



Setting the global standard for investment professionals

28 July 2011

The Secretariat, Corporate Governance Council
c/o Capital Markets Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Re: Proposed Revisions to the Code of Corporate Governance

Dear Sir/Madam,

CFA Institute¹ and CFA Singapore² (collectively “CFA”) are pleased to comment on the *Proposed Revisions to the Code of Corporate Governance* issued by the Corporate Governance Council (the “Council”). CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education, and licensing requirements for investment professionals, and on issues that affect the efficiency and integrity of global financial markets.

Executive Summary

CFA supports the Council’s efforts to improve the corporate governance of Singapore-listed companies by revising the Code of Corporate Governance for Singapore-listed companies. We believe the changes suggested by the Council — including more robust director independence standards and better disclosure concerning director training, multiple directorships, remuneration practices, and risk management — will improve the corporate governance of Singapore-listed companies and enhance shareholder understanding of governance issues concerning the companies they own.

CFA Institute has written often on the subject of corporate governance and shareholder rights, most recently in *The Corporate Governance of Listed Companies: A Manual for Investors*,

¹ CFA Institute is a global, not-for-profit professional association of over 105,000 investment analysts, advisers, portfolio managers, and other investment professionals in 137 countries, of whom more than 93,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 58 countries and territories.

² Established in September 1987, CFA Singapore (formerly known as the Singapore Society of Financial Analysts - SSFA) is a professional body that brings together practitioners of the investment and fund management industry in Singapore. Its objectives are to lead the investment profession in Asia by setting the highest standards of ethics, education, and professional excellence and be considered the thought leader in shaping ethical and professional standards and, in furtherance of that goal, frequently partners with a diverse range of stakeholders including employers, regulators, and investment professionals in Asia. With a membership base of more than 3,500, CFA Singapore runs programs for members, CFA candidates, and the investment community, including professional development talks and seminars, networking sessions, CFA Program information sessions and examination review classes, and career development talks.

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Second Edition (2009); Shareowner Rights across the Markets: A Manual for Investors - Singapore (2011); and Shareholders Rights in Asia – Are Shareholders flexing their muscles to protect themselves (2010)?

Comments on Specific Proposals

Key Proposal 1

The Council proposes to include in the Code the following relationships as additional instances where a director will be deemed non-independent:

- *if the director is or was, in the current or any of the past three financial years, a substantial shareholder, partner, executive officer, or director of organisations to which the company or any of its related corporations made, or received significant payments or material services in the current or immediate past financial year;*
- *if the director is a substantial shareholder or an immediate family member of a substantial shareholder of the company,*
- *if the director is or has been directly associated with a substantial shareholder of the company in the current or any of the past three financial years; and*
- *if the director has served on the Board for more than nine years from the date of his or her first election.*

CFA supports the Council's expanded definition of the relationships that may compromise the independence of a director. However, we ask the Council to consider expanding the period of affiliation with a company from three to five years for determining whether a director is non-independent³.

Former company insiders can retain emotional, financial, professional, and personal ties to the issuer, its management, and its directors. This retained loyalty may compel the insider to decide on matters in a way that does not first serve the interests of shareholders. Individuals with such links are more likely than other directors to make decisions on the basis of those relationships rather than what is best for shareholders. In our opinion, over a period of five years, such allegiances may diminish to a point where the independent, non-executive director may make decisions that are fair to all shareholders which could include running counter to the interests of insiders.

We also believe the Council should consider any director who is part of a cross-directorship relationship with the company (representatives of each company sit on board of the other) as non-independent.

³ See CFA Institute position and rationale on insiders as independent directors at: http://www.cfainstitute.org/ethics/topics/Pages/insiders_as_independent_directors.aspx

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Key Proposal 2

The Council plans to introduce in the Code a new provision that independent directors should make up at least half of the Board where:

- a. the Chairman and the Chief Executive Officer (“CEO”) is the same person;*
- b. the Chairman and CEO are immediate family members;*
- c. the Chairman and CEO are both part of the management team; or*
- d. the Chairman is not independent.*

CFA recommends that instead of having the four categories above determining the 50 percent requirement for board independence, the Council consider having the 50 percent threshold applicable to all mainboard-listed companies, with the one-third threshold applied to companies listed under the Catalist board. This is based on a recent study⁴ which found that under the current code, 50.7 percent of companies listed in Singapore already had independent directors making up the majority of their boards. Of the 49.3 percent that do not, all (except one) were already in compliance with the one-third independent director threshold, requiring only minor changes to their board composition in order to satisfy the requirement. Additionally, on an overall basis, the independent director percentage of companies listed was found to be 49.2%.

