

# AUDIT COMMITTEE SEMINAR 2021

## *SGX RegCo 2021 Regulatory Updates*

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Singapore Exchange Regulation

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# AGENDA



- 1. Disclosures in uncertain times**
- 2. Valuations in interim financial statements**
- 3. Investigations involving issuers, directors or executive officers**
- 4. SGX RegCo's enforcement powers**

# Disclosures In Uncertain Times



Will withholding this news **SHOCK** investors when my financial results are released



What do investors need to **KNOW** to make informed trading decisions

# Disclosures In Uncertain Times



## REGULATOR'S COLUMNS

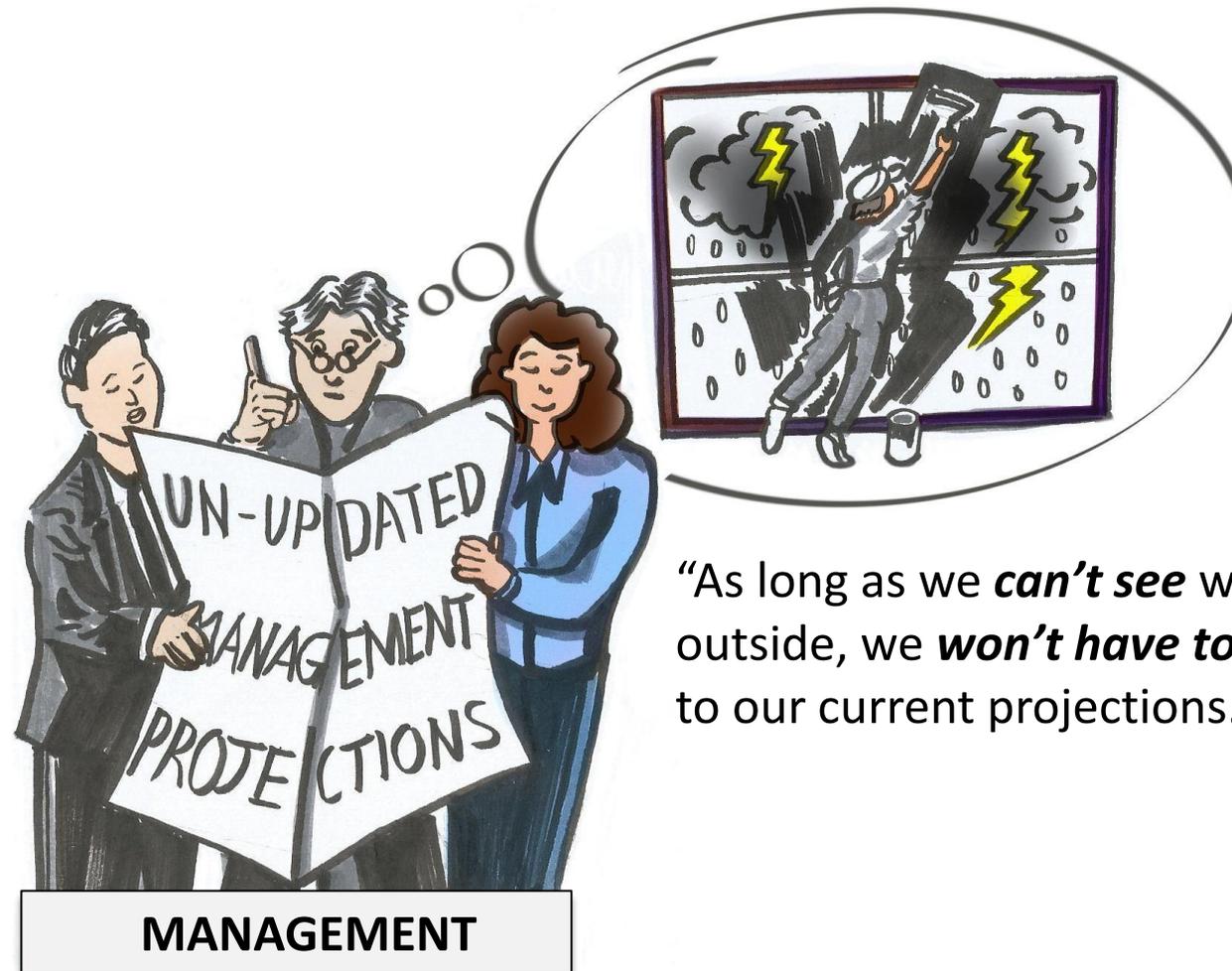
- 1. What SGX expects of issuers' disclosures during Covid-19**  
(22 April 2020)
- 2. What SGX expects of financial reports amid Covid-19**  
(27 July 2020)

# Disclosures In Uncertain Times

## Disclosure-Based Regime

- ✓ Importance of timely and accurate business updates
- ✓ Managing investors' expectations
- ✗ Generic statements on the current economic outlook
- ✗ No explanation on specific areas of impact on the Company's operations and financials

# Disclosures In Uncertain Times



“As long as we *can't see* what's happening outside, we *won't have to* make any changes to our current projections.”

