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Temporary Exemption to Allow Electronic Dissemination of Offer Documents for Rights Issues and Take-over or Merger Transactions

Introduction

As part of the nation-wide control measures put in place to deal with the COVID-19 outbreak, restrictions have been imposed on the operations and manpower of printers and mailing houses. This poses challenges to the mass production of hard copy documents including documents in relation to rights issues and take-over or merger transactions. The Securities and Futures Act ("**SFA**"), the Singapore Code on Take-overs and Mergers ("**Code**") and the SGX-ST Mainboard and Catalyst Listing Rules require hard copies of these documents to be despatched.

In response, on 6 May 2020, the Monetary Authority of Singapore ("**MAS**"), the Securities Industry Council ("**SIC**") and the Singapore Exchange Regulation ("**SGX RegCo**") [jointly announced](#) temporary measures giving issuers listed on SGX-ST and parties involved in rights issues and take-over or merger transactions the option to disseminate an electronic version of the relevant offer documents through publication on SGXNET and their corporate websites.

These temporary measures take effect from 6 May 2020 to 30 September 2020.

This Update highlights the conditions for relying on the temporary measures.

Rights Issues - Electronic OIS

On 6 May 2020, the Securities and Futures (Offers of Investments) (Temporary Exemption from Sections 277(1)(c) and 305B(1)(b)) Regulations 2020 ("**Exemption Regulations**") were issued to implement the temporary measures for an offer of securities,¹ securities-based derivatives contracts² or

¹ "Securities" is defined to include (a) shares, units in a business trust or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership, (b) debentures, or (c) any other product or class of product as may be prescribed, but excludes (a) any CIS unit, (b) any bill of exchange, (c) any certificate of deposit issued by a bank or finance company, or (d) such other product of class of product as may be prescribed.

² "Securities-based derivative contracts" is defined to include any derivatives contract of which the underlying thing or any of the underlying things is a security or a securities index, but excludes any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by regulations made under section 341 of the SFA.

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units in collective investment schemes listed on the SGX-ST ("**listed CIS units**") made under section 277 or 305B of the SFA.

Sections 277(1)(c) and 305B(1)(b) of the SFA require an offer of securities, securities-based derivatives contracts or listed CIS units (whether by means of a rights issue or otherwise) ("**Offer**") to be made in or accompanied by an offer information statement ("**OIS**"). In addition, the SGX-ST Mainboard and Catalist Listing Rules require physical copies of the notices and documents relating to rights issues of issuers listed on the SGX-ST to be sent to their shareholders.

The Exemption Regulations exempt an Offer made within the period of 6 May 2020 to 30 September 2020 from the foregoing SFA requirement and allows it to be made with an electronic version of an OIS ("**Electronic OIS**") if the conditions set out in the Exemption Regulations are satisfied. On 6 May 2020, MAS issued the "[Guidelines on the Securities and Futures \(Offers of Investments\) \(Temporary Exemption from Sections 277\(1\)\(c\) and 305B\(1\)\(b\)\) Regulations 2020](#)" providing guidance on these conditions and the inclusion of cautionary statements in relation to an Offer.

SGX RegCo has clarified that the relevant rules in the SGX-ST Mainboard and Catalist Listing Rules that require physical copies of the documents relating to rights issues to be sent to a listed issuer's shareholders will also not be applicable from 6 May 2020 to 30 September 2020.

Conditions for issuing an Electronic OIS under Exemption Regulations

A summary of the conditions for issuing the Electronic OIS is set out below.

1. The Electronic OIS relating to the Offer must be:
 - (i) Published on SGXNET and the website of the issuer (if available); and
 - (ii) Capable of being printed by a person to whom the Offer is made.
2. The Offer must be made in a physical document that:
 - (i) States that the person to whom the Offer is made should read the Electronic OIS before submitting his or her application to subscribe for or purchase the securities or securities-based derivatives contracts or listed CIS units (as the case may be);
 - (ii) States that the Electronic OIS is available online; and
 - (iii) Specifies the address of the online location at which the Electronic OIS is published and contains instructions on how to view, download and print the Electronic OIS.

The Guidelines issued to provide guidance to issuers and professional advisers on the publication of an Electronic OIS and the inclusion of cautionary statements, sets out that the issuer should ensure, among other things, that:

- (i) The Electronic OIS published on SGXNET and the issuer's website (if available):
 - (a) Is easily accessible for viewing online or easily downloadable for viewing by a potential investor, at the address of the online location of the Electronic OIS as

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specified in the physical document in which the Offer is made (see paragraph 2 above);

- (b) Does not differ significantly in form or content from the OIS that is lodged and published on MAS OPERA website at <https://eservices.mas.gov.sg/opera>. The Guidelines elaborate on what would not be considered significant differences and this includes ensuring the Electronic OIS is clearly demarcated so that it is clear which information forms part of the Electronic OIS and can be relied on, and which is not and should not be relied on, and issuers may include an advisory statement to such effect (in a font size no smaller than that used in the Electronic OIS) in the physical document referred to in paragraph 2 above along the following lines:

"Any information/material falling outside the demarcated areas does not form part of the offer information statement. The securities, securities-based derivatives contracts or units in the CIS (as applicable) offered herein are offered on the basis of the information in the offer information statement as set out within the demarcated areas.";

- (c) Is provided as a standalone document and not combined with any other document into one file; and
 - (d) (If the Electronic OIS is accessible for viewing on an Internet browser) the content is displayed in its entirety on the webpage where it is located, and not combined with the content of any other document on that same webpage; and
- (ii) Any promotional material is not made available in a way that encourages an investor to make decisions on the basis of the promotional material rather than on the basis of the Electronic OIS; and
 - (iii) The physical document in which the Offer is made includes a cautionary statement that warns potential investors that:
 - (a) All investments come with risk, including the risk that the investor may lose all or part of his investment; and
 - (b) The potential investor is responsible for his own investment decisions.

Take-Over Offers - Electronic Despatch of Offer Documents

On 6 May 2020, SIC issued the ["Public Statement on Despatch of Take-over Documents under the Singapore Code on Take-overs and Mergers"](#) providing parties involved in take-over or merger transactions with the option to electronically disseminate take-over documents from 6 May 2020 to 30 September 2020. SIC clarifies that during this period, there is no need to post hardcopy take-over documents (including the offer document and offeree board circular) as required under the Code.

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Conditions to electronically despatch offer documents

To post the take-over documents electronically, the relevant parties must:

1. Publish these documents on SGXNet and on the websites of the offeror or offeree company (as the case may be);
2. Post a hardcopy notification to shareholders providing instructions on how shareholders can locate the documents electronically, together with hardcopy acceptance forms; and
3. Consult SIC before they despatch take-over documents whether by post or electronically.

SGX RegCo has clarified that the relevant rules in the SGX-ST Mainboard and Catalist Listing Rules that require physical copies of the notices and documents relating to a take-over offer to be sent to the shareholders of listed issuers will also not be applicable from 6 May 2020 to 30 September 2020.

Further Information

If you have any queries or wish to know more about the above development, please feel free to contact our team members below who will be happy to assist.

For more articles and updates from our teams across the region on COVID-19 and related legal issues, please visit the [Rajah & Tann Asia COVID-19 Resource Centre](#).

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