One of the concerns in formulating the existing Code of Corporate Governance was the problem of finding a suitable pool of independent directors to serve on boards. CFA Singapore believes that unless the current system for recruiting independent directors is reviewed, this issue will persist. In this regard, CFA Singapore recommends that all mainboard listed companies actively participate in the development and formation of a deep pool of independent directors. One approach would be by taking on board a minimum of one first term director at any point in time⁵. CFA Singapore is working closely with the Singapore Institute of Directors to introduce senior qualified members as potential candidates to listed companies in Singapore. This should broaden and deepen the pool of independent directors for listed companies.

Unfortunately, director independence alone does not protect a board from poor strategic decision making, as evidenced by institutions that contributed to the recent financial crisis. We therefore ask the Council to consider proposing disclosures concerning the experience and areas of expertise of the board as a whole, and individual directors. Such disclosure is considered best practice in developed markets around the world, including in the United States and the European Union.

⁴ The study involved a sample of 227 companies listed on the mainboard of the SGX who had their AGM on or after 1 January 2007.

⁵ A first term director is one who is defined as a person who has not served before on any listed company board but who otherwise has appropriate experience in the industry or of serving as a director.

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Key Proposal 3

The Council proposes to introduce in the Code new requirements for companies to arrange and fund training for new and existing directors, and disclose the induction, orientation and training provided to new and existing directors in its annual report.

CFA commends the Council for introducing new requirements to arrange and fund training for directors. We conducted a review of director training programs in the region in 2010 and have enclosed a copy of the report, “*Directors Professionalism: A Review of Director Training Programs in Asia Pacific*,” for your reference. Based on our research, the training modules should include the following topics: strategy and leadership; financial analysis and reporting; directors’ duties and skills; board structure and practices; role of committees; and technical areas such as regulations, listing rules, and the board’s role in merger-and-acquisition activities.

Key Proposal 4:

The Council proposes to introduce in the Code a new requirement for the Nominating Committee to review and make recommendations to the Board on training programmes for the Board.

CFA commends the Council for highlighting board training as a key component of ongoing board development and evaluation. We encourage the Council to require corporations to disclose whether the board requires ongoing training or continuing education for directors serving on particular committees. An example would be training in enterprise risk management or valuing derivatives for the audit committee of a large financial firm.

Key Proposal 5:

The Council proposes to introduce in the Code a provision that the Nominating Committee should decide if a director is able to and has been adequately carrying out his or her duties as a director, taking into consideration the director’s number of listed company board representations and other principal commitments. The Board should further determine the maximum number of listed company board representations which any director may hold, and disclose this in the company’s annual report.

CFA is concerned about the practice of ‘overboarding’ by which board members sit on a number of boards, and therefore cannot devote adequate time and energy to any of the boards on which they serve as the Council does not set a limit to the number of listed company boards on which a director may sit and leaves such decisions to individual company boards. In view of this, we therefore ask the Council to require a disclosure addressing how a company determines whether a director can adequately serve shareholders if that director sits on more than two other listed company boards.

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Key Proposal 6:

The Council proposes to introduce in the Code a provision that directors should not appoint alternate directors except for limited periods in exceptional circumstances.

CFA does not believe that an alternate director is adequately prepared to serve in the place of a director who is intimately familiar with the corporate affairs of the company. We therefore do not feel the Council should endorse the use of alternative directors. A director should be invited to serve on a public company board due to the unique expertise he or she offers, which cannot be replaced by a less knowledgeable temporary director.

Many boards around the world have operated for short time periods with key board members absent due to medical- and family-related reasons or other exceptional circumstances. If the absence is prolonged, that director should work with the board to determine if a permanent replacement is necessary.

Key Proposal 7:

The Council proposes to include in the Code that the level and structure of remuneration should be aligned with the long-term interests and risk policies of the company. Additional guidance will also be given to companies to consider provisions allowing the company to reclaim incentive components of remuneration from directors and key management personnel in exceptional circumstances of misstatement of financial results, or of misconduct resulting in financial loss to the company.

CFA agrees that compensation for senior company executives should be explicitly linked to long-term financial and operating performance⁶. Strengthening the link between compensation and fundamental performance for both company executives and asset managers would better serve investors' interests.

Also, we believe that companies should disclose whether they have mechanisms to recapture incentive pay that are triggered when company results are restated or changed in a manner that would have negated the original award. Investors need to determine whether the Board has established such mechanisms to recoup compensation/remuneration that is paid to an executive who benefits from incorrect financial reporting, both for financial reasons and to help gauge whether the board is ultimately fulfilling its duties to shareholders.

⁶ See CFA Institute Official Executive Compensation Pay Policy and Rationale at: http://www.cfainstitute.org/ethics/topics/Pages/executive_compensation_policy.aspx

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Key Proposal 8:

The Council proposes to introduce in the Code a provision that the Remuneration Committee should ensure that existing key relationships between the company and its appointed remuneration consultants will not affect the independence and objectivity of the remuneration consultants.

