LETTER TO THE EDITOR

SGX should enforce listing rules itself - not rely on others

I REFER to the report, 'SGX: Public rap for misconduct is enough' (BT, Nov 20), and the letter from SGX, 'SGX comments in context' (BT, Nov 24).

I agree that in addition to reprimands by the Singapore Exchange (SGX), there are other sanctions against directors that are available in other statutory provisions and rules which are enforced by other regulatory bodies. I also agree that when making jurisdictional comparisons, we should assess the entire regulatory framework of statutory provisions and rules.

Nevertheless, SGX should be responsible for enforcing its own listing rules, and other statutory provisions and rules are generally not designed to be sanctions against breaches of listing rules, except for the most serious cases.

For example, the Companies Act provides sanctions for breaches of director duties and the Securities and Futures Act (SFA) provides sanctions for false or misleading disclosures, breaches of SGX's continuous disclosure requirements, and insider trading. These provisions and rules are not intended to provide sanctions against directors for routine breaches of listing rules.

Further, the bar for enforcement actions under statutory provisions and rules are often set quite high. For example, Section 199 of the SFA makes it an offence to make a statement or disseminate information which is false or misleading in a material particular, but there are a number of additional conditions before it becomes operative.

These include that the information induces people to trade; affects market prices; that the person does not care whether the statement or information is true or false when making the statement or disseminating the information; and that the person knows or ought reasonably to have known that the statement or information is false or misleading in a particular manner.

Even though companies fail to 'comply or explain' for the code of corporate governance as required by the listing rules, breach other rules like timely announcement of stock option grants, or make false or misleading disclosures in their corporate governance statements, neither the companies nor directors are generally punished.

We can debate whether the bar is too high in certain statutory provisions and rules, making enforcement actions too difficult, but my main point is that SGX cannot rely on other statutory provisions and rules, and other regulatory bodies, to enforce its listing rules.

One cannot argue that there is no need for penalties for illegal parking because we have penalties for drunk driving. Further, other jurisdictions often also have similar statutory provisions and rules.

While it is understandable that SGX cannot exercise powers it does not have, there are
questions as to whether it is using the powers it does have.

SGX states that it has reprimanded directors, but this appears to be extremely rare - at least as far as public reprimands are concerned. A notable exception is the case of the Khoo sisters back in 2005, and that came only after they were fined a total of $500,000 by the court for 11 counts of corporate misdemeanour relating to their father's undisclosed stakes in listed companies.

In the rare cases where a public reprimand is used by SGX, it is almost always directed at the company and not the directors. Reprimanding a company is not the same as reprimanding individuals associated with the company.

Both Bursa Malaysia and the Hong Kong Stock Exchange regularly name both the companies and the directors in their reprimands when listing rules are breached. One can see them on the websites of the exchanges.

I am puzzled as to why SGX takes such a different stance on this issue and why our directors should be treated so differently compared to those in other exchanges.

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