Regulatory Action

4 May 2017

SGX reprimands Singapore Post Limited

Public reprimand: Breach of Listing Rules

1. Singapore Exchange ("SGX") reprimands Singapore Post Limited ("SingPost" or the "Company") for its breaches of the Listing Rules.

2. Based on the findings of the Joint Special Auditors (namely PricewaterhouseCoopers LLP ("PwC") and Drew & Napier LLC ("D&N")) and Corporate Governance Reviewer (Heidrick & Struggles ("H&S")), and taking into account the representations made by SingPost to SGX, the instances of non-compliance with the Listing Rules are as follows:-

   (a) Listing Rule 703(4)(a) read with Paragraph 25(a) of Appendix 7.1 of the SGX-ST Mainboard Listing Manual, which requires that in complying with the Exchange's disclosure requirements, the content of each announcement should be factual, clear and succinct.

   SingPost failed to accurately disclose its then director's interest in the FSM Acquisition Announcement as defined in paragraph 3 below. The FSM Acquisition Announcement was made to comply with the Exchange's disclosure requirements under Listing Rule 704(17)(c)[1].

   (b) Listing Rule 719(1) requires an issuer to have a robust and effective system of internal controls, addressing financial, operational and compliance risks.

   The determination of whether the inaccurate disclosure needed to be corrected should have been a considered decision by the Board of SingPost where it related to a declaration of the interests of all its directors in the context of the discharge of directors' fiduciary duties. It should not have been left to be resolved between the company secretaries and the director who was the subject of the inaccurate statement without proper escalation to the Board.

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[1]Listing Rule 704(17)(c) provides that an issuer must immediately announce any acquisition of shares resulting in a company becoming a subsidiary or an associated company of the issuer (providing the information required by Rule 1010(3)and(5)).

Details on appointment of PwC, D&N and H&S

3. On 18 July 2014, the Company made an announcement pursuant to Listing Rule 704(17)(c) ("FSM Acquisition Announcement") that its subsidiary, Famous Holdings Pte Ltd, had entered into a sale and purchase agreement to purchase the entire issued and paid-up share capital of F.S. Mackenzie Limited ("FSM Acquisition"). The FSM Acquisition Announcement also stated that, "None of the directors or controlling shareholders of the Company has any interest, direct or indirect, in the Acquisition" (emphasis added). The announcement was inaccurate as Mr. Keith Tay Ah Kee ("Mr. Tay") (the Company's then independent director) was the non-executive chairman and 34.5% shareholder of Stirling Coleman Capital Limited ("Stirling Coleman"), the arranger for the FSM Acquisition.

4. On 22 December 2015, the Company released a SGXNet announcement clarifying that the inaccuracy in the FSM Acquisition Announcement of 18 July 2014 relating to Mr. Tay was due to an administrative oversight (the "Clarification Announcement"). The Clarification Announcement led to public commentaries questioning the Company's corporate governance including:- (i) whether Mr. Tay had disclosed his interest to SingPost's Board, abstained from voting and recused himself from the discussions on the FSM Acquisition; and (ii) the independence of Mr. Tay.

5. On 23 December 2015, the Company announced that it would be appointing Special Auditors, at Mr. Tay's request, to investigate the issues raised in the media reports in relation to certain acquisitions including the FSM Acquisition.

6. On 19 January 2016, PwC was appointed as the Special Auditor ("Special Auditor Announcement"). The Company also disclosed that it would be appointing an independent consulting firm to undertake a review of its corporate governance practices and adequacy of its internal procedures, processes and policies in view of the wider concerns about the Company's corporate governance as highlighted in the media commentaries. Such concerns include, among others, the following:- (i) process for review of the independence of directors; (ii) Board and management succession planning and Board renewal; (iii) Board composition, size and diversity; (iv) the role of the Executive Committee; and (v) the Board's role in reviewing announcements released on SGXNet.

7. On 5 February 2016, the Company appointed D&N as the joint Special Auditor (together with PwC, the "Joint Special Auditors") to provide additional assurance in respect of the Special Audit, given concerns about the perceived lack of independence of PwC.

8. Between 23 December 2015 and 5 February 2016, the Company's closing share price fell from S$1.66 to a low of S$1.38. The unusual price and/or volume movements in the Company's shares during this period resulted in 2 public queries issued by SGX Surveillance on 6 and 28 January 2016.

9. The Company appointed H&S on 31 March 2016 to undertake a review of its corporate governance practices (the "Corporate Governance Review").

10. The executive summaries of the reports by the Joint Special Auditors ("SAR Executive Summary") and Corporate Governance Reviewer ("CGR Executive Summary") were disclosed via SGXNet on 3 May 2016 and 4 July 2016 respectively.

Background of events leading to the public reprimand

Inaccuracy in the FSM Acquisition Announcement

11. On 18 July 2014, the Company made the FSM Acquisition Announcement pursuant to Listing Rule 704(17)(c) which stated that, "None of the directors or controlling shareholders of the Company has any interest, direct or indirect, in the Acquisition" (emphasis added).

12. The FSM Acquisition Announcement was inaccurate. At the relevant time, Mr. Tay (then an independent director) was the non-executive chairman and 34.5% shareholder of Stirling Coleman, the arranger for the FSM Acquisition. Based on the SAR Executive Summary, Mr. Tay had disclosed his interest in the FSM Acquisition and abstained from voting on the approval for the FSM Acquisition.