A company should discuss the process undertaken by the compensation committee, in conjunction with management, the board, and compensation consultants, to implement executive compensation practices. A company should also discuss how any advice from compensation consultants are reflected in the compensation committee's decisions setting executive compensation levels.

CFA also recommends a statement addressing the independence of the compensation consultants from company management and a discussion of, or cross-reference to, the information concerning how consultants are compensated for this work and other work for the company (or group of companies) unrelated to the specific executive compensation engagement.

Key Proposal 9:

The Council proposes to include in the Code additional guidance that companies should disclose more information on the link between remuneration and performance of directors, CEOs, and key management personnel.

CFA agrees with the Council that the annual remuneration report should set out a description of performance conditions to which entitlement to short- and long-term incentive schemes are subject, an explanation on why such performance conditions were chosen, and a summary of the methods to assess whether such performance conditions are met. We also believe that a company should discuss performance targets, and explain how such targets relate to the company's strategy and operating plan.

It would be helpful to investors if the remuneration report included a statement disclosing the elements of compensation for the CEO and other named executive officers. The discussion should give a typical investor a clear understanding as to what each specific element is and what each element is designed to reward.

Key Proposal 10:

The Council proposes to introduce in the Code a provision that companies should fully disclose the remuneration of each individual director and the CEO on a named basis. Companies should disclose in aggregate the total remuneration paid to the top five key management personnel (who are not directors or the CEO).

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CFA welcomes more detailed disclosure concerning executive and board remuneration. We encourage the Council to consider requiring the full disclosure of compensation for all executive officers, not just the CEO, in order to give shareholders a better understanding of how pay is linked to performance.

We hope that the proposed enhancements also include all disclosures concerning perquisites, pension plans, and any other benefits that might accrue to the board or management. This information would enable shareholders to judge for themselves whether such use of company assets are in their best interests. Details concerning related-party transactions should also be addressed somewhere — if not already included in the remuneration section of the annual report — so that shareholders can better ascertain whether company resources are being properly used by management or the board.

Key Proposal 12:

The Council proposes to introduce in the Code a provision that the Board should comment on whether it has received assurance from the CEO and CFO that (i) the financial records have been properly maintained and the financial statements give a true and fair view of the company's operations and finances; and (ii) an effective risk management and internal controls system has been put in place.

CFA commends the Council for addressing the issue of risk, especially in light of the recent global financial crisis in which neither company-specific risks nor systematic risks were adequately addressed by a number of company boards. We also commend the Council for calling on companies to, at least annually, review their risk management and internal control systems, including financial, operational, compliance, and information technology controls.

We also welcome the Council's call for companies to establish a separate board risk committee or otherwise assess appropriate means to oversee the development of a risk management framework and policies. We encourage the Council to require companies to report to shareholders at least annually as to the board's management of risk.

We agree with the Council's call for Boards to comment on whether they have received assurance from CEOs and CFOs that the financial records have been properly maintained and the financial statements give a true and fair view of the company's operations and finances. In our view, this is an obligation of sound management and a mandatory requirement in many jurisdictions.

Key Proposal 13:

The Council proposes to introduce in the Code a new principle, and accompanying guidelines, on 'Shareholder Rights' to guide companies in their engagement with shareholders.

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The guidelines that accompany this proposal are as follow:

- *Companies should facilitate the exercise of ownership rights by all shareholders. In particular, shareholders have the right to be sufficiently informed of changes in the company or its business which may materially affect the value of the company's shares.*
- *Companies should ensure that shareholders have the opportunity to participate effectively in and vote at general meetings of shareholders. Shareholders should be informed of the rules, including voting procedures that govern general meetings of shareholders.*
- *Companies should allow corporations which provide nominee or custodial services to appoint more than two proxies so that shareholders who hold shares through such corporations can attend and participate in general meetings as proxies.*

CFA supports this proposal and the guidelines by which the Council aims to achieve it. We further recommend that there should be no limit on the number of proxies to attend and participate in the general meetings so long as they are the beneficial owners of the shares which is also consistent with the recommended changes in the Companies Act to enfranchise indirect investors.

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Concluding Comments

CFA Institute and CFA Singapore are pleased to submit our views on these proposed revisions to the Code of Corporate Governance. If you or your staff have questions or seek clarification of our views, please feel free to contact Lee Kha Loon, CFA, at +603.8023.4413 or khaloon.lee@cfainstitute.org; Tony Tan, CFA, at +65.9455.7295 or secretariat@cfasingapore.org; or Matthew Orsagh, CFA, CIPM at +1.212.756.7108 or matt.orsagh@cfainstitute.org.

Sincerely,

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