rule has factored in the circumstances of each case,
- (d) the manner by which decisions are made is procedurally fair;
- (e) decisions made are fair, and in the interest of market participants; and
- (f) decisions are made expeditiously.

SGX RegCo will also ensure that its existing show cause process continues to be robust and conform to the principles of natural justice including, among others, providing notice of the relevant charges and particulars of the relevant Listing Rule breaches, and an opportunity for the party under investigation to make representations. Further, it is intended that more detailed guidance on SGX RegCo's use of its enforcement powers and the aforementioned robust show cause process involved will be provided in the form of an updated Enforcement Handbook to be issued. This will increase transparency of the process and allow market participants to more accurately understand the application of SGX RegCo's enforcement powers. The Enforcement Handbook will set out the relevant factors and considerations for exercising SGX RegCo's enforcement powers, and also provide illustrative examples of their application.

3.7 Under the proposed amendments to the enforcement framework, the LDC and LApC will, respectively, continue to exercise their existing powers at their disposal. Accordingly, the LDC and LApC will continue to have oversight of cases where the circumstances warrant a fine. Given the severity and pecuniary nature of fines, it is judicious to reserve such cases for the LDC to ensure the fair and independent administration of fines.

3.8 In formulating the above proposals, it is noted that the Australian Securities Exchange ("**ASX**")<sup>8</sup> and the Japan Exchange Group ("**JPX**")<sup>9</sup> also undertake enforcement actions and issue severe penalties directly without referral to an externally constituted disciplinary committee, tribunal or panel. In December 2019, ASX introduced a new listing rule which empowered it to mete out public censures against offending issuers.<sup>10</sup> This is in addition to its powers to require a suspension or delisting of securities, or for an offending issuer to do or refrain from doing any act necessary to ensure compliance with the listing rules. Similarly, JPX has the power to impose fines, issue public announcement of breaches or impose requirements to make certain improvements, failing which the issuer may be delisted.<sup>11</sup> The decisions of both bodies are not appealable. Both ASX and JPX are also self-regulatory organisations with an independent regulatory subsidiary with its own board, which consists of a majority of independent members.

**Question 1: Swifter Enforcement Outcomes**

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

<sup>8</sup> ASX Compliance Pty Limited is a wholly-owned subsidiary of ASX Limited, and is responsible for monitoring and enforcing compliance by listed entities with the ASX Listing Rules.

<sup>9</sup> Japan Exchange Regulation is a subsidiary of the Japan Exchange Group. It is the regulatory arm of the Tokyo Stock Exchange and Osaka Exchange, both subsidiaries of JPX.

<sup>10</sup> Rule 18.8A of ASX listing rules.

<sup>11</sup> JPX classifies its measures against listed companies into two categories, penalties and improvement measures. Fines and public announcements of breaches are penalties imposed on listed companies which violated the rules. Improvement measures are taken with the aim of urging improvements in the listed company: <https://www.jpj.co.jp/english/regulation/ensuring/listing/compl/index.html>.

**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?

#### **4 Exchange's Approval for Appointment of Director, Chief Executive Officer and Chief Financial Officer**

- 4.1 Under Rule 720(3) of the Mainboard Rules and Rule 720(2) of the Catalist Rules, SGX RegCo currently has the power to require an issuer to obtain the approval of the Exchange for any appointment of directors, chief executive officers, and chief financial officers (or its equivalent rank) under certain specified circumstances. This power ensures that only suitable persons are appointed by errant issuers to steer them back on track.
- 4.2 The specified circumstances include (a) where the issuer is the subject of an investigation into the affairs of the issuer by a special auditor appointed under Rule 704(14) of the Mainboard Rules or Rule 704(13) of the Catalist Rules, or a regulatory or enforcement agency; (b) where the integrity of the market may be adversely affected; (c) where the Exchange thinks it is necessary in the interests of the public or for the protection of investors; and (d) where the issuer refused to extend cooperation to the Exchange on regulatory matters.
- 4.3 In this connection, Rule 704(14) of the Mainboard Rules and Rule 704(13) of the Catalist Rules allow SGX RegCo to, among others, require an issuer to appoint a special auditor to review or investigate the issuer's affairs. However, SGX RegCo notes that in practice, special auditors are usually appointed by the issuer, and not necessarily pursuant to SGX RegCo's directive under these Listing Rules.
- 4.4 SGX RegCo therefore proposes amendments to Rule 720(3)(b)(i) of the Mainboard Rules and Rule 720(2)(b)(i) of the Catalist Rules to apply to 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 not merely limited to circumstances where the special auditor is appointed under Rule 704(14) of the Mainboard Rules or Rule 704(13) of the Catalist Rules (as may be applicable).

