

RESPONSE TO CONSULTATION PAPER ON ENHANCEMENTS TO ENFORCEMENT AND WHISTLEBLOWING FRAMEWORKS

Singapore Exchange Regulation invites comments on this consultation paper. Please send your responses through any of the following means:

Email	listingrules@sgx.com
Mail	Singapore Exchange Regulation 11 North Buona Vista Drive #06-07, The Metropolis Tower 2 Singapore 138589 (Attention: Listing Policy & Product Admission)

Please include your full name and, where relevant, the organisation you are representing, as well as your email address or contact number so that we may contact you for clarification. Anonymous responses may be disregarded.

SGX may make public all or part of any written submission, and may disclose your identity. You may request confidential treatment for any part of the submission which is proprietary, confidential or commercially sensitive, by clearly marking such information. You may request not to be specifically identified.

Any policy or rule amendment may be subject to regulatory concurrence. For this purpose, you should note that notwithstanding any confidentiality request, we may share your response with the relevant regulator.

By sending a response, you are deemed to have consented to the collection, use and disclosure of personal data that is provided to us for the purpose of this consultation paper or other policy or rule proposals.

Please refer to the Consultation Paper for more details on the proposals.

Respondent's Information

Name(s)	Mak Yuen Teen
Organisation (if applicable)	
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Contact Number(s)	
Statement of Interest	Corporate governance advocate and investor

Disclosure of Identity

Please check the box if you do not wish to be specifically identified as a respondent:

I/We do not wish to be specifically identified as a respondent.

Consultation Questions

Question 1: Swifter Enforcement Outcomes

Do you agree that SGX RegCo should have swifter enforcement outcomes?

Please select one option:

- Yes
 No

Please give reasons for your view:

Swift enforcement actions by SGX Regco are critical to mitigating market misconduct and lack of diligence by directors which in my view are quite rampant. Together with enforcement actions by statutory regulators, they are essential to rebuilding market confidence and providing adequate investor protection.

Question 2: Enforcement Powers of SGX RegCo

Do you agree that the expansion of SGX RegCo's range of enforcement powers (which are not appealable) to include the following sanctions will result in swifter enforcement outcomes:

- (a) issuing a public reprimand;
- (b) in the case of an issuer:
- (i) issuing an order for the denial of facilities of the market, prohibiting an issuer from accessing the facilities of the market for a specified period; and
 - (ii) requiring an issuer to comply with conditions on the activities undertaken by the issuer; and
- (c) in the case of a director or executive officer of an issuer:
- (i) requiring the resignation of the director or executive officer from an existing position with any issuer listed on the Exchange; and
 - (ii) issuing an order 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?

Please select one option:

- Yes
 No

Please give reasons for your view:

Issuing public reprimands may take time as market misconduct occurs in real time, so even if SGX Regco is able to issue reprimands without the involvement of the LDC, there may be harm to the issuer being perpetrated in the meantime. Therefore, being able to issue orders or impose conditions on activities can allow for swifter preventive actions.

SGX Regco having the power to require the resignation of a director or executive officer and prohibit the appointment of a director or key officer is also important for ensuring that there are real consequences to reprimands and can also prevent further harm to the issuer or other issuers.

Question 3: Exchange's Approval for Appointment of Director, Chief Executive Officer and Chief Financial Officer

Do you agree that the circumstances where the Exchange's approval is required for the appointment of a director, chief executive officer and chief financial officer (or its equivalent rank) should be broadened to:

- (a) include circumstances where the issuer is the subject of an investigation into the affairs of the issuer by a special auditor, or a regulatory or enforcement agency; and
- (b) include re-appointment of a director, chief executive officer and chief financial officer (or its equivalent rank)?

Please select one option:

- Yes
- No

Please give reasons for your view:

Yes, because investigations take time and SGX Regco needs to help ensure there is no interference in investigations by the individual being investigated and no further harm to the issuer while the investigation is in progress. The term "special auditor" is used above. Of late, the term "independent reviewer" is used almost all the time with the term "special auditor" rarely used. The circumstances should include where an independent reviewer is appointed.

While not the subject of this consultation, I would also urge SGX Regco to require forensic-type special audits and investigations with direct reporting to SGX Regco in appropriate circumstances, in order to ensure that wrongdoing and misconduct are properly identified. Independent reviews often lack sufficient depth and objectivity as they are often based on desktop document reviews and interviews with individuals who may be complicit. They generally do not include inputs from third parties who may have evidence. As a result, many independent reviews are in my view ineffective and do not provide a sound basis for enforcement actions.

Question 4: Administrative Powers of SGX RegCo

Do you agree that SGX RegCo's administrative powers should be enhanced as follows:

- (a) to allow SGX RegCo to object to re-appointments of individual directors or executive officers in any issuer for a period not exceeding three years under the circumstances set out in Rule 1405(2) of the Mainboard Rules and Rule 305(2) of the Catalist Rules (as may be applicable);
- (b) to include a new administrative power to require an issuer to suspend individual directors or executive officers for a period not exceeding three years under the circumstances set out in Rule 1405(2) of the Mainboard Rules and Rule 305(2) of the Catalist Rules;
- (c) to include in Rule 1405(2) of the Mainboard Rules and Rule 305(2) of the Catalist Rules circumstances where the director or executive officer is being investigated or is the subject of proceedings for the 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; and
- (d) to remove the requirement of wilfulness under Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules?

Please select one option:

Yes

No

Please give reasons for your view:

Yes, as there should be stronger safeguards against directors and executive officers who do not extend cooperation, contravene relevant laws, rules and regulations, or who are being investigated or subject to proceedings. Directors who refuse to extend cooperation or breach rules are in breach of the undertaking they have provided to the SGX and SGX Regco should be able to enforce the undertaking on them. Those under investigation or are subject to proceedings may also not meet the “character and integrity” requirement in the listing rules.

I also agree with removing the requirement for “wilfulness” as it may be difficult to establish this. Refusal to extend cooperation and clear breaches of listing rules should be sufficient.

Question 5: Issuers to Disclose Whistleblowing Practices

Do you agree that issuers should disclose how they have complied with best practices on whistleblowing? You may suggest additional best practices that may be appropriate.

Please select one option:

Yes

No

Please give reasons for your view:

In order to ensure that whistleblowing policies are effective, there ought to be adequate disclosure of how they work and assurance that they are working. Issuers should be required to explain the channels that employees and stakeholders can use and how they ensure that substantive complaints made to different channels are escalated to the board or relevant board committee such as the audit committee. They should be required to explain how complaints are reviewed and who reviews them to determine whether they are substantive, and the board's or audit committee's role in determining whether investigations into complaints should proceed.

The whistleblowing policy should also allow the whistleblower to report to the external auditor especially on matters that may have an impact on the financial statements of the company, and the external auditor's contact details should be provided. This will also help ensure that the external auditor does not only consider management's views when they are conducting the audit. External auditors have a duty to shareholders so shareholders should also have access to them.

Issuers should also be required to ensure that the whistleblowing policy and its implementation is included in the internal audit plan and subject to audit periodically (for example, at least once every three years).

Question 6: Exclusion of Liability of SGX RegCo

Do you agree with the scope of the exclusion of liability for SGX RegCo? Please state your reasons.

Please select one option:

- Yes
- No

Please give reasons for your view:

This is important to ensure that SGX Regco is not hindered in its enforcement actions through issuers and directors "lawyering up" and the exclusion of liability should be extending to those listed to enable to SGX Regco to effectively discharge its responsibilities.