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19th April, 2010

Complex Institutions Supervision Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Re: Consultation Paper on Corporate Governance Regulations and Guidelines

Dear Sir/Madam,

CFA Institute¹ and CFA Singapore² welcome the opportunity to provide joint feedback on the consultation paper regarding changes on the Singapore Banking and Insurance Corporate Governance Regulations and Guidelines. We respectfully submit this letter to comment on some of the recommended changes and state our positions on these areas. The input is primarily from the perspective of representing what we believe to be investors' interests in the equitable functioning of efficient capital markets.

CONTINUOUS DEVELOPMENT

Proposal 1: *To introduce in the Regulations a requirement that the Nominating Committee shall conduct an assessment of the skills of the directors on an annual basis.*

CFA Institute and CFA Singapore support this Proposal. We believe that board members' knowledge and abilities are important attributes when assessing overall board effectiveness. From an investor's point of view, it is very important to understand the ability and skill-set of the board members. As highlighted in the CFA Institute publication, "The Corporate Governance of Listed Companies, a Manual for Investors (the 'Manual')", investors should determine whether board members have the qualifications the company needs for the challenges it faces. Investors should also assess whether individual board members have the knowledge and experience required to advise management in light of the particularities of the company, its businesses, and the competitive environment. Board members who lack the skills, knowledge, or expertise to conduct a meaningful review of the company's activities are more likely to defer to management when making decisions. Such reliance on management undermines the duty of board members to consider shareholders' interests first. Board

¹With headquarters in Charlottesville, VA and regional offices in New York, Hong Kong, and London, CFA Institute, formerly the Association for Investment Management and Research®, is a global, non-profit professional association of more than 99,000 financial analysts, portfolio managers, and other investment professionals in 134 countries of which more than 87,000 are holders of the Chartered Financial Analyst® (CFA®) designation. CFA Institute membership also includes 137 Member Societies and Chapters in 58 countries and territories.

²Based in Singapore, the CFA Singapore is a professional society comprised of 2561 members, including practitioners in the financial services, investment and fund management industry, many of whom hold regional responsibilities. Its mission is to promote global best practice in the areas of financial analysis, investment decision making, ethical and professional conduct to contribute to the further improvement of capital markets integrity and the investment profession in Singapore.

members who are not capable of in-depth evaluation of the issues are not capable of discharging their duties, which will adversely affect the company's operations and viability.

To have a mechanism that assesses board members' skills on regular basis is important. It is equally important to publicly disclose the results. Current disclosure practice in this regard varies from market to market. One of the best practices observed is the approach adopted by the United States companies, where companies typically list the names and qualifications of board members in annual proxy statements and on their websites. Information concerning board member assessment and activities are also included in the Nominating Committee Report section of the annual proxy statements and on their websites.

Therefore, while supporting the Proposal, we recommend to further strengthen the disclosure requirement.

Proposal 2: *To include the following additional guidance in the Guidelines that the NC should:*

- a) *Establish a continuing development programme for all directors to ensure that they are equipped with the appropriate skills to perform their roles on the Board and the Board committees;*
- b) *Develop a framework to identify the skills that the Board collectively needs in order to discharge its responsibilities effectively; and*
- c) *Assess, at least annually, if the Board and Board Committees lack any skills to perform their roles effectively and identify steps to improve their effectiveness.*

A CFA Institute study “Independent Non-Executive Director, A Search for True Independence in Asia (the “INED Report”)” pointed out that in comparison to the US or the UK, Asian regulatory requirements and professional prerequisite for formal director training is either absent or insufficient. The lack of minimum level of training or qualification makes identifying qualified candidates hard and thus makes the nomination process more difficult.

We would support the development of an Asia regional director certification program, which could be established to improve the effectiveness of independent directors and the director community in general. Such a program is a good way to build a strong, educated supply of directors for nomination committees to choose from. The formal certification can be a voluntary program, but recognized by state authorities as evidence that the director meets certain competencies. We are aware of established director programs in the US and Europe, but believe that customization is appropriate for the Asian context.

Therefore, we support the Proposal of establishing a continuing development program and developing a framework to identify skills that the board collectively needs in order to discharge its responsibilities effectively. A regional director certification program is a useful tool to recognize that directors must possess certain abilities and qualifications to be credible.

TIME COMMITMENT

Proposal 3: *To include in the Guidelines that the NC should set internal guidance on the time commitment expected of each director. This may include guidance on the number of Board memberships each director may hold, taking into account the competing time commitment faced when directors serve on multiple Boards. Any deviation from the internal guidelines should be explained and disclosed in the FI's annual report.*

We agree with this Proposal, as the effectiveness of the board heavily depends on the time commitment of board members. The CFA Institute “Manual” emphasizes that investors should review:

“...whether the Board Member serves on a number of Boards for other Companies, constraining the time needed to serve effectively”.