- 4.5 SGX RegCo further proposes amendments to Rule 720(3) of the Mainboard Rules and Rule 720(2) of the Catalist Rules to have the power to additionally require an issuer to obtain the approval of the Exchange for the re-appointment (and not merely the appointment) of a director, chief executive officer, and chief financial officer (or its equivalent rank). This is to ensure that in the extenuating circumstances under which this power is invoked, SGX RegCo's pre-emptive powers are sufficiently robust. For example, these amendments would enable SGX RegCo to prevent potentially culpable individuals identified in special audit reports from remaining on the board of directors to impede regulatory investigations or actions. For consistency, consequential amendments are proposed to Rule 1405(1)(d) of the Mainboard Rules and Rule 305(1)(c) of the Catalist Rules as well.

**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)?

## 5 Enhancing SGX RegCo's Administrative Powers

- 5.1 SGX RegCo currently has several powers conferred by Rule 1405(1) of the Mainboard Rules and Rule 305(1) of the Catalist Rules for the purposes of ensuring that the market is fair, orderly, and transparent. In particular, Rule 1405(1)(e) of the Mainboard Rules and Rule 305(1)(d) of the Catalist Rules allow the Exchange to object to the appointments of individual directors or executive officers in any issuer for a period not exceeding three years. This power ensures that an errant director or executive officer is not appointed to any issuer.
- 5.2 The circumstances under which SGX RegCo may exercise its powers under the aforementioned rules are set out in Rule 1405(2) of the Mainboard Rules (and equivalent Rule 305(2) of the Catalist Rules), and they include where the director or executive officer has (a) refused to extend cooperation to the Exchange or other regulatory agencies on regulatory matters, and (b) wilfully contravened any relevant laws, rules, and regulations.
- 5.3 To ensure that this administrative power achieves its purpose of preventing individuals with questionable character and integrity from serving on the boards or management teams of issuers, SGX RegCo proposes to enhance this administrative power to allow the Exchange to object to re-appointments of individual directors or executive officers in any issuer. To align Rule 305(1)(d) of the Catalist Rules with its equivalent Rule 1405(1)(e) of the Mainboard Rules and for clarity, SGX RegCo additionally proposes to amend Rule 305(1)(d) of the Catalist Rules to clarify that the rule applies to appointments or re-appointments in any issuer.
- 5.4 In order to increase the range of options available to SGX RegCo in dealing with individual directors and executive officers, SGX RegCo further proposes 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.

- 5.5 SGX RegCo also proposes to include an additional provision to Rule 1405(2) of the Mainboard Rules and Rule 305(2) of the Catalist Rules to further clarify the circumstances under which the Exchange may suspend, or object to the appointments and re-appointments of, individual directors or executive officers in any issuer. Specifically, these circumstances are 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. SGX RegCo is of the view that the nature of the specified offences are serious enough to call into question the individual's suitability to serve as a director of listed companies. Accordingly, SGX RegCo should have the discretion to take pre-emptive action to prevent the appointment or re-appointment of persons in such situations where their suitability as a director is in doubt.
- 5.6 In addition, SGX RegCo proposes to amend Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules to remove the requirement of wilfulness. Previously the rule applied to all contraventions of relevant laws, rules and regulations. The proposed changes narrow its scope to only the most material contraventions relating to fraud, dishonesty, the securities or futures industry, corruption or breaches of fiduciary duties. It is unnecessary to further limit the application of the rule by requiring wilfulness.

