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ASIFMA AMG Response to Consultation Paper on Enhancements to Enforcement and Whistleblowing Frameworks

To: listingrules@sgx.com

Respondent's Information

Name(s)	Eugenie Shen, Yvette Kwan
Organisation (if applicable)	ASIFMA
Email Address(es)	eshen@asifma.org , ykwan@asifma.org
Contact Number(s)	+852 2531 6570, +852 6751 6137
Statement of Interest	Please refer to our introductory paragraphs below

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.

On behalf of the Asset Management Group ("AAMG") of Asia Securities Industry & Financial Markets Association ("ASIFMA")¹, we would like to submit our responses to the Singapore Exchange Regulation ("SGX") Consultation Paper on Enhancements to Enforcement and Whistleblowing Frameworks.

Our members who are predominantly global asset managers and owners, are pleased to have the opportunity to present our views during this consultation. As stewards and owners of capital, we welcome initiatives that strengthen the frameworks that uphold the integrity and thus viability of capital markets. To this end, our members are generally supportive of the proposed enhancements to the SGX's listing rules on enforcement and whistleblowing regime and other proposed changes, proposed by the SGX.

¹ ASIFMA is an independent, regional trade association with over 100 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. AAMG advocates stable, innovative and competitive Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the [GFMA](#) alliance with [SIFMA](#) in the United States and [AFME](#) in Europe, AAMG also provides insights on global best practice and standards to benefit the region.

DEVELOPING ASIAN CAPITAL MARKETS

Weak standards and enforcement run the risk of allowing the listing of low-quality issuers, potentially leading to poor governance and investor outcomes. We would however be wary of enforcement powers which are seen as too wide-reaching or too onerous compared to competing listing venues. This may negatively impact on the consideration of Singapore as a potential listing venue thereby reducing the diversity of listing options available to issuers, especially within Asia.

Q1. 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:

We believe that swifter enforcement outcomes are a reflection of higher quality capital markets. Whilst enforcement frameworks aim to mete penalties and other enforcement actions to rectify wrongdoings, we believe that swifter enforcement outcomes also provide a deterrence value. Conversely, delays between actions, investigations and subsequent enforcement can reduce the deterrent value of regulation and resultant investor confidence. Swifter responses also reduce the potential for information leakage which would otherwise dilute enforcement efforts.

SGX RegCo, the independent regulatory entity under the SGX, has been facing issues with obtaining sufficient quorum of its Listings Disciplinary Committee (“LDC”) for enforcement hearings, as a result of committee members’ conflicts of interest. This is an issue due to the small pool of corporate finance professionals available to perform this task in Singapore. We agree that expanding SGX RegCo’s direct enforcement powers, which are currently only exercisable by the LDC, would therefore lead to swifter enforcement outcomes.

We understand that SGX RegCo has a separate board of directors which reports to the SGX board of directors and the Monetary Authority of Singapore (“MAS”), with conflict escalation protocols in place. We believe that this provides a certain safeguard to ensure the independence of SGX RegCo from the SGX’s commercial interests, and on the other hand ensure that SGX RegCo is not, and is not seen to be, overreaching its enforcement powers given its expanded powers.

We would separately like to highlight a regional example in Hong Kong. The Stock Exchange of Hong Kong Ltd (“SEHK”) has Main Board and GEM Listing Committees, however the Securities and Futures Commission (“SFC”) has an additional SFC (HKEC Listing) Committee, made up of independent members, to deal with situations where actual or potential conflicts of interest may occur with the SEHK’s Committees. This backup committee example, whilst utilised for listing as opposed to disciplinary issues, may be an alternative structure that the SGX (and the MAS) may wish to consider.

Q2. 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:

We agree that the expansion of SGX RegCo's enforcement power to (a) public reprimand strengthens the current rules which are limited to a private warning. The public nature of such a sanction would provide strong deterrent value. Public reprimands by SGX RegCo would also provide signaling and research value for investors. Investors who engage with companies for improved governance structures and controls would have added tools / leverage in the stewardship of companies they invest in. Overall a market with better-informed and more engaged investors, all things equal, improves quality.

From a practical perspective, it would be helpful for a public registry of these reprimands to be set up. This would facilitate easier incorporation of the information into ESG data sets and wider use and recognition of the information and signaling value inherent in the data.

We generally agree with the expansion of SGX RegCo's enforcements powers in relation to (b) issuers and (c) officers of an issuer. We think that this is appropriate given that SGX is largely a self-regulated exchange and that a reduction in time taken to issue limited orders against an issuer or its officers will improve in-substance compliance with the SGX's listing rules.

Q3. 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:

We generally agree with this enhancement to the SGX RegCo's enforcement powers however, it would automatically create an obligation of greater scrutiny of all cases under investigation. We believe that SGX RegCo should be adequately staffed to ensure that its resources match these additional powers and accountabilities, otherwise, SGC RegCo's aim to speed enforcement outcomes may be compromised.

*Separately, our members also question, in the case of errant individuals, whether the SGX would consider expanding the exchange's powers to include the prior approval of the appointment or reappointment of such an individual as a director or executive officer in **any issuer** listed on the SGX Mainboard or Catalist, and not just in the case of an issuer subject to an enforcement action. Alternatively, would the SGX consider introducing disclosure requirements that call for issuers, if they choose to appoint such an individual to their own board, to disclose why they are the best fit as a director or executive officer.*

Q4. 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:

We agree with changes (a) and (b) to ensure that errant officers of issuers are restricted from the ability to be appointed to any issuers. In terms of point (c) above, we would question at which point in an investigation that it is appropriate for SGX RegCo to object to the re-appointment or require the suspension of an officer, and whether it would be too presumptive at any point until an investigation is completed. We refer to our opening comment to ensure SGX RegCo does not create too onerous an environment that it is not conducive to listing in Singapore.

We would encourage SGX to continue to promote Singapore as a vibrant and attractive listing venue. SGX RegCo should certainly maintain independence from SGX's commercial interests, but we would urge it to be aware of and balance those commercial interest and avoid too aggressive an application of the rules. Defined rules for the treatment of ongoing investigations will be important to provide clarity to both issuers and investors. Equally important will be the need for adequate resources to be allocated by SGX RegCo to ensure rapid turnaround of pending investigations.

On point (d) above, given that wilfulness can be difficult to establish and is arguably very high a benchmark to determine malpractices or infarctions by directors of listed companies, we agree with the removal of the requirement of wilfulness.

Q5. 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:

This is a basic hygiene requirement. Strong whistleblower programmes that operate in market environments that protect whistleblowers are important deterrents against and levers to report fraud / malpractices. These should be accessible to a range of insiders as well as external stakeholders, well communicated and easily accessible, free of reprisals, with overall accountability residing with the Audit Committee. Companies should also be asked to report on summary statistics with some qualitative description of whistleblower cases, their nature, status, and actions taken on a periodic basis.

Q6. 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:

The ability to implement the additional powers envisaged in this Consultation Paper will be contingent on SGX RegCo having a certain level of immunity. We understand that exclusion of liability is already found within the Securities and Futures Act ("SFA") and this is mirroring the concept within the listing rules.