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SGX Enhances SGX RegCo's Enforcement Powers and Disclosures on Whistleblowing Practices

Executive Summary

With effect from 1 August 2021, Singapore Exchange Regulation ("**SGX RegCo**") will have a wider range of enforcement and administrative powers, including the power to require a director or executive officer to resign from an existing position with an issuer listed on the Singapore Exchange Securities Trading Limited ("**SGX-ST**"). With effect from 1 January 2022, issuers listed on the SGX-ST Mainboard and Catalist ("**listed issuers**") will be required to state in their annual reports that they have put in place a whistleblowing policy, starting with their annual reports relating to financial years commencing from 1 January 2021.

These changes follow a public consultation conducted by the Singapore Exchange Limited ("**SGX**") in August 2020 on the proposals. For more information, please refer to our Client Update titled "*SGX Consults on Changes to Listing Rules to Enhance Enforcement and Whistleblowing Frameworks*" available [here](#). The proposals received broad support from market participants. SGX's response to the feedback received from the consultation ("**Response**") is available [here](#).

This Update provides an overview of the key enhanced enforcement and administrative powers of SGX RegCo and the new requirement mandating a listed issuer to establish a whistleblowing policy.

Enforcement Powers for Swifter Enforcement Outcome

Presently, SGX RegCo's direct enforcement powers to enforce compliance with the SGX Listing Rules (Mainboard) ("**Mainboard Rules**") and the SGX Listing Rules (Catalist) ("**Catalist Rules**") (collectively, the "**Listing Rules**") are mainly confined to private actions (i.e. not disclosed to public). Public enforcement actions, such as public reprimands, are only exercisable by the independent Listings Disciplinary Committee.

Starting from 1 August 2021, SGX RegCo will have the power to, amongst others:

- issue public reprimands; and
- require a listed issuer to comply with specified conditions. This is intended for investor protection and not a punitive sanction.

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These sanctions are non-appealable.

SGX RegCo will also have the power to:

- prohibit an issuer from accessing the facilities of the market for a specified period or until fulfilment of specified conditions. The denial of market facilities is not intended to be a delisting of the issuer, but includes 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 situations where the issuer has repeatedly committed multiple breaches of the Listing Rules. SGX RegCo may also extend the duration of this sanction to last until the listed issuer has fulfilled specified conditions so that active action is taken to remedy the breaches;
- prohibit any issuer from appointing or reappointing a director or an executive officer for up to three years; and
- require a director or an executive officer to resign.

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 (which will come into effect on 1 August 2021), appeals to the Listings Appeals Committee of these sanctions are allowed. Under the new Rule 1419(6) of the Mainboard Rules and Rule 319(6) of the Catalist Rules, an appeal may be heard only if leave is given by the chairman of the Listing Appeals Committee and the chairman's decision on leave is final and not subject to any appeal.

More severe and pecuniary sanctions, such as fines, continue to be reserved for the Listing Disciplinary Committee.

For guidance on SGX RegCo's use of enforcement powers, please refer to the updated Enforcement Handbook to be issued by SGX RegCo. The Enforcement Handbook will explain the robust show cause process involved prior to SGX RegCo's determination on liability and the appropriate sanctions, factors and considerations for SGX RegCo's exercise of its enforcement powers, examples of their application, as well as sentencing principles and guidance.

For unlisted debt issuers, they will be subject to the continuing obligations stipulated as applicable to unlisted debt issuers in the Listing Rules and consequently, will be subject to the enforcement powers applicable to issuers.

Broader Circumstances Requiring SGX's Approval for Appointment (and Re-appointment) of Director, CEO and CFO

Currently, Rule 720(3) of the Mainboard Rules and Rule 720(2) of the Catalist Rules allow SGX RegCo to require an issuer to obtain the approval of SGX for any appointment of directors, CEOs, and CFOs (or its equivalent rank) under certain specified circumstances, for instance, where the listed issuer is the

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subject of an investigation into the affairs of the listed issuer by a special auditor, or a regulatory or enforcement agency.