**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?

### III Proposed Enhancements to Whistleblowing Regime

#### 1 Whistleblowing Policy

- 1.1 The two tenets of an effective whistleblowing policy are (a) protecting whistleblowers from reprisals, and (b) maintaining their confidentiality. Raising awareness of the protections afforded to whistleblowers and the safety of reporting channels will encourage more to come forward. A transparent whistleblowing policy is thus essential to a strong whistleblowing culture.

- 1.2 Reprisals may take various forms, whether direct or indirect, carried out by management, other employees, business partners or clients, at work or outside the workplace. These may include victimisation, demotion, retaliation, discrimination or dismissal, or cause the whistleblower to be otherwise ostracised. An effective whistleblowing policy must expressly prohibit such retaliations.
- 1.3 It is also important to keep the identity of the whistleblower confidential. The whistleblowing process should provide safe reporting channels, and ensure the confidentiality of the content of the report and any information that could identify the person making the report. Where it is necessary to reveal the identity of the person making the report, for example for the purposes of the investigation, that confidentiality must be maintained to the extent reasonably possible.

## **2 Jurisdiction Comparison**

- 2.1 Many countries have enacted national whistleblower protection laws, including Australia, Canada, Ireland, Italy, Japan, Malaysia, New Zealand, the United States of America, and the United Kingdom. While the focus of such whistleblower protection laws have initially been on corruption, terrorism, national security, or are otherwise limited to public sector employees, whistleblowing has been used as a tool to expose breaches such as anti-competitive conduct, environmental damage, poor labour standards, tax evasion, and financial fraud.
- 2.2 Singapore does not have a universal whistleblower protection law. Rather, Singapore law affords protection to specific groups of whistleblowers via various pieces of legislation, such as the Prevention of Corruption Act (Chapter 241 of Singapore) and the Workplace Safety and Health Act (Chapter 354A of Singapore). In the corporate sphere, the Code of Corporate Governance 2018 (the “**CG Code**”) places responsibility for whistleblowing on the Audit Committee, and requires companies to publicise and communicate to its employees the existence of a whistleblowing policy.<sup>12</sup>
- 2.3 The Hong Kong Stock Exchange recommends as a best practice that the audit committee of a listed issuer should establish a whistleblowing policy and system for employees and those who deal with the issuer (for example, customers and suppliers) to raise concerns, in confidence, with the audit committee about possible improprieties in any matter related to the issuer.
- 2.4 In Malaysia, Bursa Malaysia introduced new requirements in December 2019 (effective 1 June 2020) for listed issuers and their boards of directors to establish and maintain policies and procedures on whistleblowing for the listed issuer and its subsidiaries.
- 2.5 Accordingly, the proposed amendments to the Listing Rules to strengthen the whistleblowing culture across the market are in line with other exchanges.

## **3 Companies to Establish and Maintain Whistleblowing Policy**

- 3.1 SGX RegCo proposes to require issuers to include in their annual report a statement whether and how the issuer has complied with the following best practices on whistleblowing:
  - (a) an issuer should establish and maintain a whistleblowing policy which sets out the procedures for a whistleblower to make a report to the issuer on misconduct or wrongdoing related to the issuer and its officers;
  - (b) the issuer should designate an independent function to investigate whistleblowing reports made in good faith;

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<sup>12</sup> See Provision 10.1(f) of the CG Code.

- (c) the issuer should ensure that the identity of the whistleblower is kept confidential;
  - (d) the issuer should disclose its commitment to ensure protection of the whistleblower against detrimental or unfair treatment; and
  - (e) the Audit Committee should be responsible for oversight and monitoring of whistleblowing.
- 3.2 It is envisaged that the head of internal audit in an issuer or the issuer’s whistleblowing office would be responsible for handling all reported cases and ensuring that issues raised are properly resolved by the management or such parties as appropriate.
- 3.3 Provision 10.1(f) of the CG Code states that the duties of the Audit Committee include, among others, that “[t]he company publicly discloses, and clearly communicates to employees, the existence of a whistle-blowing policy and procedures for raising such concerns”. The CG Code operates on a comply-or-explain basis. Under Rule 710 of the Listing Rules, issuers must explicitly state, in their annual reports, compliance with the principles of the CG Code. Where the issuer’s practice varies from the provisions of the CG Code, it must explicitly state the provision from which it varied and explain the reasons for the variation as well as explain how the practices adopted are consistent with the intent of the relevant principle.
- 3.4 The proposed Listing Rule amendments aim to enhance the disclosures on whistleblowing practices and complement the disclosures required under 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.

