

Listing Manual Review

Issuer Regulation, Risk Management and Regulation Group

Singapore Exchange Limited

2 Shenton Way

#19-00 SGX Centre 1

Singapore 068804

Sent via Electronic Mail to lm@sgx.com

Attn: Lorraine Chay, Risk Management and Regulation

7th June 2007

Ms Chay,

Re: Response to SGX Consultation Paper “Proposed Amendment to the Listing Rules”

HIM Governance is an independent governance services and solutions organisation, based in Singapore and operating throughout South-East Asia. We are also the South-East Asian regional advisers and representatives of Governance for Owners LLP, and provide advice on the delivery of stewardship services.

Governance for Owners LLP (GO) is an independent partnership between financial institutions and experienced professionals dedicated to adding long-term shareholder value for clients by exercising owners' rights. GO provides stewardship services to clients that take an active approach to their share ownership responsibilities. GO takes seriously its responsibilities to clients to exercise voting rights, and seeks to constructively engage with companies in which its clients invest.

HIM Governance believes that active, intelligent and effective engagement by shareowners on issues of corporate governance leads to sustained superior long-term value-creation for shareholders.

HIM Governance welcomes the opportunity to respond to consultation papers, and takes a close interest in legislative and regulatory developments. The development of a legislative and regulatory environment conducive to both long-term value creation and the protection of long-term shareholders' interests is of paramount importance.

I hope that you will consider our comments and will take them as constructive input to the continuing development of corporate governance at the Singapore Exchange. If you would like to discuss our comments further, please contact David Smith in the first instance (+65 6287 1919, e-mail: david.smith@himgovernance.com.sg).

We address specific questions below. We understand that some or all of our comments may be made public.

Yours sincerely,

Tan Lye Huat
Chief Executive Officer,
HIM Governance Pte Ltd

Proposal 1:

The Exchange seeks your views on:-

(1) Listing Manual amendments to reflect the changes to the Companies Act relating to treasury shares, par value and nominal value. Specifically, where the listing rules contain references to “issued share capital” and “paid up capital”, it is proposed that the relevant rules be amended to “total number of shares outstanding” and deemed to exclude treasury shares. Please refer to the proposed amendments to the Rules in Annexure A; and

(2) In line with the intent of the Companies Act, Rule 806 will be amended to clarify that the general share issue mandate limits will exclude the issue of treasury shares. Issue of treasury shares to shareholders must comply with the Listing Manual provisions in Chapter 8 relating to changes in share capital. Comments are sought whether the amount of treasury shares issued should be excluded from the limits of the general share issue mandate, subject to compliance with other listing rules in Chapter 8.

Response:

HIM Governance currently takes no position on this proposal.

Part 2. Changes in Capital**Proposal 2:**

To further strengthen transparency and accountability in relation to the grant of options, the Exchange seeks your views on the introduction of a new Rule 704(26) to state that an issuer must immediately announce each grant of options and give details of the grant, including the following:

- (a) date of grant;
- (b) exercise price of options granted;
- (c) number of options granted;
- (d) market price of its securities on the date of grant;
- (e) number of options granted to directors and controlling shareholders, if any; and
- (f) validity period of the options.

Comments are sought on whether the proposed measure is sufficient to prevent back-dating of options.

Response:

We believe that the disclosure of such information contained within the proposals is indeed useful. However, we would prefer to see disclosures made on the date of offer, as opposed to the date of grant, of stock options. This would ensure that investors were aware of the

exact date of offer, given the potential for a differential between the date of offer and the date of grant.

Moreover, we would add that such disclosure is welcome but insufficient on its own. Disclosures on performance-based equity plans should include information such as performance conditions attached to the options, details of those parties who administer the scheme, as well as information on any clauses contained within the plan that might result in premature payout, including change of control provisions.

Nonetheless, the introduction of such disclosure requirements contained within Proposal Two may mitigate the potential for back-dating of options.

Proposal 3:

Rule 806(3)(c) and Part VII of Chapter 8 will be amended to clarify that references made to capitalisation issues and subdivision of shares include bonus issues.

Response:

HIM Governance currently takes no position on this proposal.

