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I Introduction

1 Background

1.1 On 9 November 2018, SGX issued a consultation on “Proposed Amendments to Voluntary Delisting Regime” (“Consultation”). Unless otherwise defined, capitalised terms used herein shall have the same meanings as ascribed to them in the Consultation.

1.2 In the Consultation, SGX proposed amendments to the Voluntary Delisting regime. In light of the proposed amendments to the Voluntary Delisting regime, SGX also proposed amendments to clarify the applicability of the Listing Rules to a delisting pursuant to a voluntary liquidation and other privatisation mechanisms, namely, a scheme of arrangement and a general offer as well as in the case of a Directed Delisting.

1.3 The Consultation closed on 7 December 2018. Subsequently, SGX conducted further engagement with some respondents to better understand the feedback received. SGX has carefully considered all the comments received. The list of respondents can be found in Appendix 1. SGX would like to thank all respondents for providing comments to the Consultation.

1.4 The amendments to the Mainboard Rules and the Catalist Rules can be found in Appendix 2 and Appendix 3, respectively.

II Comments Received and SGX’s Responses

1 Voluntary Delisting

Question 1: Proposed Exit Offer Requirements

Do you agree that the Exit Offer must be fair and reasonable, and that the IFA must opine that the Exit Offer is fair and reasonable?

Comments Received

1.1 A majority of respondents agreed that the Exit Offer must be fair and reasonable, and that the IFA must opine that the Exit Offer is fair and reasonable. Generally, these respondents considered that the Proposed Exit Offer Requirements will increase protection for minority shareholders as it is likely to lead to a better Exit Offer.

1.2 The respondents that disagreed with the Proposed Exit Offer Requirements were of the view that shareholders should not be deprived of the opportunity to decide on an Exit Offer even if it is not fair (but reasonable). Some of these respondents supported the Proposed Shareholders’ Approval Requirements (see Question 2 below), and thus felt that if the Proposed Shareholders’ Approval Requirements were in place, it would be unnecessary to impose an additional requirement relating to the Exit Offer. One of these respondents highlighted that by requiring an Exit Offer to be both fair and reasonable, independent shareholders – who are those that are not part of the Offeror Concert Party Group – will be prejudiced as they will no longer be able to decide on Exit Offers that may not be both fair and reasonable.
1.3 A few respondents also raised concerns relating to the independence of IFAs and IFA opinions. One respondent cautioned that requiring the Exit Offer to be fair and reasonable may lead to the board of directors of the issuer engaging in “IFA shopping” to source for an IFA that is prepared to provide the requisite opinion.

SGX’s Responses

1.4 SGX notes the concerns raised by the professional firms that investors should not be deprived of the opportunity to decide on an Exit Offer that is not fair.

1.5 Nevertheless, an Exit Offer that is fair, in addition to being reasonable, is what a majority of respondents would prefer. Investors who responded to the Consultation, and those with whom we have engaged, also share this view. SGX also considers that it is important that shareholders are given a fair and reasonable Exit Offer. We will proceed with the Proposed Exit Offer Requirements, as proposed in the Consultation.

1.6 SGX notes the comments relating to IFAs and IFA opinions. To ensure that IFA opinions are well understood by investors, SGX expects that the bases for determining fairness as well as reasonableness of the Exit Offer be detailed separately, where appropriate. SGX also intends to work with the relevant industry bodies to develop guidance and standards for IFAs and their opinions.

**Question 2: Proposed Shareholders’ Approval Requirements**

Do you agree that a Voluntary Delisting Resolution must be approved by a simple majority of 50% of the total number of issued shares (excluding treasury shares and subsidiary holdings) held by shareholders present and voting, and that the Offeror Concert Party Group must abstain from voting on the Voluntary Delisting Resolution?

**Comments Received**

1.7 A majority of respondents generally agreed that minority shareholder protection should be enhanced in a Voluntary Delisting. In line with the proposal, they agreed that the approval threshold for a Voluntary Delisting Resolution be pegged at a simple majority, and the Offeror Concert Party Group must abstain from voting on the Voluntary Delisting Resolution. Respondents felt that the Proposed Shareholders’ Approval Requirements would ensure that the views of independent shareholders are reflected in the outcome of the Voluntary Delisting Resolution without any undue influence from the Offeror Concert Party Group.