# Disclosures In Uncertain Times

## What is critical for investors to trade on an informed basis?

- Earnings guidance
- Appropriateness of going concern assumptions
- Sensitive information – is the information material (price or trade sensitive)
- Impairments, valuations, cash flow forecasts and debt servicing abilities
- Cancellation of dividends

# Case Study

## Good Disclosure – Hospitality

**Company A** made specific disclosures relevant to its business and market conditions:

- % of US Covid-19 cases and its impact on hotel revenue PAR
- Occupancy rate in Hotels
- Explained to shareholders that this was consistent with market trend

✓ Set out its expectations of the market conditions in the coming month

✓ Action Plans to  - Reduce workforce  
- Preserve liquidity  
- Temporary suspension of operations (closure of hotels)  
- Identify new opportunities

# Case Study

## Observations – Hospitality

- ✘ **Company B** disclosed that there will be an impact on an asset's contribution to the Group's distributable income **but did not quantify** the specific impact on distributable income.
- ✘ **Company B** **did not disclose** whether it expected its financial position and business operations to be impacted by Covid-19, notwithstanding:
  - Uncertainties on liquidity
  - Material changes to capital expenditures (Capex) and operations

## Concerns

- **SGX queried Company B** on the % contribution of the affected properties to distributable income.
- **Company B eventually disclosed** that there were ***certain force majeure clauses*** that may be evoked and the **full impact of such measures cannot be quantified.**

# Valuations in Interim Financial Statements



## What the Audit Committee should consider:

- Question Management on the ***appropriateness of property valuations***, including consideration of any significant valuation uncertainties, assumptions or limitations.

# Case Study

## Good Disclosure – Property Development

**Company C** is in the business of Property Development and Property Investment.

- Due to the geographical spread of assets, **conducted external valuations** for properties it considered may have a ***risk of impairment loss at year end***.
- Focused impairment assessment on properties with 20% or less headroom to their last available valuations.

- ✓ Disclosed the **underlying cash flows** and **key assumptions** regarding projection of future cash flows and operation of the properties.
- ✓ Key assumptions included the expected rate of recovery in revenue, projected occupancy and average room rates, operational and maintenance expenditure profiles, discounts rates and capitalization rates

# Valuations in Interim Financial Statements



## In summary:

- Where adjustments to the valuation models are made, the key assumptions as well as Management's basis for selecting those assumptions must be disclosed.
- Illustrations may be used to forecast a potential impact a change in valuation may have on NAV, NTA or leverage ratio.
- In other jurisdictions, such as Hong Kong SAR, a listed issuer is expected to conduct a valuation for its interim report in accordance with the HKFRS, IFRS or CASBE accounting standards. **This is similarly the case in Singapore. SGX will be clarifying in our updated Listing Rules, that issuers must prepare their interim financial statements in accordance with the prescribed accounting standards.**

