DATAPULSE TECHNOLOGY: RESPONSE TO MISLEADING AND MALICIOUS DOCUMENT

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It has come to my attention that a misleading and malicious document, which includes statements relating to what I have written and me personally, has been distributed to Datapulse shareholders. The writer(s) has chosen the cowardly approach of remaining anonymous.

I realise that this document may not only be aimed at misleading shareholders when they vote at the EGM on April 20, but to distract or discourage me from writing more about Datapulse. I urge minority shareholders of Datapulse not to be swayed and to turn out in force on April 20 to vote out the current directors and appoint the new directors. On my part, I have drafted a response which you can read via this link: http://governanceforstakeholders.com/wp-content/uploads/2018/03/response-to-anonymous-document-2.pdf.

GUIDE TO VOTING ON RESOLUTIONS AT EGM ON 20 APRIL 2018

Excerpts from an article "Is Datapulse Technology holding the EGM at the busiest time of the year?" by Professor Mak Yuen Teen published on February 15, 2018 in his publication series on Governance for Stakeholders at http://www.*governanceforstakeholders.com*

Given all that has happened, my view is that shareholders should instruct their proxies to vote against the diversification resolution proposed by the current board (in case SGX does not reject the proposed change in business, which it can under the rules) and vote for all the resolutions proposed by the requisitioning shareholders. The reasons should have been clear from the series of articles I have published. Here is a summary, with some additional information.

Why Mr Low Beng Tin should be removed

Updated with information from Why Low Beng Tin should be removed published on 29 March 2018 and can be found at:

http://governanceforstakeholders.com/2018/03/29/more-questions-about-the-suitability-of-low-beng-tin-as-a-director/

More questions about the suitability of Low Beng Tin as a director

I had previously written several articles where I made reference to the track record of Low Beng Tin, the chairman of Datapulse Technology, who is one of the directors proposed for removal by requisitioning shareholders at the EGM on April 20. I had explained why I support the removal of Mr Low as director and chairman (and the removal of the other directors).

For example, Mr Low made wrong disclosures about regulatory actions by SGX and MAS against China Yongsheng, where he was the lead independent director, when he was appointed to the boards of Datapulse, Fuji Offset Manufacturing and Lian Beng. He also provided the wrong answer to the question as to whether there had been a petition for winding-up against any company he had been a director of, for the relevant period covered in the announcement template, when he was appointed to the boards of Datapulse and Fuji Offset (it did not apply in the case of Lian Beng because he joined that board before the winding-up petition was filed).

Whether Mr Low himself made the incorrect disclosures or he relied on others to complete the appointment template for him is, in my view, irrelevant because as a director, he is ultimately responsible. This was made clear by SGX in the case involving Singapore Post (SingPost).

In that case, SingPost had made an incorrect disclosure that no director had an interest in a transaction. After it discovered the mistake, the company, with advice from an external lawyer, decided that no announcement to correct the error was necessary. This was not surfaced to the board. The company only issued the "clarification announcement", attributing it to an "administrative oversight", after I had pointed out the incorrect disclosure. SGX did not accept the explanation and reprimanded the company.

SGX said the following: "The board of a company is ultimately responsible for the announcements made by the company and must not abdicate its responsibility to any professionals especially where matters under consideration are not subjective but factual in nature…A company and its board must exercise due care in drafting, reviewing and approving SGXNET announcements. Any error must be promptly escalated to the board's attention for its deliberation and decision."

In this case, the incorrect disclosures relate to matters which are factual in nature. The responsibility for the incorrect disclosures, which relate to Mr Low personally, and not to the company, must rest with Mr Low. It would not be reasonable to expect the companies to do the kind of checking that I was doing about disclosures made by directors. The incorrect disclosures remained uncorrected for periods of up to more than two years. Further, when Mr Low was appointed to the Datapulse board, the board said that it was of the view that "Mr Low, being an independent director of several other listed companies, is well versed with listing compliance and corporate governance matters and will be able to contribute to the Board in his role". With such experience, he should have known the requirement to make accurate disclosures.

