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Time for listed companies to weed out untimely information disclosure

SGX may need to improve its monitoring of issuers' compliance and enforcement action should be taken for issuers that continue to flout the rules despite being informed about the regulations. BY MAK YUEN TEEN AND CHEW YI HONG

The principal function of the Singapore Exchange is to provide a fair, orderly and efficient market for the trading of securities. It is important for existing and would-be investors to be informed on an equal and timely basis. Consequently, strict rules for continuous disclosure have been put in place for SGX-listed issuers.
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SINGAPORE'S stock exchange operates under a disclosure-based regime premised on the principle that, in general, informed investors can protect themselves. In such a regime, the principal function of the Singapore Exchange (SGX) is to provide a fair, orderly and efficient market for the trading of securities. It is important for existing and would-be investors to be informed on an equal and timely basis.

Consequently, strict rules for continuous disclosure have been put in place for SGX-listed issuers. Rule 702 of the SGX Rulebook states that issuers must release all announcements on SGXNET, unless specified otherwise. Rule 703(1) states that an issuer must announce any information known to the issuer concerning it or any of its subsidiaries or associated companies which is necessary to avoid the establishment of a false market in the issuer's securities or would be likely to materially affect the price or value of its securities. Rule 703(2) exempts information from disclosure if it would be a breach of law to disclose. Rule 703(3) also exempts information from disclosure if a reasonable person would not expect the information to be disclosed and the information is confidential, plus one or more of the following applies: (a) the information concerns an incomplete proposal or negotiation; (b) the information comprises matters of supposition or is insufficiently definite to warrant disclosure; (c) the information is generated for the internal management purposes of the entity; (d) the information is a trade secret.

> Issuers should be educated about their continuous disclosure obligations ... Ignorance and negligence have no place in a disclosure-based regime. Otherwise, ordinary investors will not see a level playing field and this will ultimately harm investors' confidence in the integrity of our market.

Issuers are also required to ensure that their directors and executive officers are familiar with the SGX's disclosure requirements and Corporate Disclosure Policy (discussed below). It is also made clear that the SGX will not waive any requirements under Rule 703.

In addition to Rule 703, Rule 704 requires the immediate disclosure of certain specific information, such as appointment or cessation of directors and certain key officers and the convening of general meetings.

Issuers must also comply with the Corporate Disclosure Policy in Appendix 7.1, which provides additional guidance on the application of the continuous disclosure obligation. It states that the fact that information is generally available is not a reason for failing to disclose under Rule 703. Appendix 7.1 also contains a non-exhaustive list of items that "are likely to require immediate disclosure", including, for example, firm evidence of significant improvement or deterioration in near-term earnings prospects; the acquisition or loss of a significant contract; the purchase or sale of a significant asset; and a change in effective control or a significant change in management.

Appendix 7.1 further states that "material information must be disclosed when it arises, even if during trading hours". Issuers are expected to request a trading halt to facilitate the dissemination of the material information during trading hours and as a guide, such a trading halt "will last at least half an hour after the release of the material information, or such other period as the Exchange considers it appropriate".

The continuous disclosure obligation in the SGX Rulebook is given statutory backing through Section 203 of the Securities and Futures Act (SFA). Under the SFA, an issuer (or a trustee for a business trust or responsible person for a collective investment scheme) is required to notify the SGX on specified events or matters as they occur or arise in order for the SGX to make that information available to the market. An issuer will be liable if the failure to notify is intentional, reckless or due to negligence.

Despite the strict rules in place, it seems that it is still relatively common for issuers to not disclose material events on a timely basis on SGX. In a recent commentary, we cited examples such as Sinocloud (formerly Armada), Swiber and YuuZoo (*Scrapping quarterly reporting a bad move*, BT, August 16). Over the last few months, several other issuers have arguably not disclosed material information on a timely basis.

Chasen

On Mar 23 at 7.36 pm, Chasen announced that it had bought back 200,000 shares at S$0.049 earlier that day. About three minutes later, it announced that it had secured projects worth up to RMB245 million (about S$50 million). At the close of trading earlier that day, it had a market capitalisation of about S$16 million. The company said: "Barring unforeseen circumstances, it is expected that the projects will have a positive contribution to the financial result of the Group for the financial years ending 31 March in 2017 and 2018." Yet, it conducted a share buyback on the same day and prior to the announcement of the new projects. This was its first share buyback since the current mandate was obtained.