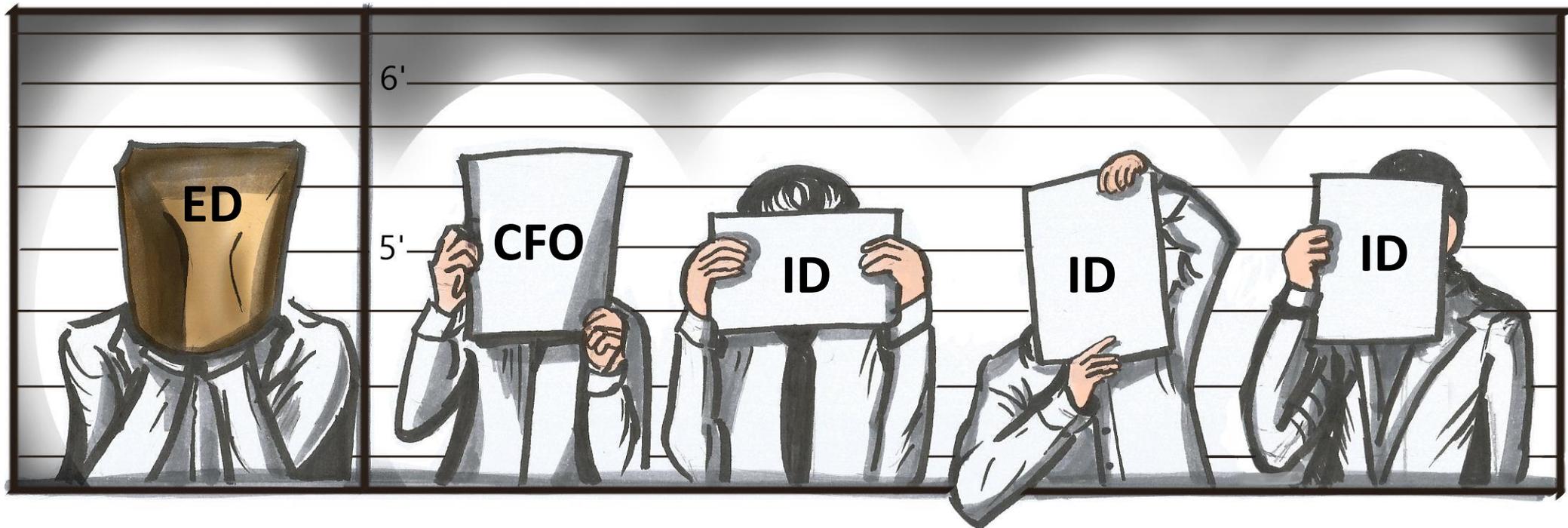
# Valuations in Interim Financial Statements



## In summary [cont'd]:

- Where valuations are required for financial reporting purposes, the valuations must comply with the relevant accounting standards, practice guidance and issuers should seek professional advice when in doubt.
- **On 4 Dec 2020, ACRA issued its Practice Guidance which discussed a director's duty in the fair value measurement of investment properties and financial instruments.** For instance, where the scope of valuation does not cover the assessment of assumptions made by Management, ***directors are expected to review those assumptions in detail and be comfortable with the assumptions made.***

# Directors / Executive Officers Under Investigation

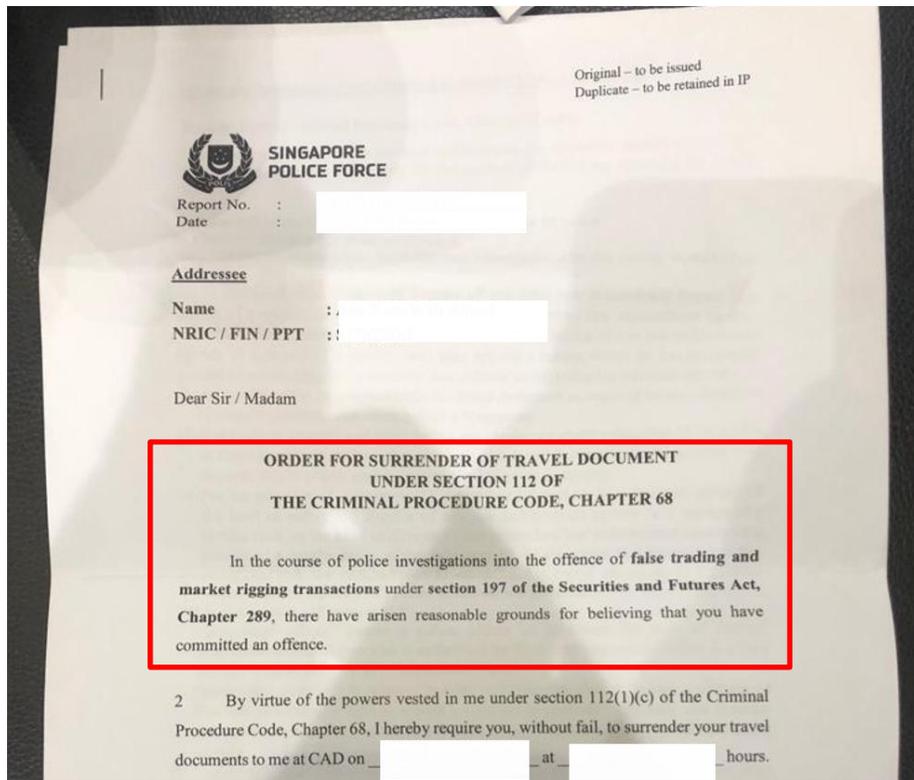


# Directors / Executive Officers Under Investigation



- **Listing Rule 720(1):** Listed issuers must ensure that *directors comply with character and integrity requirements* on a continuing basis.
- The only question you should be asking yourself as the NC and AC is *whether it is in the best interest of the company and the shareholders for the director to continue to be on the board while the investigation is ongoing.*