1.8 Generally, the respondents that disagreed were of the view that the existing voting thresholds (i.e. requiring the Voluntary Delisting Resolution to be approved by at least 75% of the total number of issued shares (excluding treasury shares and subsidiary holdings) held by shareholders present and voting and the 10% Block provision), coupled with the Proposed Exit Offer Requirements, accord sufficient protection for minority shareholders. Some of these respondents also reiterated that the maintenance of the listing status of the issuer is a matter in which all shareholders have an interest in, and certain shareholders should not be disenfranchised from voting notwithstanding that they are the ones proposing the Exit Offer.

1.9 On the other hand, there were also calls for SGX to further strengthen minority shareholder protection, including retaining the 10% Block provision or increasing the approval threshold for a Voluntary Delisting Resolution in the Proposed Shareholders’ Approval Requirements to 75%.
1.10 Three respondents highlighted that based on the Proposed Shareholders’ Approval Requirements, where the Offeror Concert Party Group does not hold a significant (or any) stake in the issuer, and the issuer’s issued share capital is instead concentrated in the hands of a major controlling shareholder who is not part of the Offeror Concert Party Group (a ‘third party buyout’), the Voluntary Delisting Resolution may be unilaterally passed by that shareholder. For example, if a controlling shareholder who is not part of the Offeror Concert Party Group holds 51% of the issuer’s issued share capital and intends to approve the Voluntary Delisting Resolution (and tender his shares to the offeror), he will be able to pass the Voluntary Delisting Resolution regardless of the views of the minority shareholders.

1.11 Two respondents sought clarification on whether the reference to the issuer’s “total number of issued shares... held by the shareholders present and voting” in Rule 1307(2) of the Listing Rules excludes the shares held by the Offeror Concert Party Group. One respondent sought clarification on how it can be assured that any party that constitutes part of the Offeror Concert Party Group will abstain from voting on the Voluntary Delisting Resolution.

SGX’s Responses

1.12 SGX notes the general support to enhance minority shareholder protection in a Voluntary Delisting. We reiterate our view that shareholders who are part of the Offeror Concert Party Group should not be allowed to vote on the Voluntary Delisting Resolution, as they are interested in the resolution.

1.13 We also note the concerns highlighted by the respondents that based on the Proposed Shareholders’ Approval Requirements, a major controlling shareholder may be in a position to dominate the outcome of the Voluntary Delisting Resolution in a ‘third party buyout’. We are cognisant that the views of minority shareholders should be adequately reflected in a Voluntary Delisting, including in a ‘third party buyout’; however, it may not be appropriate to do so by disenfranchising the major controlling shareholder who is not otherwise part of the Offeror Concert Party Group. We therefore considered the proposals to either retain the 10% Block provision or set the approval threshold for a Voluntary Delisting Resolution at 75%. We do not consider the retention of the 10% Block provision to be appropriate as it may be difficult for minority shareholders to collectively obtain the 10% Block when the issuer is tightly controlled, as stated in the Consultation. Further, as the Offeror Concert Party Group is now barred from voting on the Voluntary Delisting Resolution, it may be disproportionate to retain the 10% Block provision.

1.14 Accordingly, we consider that it is most appropriate to retain the existing approval threshold of 75% for a Voluntary Delisting Resolution in the Listing Rules, i.e. the Voluntary Delisting Resolution must be approved by a majority of at least 75% of the total number of issued shares (excluding treasury shares and subsidiary holdings) held by shareholders present and voting (either in person or by proxy) at the meeting, with the Offeror Concert Party Group abstaining from voting ("Revised Shareholders’ Approval Requirements").

1.15 In response to the specific query raised by respondents on Rule 1307(2) of the Listing Rules, SGX wishes to clarify that in ascertaining whether the approval threshold has been reached, the computation of the denominator should also exclude the shares held by the Offeror Concert Party Group.

1.16 The Listing Rules also contain additional safeguards to ensure that any party that constitutes the Offeror Concert Party Group does not vote on the Voluntary Delisting Resolution. Rule 1206(5) of the Mainboard Rules and Rule 1203(5) of the Catalist Rules require the circular to shareholders to contain a statement if a person is required to abstain from voting on any resolution, and expressly set out that the issuer will disregard any votes cast on the resolution by such a person. In addition, Rule 730A of the Listing Rules requires that an independent scrutineer be appointed at each general meeting to, inter alia, direct and supervise the count of the votes. Further, for transparency, under
Rule 704(16) of the Listing Rules, after each general meeting, the issuer must disclose, among others, the details of parties who are required to abstain from voting on any resolution. Solely for the purposes of the Listing Rules, if there is doubt on whether a particular party is part of the Offeror Concert Party Group and has to abstain from voting on the Voluntary Delisting Resolution, SGX should be consulted.