**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.

## IV Other Proposed Changes

### 1 Exclusion of Liability of SGX RegCo

- 1.1 The SFA provides that SGX is immune from criminal and civil liability for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of SGX under the SFA or under the Listing Rules.<sup>13</sup> This extends to persons acting on behalf of SGX, including any director of SGX or any member of any committee established by SGX.<sup>14</sup>
- 1.2 Following SGX RegCo’s assumption of regulatory responsibilities of SGX and its regulated entities in 2017, SGX RegCo proposes several administrative amendments to Chapter 1 of the Mainboard Rules and Catalist Rules to clarify SGX RegCo’s authority to exercise the rights, powers, authorities and discretions of SGX and its regulated entities under the relevant Listing Rules, and to allow SGX RegCo to delegate and assign those rights, powers, authorities and discretions to any other person or entity (each a “**delegate**”).

<sup>13</sup> Section 32(1) of the SFA.

<sup>14</sup> Section 32(2) of the SFA.

- 1.3 In this regard, SGX proposes to amend the Listing Rules on general limitation of liability and indemnity (as set out in Appendix 5 and Appendix 6) 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 without fear or favour.

**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.

# Appendix 1 Proposed 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 ~~appointed under Rule 704(14)~~, or a regulatory or enforcement agency;

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

### 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;
  - (ea) require an issuer to suspend individual directors or executive officers for a period not exceeding 3 years;
- (2) The circumstances under which the Exchange may exercise its powers under Rule 1405(1)(e) and Rule 1405(1)(ea) 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 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; 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) requiring the resignation of the director or executive officer from an existing position with any issuer listed on the Exchange;
- (xviii) 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;
- (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.

## 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)(~~xi~~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;

## Appendix 2 Proposed 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 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;
  - (da) require an issuer to suspend individual directors or executive officers for a period not exceeding 3 years;
- (2) The circumstances under which the Exchange may exercise its powers under Rule 305(1)(d) and Rule 305(1)(da) 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; 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) requiring the resignation of the director or executive officer from an existing position with any issuer listed on the Exchange;
- (xx) 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;
- (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.

## **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;

## **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 ~~appointed under Rule 704(13)~~, or a regulatory or enforcement agency;

## Appendix 3 Proposed 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 whether and how the issuer has complied with the following best practices on whistleblowing: —

- (a) an issuer should establish and maintain a whistleblowing policy which sets out the procedures for a whistleblower to make a report to the issuer on misconduct or wrongdoing related to the issuer and its officers;
- (b) the issuer should designate an independent function to investigate whistleblowing reports made in good faith;
- (c) the issuer should ensure that the identity of the whistleblower is kept confidential;
- (d) the issuer should disclose its commitment to ensure protection of the whistleblower against detrimental or unfair treatment; and
- (e) the Audit Committee is responsible for oversight and monitoring of whistleblowing.

# Appendix 4 Proposed 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 whether and how the issuer has complied with the following best practices on whistleblowing: —

- (a) an issuer should establish and maintain a whistleblowing policy which sets out the procedures for a whistleblower to make a report to the issuer on misconduct or wrongdoing related to the issuer and its officers;
- (b) the issuer should designate an independent function to investigate whistleblowing reports made in good faith;
- (c) the issuer should ensure that the identity of the whistleblower is kept confidential;
- (d) the issuer should disclose its commitment to ensure protection of the whistleblower against detrimental or unfair treatment; and
- (e) the Audit Committee is responsible for oversight and monitoring of whistleblowing.