13. The draft FSM Acquisition Announcement was not circulated to SingPost's Board before release. Mr. Tay had identified the inaccuracy when a copy of the FSM Acquisition Announcement was sent to SingPost's Board on the same day after publication via SGXNet. He enquired with the company secretaries if the announcement should "include a comment on (his) indirect interest (through) Stirling Coleman which acts for the seller" and asked that a legal opinion be sought if necessary. The legal advisor consulted was of the view that it was not necessary to release another announcement and it was "defensible" not to include a statement on Mr. Tay's interest in Stirling Coleman. It was only discovered during the Special Audit that the legal advisor was not aware of the inaccurate disclosure and otherwise would have advised the Company to issue a clarification announcement.

14. The inaccurate disclosure was not brought to the attention of SingPost's Board as the company secretaries had placed sole reliance on a professional's advice on a factual matter and decided that no clarification was required. This resulted in the Company's failure to correct the inaccuracy in the FSM Acquisition Announcement promptly, notwithstanding that it was detected soon after its release via SGXNet. The Clarification Announcement was made 17 months after the FSM Acquisition Announcement.

15. SingPost submitted the following:-

    (a) Listing Rule 703(4)(a) read with Appendix 7.1 (Corporate Disclosure Policy) relates to the timely disclosure of material information. Mr. Tay's interest in the FSM Acquisition was not material information and there was no obligation to disclose this in the FSM Acquisition Announcement made pursuant to Listing Rule 704(17)(c);

    (b) The error in the FSM Acquisition Announcement was not deliberate but the result of human error;

(c) The error in the FSM Acquisition Announcement did not have a material adverse effect. The price impact on the share price of SingPost was minimal when the Clarification Announcement was made; and

(d) SingPost had acted prudently and immediately in seeking legal advice on 18 July 2014 itself, when SingPost internally discovered that the FSM Acquisition Announcement contained the error. SingPost acted reasonably when it relied, in good faith, on legal advice that it was not necessary to release another announcement.

16. SGX notes that even though the disclosure of director's interest was voluntary, it was contained in the FSM Acquisition Announcement that SingPost had to make in order to comply with the disclosure requirements under Listing Rule 704(17)(c). Listing Rule 703(4)(a) requires issuers to observe the Corporate Disclosure Policy set out in Appendix 7.1 in relation to announcements made to comply with disclosure requirements. Therefore, in making the FSM Acquisition Announcement, SingPost must observe paragraph 25(a) of the Corporate Disclosure Policy in Appendix 7.1, which requires each announcement to be factual. The Exchange further notes that the factual inaccuracy relates to concerns as to whether directors have discharged their fiduciary duties or are in a position of conflict.

17. In view of the above, SingPost has breached Listing Rule 703(4)(a) read with Paragraph 25(a) of Appendix 7.1, for failing to accurately disclose its then director's interest in the FSM Acquisition Announcement.

Lack of robust internal controls

18. The Corporate Governance Reviewer and Joint Special Auditors recommended, among others, that the Company adopt a robust policy in relation to the preparation, approval and release of SGX announcements. This would help ensure that information contained in SGXNet announcements is accurate while avoiding inconsistencies and errors.

19. SingPost submitted that the Joint Special Auditors had noted that SingPost did have in place a "practice" in relation to the preparation and approval of SGXNet announcements for M&A transactions.

20. In the case of the FSM Acquisition, SGX notes that:-

(a) the FSM Acquisition Announcement containing disclosure of the directors' interests was sent to SingPost's Board only after its release via SGXNet;

(b) the inaccuracy in the FSM Acquisition Announcement was not brought to the attention of SingPost's Board once it was identified; and

(c) the Clarification Announcement was issued 17 months after the inaccuracy was identified.

21. The determination of whether an inaccurate statement needs to be corrected should be a considered decision by the Board of a company where it relates to a declaration of the interests of all directors in the context of the discharge of directors' fiduciary duties. It should not be left to be resolved between the company secretaries and the director who is the subject of the inaccurate statement without proper escalation to the Board.

22. In light of the above, SGX is of the view that SingPost has breached Listing Rule 719(1).

23. Listed companies should have clear, established disclosure policies and appropriate systems of internal checks and controls to assure compliance with disclosure obligations. This is important in a disclosure-based regime where investors rely on the information disclosed in SGXNet announcements to make informed decisions with regards to the listed companies' securities.

Remedial actions taken by the Company

24. On 10 October 2016, the Company announced that it had substantially implemented all the recommendations of the Corporate Governance Reviewer, encompassing those of the Joint Special Auditors. These steps were on top of the Company's initiatives in June 2016, namely the adoption of the following:- (i) Code of business conduct and ethics for its Board; (ii) Policy on directors' conflicts of interest; and (iii) Board renewal and tenure policy. On 3 May 2016, SGX required the Company to obtain independent confirmation on the implementation of the recommendations as set out in the SAR Executive Summary. The Company's lawyers, Lee & Lee, confirmed compliance with SGX's requirement on 29 December 2016.

Referral to the relevant authorities

25. SGX has referred the case to the relevant authorities.

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About Singapore Exchange

Singapore Exchange is Asia's leading and trusted market infrastructure, operating equity, fixed income and derivatives markets to the highest regulatory standards. As Asia's most international, multi-asset exchange, SGX provides listing, trading, clearing, settlement, depository and data services, with about 40% of listed companies and 75% of listed bonds originating outside of Singapore.

SGX is the world's most liquid offshore market for the benchmark equity indices of China, India, Japan and ASEAN and offers commodities and currency derivatives products. Headquartered in AAA-rated Singapore, SGX is globally recognised for its risk management and clearing capabilities. For more information, please visit www.sgx.com.

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