

# **SINGAPORE EXCHANGE REGULATION 2018 REGULATORY UPDATES**

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Ms June Sim

Senior Vice President & Head, Listing Compliance,  
Singapore Exchange Regulation

# AGENDA

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- 1. LISTING RULE CHANGES ARISING FROM THE PROPOSED REVISION TO THE CG CODE**
- 2. CASE STUDIES**
  - ❖ Powers under Section 137F of the SFA
  - ❖ Proposed bonus warrants issue
  - ❖ Rights issue with excessive dilution
  - ❖ Fund raising to be put on hold pending clarity on state of affairs
- 3. SUSTAINABILITY REPORTING- EXAMPLES OF BOARD STATEMENTS**
- 4. GUIDEBOOK ON HANDLING OF CONFIDENTIAL INFORMATION AND DEALINGS IN SECURITIES**

## LISTING RULE CHANGES ARISING FROM THE PROPOSED REVISION TO THE CG CODE

KNOW THE  
RULES!



# MOVING TO LISTING RULES

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## ❖ Listing Rules

- Compliance is mandatory
- No variation
- CG Code provides for variation from provisions with explanation by companies



## BOARD MATTERS

- ❖ Independent directors form at least 1/3 of the board
- ❖ Test of independence
- ❖ “9-year” rule for independent directors
- ❖ Mandatory training for 1<sup>st</sup> time directors
- ❖ Directors to be re-nominated at least once every 3 years
- ❖ Board committees

# INDEPENDENT DIRECTORS FORM AT LEAST 1/3 OF THE BOARD

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## **Aim**

To ensure boards have strong independent element to exercise objective judgement

## **Current Code**

Strong independent element on the board, independent directors making up at least 1/3 of the board

## **Observation**

98% of Mainboard-listed companies have independent directors make up at least 1/3 of the board

## **Proposal**

Mandatory compliance with requirement that independent directors make up at least 1/3 of the board

*(Note: The revised Code proposed that where Chairman is not independent, independent directors should make up a majority of the board)*

# TEST OF INDEPENDENCE

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## **Aim**

Mandatory compliance for objective tests AND Board renewal

## **Current Code**

Tests of independence prescribed in Guidelines to the Code

## **Observation**

Companies may choose to not comply and provide explanations

## **Proposal**

Objective tests moved to Listing Rules:

A director will not be independent under any of the following circumstances:

- Employed by issuer or related corporations for current or past 3 FYs
- Immediate family member employed or was employed by issuer or related corporations for past 3 FYs and remuneration determined by remuneration committee
- Substantial shareholder or immediate family member is substantial shareholder
- Been on the board for aggregate period of more than 9 years

# “9-YEAR RULE” FOR INDEPENDENT DIRECTORS

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## Aim

Board renewal

## Current Code

Independence of director serving 9 years subject to “particularly rigorous review”

## Observation

- Almost 30% of IDs serve more than 9 years
- Some IDs have served for more than 30 years
- More than 50% of Mainboard-listed companies have directors serving beyond 9 years

## Proposal

- Option 1: Directors will not be independent after aggregate period of more than 9 years
- Option 2: Independence after 9 years subject to yearly vote with separate resolutions from all shareholders and non-controlling shareholders



# MANDATORY TRAINING FOR 1<sup>ST</sup> TIME DIRECTORS

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## **Aim**

More structured training for directors

## **Current Code**

First time directors should receive comprehensive and tailored induction on joining the board

## **Observation**

Majority of companies disclose that directors receive regular training

## **Proposal**

Directors with no prior experience as director of SGX-listed company and no relevant experience must undergo prescribed training

# **DIRECTORS SHOULD SUBMIT THEMSELVES FOR RE-NOMINATION AT LEAST ONCE EVERY 3 YEARS**

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## **Aim**

Prevent entrenchment, encourage board renewal

## **Current Code**

All directors should be required to submit themselves for re-nomination and re-appointment at regular intervals and at least once every 3 years

## **Proposal**

Mandatory for all directors to submit themselves for re-nomination and re-appointment at least once every 3 years

# BOARD COMMITTEES

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## Aim

To ensure minimum standards of corporate governance

- Board appointments
- Remuneration
- Internal controls

## Current Code

Companies should establish Nominating Committee, Remuneration Committee and Audit Committee

## Proposal

Companies must establish one or more committees to perform the functions of these committees with written terms of reference clearly setting out the authority and duties of the committees



# CONTROLS

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- ❖ Internal audit function
- ❖ Internal controls

# INTERNAL AUDIT FUNCTION

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## **Aim**

To ensure sound internal controls are in place to safeguard the interests of shareholders

## **Current Code**

- Effective internal audit that is adequately resourced and independent of the activities it audits
- Audit Committee should review adequacy and effectiveness of internal audit function at least annually

## **Observation**

95% of Mainboard-listed companies disclosed an internal audit function has been established