2 Delisting Pursuant to Voluntary Liquidation, Scheme of Arrangement and General Offer

Question 3: Delisting Pursuant to a Voluntary Liquidation

Do you agree that the Proposed Exit Offer Requirements and the Proposed Shareholders’ Approval Requirements should not apply to a delisting pursuant to a voluntary liquidation?

Comments Received

2.1 All of the respondents agreed that the Proposed Exit Offer Requirements and the Proposed Shareholders’ Approval Requirements should not apply to a delisting pursuant to a voluntary liquidation.

SGX’s Responses

2.2 We will proceed with the amendments that the Proposed Exit Offer Requirements and the Revised Shareholders’ Approval Requirements do not apply to a delisting pursuant to a voluntary liquidation.

Question 4: Delisting Pursuant to a Scheme of Arrangement

Do you agree that, in relation to a delisting pursuant to a scheme of arrangement, the Exit Offer must be fair and reasonable, and an IFA must also be appointed to opine that it is fair and reasonable?

Comments Received

2.3 A majority of respondents agreed that in a delisting pursuant to a scheme of arrangement, the Exit Offer must be fair and reasonable, and an IFA must also be appointed to opine that it is fair and reasonable.

2.4 The respondents that disagreed were of the view that SGX should not impose further requirements on a delisting pursuant to a scheme of arrangement on the basis that a scheme of arrangement, and its requirements, are statutorily prescribed.

2.5 Two respondents suggested editorial amendments to Rule 1309(1)(b) of the Mainboard Rules and Rule 1308(1)(b) of the Catalist Rules relating to the requirement for a cash alternative.

SGX’s Responses

2.6 SGX notes that the Companies Act prescribes voting requirements for a scheme of arrangement which are comparable to the Revised Shareholders’ Approval Requirements, and therefore does not consider it necessary to impose the Revised Shareholders’ Approval Requirements to a delisting pursuant to a scheme of arrangement. However, the Companies Act does not prescribe any requirement specifically relating to the Exit Offer. SGX therefore considers that it is necessary to
impose the Proposed Exit Offer Requirements to a delisting pursuant to a scheme of arrangement.

2.7 In particular, SGX wishes to clarify that a cash alternative should be offered as a default alternative for a delisting pursuant to a scheme of arrangement. This is also consistent with the existing position in the Listing Rules. SGX may, in certain circumstances, grant a waiver from this requirement if, for example, shares in an SGX-listed issuer are offered as a default alternative, as these shares will be readily tradable and shareholders will be able to exit their investment if they wish to do so.

**Question 5: Delisting Pursuant to a General Offer**

Do you agree that the Proposed Exit Offer Requirements and the Proposed Shareholders’ Approval Requirements should not apply to a delisting following a general offer where the offeror is exercising its right of compulsory acquisition?

**Comments Received**

2.8 All of the respondents agreed that the Proposed Exit Offer Requirements and the Proposed Shareholders’ Approval Requirements should not apply to a delisting following a general offer where the offeror is exercising its right of compulsory acquisition.

2.9 Two respondents commented that the Proposed Exit Offer Requirements and the Proposed Shareholders’ Approval Requirements should similarly not apply where there is a general offer, but the offeror is not entitled to exercise its compulsory acquisition right and the issuer has lost its public float (“Loss of Public Float Scenario”). In such a Loss of Public Float Scenario, the respondents opined that the issuer should be allowed to delist if the offeror does not intend to maintain the issuer’s listing status, on the basis that a sufficient number of minority shareholders had accepted the offer which led to the loss of public float. One respondent also highlighted that offerors may be deterred from making an offer in the first place (and hence, depriving shareholders of the opportunity to evaluate an offer) if an issuer in a Loss of Public Float Scenario cannot delist.

2.10 As an alternative, one of the respondents suggested that the requirements should not apply where minority shareholders had been given an opportunity to exit their investment by way of a fair and reasonable offer.

**SGX’s Responses**

2.11 We will proceed with the amendments that the Proposed Exit Offer Requirements and the Revised Shareholders’ Approval Requirements do not apply to a delisting following a general offer where the offeror is exercising its right of compulsory acquisition.

