



BLOOMBERG



JOHN HENG

Mr Balfort says companies headquartered outside the US have chosen to list their shares on either the New York Stock Exchange or Nasdaq, because of the perceived benefits of being listed in a SOX-environment

Heavier responsibility: The new SGX rule requires directors to confirm that nothing has come to their attention that may render the interim results to be false or misleading.

Negative assurance right for corporate S'pore: consultant

He urges directors to view new requirement positively

By MICHELLE QUAH

[SINGAPORE] Singapore's new requirement that boards of listed companies provide a negative assurance on interim financial statements has struck fear in the hearts of many. And rightly so, says one expert, because the added responsibility is great.

But Ferdinand Balfort — a consultant who works with companies here on corporate governance issues — also believes that such rules, while onerous, are the right way for Singapore to go.

"In discussing the concept of good corporate governance, I believe we are talking about a continuum," says Mr Balfort, a principal with Balfort Enterprises in Singapore.

"I believe that on the corporate governance continuum, Singapore will definitely be moving towards a more corporate governance-conscious environment because it makes good sense financially. And the negative assurance requirement should be viewed positively as a milestone on that road — as a step in the evolution towards improved corporate governance and greater director's accountability," he says.

Mr Balfort acknowledges the considerable burden that the negative assurance requirement has

added to directors' shoulders — and the ominous criminal penalties for those who flout the law. The new rule requires directors of listed companies to confirm that, to the best of their knowledge, nothing has come to their attention that may render the interim financial results to be false or misleading.

Introduced as an amendment to the Singapore Exchange (SGX) listing rules on Sept 1, 2006, the rule does not overtly mention how a breach would be punished. But the Securities and Futures Act states that any breach of disclosure by a listed company is punishable by a maximum \$250,000 fine and/or a seven-year jail term.

"My experience has been that the key concern of some senior executives having to sign off on similar certification in the Asia-Pacific region — as negative assurance is still quite new in Singapore — has been how to ensure that they are aware of any issues that might materially affect the financial statements and, hence, raise a personal risk of penalties as well as a blemish on their personal records," Mr Balfort says.

CEOs and chief financial officers (CFOs) have made it clear to him that they are most concerned about the penalties and the threat of jail terms that come with such regulations, he says. And he has not met or worked with CEOs, CFOs or board members that have not been concerned about meeting their obligations.

Despite such concerns,

Mr Balfort believes that such punitive measures are needed to spur directors to take their responsibilities seriously.

"I certainly believe criminal or civil penalties are required," he says. "As an analogy, what would you think would be the result of suddenly removing all the fine notices on the MRT? Would the MRT still be as clean as it currently is? I have a number of first-hand examples where multinational companies have used a weakness in a law in another jurisdiction to do exactly the opposite of what would be expected from a

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— Ferdinand Balfort

benchmark, world-class organisation.

"More to the point, the Sarbanes-Oxley Act (whose Section 302 has been viewed as the inspiration for Singapore's negative assurance rule) has definitely had an impact on directors recognising their responsibilities, especially in the US, as evidenced by greater willingness on the part of non-executive directors to speak out against the consensus view of listed company boards."

Section 302, explained simply, requires a listed

company's CEO and CFO to attest — by signing off — to the accuracy of its quarterly financial reports. Its penalties are even more onerous than those for Singapore's negative assurance rule: a knowingly or willfully false certification under Section 302 is punishable under Section 906 with a fine of not more than US\$1 million and/or imprisonment of up to 10 years.

Mr Balfort says: "Singapore should regulate the markets by setting certain standards, enshrined in laws and regulations. This is particularly important for the image of Singapore as a robust financial centre, attractive to foreign investors."

He lists several examples of companies, and not just shareholders, benefiting from a more tightly regulated business environment. "A major oil and gas company based in Europe, whose name I'll keep confidential, requested evidence of SOX compliance as part of its tendering process in Asia recently. I believe it was to gain assurance of proper vendor interface controls, that is, invoicing and follow up, as well as other controls related to change order management."

