

Sponsors' conflicts symptomatic of a bigger issue

Sponsors should be independent and free from conflicts of interest but this is debatable, given the current fees for sponsorship activities. **BY MAK YUEN TEEN, CHEW YI HONG AND MARK LAI**

ON JAN 22, 2020, SGX Regco issued a Notice of Compliance (NOC) to RHT Capital (RHTC), a full sponsor on the Catalyst board. This was for possible conflicts of interest relating to share registrar or investor relations services provided by RHT Corporate Advisory Pte Ltd (RCA) and RHT Communications and Investor Relations Pte Ltd (RCIR) at four Catalyst companies sponsored by RHTC – Accrelist, Jubilee Industries, Metech International and Synagie Corporation. The NOC also noted that the RHT Group shares common directors and/or shareholders with RHTLaw Taylor Wessing LLP (RHTTW), “which provides certain legal and other services to certain sponsored issuers of RHTC”. It is the first NOC to be issued to a sponsor.

The first author of this report had previously posted several articles on his website expressing concerns about other services provided by affiliates of RHTC to these companies, and relationships between some directors of these companies and RHT affiliate firms.

On Jan 23, 2020, a response to a *Business Times* article on the NOC was posted on the website of RHT Fintech Holdings (RHTFH). The response, which has no author listed, said: “I wish to clarify that RHT Corporate Advisory is not part of the RHT Group of Companies. In.Corp Global has acquired RHT Corporate Advisory in May 2019.” RHTFH, previously called RHT Holdings Pte Ltd, owns 60 per cent of RHTC, 100 per cent of RCIR, and owned RCA before May 2019. The following day, Taylor Wessing and RHTLaw announced that they have parted ways and “have decided to move towards a collaborative relationship in place of our formal links”.

Responsibilities of sponsors

There are currently 16 full sponsors and four continuing sponsors approved for sponsorship activities on Catalyst. A full sponsor is responsible for preparing companies for listing on Catalyst or advising in a very substantial acquisition or reverse takeover, and assesses the suitability of companies for listing.

A continuing sponsor advises on all listing rule and corporate governance matters, or arranges for an appropriate adviser to do so. It also has to review all documents to be released by the issuer to shareholders or to the market before their release, to ensure compliance with the rules.

Sponsors are required to notify SGX when an issuer refuses to follow its advice on matters which may involve or lead to a breach of the rules, and when they believe that the trading of the issuer's securities should be halted or suspended, or that the issuer should be delisted.

Sponsors are also expected to investigate and consider the suitability of directors.

Independence and conflicts of interest

Under the Catalyst rules, sponsors have to comply with extensive rules on independence and conflicts of interest, and are to have “adequate systems and resources, including controls, procedures and other safeguards to maintain its independence and avoid conflicts of interest”. The proof of independence, or absence of conflict, rests with the sponsor.

Notwithstanding safeguards that may be in place, certain relationships may, at the very least, affect the perceived independence of a sponsor.

Where a sponsor or its affiliate provides other services to a sponsored company, the sponsor may be more hesitant to take action that may jeopardise its provision of such services. If there are disclosure or compliance



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breaches, reporting to SGX may result in the sponsor being replaced or losing opportunities to provide other services. Its work or that of its affiliate may also be called into question.

Certain services may also create a self-review threat or other conflicts of interest. For instance, if an investor relations consultant or company secretary is from an affiliate firm, it would be involved in preparing announcements or documents for the sponsored issuer. These are then reviewed by the sponsor from the same group.

If a sponsor also acts as the issue manager, underwriter and placement agent for a listing, its ability to objectively evaluate the suitability of a company for listing may be affected – notwithstanding the counter-argument that the sponsor doing so may have greater incentives to ensure that the applicant is of good quality to ensure a successful listing.

Sponsors may also be more enthusiastic in supporting transactions by the sponsored issuer which present new opportunities for providing services. For example, where a sponsor acts as a financial adviser or independent financial adviser, it may be less prepared to report questionable transactions or rule breaches to SGX, or be more supportive of aggressive assumptions to get the deal over the line.

Finally, an affiliate of a sponsor may also have an unfair advantage in bidding to provide other services, as the issuer may feel that appointing the sponsor's affiliate may lead the sponsor to be more lenient in overseeing its compliance with the rules.

Disclosure and reporting requirements

The Catalyst rulebook requires Catalyst companies to disclose in their annual report the amount of non-sponsor fees paid to their sponsors, and to make an appropriate negative statement if there is none. However, fees paid to the sponsor's affiliates are not specifically covered, nor is there a specific requirement to disclose the nature of these fees. Sponsor fees are also not required to be disclosed – which makes it difficult to assess the materiality of non-sponsor fees.

Sponsors are to submit an annual return to SGX which provides “details of fees earned from each issuer for non-sponsor work (including the type of work performed), where such fees are in excess of 100 per cent of the fees earned from sponsor work”. There is no limit on how much a sponsor can be paid for non-sponsor work, in absolute terms or relat-

sponsored companies did so based on our review. In most of these cases, the nature of the advisory services was not disclosed and even where they were, there was often little specific information provided. For SACC, it was six out of 35 companies, or 17 per cent, while for RHTC, it was only one out of 25.

Some issuers paid non-sponsor fees that were clearly many multiples of sponsor fees, based on our understanding of market practice for sponsor fees. The largest amount of non-sponsor fees was S\$1.12 million paid by DLF Holdings to PPCF, and the nature of these fees was not disclosed. Other large non-sponsor fees for PPCF were paid by Rich Capital and Fortress Minerals.

The second and third largest amounts of non-sponsor fees were S\$980,000 at Silkroad Nickel and S\$834,000 at Asia Vets, both paid to Zico Capital, for acting as financial adviser in an acquisition; and the fourth largest amount was S\$812,600 at Hyphens Pharma paid to DBS Bank as issue manager, underwriting and placement agent fees.