The amended Listing Rules will broaden the circumstances where SGX's approval is required for the appointment (and re-appointment) of a director, CEO and CFO (or an equivalent rank) to include circumstances where the listed issuer is the subject of an investigation into the affairs of the issuer by an independent reviewer appointed by the issuer and/or the SGX, or a regulatory or enforcement agency.

SGX stated that "investigation" has the plain meaning of the term. 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 listed issuer, its directors or key management in connection with the affairs of the issuer, SGX RegCo may exercise its power under this rule regardless of the party appointing the special auditor or independent reviewer.

Enhanced Administrative Powers Relating to Objections to Appointment (and Re-appointment) of Directors or Executive Officers

The existing Listing Rules confer several powers on SGX RegCo to ensure that the market is fair, orderly, and transparent. The circumstances under which SGX RegCo may exercise these powers are prescribed under Rule 1405(2) of the Mainboard Rules and Rule 305(2) of the Catalist Rules, for instance where the director or executive officer has (a) refused to extend cooperation to SGX or other regulatory agencies on regulatory matters, or (b) wilfully contravened any relevant laws, rules, and regulations.

In the consultation paper, for better protection of investors, it was proposed that SGX RegCo's administrative powers be enhanced:

- to object to the appointment (and re-appointment) of directors and executive officers under specified circumstances so as to prevent individuals with questionable character and integrity, or errant individuals, from serving on the boards or management teams of listed issuers;
- to suspend directors and executive officers under specified circumstances; and
- to remove the requirement of wilfulness under Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules.

After considering the feedback received, it was decided that:

- SGX RegCo may prevent the appointment (or re-appointment) of directors or executive officers for up to three years, under specified circumstances. Circumstances where this power may be invoked include 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

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- regulatory bodies) relating to fraud, dishonesty, the securities or futures industry, corruption or breaches of fiduciary duties, in Singapore or elsewhere.
- SGX will not proceed with the proposed suspension powers as the power to object to appointment (or re-appointment) of directors or executive officers is sufficient to address the concern of preventing prevent individuals with questionable character and integrity from serving on the boards or management teams of the listed issuer. This is aligned with the duties of the listed issuer's nominating committee under the Corporate Governance Code which includes assessing the suitability of the listed issuer's directors and executive officers on a continuous basis. For clarity on SGX RegCo's expectations in this regard, refer to amendments to Practice Note 7.1 of the Mainboard Rules and Practice Note 7A of the Catalist Rules.
 - the requirement of wilfulness under Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules with respect to SGX's exercise of its administrative powers where the listed issuer's director or executive officer has contravened any relevant laws, regulations and rules be removed. As the proposed amendments to the Listing Rules narrow the scope of Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules to apply only in circumstances involving the most material contraventions relating to fraud, dishonesty, the securities or futures industry, corruption or breaches of fiduciary duties, SGX was of the view that it was unnecessary to further limit application of the rule to require wilfulness.

Listed Issuers to Establish and Maintain Whistleblowing Policy

All listed issuers must establish and maintain a whistleblowing policy which sets out the procedures for a whistleblower to make a report on the listed issuer on misconduct or wrongdoing related to the listed issuer or its officers. Under the new Rule 1207(18B)(d) of the Mainboard Rules and Rule 1204(18B)(d) of the Catalist Rules, the Audit Committee, to whom the independent function reports, will be responsible for oversight and monitoring of whistleblowing.

Information on the whistleblowing policy must be provided in the annual reports and minimally include the following:

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

SGX had proposed in the consultation paper that listed issuers disclose how they have complied with the best practices on whistleblowing. As listed issuers may differ in their approach to implementing a

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whistleblowing framework, SGX opined that these best practices are intended to reflect the fundamental principles of an effective whistleblowing framework and should not be overly prescriptive. As such, listed issuers will have flexibility to operationalise their whistleblowing policies and demonstrate how they meet these best practices, as well as the discretion on 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.

Further Information

Detailed amendments to the Listing Rules may be found at the Appendices in the Response.

If you have any queries, please feel free to contact our team members below who will be happy to assist.

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