# Directors / Executive Officers Under Investigation



Example of Order Pursuant to the Criminal Procedure Code

## ORDER FOR SURRENDER OF TRAVEL DOCUMENT UNDER SECTION 112 OF THE CRIMINAL PROCEDURE CODE, CHAPTER 68

In the course of police investigations into the offence of false trading and market rigging transactions under section 197 of the Securities and Futures Act, Chapter 289, there have arisen reasonable grounds for believing that **you have committed an offence.**

**✘ Not Routine**      **✘ Not Procedural**

# Directors / Executive Officers Under Investigation

## ■ What Boards should consider:

	Issuers' boards should <b>ask the right questions</b> e.g. does the offence relate to the issuer, and <b>announce adequate information</b> for shareholders to make informed decisions	
	Issuers should put in place <b>internal controls to ensure material information is escalated expediently to the Board and board committees</b> – <b>trading to be halted if necessary</b>	
	<b>The Nominating Committee has responsibility to provide assessment on the suitability of a director</b> ; assessment should consider, amongst other things, character and integrity	

# Case Study

## Observations

**Company D** announced that its executive chairman was being held in criminal custody in the People's Republic of China. The Board was unable to ascertain the reasons or circumstances leading to the criminal custody, despite making inquiries to the relevant regulatory authority.

- ✓ A statement was given in the announcement that the Company's business operations have not been materially affected.
- ✗ The announcement was **released 4 days after** the Board became aware that the executive chairman was held in criminal custody.
- ✗ It was **1 month later** that the Board made an assessment on whether the executive chairman's duties and powers should be suspended.

# Directors / Executive Officers Under Investigation

1. Director Under Investigation



2. Disclosure to All Boards



Affected Board



Company A

3. Nominating Committee to Assess Suitability



All Other Boards



Company B



Company C



Company D

Transparency

# Disclosure Obligations

- Nominating Committee should assess / Issuer should disclose (if applicable):

1

Was the Company **served with an order** to produce documents or devices?

3

Was any director / EO **interviewed**?

5

Did any director / EO **surrender his passports** to the authorities?

2

Was any director / EO **arrested**, with or without bail?

4

Was any director / EO **formally charged**?

6

Were there **conditions or restrictions imposed** by the authorities?

# Disclosure Obligations

- If the answer to any of the factors in the previous slide is “Yes”, please also disclose:

7

**The nature of the offence**

as stated in the bail form or order

9

**Details** of conditions or restrictions imposed

11

**NC's assessment** on  
(i) **suitability** of director / EO  
ii) **continued compliance** with LR720(1)  
***with bases clearly stated***

8

**Name** of the director / EO and **position and role** with the Company

10

Statement on affected **personnel's continued obligation to provide updates**

12

Board's statement that it will **continue to monitor and re-assess** accordingly

# Nominating Committee's Assessment

## Considerations in Assessing Suitability *To be Disclosed (Where Applicable)*

Whether **conflicts of interest** will arise if the director / EO remains.



The **impact on the company's reputation** if the director / EO remains.



If there are **sufficient checks and balances** within the board



Whether the director / EO will **cause any "distraction"** by remaining while the investigation progresses.



If the director / EO will be **able to devote sufficient time and attention** to the Company.



Is the Company **reserving its rights against the director / EO for potential breaches of their contractual obligations or fiduciary duties**



# Nominating Committee's Assessment

- If the **Entire Board** is under investigation:
  - ✓ Appoint 1 or 2 ***new IDs*** to the Board to ***strengthen checks and balances***.
  - ✓ Appoint one of the ***incoming IDs as a lead ID***.
  - ✓ Seek assistance of ***professional search firms / SID to identify new IDs***.
  - ✓ The ***new IDs*** to form a ***special committee to oversee the investigative process*** and ensure that the company is cooperating fully.