## Appendix 5 Other Proposed Amendments to Mainboard Rules

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

### Chapter 1 Introduction

#### Part III Application of Listing Rules

109A Save as provided in the Exchange's listing rules, a person who is not a party to the Rules has no rights under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore to enforce or enjoy the benefit of the Rules, regardless of whether such person has been identified by name, as a member of a class or as answering a particular description.

#### Part VI Liability of SGX-ST

118 The Exchange may delegate, assign or grant authority to exercise any of its rights, powers, authorities and discretions under the Rules, including any right to enforce the Rules, to such person or entity as it may determine in its sole discretion, without consent from any persons. In the exercise of any such rights, powers, authorities and discretions under these Rules, such person or entity shall be bound to the same extent as the Exchange in respect of any obligations arising from the exercise of such rights, powers, authorities and discretions.

119 Where the Rules provide that any right, power, authority or discretion is to be exercised by the SGX RegCo Board, the Board may delegate, assign or grant authority to exercise such right, power, authority or discretion to any person or entity. The SGX RegCo Board may authorise a delegate to sub-delegate.

120 SGX RegCo shall have the authority to exercise any rights, powers, authorities and discretions under the Rules, including the right to enforce the Rules.

121 None of the Exchange, its related companies, SGX RegCo, any person or entity referred to under Rule 118, or their respective directors, officers, employees or agents, nor any member of the Listings Advisory Committee, Disciplinary Committee or Appeals Committee ("**Relevant Parties**") shall be liable to any person for any loss or damage (including consequential or indirect loss or damage even if advised of the possibility of such loss or damage), however caused or arising, including but not limited to any loss or damage arising directly or indirectly, whether or not due to any negligence of the Relevant Parties, out of or in connection with any thing done (including any statement made) or omitted to be done in the course of, or in connection with, the discharge or purported discharge of the Exchange's obligations or rights under the SFA, any other applicable law, or under the Rules, the exercise of a decision-making or regulatory power or discretion under the Rules, or any thing done or not done as a direct or indirect consequence thereof.

122 Each listing applicant, issuer, Issue Manager (the "**Indemnifying Persons**") indemnifies each of the Exchange, its related companies, SGX RegCo, any person or entity referred to under Rule 118, and their respective directors, officers, employees and agents (the "**Indemnified Persons**") against any loss or liability incurred or suffered by an Indemnified Person where such loss or liability arose out of or in connection with:

- (a) any breach by the Indemnifying Person of its obligations under the Rules; or
- (b) any wilful, unlawful, reckless or negligent act or omission by the Indemnifying Person.

123 Without prejudice to the generality of Rule 122, in the event that any legal, arbitration or other proceedings are brought to impose any liability on all or any of the Indemnified Persons for an alleged

failure on the part of any Indemnified Person to prevent or to require action by an Indemnifying Person or any of its directors, officers, professional advisers, registered professionals, representatives, employees or agents, the Indemnifying Person shall reimburse the relevant Indemnified Person for:

- (a) all expenses and legal fees incurred by or on behalf of the Indemnified Person in connection with such proceedings;
- (b) any payment made by or on behalf of the Indemnified Person with the approval of the Indemnifying Person in connection with any settlement of such proceedings; and
- (c) any payment made by or on behalf of the Indemnified Person as a result of any order, award or judgment made in such proceedings.

and the Indemnifying Person shall render such co-operation as the Indemnified Person reasonably requires in respect of such proceedings including without limitation the production of any document or records.

**124** Without prejudice to Rule 123, the Indemnifying Person shall pay to an Indemnified Person, if the Indemnified Person so requires, the costs incurred by or on behalf of the Indemnified Person of producing or obtaining, pursuant to a court order or other legal process, records relating to the business or affairs of a Indemnifying Person or any of its directors, officers, professional advisers, registered professionals, representatives, employees or agents, regardless of the party requiring such production or obtainment.

## Appendix 6 Other Proposed Amendments to Catalist Rules

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

### Chapter 1 Introduction

#### Part III Application of Rules

108A Save as provided in the Rules, a person who is not a party to the Rules has no rights under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore to enforce or enjoy the benefit of the Rules, regardless of whether such person has been identified by name, as a member of a class or as answering a particular description.