The implication of serving on too many boards is that board members may not be capable of in-depth evaluation of the issues affecting the company’s business as they are unable to devote sufficient time to their study. In instances where non-executive directors have not dedicated adequate time to scrutinizing senior executives, these executives will inevitably become accustomed to unchallenged input. Such conditions do not serve investors’ or shareholders’ interests.

DIRECTOR INDEPENDENCE

Proposal 4: *To introduce in the Regulations a new requirement for a director to be deemed non-independent after he/she has served for a continuous period of 9 years on the Board. Notwithstanding the proposed 9-year threshold, the NC should assess annually prior to the ninth year, whether the length of service of a director has affected his/her independence. A director who has served more than 9 years can still remain as a non-independent director on the Board, as long as composition requirements are met. All director appointments require MAS’ prior approval. MAS would not ordinarily approve the appointment of any person as independent director if his previous length of service on the Board and the interval between his last appointment and the current proposed appointment indicate an intention to circumvent the spirit of this new requirement. With this proposal, a director who is independent from management, business relationships and substantial shareholders will no longer be considered independent after he has served for a continuous period of 9 years on the Board.*

One of the key attributes to consider when assessing whether a board member is independent is the length of his/her service on the same board. An individual that has served on a board for more than 10 years may have a detailed knowledge of the company but this long-term participation is more likely to cause the board member to develop a corporative relationship with management that could impair his/her independence to willingly act in the best interest of shareholders. Therefore, we support the Proposal to introduce a maximum number of terms to serve on a board, which may deem the board member independent.

Commonly in Asia, the directors sitting on the nomination committee are nominated and appointed by the controlling shareholder. This presents a potential conflict of interests between the controlling and minority shareholders. The controlling shareholder commonly has the power to nominate friends, former colleagues, or relatives to the board, regardless of their experience or qualifications. Directors appointed in this way often have a sense of loyalty to the controlling shareholder; hence potentially disregard minority shareholders interests while approval proposals. As a consequence, the nomination and appointment process is merely a formality. Therefore, in order to determine the independence of the board members, it is crucial to first determine the independence of the nomination committee and the nomination process.

To determine the independence of the NC and nominating process, CFA Institute and CFA Singapore recommend:

1. Minority shareholders should be given sufficient influence over the nomination and election process by:

- i) Allowing minority shareholders that own a minimum threshold percentage of shares to directly nominate candidates for election. One example of this is the United States proposal that allows shareholders to nominate up to 25 percent of the board of directors. Under this system, shareholders would be allowed to aggregate their holdings to meet the thresholds. The one condition attached to it is that shareholders would have to hold their share for at least one year. They would also have to certify that they were not holding the stock simply to effect a change in control.
 - ii) Introducing cumulative voting. Cumulative voting is currently used in countries around the world as a method to improve the voting rights of minority shareholders. The aim of cumulative voting is to increase a minority shareholder's ability to elect a director to the board. It can be an effective tool in contested board elections, but it is also useful in uncontested election because it can be used to increase the number of "no" votes for a nominee. Cumulative voting does not guarantee that the shareholder will be able to elect a preferred candidate; nevertheless, it is a useful tool for minority shareholders. It gives minority shareholders a greater voice and will enhance the current nomination and election process.
2. Improve transparency and quality of disclosure of the nominating and election processes. Companies need to provide shareholders with full biographical details on all the directors/nominees up for election in the Notice of the Annual General Meeting or other relevant shareholder circulars in advance of meetings for shareholders to review. The disclosure should include academic and professional qualifications, all previous and current directorships, all relevant experience, and the nature of any relationships of the person that could affect his/her ability to act objectively.

COMPOSITION OF BOARD AND BOARD COMMITTEES

Proposal 6: *To introduce in the Regulations a new requirement that the FI shall not appoint a person who is a member of the immediate family of the CEO as a Board Chairman. This does not affect existing Board Chairmen who do not meet this requirement, subject to annual approval by MAS.*

CFA Institute and CFA Singapore support the separation of the role of chairman and CEO. For the board to be effective there needs to be a clear separation between the management of the board and the management of the company. Without this separation, the accountability of the CEO to the board is limited and the board's capacity to monitor management, especially the CEO, is severely hindered.

We applaud the recommendation that prohibits a person who is an immediate family member to be appointed to the board. This Proposal ensures that there is a physical separation between the CEO and the board chairman, which is an effective way of mitigating one of the key issues within Asia FIs where the CEO and the chairman are commonly from the founding family or substantial shareholders.

Proposal 7: *To amend the Regulations to raise the number of independent directors on the Board, NC and RC from the current one-third to a majority. A single substantial shareholder who holds 50% or more of a locally-incorporated bank or significant life insurer can continue to have majority representation on the Board, NC and RC provided the FI's Board comprise at least one-third of directors who are independent directors.*

CFA Institute and CFA Singapore have always supported and advocated majority-independent boards. Majority-independent boards are recommended in the United Kingdom, United States, and Australia. In Asia, it is already required in India, when the Chairman is either an executive or promoter of the company.