He also says companies headquartered outside the US have chosen to list their shares on either the New York Stock Exchange or Nasdaq, because of the perceived benefits of being

listed in a SOX-environment, despite the higher costs of compliance. "Recently, a global outsourcing company called WNS, headquartered in Mumbai, took the decision to list on the NYSE, explicitly because they realised their capitalisation/share valuation would be higher and opportunities to gain clients better by listing there and complying with corporate governance requirements."

Mr Balfort believes the increased responsibility will eventually work in these directors' favour — by making them more familiar with their companies. And he says they can look for guidance on how to begin fulfilling their responsibilities by looking at the internal control framework drawn up by the Committee of Sponsoring Organisations of the Treadway Commission (COSO) in the US.

The detail provided in the COSO Internal Control Framework allows directors to prepare a "health check list" that will help them determine exactly what gaps there are in their internal control framework.

Mr Balfort will be a panelist at a forum on Negative Assurance on Nov 3, organised by the Singapore chapter of SOX Institute. He will share with Singapore-listed companies what is being done by their US counterparts in managing their risk, corporate governance and internal control issues.

THREE-MINUTE DIGEST

Sustainable energy is next, says Rabobank

RABOBANK has earmarked its Singapore office to play a key role in the Dutch bank's move to tap into the development of sustainable energy where, its chairman Bert Heemskerk says, huge opportunities are on offer. But for investors seeking to cash in, he expects some losses as "there is lots of non-proven technology".

TOP STORIES, PAGE 4

CapitaLand gets SGX nod for listing of China Reit

PROPERTY developer CapitaLand has received approval from the Singapore Exchange to list its \$690 million China retail real estate investment trust on the main board. Up to 46.7 per cent of units in the new Reit will be sold during the initial public offering.

COMPANY NEWS, PAGE 5

MMP Reit's Q3 income above projections

MMP Reit yesterday reported third-quarter distributable income of \$13.7 million, 9 per cent higher than projected at the time of its mainboard listing in September last year. The strong results were largely due to higher rental income from its two properties as well as lower leasing and property maintenance expenses.

COMPANY NEWS, PAGE 5

36% upside seen for Landwind Med

OCBC Research has issued a buy recommendation on Landwind Medical Holdings, with a fair value of 64 cents, a 36 per cent upside from its current price. Landwind will benefit from the expansion of its sales network, higher government spending on healthcare in China and exports to other countries, an

CHINA STOCKS, PAGE 6

MARKETS DIGEST

▲ STI 2,691.61 (+5.18)

▲ ST INDEX FUTURES 2,691.00 (+5.00)

▲ SIMSCI 324.56 (+0.97)

▲ SIMSCI FUTURES 324.80 (+1.60)

PRIME RATES

SINGAPORE	.....
MALAYSIA	.....
HONG KONG	.....
INDONESIA	.....
TAIWAN	.....
JAPAN	.....
KOREA	.....
BRITAIN	.....
US	.....
CANADA	.....
SWITZERLAND	.....
INDIA	.....

Source: Bloomberg

MARKETS

	Monday Change	FOREX	US\$
KL COMP	Closed	US\$ (S\$ per US\$)	—
NIKKEI 225	16,788.82 +137.19	£ (US\$/£ per £)	1.878
HANG SENG	18,089.85 -23.70	EURO (US\$/€ per €)	1.259
SET INDEX	Closed	YEN	119.0
JAKARTA COMP	Closed	RM	3.677
MANILA COMP	2,625.52 +8.11	HK\$	7.787
SEOUL COMP	1,364.95 +0.71	BAHT	37.25
SHENZHEN B	328.54 -1.92	RUPIAH	9.155
MUMBAI IND	12,623.28 -113.54	RENMINBI	7.900
	11.30AM EST Change	INDIAN RUPEE	45.40
DOW	12,093.38 +91.01	AS	1.316
NASDAQ	2,360.00 +17.70	NZ\$	1.500