

SGX Listing Manual Update: Provisional Waiver – Rule 806(2) Limit for *Pro Rata* Renounceable Rights Issue Raised from 50% to 100% until 31 December 2018

Singapore Exchange (SGX) recently issued a news release detailing the grant of a provisional waiver in relation to the limit on the aggregate number of shares and convertible securities that an issuer listed on the Mainboard may issue on a *pro rata* basis pursuant to a general mandate under Rule 806(2) of the SGX Listing Manual. This move is reminiscent of a similar waiver granted by SGX in February 2009 to facilitate fund-raising efforts during the global financial crisis. This update discusses the provisional waiver.

Existing limit under Rule 806(2)

Rule 806(2) requires that an issuer must limit the aggregate number of shares and convertible securities that may be issued under a proposed general mandate proposed under Rule 806, and the limit must be not more than 50% of the total number of issued shares (excluding treasury shares) ("**Rights Issue Limit**"), of which the aggregate number of shares and convertible securities issued other than on a *pro rata* basis to existing shareholders must be not more than 20% of the total number of issued shares (excluding treasury shares).

Temporary waiver granted (only for *pro rata* renounceable rights issues)

SGX has granted a temporary waiver from Rule 806(2) to the effect that the Rights Issue Limit is provisionally raised from 50% to 100% for *pro rata* renounceable rights issues ("**Enhanced Renounceable Rights Issue Limit**"), subject to conditions set out in the new Practice Note 8.3 (summarised below). For the avoidance of doubt, the waiver is not applicable to *non-renounceable* rights issues or preferential offerings.

SGX has explained that the purpose of this temporary waiver is to widen the available fund-raising avenues of issuers that may be facing challenges amid current uncertainties and the tightening of financial conditions, and is aimed at helping issuers raise funds expediently for expansion activities or working capital. SGX will also be closely monitoring the disclosures of issuers which seek to rely on the Enhanced Renounceable Rights Issue Limit.

Seek shareholders' approval to rely on the Enhanced Renounceable Rights Issue Limit

Issuers intending to rely on the Enhanced Renounceable Rights Issue Limit must seek shareholders' approval either via an "enhanced" share issue general mandate at its annual general meeting, or via specific approval (e.g. at an extraordinary general meeting). If an issuer's existing share issue general mandate caps *pro rata* issuances thereunder at 50%, the issuer will need to obtain fresh shareholders' approval in order to avail itself of the Enhanced Renounceable Rights Issue Limit.

Temporary waiver until 31 December 2018; no need to separately announce waiver

The Enhanced Renounceable Rights Issue Limit will take effect from 13 March 2017 until 31 December 2018. All shares issued pursuant to the Enhanced Renounceable Rights Issue Limit must be issued and listed by 31 December 2018.

There is no need to make a specific upfront announcement in order to rely on the Enhanced Renounceable Rights Issue Limit; it is sufficient that the issuer makes reference to Practice Note 8.3 when announcing a rights issue which utilises the Enhanced Renounceable Rights Issue Limit, and this will be compliant with the disclosure requirement under Rule 107.

Practice Note 8.3 Conditions for Enhanced Renounceable Rights Issue Limit

The new Practice Note 8.3 of the SGX Listing Manual sets out the applicable conditions for an issuer seeking to utilise the Enhanced Renounceable Rights Issue Limit. Key conditions are summarised below:

- The Enhanced Renounceable Rights Issue Limit is for the purpose of financing the issuer's business needs. The issuer must disclose that its board is of the view that the Enhanced Renounceable Rights Issue Limit is in the interests of the issuer and its shareholders.
- In addition to the listing rules, an issuer seeking to utilise the Enhanced Renounceable Rights Issue Limit must comply with all applicable legal requirements, including but not limited to provisions in the Companies Act or Business Trusts Act (where applicable) requiring issuers to seek shareholders' approval, as well as the issuer's constitution or trust deed (where applicable).
- If the issuer has obtained a general mandate with an Enhanced Renounceable Rights Issue Limit from its shareholders, the issuer must notify SGX by e-mail to enhancedrights@sgx.com of the name of the issuer and the date on which such general mandate was approved by its shareholders.

- In its announcement of a rights issue utilising the Enhanced Renounceable Rights Issue Limit, the issuer must state the following in a separate section:
 - (1) that it is utilising the Enhanced Renounceable Rights Issue Limit;
 - (2) the extent of discount from closing price immediately preceding the announcement;
 - (3) a statement from the issuer's directors on why the rights issue is in the interests of the issuer and their basis for forming such views including justification on the extent of any discount; and
 - (4) if the issuer undertakes the rights issue within one year from its previous equity fund raising, details for each fund raising exercise as follows:
 - (a) description of equity funds raised;
 - (b) date of issue of new securities;
 - (c) amount raised (both gross and net);
 - (d) amount utilised and breakdown on use of proceeds; and
 - (e) amount not utilised and how it is intended to be used.

The issuer should make a negative statement if there is no such previous equity fund raising.
- The issuer must also observe the applicable continuing disclosure requirements in respect of use of proceeds from the rights issue, as set out in Rule 704(30) (announcements) and Rule 1207(20) (annual reports).

References

For further details, please refer to the news release and the newly-issued Practice Notice 8.3 via the following web-links:

- SGX's news release dated 13 March 2017:
http://www.sgx.com/wps/wcm/connect/sgx_en/home/highlights/news_releases/sgx-raises-pro-rata-renounceable-rights-issue-cap-to-100pct-of-share-capital
- New Practice Note 8.3:
http://rulebook.sgx.com/en/display/display_main.html?rbid=3271&element_id=6593.

If you would like more information on this or any other area of law, you may wish to contact the partner at WongPartnership LLP that you normally deal with or any of the following partners:

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