Proposal 4:

The Exchange seeks your views on the following proposals:

- (i) Rule 1303(3) to be amended to state that “the Exchange may at any time suspend trading of the listed securities of an issuer, where the issuer is unable to continue as a going concern or unable to demonstrate to the Exchange and its shareholders that it is able to do so”.
- (ii) New Rule 1303(3)(c) to state that trading may be suspended “when the issuer is unable to assess accurately its financial position and inform the market accordingly”; and
- (iii) In view of the amendment to Proposal 4(i) above, current Rule 1303(3)(c) relating to audit qualification and emphasis of matter to be deleted.

Response:

HIM Governance currently takes no position on this proposal.

Proposal 5:

The Exchange seeks your views on the proposed amendment to Rule 1303(1) to clarify that in a take-over situation, where the offeror succeeds in garnering acceptances exceeding 90% of the issuer's outstanding shares and consequently reducing the public float to below 10%, the Exchange will suspend trading in the securities of the issuer at the close of the take-over offer, instead of the point at which the 10% threshold is breached.

Response:

We believe that the amendments proposed to Rule Rule 1303(1), as contained within Proposal 5 of the Consultation Paper, are useful inasmuch as they formalise current exchange practice.

Proposal 6:

The Exchange seeks your views on the proposal to amend Rule 1018(1) to state that upon completion of the disposal of the issuer's operations and assets, the issuer must:-

- (i) Place 90% of its cash and short-dated securities (including existing cash balance and the consideration arising from the disposal(s) undertaken by the issuer) with a financial institution licensed and approved by the Monetary Authority of Singapore. The 90% of its cash and short-dated securities (including existing cash balance and the consideration arising from the disposal(s) undertaken by the issuer) that is placed in escrow cannot be drawn down until the completion of the acquisition of a business which is able to satisfy the Exchange's requirements for a new listing; and
- (ii) Provide monthly valuation of its assets and utilization of cash, and quarterly updates of milestones in obtaining a new business to the market via SGXNET.

Taking the above compliance into account, the Exchange may allow continued trading in a cash company's securities on a case-by-case basis, subject to:-

- (iii) Contractual undertakings from the issuer's directors, controlling shareholders, chief executive officer and their associates to observe a moratorium on the transfer or disposal of all their interests, direct and indirect, in the securities of the issuer; and
- (iv) The period of the moratorium must commence from the date shareholders approve the disposal of business, up to and including the completion date of the acquisition of a business which is able to satisfy the Exchange's requirements for a new listing.

Response:

HIM Governance currently takes no position on this proposal.

Proposal 7:

The Exchange seeks your views on the proposed amendment to Rule 1018(2) to clarify that the issuer may be granted a maximum of 6-month extension to find a new business, only if it is able to provide milestones against which investors may evaluate the issuer's progress. In the event the issuer is unable to meet its milestones or find a new business in spite of the extension granted, no further extension will be granted and it is required to delist and make a cash exit offer to its shareholders within 6 months.

Response:

HIM Governance currently takes no position on this proposal.

Proposal 8:

The Exchange seeks your views on the proposal whether the shortening of the duration of trading halt for dissemination of material information from 1 hour to 30 minutes is appropriate.

Response:

HIM Governance currently takes no position on this proposal.

Proposal 9:

The Exchange seeks your views on the introduction of a new Paragraph 4.3 in Practice Note 10.1 to clarify that for the purposes of determining the relative figure in Rule 1006(c), the aggregate value of consideration given or received should include: (i) any deferred consideration that may be payable or receivable by the issuer; and (ii) such further amounts as the Exchange deems appropriate and related to the transaction. Issuers are encouraged to consult the Exchange as early as possible whether further amounts are part of the aggregate value of consideration.

The Exchange also seeks your views what other amount(s), if any, that should be taken into account as part of "consideration".

Response:

HIM Governance currently takes no position on this proposal.