Given the reprimand meted out by SGX in the case of SingPost, one would expect that the multiple incorrect disclosures made by Mr Low would likewise attract sanction.

In my earlier articles, I also urged shareholders to consider Mr Low's track record as a director in the companies that he had been associated with. Other than Datapulse, the SGX-listed companies where he is currently a director are Cosmosteel, Lian Beng and Fuji Offset (he has resigned from China Yongsheng which had attracted the regulatory sanctions). Mr Low was also the founder of OEL Holdings, previously called Oakwell Engineering. Let me reiterate and expand on what has happened in these companies.

In the case of Cosmosteel, Mr Low has been a director since November 2005 and is its independent chairman. Cosmosteel entered the SGX watchlist in June 2017 due to the MTP criteria. In December 2017, it announced that it has made three consecutive years' of losses. Therefore, it is facing a potential mandatory delisting.

Mr Low joined Lian Beng's board as an independent director in July 2015, after two independent directors had resigned in a very public dispute with management/controlling shareholders over the remuneration of the executive directors. I published a commentary on the issues relating to the dispute ("Performance bonus may just be the tip of the iceberg," Business Times, August 25, 2015). Mr Low chairs the nominating and audit committees and is a member of the remuneration committee.

After Mr Low and another new independent director replaced the directors who resigned, Lian Beng's remuneration continued to be questioned by the Securities Investors Association (Singapore) (SIAS) in its Q&A on annual reports, which also asked questions on other areas. In the area of remuneration, in September 2016, SIAS asked why the remuneration of the directors had increased by 21 percent, from $9.78 million in 2015 to $11.86 million in 2016, even though the group's net profit had fallen by 20 percent and its profit attributable to shareholders had dropped by 5 percent. The disconnect between profit and remuneration needed explanation because bonus/profit-sharing constitutes a significant part of the remuneration of the executive directors. In September 2017, SIAS again asked several questions. On remuneration, this time it asked why the remuneration of the top eight key executives (excluding the CEO and directors) had only dropped by 1.3 percent when revenues and profit attributable to shareholders had dropped by 37 percent and 48 percent respectively. A number of family members of Lian Beng's controlling shareholder are among the eight key executives.

What was Lian Beng's responses to those questions? Nothing. It did not respond at all. Lian Beng is no paragon of corporate governance and communication with shareholders, and remuneration of its executive directors and key management remains a concern, after Mr Low joined as an independent director.

In the case of Fuji Offset, Mr Low joined the board on May 3, 2017, replacing another independent director who had resigned for "health reasons" that day. The controlling shareholder and chairman of Fuji Offset was listed as one of the top 20 shareholders in Datapulse's 2016 annual report, owning just over 1 percent of Datapulse's shares. In the 2017 annual report, his stake had increased to about 1.4 percent as of October 9, 2017. It is unclear if he was one of those who sold his shares to Ms Ng Siew Hong.

Fuji's latest unaudited full year results for the year ended December 31, 2017 shows a loss from continuing operations of $1.08 million, down from a profit of $69,000 in the previous year, while the loss including discontinued operations was $1.23 million, down from a profit of $29,000 the previous year. Tough times may be ahead there it seems. Since Mr Low only joined the board on May 3, 2017, it remains to be seen whether Mr Low would be able to help create shareholder value there.

However, perhaps the company that is most relevant in assessing Mr Low's performance track record is OEL Holdings. OEL, previously called Oakwell Engineering, is listed on Catalist. Mr Low was founder and director of OEL from September 1984 and became chairman and managing director in July 1992. He relinquished his chairman and managing director role in March 2016, became an executive director, before resigning from the board in October 2016.