Given the characteristic of having highly concentrated ownership in Asian FI, it is even more important than in Europe or the United States to have majority-independent boards. Majority independent boards will ensure that there are enough independent directors on the board to exercise collective independence and to share the committee workload.

GOVERNANCE OVER REMUNERATION FRAMEWORK AND PRACTICES

Proposal 8: *To include in the Regulations:*

- a) *Additional components and factors that the RC must consider in the design and operation of the remuneration framework.*
- b) *That the RC must ensure that the remuneration practices of the FI are aligned and accord with the remuneration framework*
- c) *That the RC must review that remuneration practices annually; and*
- d) *That the RC must have unfettered access to information in the FI for the purposes of carrying out its responsibilities.*

Proposal 9: *To include additional guidance in paragraph 7.6 under Principle 7 of the Guidelines for FIs to adopt the FSB Principles and Standards on Sound Compensation Practices.*

We agree with the Proposals and believe these will enhance the current remuneration framework. Alignment of incentives with the type of behavior we wish to encourage is critical to ensure alignment of interests between executive management, shareholders, and investors.

CFA Institute and CFA Singapore recommend that a thoughtful remuneration policy should:

- explain the importance of variable and non-variable components of directors' remuneration;
- state the performance criteria that forms the basis of entitlement to share options and other variable pay components;
- identify the parameters for bonus schemes and noncash benefits; and
- clarify the rationale for these parameters.

Scrutinizing compensation practices and spotting red flags largely depends on the quality of available financial reporting information. To ensure that the policies are set independently, disclosure of the remuneration policy and the remuneration details are essential. We recommend that the remuneration statement should be publicly disclosed, and the content should include the mandate and composition of the remuneration committee, including the names of external consultants whose services were used in determining the remuneration policies.

Unfortunately, information disclosed under the current disclosure regulations in Asia is weak and insufficient. As illustrated in CFA Institute research "It pays to Disclose, Bridging the Information Gap in Executive-Compensation Disclosure in Asia (the "Disclosure Report")", an example of a typical remuneration policy statement commonly seen in Asia is included herewith for your quick reference.

The following is an amalgam of three different remuneration-policy statements taken from randomly selected annual reports. It represents the extent of what is typically disclosed by listed companies in Hong Kong, Singapore, and Japan:

“The basis of determining the emoluments payable to directors and senior management is by reference to the level of emoluments normally granted by a listed company to directors and senior executives of comparable caliber and job responsibilities so as to ensure a fair and competitive remuneration package as is fit and appropriate. The remuneration policy for executive directors and senior management staff consists of both a fixed and variable component. The fixed component includes salary, pension fund contributions, and other allowances. The variable component comprises a performance-based bonus that is payable on achievement of individual and corporate performance targets. The remuneration of directors is thus generally fixed, but the performance-linked bonus for executive officers is decided based on the company’s and an individual’s personal performance.”

The prevailing disclosure requirements in the major Asian markets, including Singapore, leave much to be desired. Asian markets fall short in reporting on directors’ remuneration on an individual basis, compared to the USA, UK and Australia.

CFA Institute and CFA Singapore encourage companies to disclose information on director’s remuneration as follows:

- (a) Individual Disclosure: director-compensation disclosure on an individual basis is a common practice in major markets globally. We strongly encourage all companies to follow suit because the practice stresses individual accountability of management and directors.
- (b) Share-based compensation terms: because share-based compensation lies at the heart of the alignment of management and shareholder interests, companies are encouraged to provide the terms of such compensation in the remuneration reports, along with the rest of the pay components. Share-based compensation should also take into consideration the long-term performance of the shares. CFA Institute and CFA Singapore believes that disclosure of details of stock option plans should include the amount of securities outstanding; the exercise prices and the expiration dates for each outstanding option; and the amounts individual executives realized by vesting their stock options in the last fiscal year. This information should be presented in a clear and easy to read tabular form.
- (c) Remuneration policy: companies are encouraged to provide a discussion of the terms of their director remuneration programs, including parameters used in determining performance-based and share-based remuneration, the basis for the selection of these parameters, and how these metrics are calculated. The review should also include a statement of the role of the statutory auditors in setting compensation policy and whether the statutory auditor used consultants in setting the pay.
- (d) Total Compensation: CFA Institute and CFA Singapore encourage companies to disclose total compensation in a clear, simple, and easy to follow format.



Companies should also disclose whether they have a mechanism to recapture incentive pay that is triggered by a company's financial results and which is ultimately restated or changed in a manner that would have negated the original award.

We appreciate your consideration of our comments. If you feel we can provide additional information, please do not hesitate to contact Sharon Craggs at (65) 6323-6679 or sharon.craggs@cfasingapore.org.

Sincerely,

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cc:

- The Corporate Governance of Listed Companies – A Manual for Investors, second addition, 2009
- The Compensation of Senior Executives at Listed Companies – A Manual for Investors
- It Pays to Disclose – Bridging the Information Gap in Executive-Compensation Disclosures in Asia
- Independent Non-Executive Directors – A Search for True Independence in Asia