#### Part VI Liability of SGX-ST

116 The Exchange may delegate, assign or grant authority to exercise any of its rights, powers, authorities and discretions under the Rules, including any right to enforce the Rules, to such person or entity as it may determine in its sole discretion, without consent from any persons. In the exercise of any such rights, powers, authorities and discretions under these Rules, such person or entity shall be bound to the same extent as the Exchange in respect of any obligations arising from the exercise of such rights, powers, authorities and discretions. ~~Neither the Exchange nor any servant or agent of the Exchange, nor any member of the advisory panel, Disciplinary Committee or Appeals Committee is liable to sponsor applicant or sponsor (including any director, officer, registered professional, employee or agent of the sponsor) for performing its functions under the Rules. This limitation of liability extends to any actions whether in contract or tort or otherwise, and applies even in the purported performance of a function in good faith.~~

117 Where the Rules provide that any right, power, authority or discretion is to be exercised by the SGX RegCo Board, SGX RegCo Board may delegate, assign or grant authority to exercise such right, power, authority or discretion to any person or entity. The SGX RegCo Board may authorise a delegate to sub-delegate.

118 SGX RegCo shall have the authority to exercise any rights, powers, authorities and discretions under the Rules, including the right to enforce the Rules.

119 None of the Exchange, its related companies, SGX RegCo, any person or entity referred to under Rule 116, or their respective directors, officers, employees or agents, nor any member of the Listings Advisory Committee, Disciplinary Committee or Appeals Committee ("**Relevant Parties**") shall be liable to any person for any loss or damage (including consequential or indirect loss or damage even if advised of the possibility of such loss or damage), however caused or arising, including but not limited to any loss or damage arising directly or indirectly, whether or not due to any negligence of the Relevant Parties, out of or in connection with any thing done (including any statement made) or omitted to be done in the course of, or in connection with, the discharge or purported discharge of the Exchange's obligations or rights under the SFA, any other applicable law, or under the Rules, the exercise of a decision-making or regulatory power or discretion under the Rules, or any thing done or not done as a direct or indirect consequence thereof.

120 Each listing applicant or issuer, sponsor applicant or sponsor (the "**Indemnifying Persons**") indemnifies each of the Exchange, its related companies, SGX RegCo, any person or entity referred to under Rule 116, and their respective directors, officers, employees and agents (the "**Indemnified Persons**") against any loss or liability incurred or suffered by an Indemnified Person where such loss or liability arose out of or in connection with:

- (a) any breach by the Indemnifying Person of its obligations under the Rules; or
- (b) any wilful, unlawful, reckless or negligent act or omission by the Indemnifying Person.

**121** Without prejudice to the generality of Rule 120, in the event that any legal, arbitration or other proceedings are brought to impose any liability on all or any of the Indemnified Persons for an alleged failure on the part of any Indemnified Person to prevent or to require action by an Indemnifying Person or any of its directors, officers, professional advisers, registered professionals, representatives, employees or agents, the Indemnifying Person shall reimburse the relevant Indemnified Person for:

- (a) all expenses and legal fees incurred by or on behalf of the Indemnified Person in connection with such proceedings;
- (b) any payment made by or on behalf of the Indemnified Person with the approval of the Indemnifying Person in connection with any settlement of such proceedings; and
- (c) any payment made by or on behalf of the Indemnified Person as a result of any order, award or judgment made in such proceedings,

and the Indemnifying Person shall render such co-operation as the Indemnified Person reasonably requires in respect of such proceedings including without limitation the production of any document or records.

**122** Without prejudice to Rule 121, the Indemnifying Person shall pay to an Indemnified Person, if the Indemnified Person so requires, the costs incurred by or on behalf of the Indemnified Person of producing or obtaining, pursuant to a court order or other legal process, records relating to the business or affairs of a Indemnifying Person or any of its directors, officers, professional advisers, registered professionals, representatives, employees or agents, regardless of the party requiring such production or obtainment.

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