SACC was paid large non-sponsor fees at Advancer Global, KTMG, Reclaims Global and TSH.

We also examined whether there were other relationships between a sponsor or sponsor group (ie including affiliates of the sponsor) and a sponsored company which were not disclosed under non-sponsor fees. We considered the 10 sponsors which sponsored at least 10 Catalyst companies.

RHT Capital

Since RHTC was served with the NOC, we first discuss relationships between its affiliates and sponsored issuers.

Of the 25 issuers under RHTC as of May 2019 (one has since replaced RHTC), affiliate firms of RHTC provided corporate secretarial, investor relations and/or share registrar services for 10 of them.

At Accrelist and Jubilee, RCIR was appointed as the companies' “dedicated investor relations team to handle investors' queries and assist on all matters related to investor relations”. At Asiatravel.com, KOP, Ley Choon, Metech, No Signboard, Synagie and Y Ventures, RCA was appointed as share registrar. Asiatravel.com, GKE, Jubilee, KOP, No Signboard and Renewable Energy Asia use RCA as their company secretary while Metech and Synagie procured their company secretary services from RCA until recently.

In other words, seven out of 25 RHTC-sponsored issuers chose RCA to provide share registrar services while eight of them use or have used RCA as their company secretary. In all these cases, fees for these services paid to affiliates were not disclosed as this was not required.

RHTC had said that RCA, which provides corporate secretarial and share registrar services, was sold to In.Corp Global in May 2019. However, the RCA name is still used. RHTC should clarify whether there is any arrangement which provides financial benefits to the RHT Group should any of its sponsored companies use RCA services, or if there are any financial targets or “earn-out” in the sale to In.Corp.

Regardless, the share registrar and corporate secretarial services in the abovementioned companies were provided by RCA before it was sold to In.Corp Global. Therefore, even if conflicts no longer exist, possible conflicts existed before RCA was sold. Further, these clients of RCA would presumably have been reflected in the sale price of RCA.

In nearly all the 10 companies where RHT affiliates provided other services, the affiliate was appointed either at the time of listing (when RHTC was the full sponsor) or after RHTC was appointed as continuing sponsor. In one company, RCA was appointed as share registrar just seven days after RHTC was appointed as sponsor, while in another case, RCA was appointed as company secretary just eight days after.

At No Signboard, RHTC is the sponsor, RCA is the provider of corporate secretarial and share registrar services, and RHTLaw Taylor Wessing LLP were the solicitors to the issue manager and sponsor (RHTC), and to the bookrunner, underwriter and placement agent at the IPO.

Directorship and shareholding relationships

We also found current or recent relationships between directors of the sponsored issuers and the RHT Group companies.

At Asian Micro Holdings, one of the directors of the company, Mr Lee Teck Seng Stanley, is the nephew of the executive chairman, who is also the largest controlling shareholder. On Aug 21, 2018, the company announced the resignation of Mr Lee from non-independent non-executive director to an independent director. Mr Lee had held an appointment with RHT Family Office Pte Ltd, and was also a director of RHT Strategic Advisory Pte Ltd from 2014 to 2016. In fact, he was a director at RHT Strategic Advisory Pte Ltd when he was first appointed to Asian Micro's board as a non-independent non-executive director in August 2016.

At Metech, independent director Chay Yiwmin is a director of RHT Chestertons Valuation & Advisory Pte Ltd. At Ley Choon, lead independent director Roy Ling Chung Yee is a consultant for RHT Strategic Advisory and RHT Academy. His online bio also lists him as a consultant for RHT Law Taylor Wessing Group. Under such circumstances, would RHTC be perceived to be objective in advising on the suitability or independence of a director?

Finally, at Olive Tree Estates, RHTC was listed as the ninth largest shareholder, holding 2.9 per cent of the company's shares. The shares were payment made to RHTC for acting as financial adviser in the reverse takeover.

There were other companies where sponsors such as PPCF and UOB Kay Hian held shares. While there are different schools of thought on sponsors accepting shares as payment for services, the shareholdings in all these cases were all well below the 10 per cent limit permitted under SGX rules.

Other sponsors

Trendlines disclosed that PrimePartners Holdings was among the shareholders and partners for its Trendlines Medical Singapore incubator. At Old Chang Kee, lead independent director Tan Han Beng was a Registered Professional at PPCF from July 1, 2014 to Dec 31, 2018 prior to his appointment on July 25, 2019.

In the case of the 16 companies sponsored by SCS, five disclosed relationships with Morgan Lewis Stamford LLC for provision of legal services in the year under review or previous year. Such relationships could change from year to year. Where fees were paid, they were disclosed. At Lasseters International, it was also disclosed that Zico-Stamford Corporate Services was paid a retainer for secretarial services.

For the sponsors that are associated with banks, most of the relationships appear to be associated with banking, custodian and nominee services. To be clear, we do not consider all relationships to necessarily pose a conflict.

We believe that SGX Regco should bar sponsors or their affiliates from providing services that pose a clear conflict of interest, such as corporate secretarial and investor relations services. Where non-sponsor fees are substantial or where permitted services or relationships may nevertheless undermine the objectivity of a sponsor, SGX Regco should monitor the sponsor and issuer more closely.

A pertinent question is whether the Catalyst regime, where SGX relies extensively on sponsors to oversee issuers, is sustainable. For sponsors to properly carry out their duties, they should be independent and free from conflicts of interest. This is debatable, given the current fee levels for sponsorship activities and the relative amounts of non-sponsor fees, and certain services and relationships. In our forthcoming report, we provide a more comprehensive assessment of the Catalyst regime and how it compares with other markets with similar sponsor-based regimes.

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