2.12 As stated in the Consultation, SGX recognises that it is important that the rights of minority shareholders in a delisting are appropriately balanced. Two general principles avail. First, a fair and reasonable offer should be made to shareholders. Second, independent shareholders as a whole should have a decision right in the delisting. Where an offeror is able to exercise its compulsory acquisition right, the offeror would have garnered a level of acceptances from other shareholders that is deemed sufficient in law to force a buyout. Conversely, we note that, in relation to the Loss of Public Float Scenario, public float may be lost due to different circumstances, not all of which involve at least 75% of independent shareholders accepting the offer. Therefore, in relation to the Loss of Public Float Scenario, as stated in the Consultation, consistent with existing practice, SGX must be consulted on the applicability of the Listing Rules.
2.13 SGX wishes to highlight that the Loss of Public Float Scenario should not be utilised as a mechanism to avoid compliance with the principles applicable to a Voluntary Delisting. Accordingly, to avoid circumvention, SGX will generally consider waiving compliance from the Proposed Exit Offer Requirements and the Revised Shareholders’ Approval Requirements if:

(a) the offer is fair and reasonable, and the IFA has opined that the offer is fair and reasonable; and

(b) as at the close of offer, the offeror has received acceptances from shareholders (excluding the Offeror Concert Party Group) that represent a majority of at least 75% of the total number of issued shares held by shareholders (excluding the Offeror Concert Party Group).

If these conditions are not met, SGX is unlikely to allow the issuer to delist, and may suspend the trading of the issuer’s securities. SGX will require the issuer to comply with the Listing Rules, including the requirement to restore its public float (through private placement or otherwise). For the avoidance of doubt, if there is a subsequent offer or a scheme of arrangement that complies with the requirements of the Listing Rules, the issuer will be able to delist.

III Implementation of Amendments to Listing Rules

1 Implementation

1.1 The amendments to the Listing Rules will take effect immediately.

1.2 If the offeror has announced its firm intention to make an offer (as opposed to an announcement that talks are taking place which may lead to an offer) prior to the implementation, the delisting will be subject to the Listing Rules in effect prior to the implementation.
Appendix 1 Respondents to the Consultation

SGX received comments from 22 respondents on the Consultation, of which 5 requested confidentiality. The 17 who agreed to be named are:

Allen & Gledhill LLP
Boardroom Corporate & Advisory Services Pte Ltd
DBS Bank Ltd.
Gordan Chen
Ho Yuet Sim
Jacqueline Kwek
Latham & Watkins LLP
Lau Kim Hup
Manohar Sabnani
Ong Kian Hong
PrimePartners Corporate Finance Pte. Ltd.
Rajah & Tann Singapore LLP
RHT Capital Pte. Ltd.
RHTLaw Taylor Wessing LLP
SAC Capital Private Limited
Securities Investors Association (Singapore)
WongPartnership LLP
Appendix 2 Amendments to Mainboard Rules

Legend: Deletions are struck-through and insertions are underlined.

Definitions and Interpretation

“Offeror Concert Party Group”

the offeror and parties acting in concert with it, where the expression “acting in concert” has the meaning ascribed to it under the Takeover Code

Chapter 11 Takeovers

1105

Where a takeover offer is made for the securities of an issuer, upon the announcement by the offeror that acceptances have been received that bring the holdings owned by it and parties acting in concert with it to above 90% of the total number of issued shares excluding treasury shares, the Exchange may suspend the trading of such securities in the Ready and Unit Share markets until it is satisfied that at least 10% of the total number of issued shares excluding treasury shares are held by at least 500 shareholders who are members of the public.

Chapter 13 Trading Halt, Suspension and Delisting

Part IV Delisting

1305

The Exchange may remove an issuer from its Official List (without the agreement of the issuer) if:—

1. the issuer is unable or unwilling to comply with, or contravenes, a listing rule;

2. in the opinion of the Exchange, it is necessary or expedient in the interest of maintaining a fair, orderly and transparent market;

3. in the opinion of the Exchange, it is appropriate to do so; or

4. the issuer has no listed securities.

1306

If the Exchange exercises its power to remove an issuer from the Official List, the issuer or its controlling shareholder(s) must, subject to Rule 1308, comply with the requirements of Rule 1309. For purposes of Rule 1309, a reasonable exit offer may include a voluntary liquidation of the issuer’s assets and distribution of cash back to shareholders.
The Exchange may agree to an application by an issuer to delist from the Exchange if:—

(1) the issuer convenes a general meeting to obtain shareholder approval for the delisting; and

(2) the resolution to delist the issuer has been approved by a majority of at least 75% of the total number of issued shares excluding treasury shares and subsidiary holdings held by the shareholders present and voting, on a poll, either in person or by proxy at the meeting (the issuer's directors and controlling shareholder need not abstain from voting on the resolution); and The Offeror Concert Party Group must abstain from voting on the resolution.