## **Proposal**

Companies must establish and maintain on an ongoing basis, an effective internal audit function that is adequately resourced and independent of the activities it audits

# INTERNAL CONTROLS AND RISK MANAGEMENT

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## Aim

Consistent set of obligations in relation to the commentary by the board / audit committee relating to the company's internal controls and risk management systems

## Current Code

- Board should comment on adequacy and effectiveness of internal controls and risk management systems in the annual report
- Audit committee should review significant financial reporting issues and judgements, review and report on adequacy and effectiveness of internal controls, review effectiveness of internal audit function, review scope and results of external audit, independence and objectivity of external auditors and recommend to the board on appointment, re-appointment, removal of external auditors and their remuneration and terms of engagement

# INTERNAL CONTROLS AND RISK MANAGEMENT (CONT.)

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## Observation

- 99% of Mainboard-listed companies disclosed adequacy of internal controls
- 53% disclosed effectiveness of internal controls
- 66% disclosed adequacy of risk management
- 45% disclosed effectiveness of risk management

## Proposal

- Board must comment on the adequacy and effectiveness of the company's internal controls (including financial, operational, compliance and IT risks) and risk management systems
- Where weaknesses are identified, they must be disclosed together with the steps taken to address them



## CONTINUING OBLIGATIONS

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- ❖ Disclose reasons for not declaring dividends



# DISCLOSE REASONS FOR NOT DECLARING DIVIDENDS

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## **Aim**

To enable shareholders to understand why companies do not choose to issue dividends, particularly if the company made profits or has a large cash reserve

## **Current Code**

Where dividends are not paid, companies should disclose their reasons

## **Proposal**

In addition to announcing that no dividend is declared or recommended, the company must announce the reason(s) for such decision



- ❖ Powers Under Section 137F Of The SFA
- ❖ Proposed Bonus Warrants Issue
- ❖ Rights Issue With Excessive Dilution
- ❖ Fund Raising To Be Put On Hold  
Pending Clarity On State Of Affairs

# Case Study 1

## Disclosure of interest - Powers under Section 137F of the SFA

Observations	Concerns
<ul style="list-style-type: none"><li>➤ For disclosure of shareholding interests in circulars and announcements, the issuer will usually rely on notifications (Form 1 and Form 3) and other confirmations from the relevant parties, as well as checks on CDP records.</li><li>➤ Substantial shareholders / Directors / CEOs are obliged under Part VII (Disclosure of Interests) of the SFA to notify the listed issuer of their shareholding changes, if any.</li></ul>	<ul style="list-style-type: none"><li>➤ For the purpose of releasing announcements which make reference to shareholdings of relevant persons, a listed company is expected to take reasonable steps to verify the accuracy of disclosure.</li><li>➤ However, independent verification of shareholding interests held through nominees may not be possible (if the shareholder refuses to provide confirmation) given that a breakdown of shareholdings of individual members is not publicly available.</li></ul>
	<b>Recommended Practices / Resolution</b>
	<ul style="list-style-type: none"><li>➤ Whilst the onus is on shareholders to notify the listed company of changes in their shareholdings, the company has powers under <b>Section 137F of the SFA</b> to compel (a) any shareholder to inform of his beneficial interest in the company's voting shares; and (b) if he holds them as trustee, to provide the particulars of person for whom he holds them.</li></ul>

# Case Study 2

## Proposed Bonus Warrants Issue

### Observations

- Listco is a Mainboard company.
- Listco proposed a bonus issue of 20 warrants for every existing share (“Proposed Bonus Warrants Issue”). The warrant exercise price of \$0.0002 is at a **99.9% discount** to the last transaction price of \$0.196.

### Concerns and Recommended Practices

- Theoretical share price will fall below \$0.20 assuming the exercise of all bonus warrants.
- Rule 838 states that for any bonus issue of shares:  
“The daily weighted average price of an issuer's quoted securities, adjusted for the capitalization issue or subdivision of shares ("adjusted price"), **must not be less than \$0.20 (Catalist) / \$0.50 (Mainboard).....**”
- Issuance of warrants would be subject to Rules 811(2); 811(3) and Part VI of Chapter 8 of the Listing Rules (in relation to issuance of convertibles). Rule 838 would not be applicable.
- The Exchange viewed the proposed warrants issue as being akin to a bonus issue of shares in view of:
  - the steep discount; and
  - The fact that proceeds from exercise of the bonus warrants will substantially be utilized to fund expenses related to the proposed bonus warrants issue (ie, negligible net proceeds).
- The proposed bonus warrants, if it proceeds in the current form, would be a circumvention of Rule 838.

