

## AMENDMENTS TO THE ENFORCEMENT FRAMEWORK

### AMENDMENTS TO MAINBOARD RULES

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

#### Chapter 7 Continuing Obligations

##### 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 or an independent reviewer appointed by the issuer and/or the Exchange ~~appointed under Rule 704(14)~~, or a regulatory or enforcement agency;

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

##### Part II Types of Committees

###### Appeals Committee

###### 1404

- (1) The Appeals Committee shall hear and decide appeals arising from:
  - (a) decisions of the Disciplinary Committee; ~~and~~
  - (b) decisions of the Exchange relating to any of the following matters:
    - (i) rejection of an application for the extension of time to allow an issuer to restore its percentage of securities in public hands to at least 10% under Rule 724;
    - (ii) rejection of a proposal by a cash company to meet requirements for a new listing under Rule 1018;

- (iii) rejection of an application for extension of time to meet requirements for a new listing under Rule 1018;
- (iv) rejection of a resumption proposal under Rule 1304;
- (v) rejection of an application for extension of time to submit or implement a resumption proposal under Rule 1304;
- (vi) removal of an issuer from the Official List under Rule 1305;
- (vii) rejection of a proposal by an issuer to voluntarily delist under Rule 1307;
- (viii) rejection of an application to exit from the watch-list under Rule 1314; and
- (ix) rejection of an application for extension of time to submit an application to exit from the watch-list under Rule 1315; and

(c) the enforcement actions taken by the Exchange under Rules 1405(3)(c)(x), (xvii) and (xviii).

(6) The chairman of the Appeals Committee has the following powers:

- (g) determining if an appeal has satisfied the bases for appeal required under Rule 1419(4), ~~or~~ Rule 1419(5) or Rule 1419(6); and

### **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;
- (2) The circumstances under which the Exchange may exercise its powers under Rule 1405(1)(e) 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 or until fulfilment of specified conditions; 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) 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;
- (xviii) requiring the resignation of the director or executive officer from an existing position with any issuer listed on the Exchange;
- (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.

#### **1405A**

- (1) The Exchange may allow a stay of execution of the sanctions, or an extension of the relevant timelines, which may be subject to conditions imposed by the Exchange in its absolute discretion, when:
- (a) a Relevant Person has filed a notice of appeal against an enforcement action by the Exchange referred to under Rule 1404(1)(c);
  - (b) if a Relevant Person requires more time to comply with the sanctions imposed; or
  - (c) if the Exchange is of the opinion that the circumstances warrant it.

### **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)(~~xiii~~xiv);

#### **Post-hearing**

#### **1418**

- (4) The Exchange may allow a stay of execution of the sanctions, or an extension of the relevant timelines, which may be subject to conditions imposed by the Exchange in its absolute discretion, when:
- (a) a Relevant Person has filed a notice of appeal against the decision of the Disciplinary Committee;
  - (b) if a Relevant Person requires more time to comply with the sanctions imposed; or
  - (c) if the Exchange is of the opinion that the circumstances warrant it.

### **Part V Appeals**

#### **Initiation of proceedings**

1419

- (1) A party may appeal against the decision of the Disciplinary Committee, ~~or a decision of the Exchange specified under Rule 1404(1)(b); or an enforcement action by the Exchange specified under Rule 1404(1)(c).~~ by filing a notice of appeal with the Appeals Committee within 14 business days of the relevant decision. An appellant other than the Exchange shall pay a non-refundable administrative fee of \$1,500 when filing a notice of appeal.
- (2) Where a notice of appeal is filed after 14 business days of the relevant decision, the notice of appeal may only be accepted if the delay is accounted for to the satisfaction of the chairman of the Appeals Committee.
- (3) A notice of appeal shall be served on all parties involved, and shall contain the following details:
  - (e) the sanction imposed by the Disciplinary Committee, ~~or the decision taken by the Exchange~~ or the enforcement action by the Exchange specified under Rule 1404(1)(c); and
- (4) An appeal against a decision by the Disciplinary Committee may only be ~~heard if the chairman is of the opinion that~~ made on the following grounds:
  - (a) the Disciplinary Committee had acted in bad faith;
  - (b) there was procedural unfairness in the Disciplinary Committee's determination of the charges;
  - (c) there is fresh evidence, not previously available, which would likely have affected the decision of the Disciplinary Committee;
  - (d) the Disciplinary Committee had made a gross error in respect of a finding of fact;
  - (e) the Disciplinary Committee had made an error in respect of the interpretation of the Exchange's listing rules; or
  - (f) the sanctions imposed are manifestly excessive or inadequate.
- (5) An appeal against a decision by the Exchange referred to under Rule 1404(1)(b) may only be ~~heard if the chairman is of the opinion that~~ made on the following grounds:
  - (a) the Exchange had acted in bad faith;
  - (b) there was procedural unfairness in the Exchange's determination of the matter; or
  - (c) the Exchange had made an error in respect of the interpretation of the Exchange's listing rules.
- (6) An appeal against an enforcement action by the Exchange specified under Rule 1404(1)(c) may only be made on the following grounds:

- (a) the Exchange had acted in bad faith;
  - (b) there was procedural unfairness in the Exchange's determination of the charges;
  - (c) there is fresh evidence, not previously available, which would likely have affected the decision of the Exchange;
  - (d) the Exchange had made a gross error in respect of a finding of fact;
  - (e) the Exchange had made an error in respect of the interpretation of the Exchange's listing rules; or
  - (f) the sanctions imposed are manifestly excessive.
- (7) An appeal under Rule 1419 may be heard only if leave is given by the chairman. The chairman's decision on leave is final and not subject to any appeal.

## **Practice Note 7.1 Continuing Disclosure**

### **5. Guidance on particular situations**

#### *Investigation on a director or an executive officer of the issuer*

- 5.6 Under Rule 704(7)(a), an announcement of the appointment of key persons by an issuer must contain material background information as set out in Appendix 7.4.1. Such information includes, among others, whether the key person has been concerned with the management or conduct of the affairs of any corporation or entity which has been investigated, or the subject of civil or criminal proceedings (including pending proceedings), in each case, involving a breach of law or regulatory requirement as set out in Appendix 7.4.1 relating to the securities or futures industry, or involving fraud or dishonesty.
- 5.7 Under Rule 720(1), an issuer must also comply with Rule 210(5) on a continuing basis, which requires, among others, a consideration of the character and integrity of directors and management.
- ~~5.8 Any action or conduct by directors or executive officers subsequent to their appointment that would materially affect the information previously disclosed in accordance with Appendix 7.4.1, or that would bring into question their character and integrity ("relevant conduct"), this must be immediately disclosed and not put on hold until they are to be re-appointed.~~
- 5.9~~8~~ Issuers should put in place internal controls to ensure that information is escalated expediently to the Board, including the Nominating Committee, where directors or executive officers are notified by a regulatory authority, an exchange, a professional body or a government agency ("relevant authority"), that they are to be interviewed or under investigation ~~for relevant conduct, such information is escalated expediently to the Board, including the Nominating Committee.~~ The

Board should conduct an independent assessment of the matter and not rely solely on the representations made by the director or executive officer. Where investigations are on-going, directors and executive officers must continue to provide updates to the Board on material development relating to the investigations, including the conclusion of investigations, so long as they are not prohibited from doing so by the regulatory requirements.

5.409 In determining whether the information is material for disclosure, the Board should consider, among others:

- (a) ~~the extent to which the interview or investigation for relevant conduct concerns the affairs of the issuer or the group;~~whether the information is material to the affairs of the issuer, taking into account factors such as:
  - (i) the extent to which the interview or investigation concerns the affairs of the issuer or the group;
  - (ii) the extent to which the issuer is reliant on the director or executive officer for the proper oversight and management of the issuer; and
  - (iii) the extent to which the director's or executive officer's ability to oversee or manage the issuer is compromised; and
- (b) ~~whether the director or executive officer is the subject of the investigation or merely assisting in the investigation;~~whether the investigation would affect the information previously disclosed in accordance with Rule 704(7)(a) or the assessment of the character and integrity of the director or executive officer; and
- (c) ~~the extent to which the issuer is reliant on the director or executive officer for the proper oversight and management of the issuer;~~the severity of the potential breach.
- (d) ~~the extent to which the director's or executive officer's ability to oversee or manage the issuer is compromised; and~~
- (e) ~~the severity of the potential breach.~~

5.10 Subject to paragraph 5.9 above, the following events are likely to require immediate disclosure:

- (a) the director or executive officer has been served with an order for the production of documents to assist in an investigation in relation to a breach of law, rule or regulation;
- (b) the director or executive officer was investigated and interviewed by the relevant authority;



(c) the director or executive officer has surrendered his passport to a relevant authority, has been arrested (with or without posting bail) by a relevant authority, has been formally charged by a relevant authority or a relevant authority has imposed conditions or restrictions on the director or executive officer; or

(d) the director or executive officer has been convicted or disqualified or is the subject of any judgement or ruling.

