

Bird & Bird ATMD

Legal Update



Amendments to the quarterly reporting framework and enhancements to continuous disclosures under the listing manual

February 2020

On 9 January 2020, the Singapore Exchange Regulation announced that amendments will be made to the quarterly reporting framework and enhancements will be made to continuous disclosures under the Listing Rules (Mainboard) and the Listing Rules (Catalist) (collectively, the "Listing Manual"). These amendments and enhancements took effect on 7 February 2020 and a summary of the key changes to the Listing Manual are set out below:

Amendments to the quarterly reporting framework

Prior to the amendments, an issuer had to announce its financial statements for each of the first three (3) quarters of its financial year no later than 45 days after the end of the quarter if it meets a certain minimum market capitalisation. Following the amendments, the market capitalisation threshold approach will be replaced with a risk-based approach. In the press release from the Singapore Exchange ("**SGX**") on 9 January 2020, such a risk-based approach is considered more appropriate as it targets companies that are of greatest concern to regulators and investors and enables more effective monitoring of how their concerns are being addressed.

With effect from 7 February 2020, an issuer must comply with the quarterly reporting requirements if (i) its auditors have issued an adverse opinion, a qualified opinion or disclaimer of opinion on the issuer's latest financial statements; or (ii) its auditors have stated that a material uncertainty relating to going concern exists in the issuer's latest financial statements. Issuers will be given a grace period of one (1) year to comply with the requirement if they were not previously subject to the quarterly reporting requirements based on their market capitalisation under the earlier framework.

SGX may also exercise its administrative powers to require an issuer to comply with quarterly reporting if it has regulatory concerns over an issuer. In deciding whether to exercise its administrative powers, SGX will consider two (2) main areas, namely (i) where there is a material breach of disclosure requirements by the issuer; or (ii) where there are concerns on the issuer which involve material financial impact. Quarterly reporting requirements will not apply if (i) an issuer is undergoing judicial management, winding up or provisional liquidation; or (ii) its assets consist wholly or substantially of cash or short dated securities. Currently, SGX has exercised its administrative powers to direct six (6) issuers to undertake quarterly reporting.

All other companies which are not required to do quarterly reporting are encouraged to consider providing voluntary business updates to shareholders in between their half-yearly financial reports and are encouraged to take into consideration their investors' expectations, their competitive environment and their long-term business strategy when deciding whether to provide these voluntary updates.

An issuer that is required to perform quarterly reporting must prominently include a statement on the cover page of its announcement that such an

announcement is pursuant to an SGX requirement. Additionally, where the latest financial statements of an issuer are subject to an adverse opinion, qualified opinion or disclaimer of opinion, the issuer is required to include (i) updates on the efforts taken to resolve each outstanding audit issue; and (ii) confirmation from the issuer's board that the impact of all outstanding audit issues on the financial statements have been materially disclosed.

Enhancements to continuous disclosures

Clarification on the disclosure of material information

SGX has updated the guidance on continuing obligations of issuers in respect of the disclosure of material information to include information which is necessary to avoid the establishment of a false market in the issuer's securities (referred to as "trade-sensitive information") and information which would be likely to materially affect the price or value of the issuer's securities (referred to as "materially price-sensitive information"). It is up to the issuers to ascertain whether the information is material using both tests. To assist issuers in such determination, SGX has included some guidance on examples that may be faced by issuers and how they may be dealt with.

SGX has also included the following events as events likely requiring immediate disclosure: (i) the provision or receipt of a significant amount of financial assistance; (ii) the involuntary striking off of the issuer's subsidiaries; (iii) an investigation on a director or an executive officer of the issuer; (iv) the loss of a major customer or a significant reduction of business with a major customer; and (v) major disruption to supply of critical goods or services. SGX has also introduced two (2) new events requiring immediate disclosure, namely: (i) any requirement by a regulatory authority to restate or re-file financial statements, indicating clearly the reasons for being required to do so; and (ii) any public reprimand or public sanction relating to non-compliance with applicable laws or regulations, including any applicable accounting standards.

