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Datapulse's compliance review: holistic or compromised?

Putting Wayco deal, recent appointment of directors together with a review of other past events carry the risk of diluting the depth of the review with regards to what's relevant. **BY MAK YUEN TEEN**

ON February 23, SGX issued a Notice of Compliance to Datapulse Technology, which directed the company to undertake an independent review of its internal controls and corporate governance practices on the following:

- determine the facts and circumstances surrounding the new Board's approval for the acquisition of Wayco Manufacturing;
- review the adequacy of the company's internal controls, processes and procedures relating to the evaluation and approval of mergers and acquisitions, and conflicts of interest;
- review the company's processes relating to board appointment and nomination by shareholders; and
- make recommendations on improvements to internal controls and corporate governance practices.

SGX's notice makes specific reference to the company's announcements on December 11, 12, 15 and 28, 2017 and January 30, 2018. Clearly, SGX's intent was for the review to focus on issues relating to these announcements.

However, on March 11, when the company announced the appointment of RHTLaw Taylor Wessing LLP to undertake the review, it said that the review will cover the adequacy of the company's internal policies, processes and procedures to the evaluation and approval of mergers and acquisitions, and conflict of interest since November 23, 2000. It was also expanding the review to include the terminations, resignation and removal of directors for the same period. It said that this will make the recommendations more "holistic".

There are several problems with the deviation of the review from what I believe is the intent of SGX's notice of compliance, which is to examine the recent events and to mitigate against similar episodes in future.

First, corporate governance standards and expectations change over time. What was acceptable in 2000 may no longer be. For example, prior to the introduction of the first Code of Corporate Governance here in Singapore in 2001, many boards were seen as rubber stamps. Standards and expectations continue to evolve as we can see from the current review of the Code. As another example, the global financial crisis raised awareness of the importance of risk governance and risk management, and the 2012 Code then included significant enhancements in these areas. Today, it would be considered poor corporate governance if there is no proper risk assessment around major acquisitions and changes in business strategies.

Even if some of the past policies, processes and procedures did not meet the standards expected today, they cannot be used as the benchmarks for assessing what has recently transpired.

Given the potential conflict of interest facing Datapulse's audit committee, it's important that SGX takes an active role in overseeing the review in this case. BT FILE PHOTO

WAYCO ACQUISITION

Second, the Wayco acquisition was unique, in a highly questionable way. The acquisition was announced a day after the new board was formed, with little or no due diligence. The acquisition was introduced to the board by the new controlling shareholder, Ng Siew Hong. The current chairman, Low Beng Tin, had sold shares to Ms Ng prior to joining the board, at a significant premium from the market price. He was purportedly introduced to Ms Ng by the former controlling shareholder and CEO, Ng Cheow Chye, who sold all his shares to Ms Ng. The other two independent directors are business associates of Ms Ng.

The sole shareholder of the vendor, Ang Kong Meng, used to be the employer of the then newly appointed Datapulse CEO, Kee Swee Ann, when he was working at Wayco – Mr Kee has other business relationships with Mr Ang, was part of the new board which approved the Wayco acquisition, and has now resigned. Mr Ang also has significant business relationships with Ms Ng. Further, the business and profitability of Wayco is highly dependent on other entities owned by Mr Ang. The acquisition is in a new business, not supported by any formal diversification plan.

Was there any past acquisition that is even remotely comparable in terms of lack of proper due diligence, conflicts of interest and questionable commercial merits that we have seen in the Wayco acquisition?

Putting the Wayco acquisition and the recent appointment of directors together with a review of other past acquisitions, appointments, etc carry the risk of diluting the depth of the review with regards to the issues that it is intended to cover – the issues that triggered the SGX's notice of compliance in the first place. It may also serve to confuse stakeholders about the crux of the issues.

Rather than making the review more "holistic", I would suggest making the review more focused and in-depth. Such an in-depth review can involve a forensic investigation if necessary and interviews with different stakeholders who may have insights and evidence to provide.

A series of transactions mentioned in some of my previous commentaries may merit such a deeper review. For example, on May 20, 2015, Datapulse announced a private placement of 65 million shares to Lian Beng at 11.235 cents per share, which was a 9.998 per cent discount. Five months later, Datapulse bought a 20 per cent stake in a Lian Beng company called Goldprime Realty for S$20 and extended to it a S$2.9 million unsecured interest-free shareholder's loan. Just nine months after that, Lian Beng sold all its shares to Mr Ng at a 58 per cent premium. In November 2017, Mr Ng in turn sold all his shares at a 53 percent premium to Ms Ng.

In February 2017, just 16 months after buying its stake in Goldprime, Datapulse sold it for S$35,000 to KSH, another SGX-listed company. One of Lian Beng's independent directors is also an independent director of KSH. Both this director and the current Datapulse chairman, Mr Low, had joined Lian Beng's board in July 2015.

The Datapulse board had previously said that it was not in a position to comment on the above transactions relating to Lian Beng. There is now an opportunity for it, regulators and other stakeholders to find out more. Was there an arrangement which enabled Lian Beng to sell its shares to Mr Ng, who was then able to sell his shares to Ms Ng, both at a premium of more than 50 per cent? Why did Datapulse buy a stake in, and lent money to, a Lian Beng company, only to sell it rather quickly to another company with interlocking director relationships? An in-depth review can help confirm that the transactions involving Lian Beng are in no way related to the recent events and part of an arrangement.

Mr Low sold about 700,000 shares to Ms Ng on November 22. He said that he had not met Ms Ng then, but sold his shares through the introduction of Mr Ng. The company has also now said that the current independent directors, including Mr Low, were introduced to Mr Ang around the end of November and they had discussed the Wayco acquisition then. At that time, they have not yet been appointed directors.

CONFLICT OF INTEREST

The review can also establish what information was provided to the directors two weeks before they were appointed and whether they had already made a decision then. This can help confirm that the current directors did not fetter their discretion in approving the Wayco acquisition and were not influenced by any prior relationships or arrangements.

SGX's notice of compliance also states that the reviewer should report its findings to SGX and the audit committee of Datapulse. Having a reviewer or special auditor report to the audit committee is often contentious because the audit committee may have a vested interest in the findings. We have already seen the intended scope of the review being changed.

In this case, it is particularly problematic because the audit committee members are the same as the independent directors whose actions are the subject of the review. There is a clear conflict of interest, essentially "ownself reviewing ownself", notwithstanding that a third party is used. Therefore, it is particularly important that SGX takes an active role in overseeing the review in this case.

Finally, while I welcome the appointment of an independent reviewer to examine the issues identified by SGX, I remain hopeful that SGX and other regulators will also undertake their own reviews and investigations into all the issues that have been raised, including those relating to possible disclosure lapses.

The writer is an associate professor of accounting at NUS Business School where he specialises in corporate governance