5.11 To give clarity to such events, an announcement made pursuant to paragraph 5.10 above should contain:

(a) the name and position of the relevant director or executive officer;

(b) the relevant fact (for example, that the director has surrendered his passport to the relevant authority) and details of any other conditions or restrictions imposed by the relevant authority, where applicable;

(c) the alleged offences and the identity of the offender whom the authorities were investigating as stated in the order, where applicable;

(d) the Nominating Committee's assessment of the suitability of the continued appointment of the director or executive officer and continued compliance with Rule 720(1) (read with Rule 210(5)) as well as the measures (if any) put in place to safeguard against risks associated with his continued appointment, where applicable;

(e) a statement by the director or executive officer that he undertakes to inform the Board of the ongoing investigation and subsequent developments; and

(f) the Board's statement that it will continue to monitor the progress of the investigation and the Nominating Committee will continue to re-assess the suitability of the continued appointment of the relevant director or executive officer as and when there are material developments to the investigation. If no measures to safeguard against risks associated with the retention of such individual are considered necessary by the Board, this should be stated in the announcement, along with the reasons.

5.1412 Clear instances that warrant disclosure include where the directors or executive officers surrender their passports to the relevant authority or if they are arrested. These indicate that the director or executive officer is the subject of the investigation as opposed to merely assisting with the investigation. If an investigation is still pending, issuers should first release a statement to that effect and follow up as and when there are material developments. Where a person is a director or executive officer in multiple listed issuers, the onus is on the person to notify the Boards of all these listed issuers of his involvement in an ongoing investigation. Where an issuer has been notified by its director or executive officer

of his involvement in an ongoing investigation that does not directly concern the affairs of the issuer, the Nominating Committee must still assess the suitability of the continued appointment of the relevant director or executive officer. For instance, the Nominating Committee must assess whether the investigation is material to the issuer, and whether the investigation would affect the assessment of the character and integrity of the director or executive officer. Where the Nominating Committee opines that the investigation is material to the issuer or has a bearing on the character and integrity of the director or executive officer, the issuer must announce the Nominating Committee's assessment of the suitability of the continued appointment of the relevant director or executive officer and continued compliance with Rule 720(1) (read with Rule 210(5)) as well as the measures (if any) put in place to safeguard against the risks associated with his continued appointment. If no measures are considered necessary by the Board, this should be stated in the announcement, along with the reasons.

5.13 Where the Nominating Committee finds that it is not in the best interest of the Company for the relevant director or executive officer to continue with his current appointment, an announcement should be made on the suspension or cessation of service pursuant to Rule 704(7)(a) and the reason for the suspension or cessation.

5.4214 On the other hand, where a relevant conduct ~~is likely to result in or~~ has resulted in a private sanction by the relevant authority, such information need not be disclosed as the ~~likely or actual~~ breach is likely to be of a less serious nature and the relevant authority has deemed it appropriate for the sanction to remain confidential.

#### *Investigation on an issuer*

5.15 In the case where the issuer itself is involved in an investigation, the market should similarly be updated in a timely manner. In determining whether the information is material for disclosure, the Board should consider, among others:

- (a) whether the information is material to the affairs of the issuer; and
- (b) the severity of the potential breach.

5.16 Subject to paragraph 5.15 above, the following events are likely to require immediate disclosure:

- (a) the issuer has been contacted by a relevant authority or served with an order for the production of documents to assist in an investigation in relation to a breach of law, rule or regulation; or
- (b) the issuer has been informed or becomes aware that any of its subsidiaries or associated companies are under investigation by a relevant authority.

5.17 To give clarity to such events, an announcement made pursuant to paragraph 5.15

above should contain:

- (a) the name of the relevant subsidiary or associated company, where applicable;
- (b) the relevant fact and details of any other conditions or restrictions imposed by the relevant authority, where applicable;
- (c) the alleged offences and identity of the offender whom the authorities was investigating as stated in the order, where applicable; and
- (d) the Board's statement that it will continue to monitor the progress of the investigation and to provide updates on material developments.