However, unless an acquisition of shares resulting in a company becoming, or ceasing to be, a subsidiary or an associated company of the issuer or any change in the issuer's shareholdings in such companies constitutes material information which

requires immediate disclosure, issuers will only be required to announce such acquisition or sale of shares together with their financial statements.

Additional disclosures for rights issues

The Listing Manual has also been amended to require issuers intending to make a rights issue to include certain additional information including:

- on the first page in the prescribed format the price, discount (specifying benchmarks and periods), allotment ratio, use of proceeds and purpose of issue;
- the intended use of such proceeds on a percentage allocation basis (which could be expressed as a range if the exact allocation has not been determined);
- the issuer's directors' opinion on whether, after taking into consideration the group's present bank facilities, the working capital available to the group is sufficient to meet its present requirements and if so, the directors must provide reasons for the issue. Otherwise, the issuer's directors should provide its opinion on whether, after taking into consideration the group's present bank facilities and the net proceeds of the rights issue, the working capital available to the group is sufficient to meet its present requirements;
- a statement from the issuer's directors on why the issue is in the interest of the issuer and their basis for forming such views including the factors taken into consideration in arriving at any discount; and
- if the issuer undertakes the issue within 12 months from its previous equity fund raising, the issuer must include details of each fund raising exercise undertaken in the past 12 months.

Additional disclosures in annual reports on use of proceeds

Where any proceeds from initial public offerings or from any offerings made pursuant to Chapter 8 are used for general working capital purposes, the issuer must announce a breakdown with specific details on the use of proceeds for working capital.

Interested person transactions

The Listing Manual has been amended to allow SGX to deem any person or entity to be an

interested person if the person or entity has entered into, or proposes to enter into: (i) a transaction with an entity at risk; and (ii) an agreement or arrangement with an interested person in connection with that transaction. The Listing Manual also explicitly provides that SGX may aggregate any transactions below S\$100,000 entered into during the same financial year and treat them as if they were one transaction.

Additionally, an issuer will now have to name any interested persons covered under a general mandate for interested person transactions, compared to just the disclosure of the class of interested persons. In its annual report, an issuer will also have to disclose the nature of the relationship with the interested person.

Significant transactions

The scope of Chapter 10 of the Listing Manual will be extended to cover the provision of financial assistance, except where the provision of financial assistance is in the ordinary course of business or of a revenue nature, or is to the issuer, its subsidiary or associated company. Financial assistance includes (i) the lending of money, the guaranteeing or providing security for a debt incurred or the indemnifying of a guarantor for guaranteeing or providing security; and (ii) the forgiving of a debt, the releasing of or neglect in enforcing an obligation of another, or the assuming of the obligations of another. Transactions relating to the provision of insurance coverage and indemnities for directors and CEOs against liabilities attaching to them in relation to their duties as officers of the entity at risk as well as defence funding for directors and CEOs will be excluded.

In the case of an acquisition or disposal of assets (other than shares), if no valuation is commissioned, the issuer would have to provide an explanation on why it did not commission a valuation. Notwithstanding, the Listing Manual also clarifies that the issuer must appoint a competent and independent valuer to value the assets to be disposed if a disposal of assets is one where any of the relative figures as computed on the bases set out in Rule 1006 exceeds 75%.

SGX has also provided a practice note, in relation to acquisitions and realisations, setting out (i) the types of acquisitions and disposals that are regarded to be in, or in connection with, the ordinary course of an issuer's business; (ii) the considerations to apply in computing the relative

figures under Rule 1006; (iii) the applicability of Chapter 10 of the Listing Manual where any of the relative figures computed pursuant to Rule 1006 involves a negative figure; (iv) the factors to be taken into account in arriving at the consideration value of a transaction for the purposes of Chapter 10 of the Listing Manual; (v) the considerations to apply where a transaction requires shareholders' approvals for inter-conditional proposals; and (vi) the circumstances under which SGX may grant a waiver of the requirement for shareholders' approval of any major transactions.

Reference Materials

For more information on the amendments to the Listing Manual, please refer to SGX's website [here](#).

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