**CONSULTATION PAPER ON ENHANCEMENTS TO CONTINUOUS DISCLOSURES**

Thank you for the opportunity to provide feedback on the consultation paper.

I welcome the proposed enhancements to continuous disclosures and, in general, agree with the proposed changes. It will strengthen our disclosure-based regime.

In addition, there are other areas that I believe SGX should review. I will cover these after my specific comments on some of the questions below. Where I have not commented on the questions, it indicates that I agree with the proposed changes in their entirety.

**Question 16**

Whilst I agree with the proposed enhancement, I believe that any application to delay results or to hold the AGM is material information and should be disclosed at time of application for a waiver (see my further comments on such waivers later). At the moment, issuers are inconsistent in timing of such disclosures.

**Question 25**

I agree with including IPTs below $100k. While some market players believe that this is too onerous, the risk of splitting of IPTs is real. Further, IPTs may pose risk not only because of the amount, but the nature of the IPT (e.g., IPTs related to independent directors). There is also a need to track individual IPTs to know if the aggregate exceeds thresholds.

The question is whether rule 907 should only require aggregate IPTs above certain thresholds to be disclosed. However, once IPTs are tracked regardless of amount, disclosure should not be an issue. The issue is whether it will result in "over-disclosure" for relatively insignificant IPTs that are harmless. If aggregate de minimis is adopted for rule 907, then it should be much lower than $100k and/or include a test based on comparisons with total revenues or net assets depending on nature of the item.

I also believe that SGX should review the benchmarks used to determine discloseable IPTs as the appropriate benchmark depends on the nature of the item. SGX may wish to look at the HKEx and Bursa Malaysia rules and expand the range of benchmarks used.

**Other Suggestions for Review**

**(1) Disclosure of material and specific information**

While rules 703 and 704, and Appendix 7.1, together spell out detailed rules on the disclosure of material information and other specific information, there are relatively common instances where issuers do not appear to comply with them. While rule 703 defines what constitutes material information (and when such information need not be disclosed), it still allows issuers to circumvent disclosure requirements based on their interpretation of "materiality". To some issuers, what is "material" appears to depend whether it is good news or bad news.

While there is no easy answer to this as the rules cannot spell out all events or transactions requiring disclosure, greater onus should be put on boards to deliberate on situations that are

specifically mentioned in rule 704 or Appendix 7.1 and where a decision not to disclose is made. Issuers should be able to explain the basis that the board used for arriving at a decision to not disclose. SGX should be consulted immediately on whether disclosure is required.

**(2) Mis-use of SGXNET**

Anecdotally at least, one can observe issuers using SGXNET as an advertising or promotional platform, making over-exuberant announcements, and to create hype. Such announcements are often lacking in specifics. In some cases, these have led to queries from SGX. Responses to queries often do not illuminate.

While the SGX rules are reasonably clear on this matter, some issuers seem to be ignoring the rules. SGX needs to take a firmer stance in order to preserve SGXNET as a credible disclosure platform.

**(3) Acquisitions and realisations**

Acquisitions and realisations are covered in chapter 10 of the rulebook, with acquisition and realisation of shares also covered in chapter 7. Practice Note 10.1 sets out general principles governing shareholder approval of major transactions. Where a transaction is a discloseable transaction, major transaction, or very substantial acquisition or RTO, more stringent rules apply.

Chapter 10 specifically excludes transactions that are in the ordinary course of business while PN10.1 makes reference to whether a transaction changes the risk profile of the issuer. These introduce considerable subjectivity to the application of the rules. For instance, an issuer can make a small acquisition in a new business which is below the relative figures, and then acquire a much larger business in the same business and not have to comply on the basis that it is now in the ordinary course of business.

I believe that we should look at how other overseas exchanges apply these rules. Based on my review and queries with overseas market players, it appears that there is less subjectivity in these rules in other exchanges.

In the case of what constitutes “ordinary course of business”, perhaps the rules should state that that a particular business should already be contributing a certain percentage of profits or account for a certain percentage of the assets of the issuer, before it is considered “ordinary course of business”.

I believe that all announcements by issuers of transactions (i.e., including voluntary announcements of non-discloseable transactions) should include a statement of disclosure of interest (rule 1010(11)).

At the end of the day, it is not only the initial acquisition amount that matters. A small acquisition can create big risks. A relatively small initial investment could be subsequently followed by significant outlay for capital and operating expenditure that depletes the resources of the issuer. The independence and competence of the board are fundamental – something I will get to more later.

**(d) Delays in results announcements and AGMs**

There are too many instances of issuers applying for waivers to delay the announcement of results and to hold AGMs. This makes a mockery of the deadlines in the listing rules (and in the Companies Act). Issuers and their directors must be held more accountable for such delays.

In this regard, Bursa Malaysia is much stricter on granting extensions. Typically, they only do so for delays caused by acts of God (although some supposed acts of God, such as fire destroying records, could be acts of Man) or delay on the part of the central bank in approving financial statements of listed financial institutions/banks, or where the delay is due to receiver and manager (which took over the issuer's subsidiary) resulting in delay in consolidation of the issuer's accounts. It generally does not approve applications for delay for reasons such dispute with external auditors, appointment of provisional liquidator, lack of resources to finalise accounts, and delay in procuring valuation reports. Here, the latter are common reasons cited.

Issuers and boards must take responsibility for ensuring that there is enough time and resources for the accounts to be audited and for the AGM to be held by the deadline.

Further, in Malaysia, in instances where an issuer delays its submission of any of its financial statements and no extension of time is granted by Bursa, suspension kicks in automatically 5 market days after the due date and will only be lifted when the outstanding financial statement is issued.

**(e) Suspension of trading**

Following from the previous point on suspension, I believe SGX should review the conditions under which it will suspend trading in the shares of an issuer. Whilst I agree that a suspension may be seen to be detrimental to the interest of existing shareholders especially if it is prolonged, shares should be suspended from trading where the market is not sufficiently informed. Therefore, I believe that SGX should consider adopting similar rules as Bursa whereby trading will be suspended when financial statements are delayed without extension of time granted.

**(f) Accounting "watchlist"**

SGX may also wish to review its watchlist criteria to include issuers that have received an adverse or disclaimer of opinion from the auditors, or where the auditors have expressed a material uncertainty relating to going concern. Issuers can exit the watchlist when the audit matter is resolved. This is because the true financial position of issuers with such modified opinions are in question – not being able to produce "true and fair" statements that comply with financial reporting standards are arguably just as bad – perhaps even worse – then companies that are making losses. One would not know if the company is in fact making losses if the auditors cannot even express an opinion or have issued an adverse opinion. In Malaysian, modified opinions along the lines of the above would result in an issuer being put on the PN17 (Practice Note 17) list.

**(g) Stronger monitoring and enforcement**

While enhancing the rules is important, monitoring and enforcing the rules are just as important, if not more so. Introducing rules without adequate monitoring and enforcement can undermine confidence in the rules. Enforcement must also be transparent, fair and consistent for a level playing field.

It is important to hold boards more accountable for compliance with listing rules. At the end of the day, it is the independence, competence and accountability of the board that is most important. Listing rules can never be adequate for protecting shareholders if the wrong directors are appointed and not held accountable for making or overseeing decisions that harm shareholders.

I would therefore urge SGX Regco to use its enforcement powers more vigorously. They should not only hold issuers accountable, but also directors, including independent directors.

A/P Mak Yuen Teen
January 3, 2018