The following day, the share price increased to S$0.071 (compared to its buyback price of S$0.049 the previous day) and reached S$0.139 within eight trading days. It is highly improbable that the company would not have been aware of the projects when it bought back those shares, in which case it would have done so while in possession of material price-sensitive information.

BRC Asia

On Sep 8, a block of 81.55 million BRC Asia shares was transacted at 4.52 pm. A further 121 trades amounting to 2.07 million shares were carried out for the rest of the trading day. At 8.16 pm that day, the company announced a mandatory general offer for all the other shares at S$0.925 per share, as an offeror had acquired an aggregate 81.55 million shares, or 43.77 per cent of the issued shares from four of the seven directors of BRC Asia (both directly from the directors, or indirectly from companies that the directors control).

Since four out of the seven directors were the ones who sold a 43.77 per cent stake to the offeror, were they not aware that a mandatory general offer had been triggered? In fact, according to the Corporate Disclosure Policy in Appendix 7.1, information concerning a significant change in ownership of the issuer's securities owned by insiders and a change in effective or voting control of the issuer are explicitly listed as examples of material information that are likely to require timely disclosure. Shouldn't the directors have called for a trading halt, even if it was less than 30 minutes before the close of trading?

For the 2.07 million shares that were transacted at between S$0.83 and S$0.865 after the general offer was triggered, weren't the selling shareholders disadvantaged?

ASTI

On Sep 19 at 4.14 pm, ASTI announced that the company had on Aug 29 entered into a non-binding term sheet to dispose its five wholly-owned subsidiaries for a consideration of between S$105 to S$115 million. The market capitalisation based on the previous close of S$0.052 was S$34 million.

While the company had done a commendable job in preventing leaks to the market (as observed by the stagnant price over the past month), investors must wonder if this should have been announced on Aug 29.

Also, what made the company notify the market on Sep 19 at 4:14 pm without halting the trading of shares? During the next 50 minutes, 580 trades were carried out from S$0.053 to S$0.08. The majority of the trades before the pre-close were bought from sellers while all the trades at settlement (5.04pm) were sold to buyers. This suggests that traders who picked up the news were in it for a quick buck and that for 50 minutes after the announcement, possibly a small group of the day traders were able, through no fault of their own, to take advantage of a market that was arguably not fair, not orderly and not efficient at that time. Surely the purpose of the SGX's trading halt is precisely to prevent such a situation.

Koh Brothers Eco Engineering

On Sep 8, the Land Transport Authority awarded a contract worth S$225.4 million to Koh Brothers Eco Engineering (KBEE). At that time, KBEE's market capitalisation was about S$58 million. The company did not announce on the SGX until after the close of trading on Sep 25. KBEE's share price increased by 13 per cent the following day. Its parent company, Koh Brothers Group (KBG), which owns about 65 per cent of KBEE, has been buying back its own shares, including on Sep 22. Since KBG has been making sporadic buybacks, both before Sep 8 and after Sep 25, we do not see KBG as being opportunistic in its buyback on Sep 22. Nevertheless, we would question why KBEE took more than two weeks to announce the award of such a major contract.

About a week later on Sep 28, KBEE once again announced another contract win of S$520 million from PUB after the market had closed. Following the announcement, the share price of KBEE increased by about 50 per cent the next day, to a high of S$0.128 from the previous close of S$0.084.

While the market reacted to the "news", it was actually old news. PUB had announced and the local media had picked up on the award of the contract on Sep 11, although without mention of the contract value. However, the government's Gebiz website shows the awarded value of S$520 million. The joint venture partner disclosed the figure on their corporate website on Sep 14.

KBG had continued to buy back its own shares on Sep 26, 27 and 28 – a total of 310,100 shares at an average price of S$0.31.

Issuers should be educated about their continuous disclosure obligations. SGX may also need to improve its monitoring of issuers' compliance. Enforcement action should be taken for issuers that continue to flout the rules. Ignorance and negligence have no place in a disclosure-based regime. Otherwise, ordinary investors will not see a level playing field and this will ultimately harm investors' confidence in the integrity of our market.

The writers are, respectively, an associate professor at the NUS Business School specialising in corporate governance, and an active investor and corporate governance researcher

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