# Case Study

## Observations

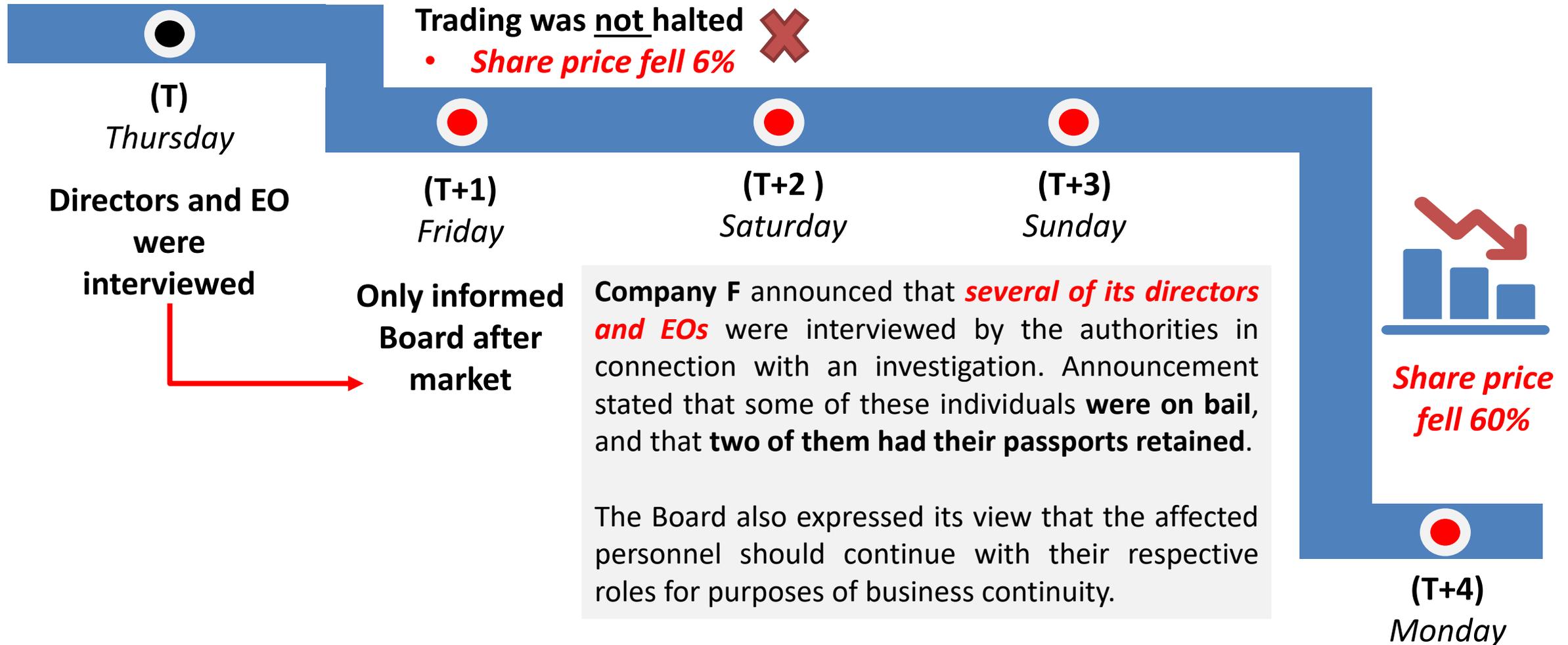
**Company E** announced that it had received notice to provide information in relation to an offence, and that a director had been asked to *assist* in an investigation.

- ✘ **The identity of the director, whether any conditions were imposed on him by the authorities, and the NC's assessment on the Director's suitability were not announced.**

## Concerns

- **SGX queried Company E.** It only identified the director and provided that the authorities had **impounded his passport**.
- The NC then placed the director on leave of absence and updated shareholders that operations were not affected.

# Case Study



# Case Study

## Observations

Company G received **letters of demand** for the recovery of certain debts. The amount due in each of the letters were material when compared to the Group's NAV.

**✘ No announcement was made.** Company G was of the view that *the likelihood of legal proceedings ensuing from the letters of demand was low.*

- The service or receipt of a letter of demand or the commencement of a lawsuit may require disclosure if the amount or action claimed has a material impact, **notwithstanding that the negotiations on the letter of demand may be ongoing or the outcome of the lawsuit is not yet known.**
- Materiality should be assessed based on the quantum of the amount owed by the issuer to the lender, and not based on the status of negotiation or likelihood of legal proceedings.
- Announcements should provide sufficient details to give clarity.

# Enhancements to Enforcement Framework



## Public Consultation on Enhancements to Enforcement Framework (6 August 2020)

- SGX RegCo to impose public sanctions.

SGX RegCo will refer the conduct of professionals which does not fulfill expected industry standards to the relevant industry bodies.

Thank You!