# Case Study 3

## Rights issue with excessive dilution

### Observations

Description	Details
(a) Existing share price	\$0.006
(b) Proposed rights issue	<ul style="list-style-type: none"><li>• 8 rights shares for every 1 existing share</li><li>• Shareholders' approval will be sought</li><li>• Obtained undertaking from controlling shareholder (21%) to vote in favor.</li></ul>
(c) Rights issue price	\$0.001 (83% discount to prevailing / 37% discount to ex-rights)
(d) Theoretical ex-rights price	\$0.0016
(e) Value of nil-paid rights	\$0.0006 Computed based on: (d) – (c)
(f) Minimum possible trading price	\$0.001

# Case Study 3 (cont.)

## Rights issue with excessive dilution

### Concerns and Recommended Practices

- Concern 1: Will shareholders be prejudiced?
  - Given that the value of the nil-paid rights, at \$0.0006 is even lower than the minimum price possible for trading, there is no certainty whether any trading of the nil-paid rights will take place.
  - Shareholders who do not take up their entitlements will be excessively diluted and will not be able to realize value by monetizing the nil-paid rights.
  - The Exchange is of the view that the terms are prejudicial to shareholders if the rights issue were to proceed on the current proposed terms.
  
- Concern 2: Is this a bonus issue of shares disguised as a rights issue?
  - The Board will need to justify.
  - Rule 838 states that a bonus issue of shares must satisfy the Exchange that its daily weighted average price, adjusted for capitalisation issue or subdivision of shares will not be less than \$0.20 (Catalist) / \$0.50 (Mainboard). A rights issue of shares at steep discount may be treated as a bonus issue of shares and be subject to Rule 838.

# Case Study 4

## Fund raising be put on hold pending clarity on state of affairs

<b>Observations</b>	<b>Concerns and Recommended Practices</b>
<ul style="list-style-type: none"><li>➤ Listco's auditor issued a disclaimer of opinion due to:<ul style="list-style-type: none"><li>• Purported unverifiable transactions;</li><li>• Internal control weaknesses and corporate governance matters</li></ul></li><li>➤ Listco appointed special reviewer to carry out an independent review of the issues raised by the auditors.</li><li>➤ Listco has previously proposed a rights issue.</li></ul>	<ul style="list-style-type: none"><li>➤ Should Listco's fund raising activities be put on hold?</li><li>➤ Fund raising activities should be put on hold pending clarity on state of affairs in the company.</li><li>➤ Should continued trading in Listco's securities be allowed?</li><li>➤ Factors for consideration:<ul style="list-style-type: none"><li>➤ Has all material information been disclosed?</li><li>➤ Do the irregularities / transactions in question pertain to key operations of the Listco?</li><li>➤ Has full impact been quantified and announced?</li><li>➤ Is Listco able to operate as a going concern?</li><li>➤ Is state of affairs Listco clear?</li></ul></li><li>➤ Board's justification for continued trading must be announced.</li></ul>

# SUSTAINABILITY REPORTING -OVERVIEW

- ❖ Introduced in June 2016
- ❖ Effective for all listed companies for all financial years ending on, or after, 31 December 2017
- ❖ To provide sufficient time for preparation, an issuer in its first year of reporting may report within 12 months of the end of its financial year.
- ❖ Key components of the sustainability report:
  - Material ESG factors
  - Policies, practices and performance
  - Targets
  - Sustainability reporting framework
  - Board statement



# SUSTAINABILITY REPORTING

## -EXAMPLES OF BOARD STATEMENTS

### Example 1:

Recognising the importance of sustainability, the Executive Committee (EMCO) leads sustainability efforts at Company. The EMCO reports directly to **the Board**, which has considered sustainability issues as part of its strategic formulation, determined the material ESG factors and overseen the management and monitoring of these factors.

### Example 2:

The key material environmental, social and governance factors for Company have been identified and reviewed by **the Chairman and the CEO**. The board of directors of Company (Board) oversees the management and monitoring of these factors and takes them into consideration in the determination of the Group's strategic direction and policies. Sustainability is a part of Company's wider strategy to create long term value for all its stakeholders.

# GUIDEBOOK ON HANDLING OF CONFIDENTIAL INFORMATION AND DEALINGS IN SECURITIES



# GUIDEBOOK ON HANDLING OF CONFIDENTIAL INFORMATION AND DEALINGS IN SECURITIES

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- ❖ Launched in December 2017
- ❖ Recommended principles and guidelines to help companies and their advisers in:-
  - retaining control over the flow of confidential information;
  - appropriately restricting staff dealing in the company's securities; and
  - creating a culture of compliance
- ❖ Suggestions on arrangements that companies and their advisors can put in place to more effectively deter insider trading

# GUIDEBOOK ON HANDLING OF CONFIDENTIAL INFORMATION AND DEALINGS IN SECURITIES

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- ❖ Areas covered by the guide include:
  - arrangements for ensuring that confidential information generated and/or received remains confidential until it is reasonably expected to be disclosed under the relevant laws, regulations and the Listing Rules;
  - how to minimise the risks of accidental leakage of confidential information;
  - characteristics of effective trading restrictions on dealings in securities; and
  - how to promote strong awareness of the importance of appropriate handling and control of confidential information.

# THANK YOU