Proposal 10:

The Exchange seeks comments on the proposal to introduce a new provision in Appendix 2.2 to require an issuer to state in its Articles of Association and other constituent documents that a change of auditors must be specifically approved by shareholders in general meeting and a new Rule 1203(5) to state that an issuer must submit to the Exchange for review, one draft copy of a notice of meeting if it contains a resolution relating to a proposed change of auditors. In addition the notice should incorporate confirmations from the outgoing auditors whether or not:

- a) they are aware of any professional reasons why the new auditors should not accept appointment as auditors of the issuer;
- b) there were disagreements with the issuer on accounting treatments which led to the auditors' resignation; and
- c) they are aware of any circumstances connected with the change of auditors that should be brought to the attention of the shareholders of issuer.

Response:

Institutional investors globally rely on audit as a method of monitoring the financial health of a company. As such, efficient, thorough, and rigorous audit standards are paramount to the effective operation of capital markets. Consequently, HIM Governance welcomes these proposals by the SGX.

Any change in auditor should be accompanied by a discussion in the AGM of the rationale for the change in audit firm. Moreover, we agree fully with the proposal that outgoing auditors provide a statement as to the existence of material disagreements with the company on issues of audit and findings. We also agree that outgoing auditors should comment on the existence of reasons why incoming auditors should not accept appointment. Further, we welcome the suggestion that outgoing auditors be required to disclose any circumstances that shareholders should be aware of that led to the change in auditors.

However, we would propose further additions to the Listing Rules.

As has been mentioned, audit is the primary method through which the financial health of a company is reported to shareholders. Auditors, hence, play a central role in this communication process. Despite this, shareholders often remain unclear as to the process through which auditors are appointed, and the terms (both financial and scope) that they are bound by.

As such, HIM Governance would suggest that this change of auditors be accompanied by a discussion at an AGM - led by the Chair of the Audit Committee - of a) the frequency of

tenders for audit; b) the interview process and details of the engagement letter; c) the scope of the audit; d) fees to be paid to the auditor; and e) any conflicts of interest and/or issues of independence that should be brought to the attention of shareholders.

Following this, and in years subsequent to the appointment of auditors, there should be a discussion at an AGM - led by the Chair of the Audit Committee - of a) key judgements discussed by the auditors with the audit committee; and b) audit letters of recommendation.

Introducing these proposals would serve to strengthen the link between shareholders and auditors, enhancing confidence in the provision of audit services.

Proposal 11:

As Real Estate Investment Trusts (“REITs”) and Exchange Traded Funds (“ETFs”) are generally governed by the Code of Collective Investment Scheme (the “Code”), the Exchange seeks your views on the introduction of new sub-rules 404(8) and 404(9) to clarify the listing rules which are not applicable to Real Estate Investment Trusts (“REITs”) and Exchange Traded Funds (“ETFs”). In addition, we will also clarify that REITS are required to comply with all listing rules applicable to equity securities, with necessary adaptations to the structure of a REIT.

A new sub-rule 887(4) will be introduced to clarify that where the general mandate referred to in Rule 887(1) has been obtained upon listing, such a mandate is deemed as approved by subscription.

Response:

With regard to the treatment of Exchange Traded Funds (ETFs), we currently take no position on this proposal. However, we would take this opportunity to raise concerns over the large and growing pools of shares that market participants (e.g. brokers) use to pay for ETF creation units.

The growing size of the global ETF market is such that ETFs may in time begin to erode market share of traditional mutual funds. Here, there are significant implications for corporate governance. The growth of ETFs is such that over time they may begin to appear on company share registers, and hence become influential in the governance sphere. If ETF managers do not actively engage in corporate governance, large portions of company ownership become inactive. If this situation materialises, there is a distinct lack of stewardship by owners of shares. Indeed, in such cases there may be ambiguity over voting rights attached to underlying shares.

We urge the exchange to clarify rules for ETF managers *vis-à-vis* corporate governance responsibilities, and suggest that clarification be forthcoming that clarifies the role of ETF managers in corporate governance.

However, we also note that many institutional share owners lack the necessarily experience, knowledge and resources to effectively engage with companies on corporate governance. This would, therefore, be true of many ETF managers.

Nonetheless, this is an area that requires significant attention before the exchange continues with its expansion of the ETF market in Singapore.