



Changes in securities regulation

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The Singapore Exchange recently announced the enhancement of its regulatory tools by redefining its query process and adding new requirements. Proposals have also been tabled to further strengthen regulation.

Last October, the share prices of three SGX-listed companies – Blumont, Asiasons, and LionGold – tanked, with all three companies losing almost all their value overnight. This prompted an extensive review by the Singapore Exchange and the Monetary Authority of Singapore.

This resulted in a set of regulatory enhancements aimed at heightening surveillance of trading

activities; and a joint consultation paper setting out proposals to further strengthen the securities market in Singapore.

New Tools

The enhancements, applicable to Mainboard and Catalist companies, comprise: enhancement to SGX's public query process, the "Trade With Caution" notice, and a requirement to keep SGX notified of discussions or negotiations that are

likely to lead to a takeover, a reverse takeover, or a very substantial acquisition.

SGX has issued a new template for its public query, which is in the form of a sample letter containing an example of the questions which SGX may ask. The intention is to draw the company's attention to some common situations which could cause unusual price movements to help it thoroughly consider if there is any undisclosed information which could account for the price movements.

SGX has also mandated that companies get their Board of Directors' approval when sending out their replies to SGX on any queries regarding unusual trading activities. Since the directors of the company are required to collectively and individually take responsibility for the accuracy of the replies provided to SGX, they would be expected to exercise diligence and make their own internal inquiries before endorsing the response, which is often prepared by management.

The challenge for most boards will probably lie in dealing with transactions which are currently undergoing negotiations but with no certainty that they will close. Very often, these would simply say that they are not aware of any specific reasons for the unusual trading activity since the deal has not been firmed up; but now they would need to reconsider whether to provide more information, with the appropriate qualifications.

It has been observed that since these refinements, the quality of responses has generally improved, with some companies highlighting proposed acquisitions or share subscriptions as a possible cause for the unusual trading activity.

Where a company has not provided adequate explanation for an unusual trading pattern, SGX may issue a Trade With Caution (TWC) Notice in situations. This is a cautionary

reminder to shareholders and potential investors and appears in the SGX's "Company Announcements" web page.

Since its introduction in February, SGX has used the TWC Notice on several occasions. The take on this: companies need to consider carefully and not simply give the "not aware of any specific reason" reply, as this could very well lead to a TWC Notice.

The TWC Notice is in addition to SGX's power to designate a stock; and could be a precursor to the designation of a stock if the unusual trading pattern continues. However, it is currently unclear whether SGX would issue any further announcement if there are subsequent disclosures, or when the issues are sorted out. Hence, there may be a risk that the company may continue to be plagued by a TWC Notice without appropriate sunset provisions. As of the date of writing, none of the TWC Notices issued by SGX have been taken off the "Company Announcement" pages relating to the relevant companies.

Finally, SGX has implemented a new notification requirement; in which a listed company must notify SGX when the Board is aware of discussions or negotiations which are likely to result in takeover, reverse takeover, or a substantial acquisition. This obligation also applies to controlling shareholders.

To assuage apprehensions over the disclosure of confidential, potentially price-sensitive information, the notification only needs to include the name of the issuer, type of transaction, target company, and details of the contact person. It would not need to disclose the commercial terms of the transaction.

In addition, SGX also requires the company to maintain a list of names of persons who are privy to the transaction, and who would not be allowed to transact in that security.

Proposals

MAS and SGX have also put up a joint consultation paper to further strengthen regulation of the market. The proposals, which are still in a development phase, include:

- Setting a minimum trading price as a continuing listing requirement for Mainboard companies. It is proposed that the issuer's volume weighted average share price must not fall below a specified minimum trading share price; if it does, the issuer will be given a reasonable time to take proactive steps to comply. It must also provide shareholders with quarterly public updates on the progress of its plans; which might include a share consolidation exercise or seeking a listing on Catalist. If it is unable to comply by the end of the specified cure period, the issuer may be delisted.
- Reporting of trading restrictions which any securities intermediary imposes upon all its customers in relation to SGX-listed securities will have to be announced on SGX's website. This is intended to improve transparency on trading restrictions and reduce information asymmetry. Securities houses may be reluctant to be put under such scrutiny, and one possible outcome could be they may impose trading restrictions on only certain groups of customers, thereby not triggering the reporting requirement.
- Setting-up of a Listings Advisory Committee. This will be referred cases with novel or unprecedented issues and it will then advise SGX on that application. Should the SGX depart from the committee's recommendation, the matter would then be brought before the Regulatory Conflicts Committee.
- Setting-up of a Listings Disciplinary Committee and Listing Appeals Committee, which come into play when SGX seeks to impose sanctions on parties which breach SGX's listing rules. The Disciplinary Committee will be the first-instance disciplinary committee while appeals against its decision or certain regulatory decisions by SGX will be brought before the Appeals

Committee. It is currently unclear if legal representations would be allowed for hearings before these committees and whether the parties involved would be given the opportunity to introduce and cross-examine witnesses to explain or substantiate their case.

- It is also proposed that the Disciplinary and Appeals Committees will be empowered to mete out sanctions which are currently administered by the SGX, including: issuing a warning, private or public reprimand, requiring remedial action for non-compliance, suspension of trading and delisting. They will also be empowered to impose a fine of not more than S\$250,000 on issuer companies for each breach, and to impose restrictions on activities that companies may undertake.
- SGX to be given the power to impose composition fines for minor breaches of the listing rules which are administrative or technical in nature. The amount of composition is not to exceed S\$10,000 for each breach. Additionally, SGX's powers to require remedial action will be widened to allow it to stipulate more alternatives in the event of non-compliance: requiring the issuer company to undertake a compliance programme, or require the appointment of an independent adviser to minority shareholders, amongst other possible remedies.

The enhancements and the proposals aim to increase regulatory surveillance to ward off situations like the penny-stock collapse of last October. But will these changes have the desired effect or will they just put more regulatory hurdles in the way and increase compliance costs for listed companies in Singapore? It is still too early to tell, but from the keen manner in which SGX has been making public enquiries and issuing TWC Notices of late, it is evident that the tone set by Singapore's securities regulators is a strict one. ■

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