(3) the resolution has not been voted against by 10% or more of the total number of issued shares excluding treasury shares and subsidiary holdings held by the shareholders present and voting, on a poll, either in person or by proxy at the meeting.

1308

(1) Rules 1307(1), (2) and (3) and 1309 do not apply to a delisting pursuant to:—

(a) a voluntary liquidation or a scheme of arrangement; or

(b) an offer under the Takeover Code provided that the offeror is exercising its right of compulsory acquisition.

(2) Rule 1307 does not apply to a delisting pursuant to a scheme of arrangement.

1309

If an issuer is seeking to delist from the Exchange:—

(1) a reasonable exit alternative, which should normally be in cash, should be offered an exit offer must be made to (a) the issuer's shareholders and (b) holders of any other classes of listed securities to be delisted. The exit offer must:

(a) be fair and reasonable; and

(b) include a cash alternative as the default alternative; and

(2) the issuer must appoint an independent financial adviser to advise on the exit offer and the independent financial adviser must opine that the exit offer is fair and reasonable.
Appendix 3 Amendments to Catalist Rules

Legend: Deletions are struck-through and insertions are underlined.

Definitions and Interpretation

“Offeror Concert Party Group”

the offeror and parties acting in concert with it, where the expression “acting in concert” has the meaning ascribed to it under the Takeover Code

Chapter 11 Takeovers

1104

Where a takeover offer is made for the securities of an issuer, upon the announcement by the offeror that acceptances have been received that bring the holdings owned by it and parties acting in concert with it, the Offeror Concert Party Group to above 90% of the total number of issued shares excluding treasury shares, the Exchange may suspend the trading of such securities in the Ready and Unit Share markets, until it is satisfied that at least 10% of the total number of issued shares excluding treasury shares, are held by at least 200 shareholders who are members of the public.

Chapter 13 Trading Halt, Suspension and Delisting

Part IV Delisting

1305

(1) The Exchange may remove an issuer from its Official List (without the agreement of the issuer) if:

(a) the issuer is unable or unwilling to comply with, or contravenes, a listing rule;

(b) in the opinion of the Exchange, it is necessary or expedient in the interest of maintaining a fair, orderly and transparent market;

(c) the issuer does not have a sponsor for more than 3 continuous months;

(d) in the opinion of the Exchange, it is appropriate to do so; or

(e) the issuer has no listed securities.

(2) If the Exchange exercises its power to remove an issuer from the Official List, the issuer or its controlling shareholder(s) must, subject to Rule 1309, comply with the requirements of Rule 1308. For the purposes of Rule 1308, a reasonable exit offer may include a voluntary liquidation of the issuer’s assets and distribution of cash back to shareholders.

1306

A sponsor must contact the Exchange if it forms the opinion that an issuer it sponsors should be removed from the Official List.
The Exchange may agree to an application by an issuer to delist from the Exchange if:

1. the issuer convenes a general meeting to obtain shareholder approval for the delisting; and

2. the resolution to delist the issuer has been approved by a majority of at least 75% of the issuer’s total number of issued shares excluding treasury shares and subsidiary holdings held by the shareholders present and voting, on a poll, either in person or by proxy at the meeting (the issuer’s directors and controlling shareholder need not abstain from voting on the resolution); and The Offeror Concert Party Group must abstain from voting on the resolution.

3. the resolution has not been voted against by 10% or more of the issuer’s total number of issued shares excluding treasury shares and subsidiary holdings held by the shareholders present and voting, on a poll, either in person or by proxy at the meeting.

If an issuer is seeking to delist from the Exchange:

1. a reasonable exit alternative, which should normally be in cash, should be offered and an exit offer must be made to (a) the issuer’s shareholders and (b) holders of any other classes of listed securities to be delisted; and. The exit offer must:

   a. be fair and reasonable; and

   b. include a cash alternative as the default alternative; and

2. the issuer should normally must appoint an independent financial adviser to advise on the exit offer and the independent financial adviser must opine that the exit offer is fair and reasonable.

Rules 1307 (1), (2) and (3) and 1308 do not apply to a delisting pursuant to:

1. a voluntary liquidation or a scheme of arrangement; or

2. an offer under the Takeover Code provided that the offeror is exercising its right of compulsory acquisition.

Rule 1307 does not apply to a delisting pursuant to a scheme of arrangement.