I was only able to access the annual reports of Oakwell/OEL online from FY2011 onwards. Based on these, it appears that performance had a turn for the worse from FY2011, when its profit fell by nearly half from $3.7 million in FY2010 to $1.9 million in FY2011 and its cash flows from operating activities went from positive $34 million to negative $34 million. In FY2012, Oakwell reported a net loss of $29 million, although cash flows from operating activities returned to positive territory of $3 million.

In October 2013, Oakwell held an EGM to dispose of its distribution business and renamed itself as OEL Holdings. The distribution business that it sold made up the bulk of its business – the net asset value of the assets disposed was equal to 92.4 percent of the total net asset value of the group. The base consideration was $70 million.

What did OEL do after the disposal of the bulk of its business? In its 2014 annual report, it said "the Group continued seeking strategic opportunities to inject a new business that could generate and enhance long-term shareholder value." It attempted to diversify into the oil and gas business. Things went further downhill. The cash balance for the group fell from $24.5 million to $6.2 million between FY2013 and FY2014, then to $1.5 million in FY2015 and down to just $245,000 for FY2016. Between FY2014 and FY2016, the external auditor included an emphasis of matter highlighting material uncertainties that may cast doubt on the company's and group's ability to continue as a going concern, although it did not modify its opinion. In other words, rather than enhancing shareholder value, OEL was fighting for survival. On March 23, 2018, OEL announced that the auditor has now included a qualified opinion and a material uncertainty relating to going concern in its report for FY2017.

Therefore, Mr Low was chairman and managing director at OEL as its performance deteriorated markedly. At the same time, he was serving on several other boards as an independent director, most of which have corporate governance or performance issues.

Datapulse shareholders should reflect on the following: Do they have any confidence that Mr Low would be able to lead the Datapulse board in improving its corporate governance and increasing shareholder value, given his track record? The other three directors of Datapulse, including two independent directors, all with no prior experience as listed company directors and no background in the new business that Datapulse is diversifying into, will now be led by him as the company embarks on its diversification into new businesses. I would much rather have a different, more experienced and proven board leading Datapulse in any diversification strategy.

The current board has questioned the suitability of some of the proposed directors. It is rather ironic given the experience and track record of the current board, and with a chairman who could not even make the correct disclosures as required by the listing rules. Having said that, I had previously written that few directors would put themselves forward in the situation that Datapulse finds itself in, where requisitioning shareholders are trying to remove the existing directors and appoint new ones. It is too confrontational for most directors. Therefore, the proposed slate of directors may also not necessarily be what is best for the company going forward. But between the current board and the proposed slate, there is no comparison.

I believe if the requisitioning shareholders are successful in removing the current directors and appointing the proposed directors, the new directors should review the board composition to ensure that they have the best people possible to take the company forward. This may mean some of these newly appointed directors relinquishing their positions rather quickly to make way for a fully functional and effective board. They would then be truly acting in the best interest of the company and all shareholders.

Why the other directors should also be removed

The other two independent directors should also be removed. Ordinarily, I would not object to the appointment of independent directors who have no prior experience as directors of listed companies – which is the case for these two other directors – as long as they are individuals who have integrity and the appropriate skills and experience. Otherwise, we will end up just recycling the same directors across different companies. However, this is not an ordinary situation. These two individuals are not only business associates of the new controlling shareholder, Ng Siew Hong, but they participated in approving the hasty acquisition of Wayco Manufacturing, which is owned by a close business associate of Ms Ng. The acquisition is in substance an interested person transaction and was done without proper due diligence. I have extensively questioned its commercial merits in my articles.

The fact that the board has used every technicality it could find to delay the EGM requisitioned by shareholders, and that it is now considering holding the EGM only four months later and possibly during the peak AGM season, also suggests a lack of regard for the rights and interests of minority shareholders. Shareholders should not support the appointment or retention of directors who do not treat minority shareholders with respect.

Why the board's diversification plan should be rejected

The board's diversification plan should be rejected because it made a poor acquisition and the diversification plan seeks to build on this poor acquisition. Shareholders should not throw good money after bad. If the board has been so hasty in making the Wayco acquisition, how can shareholders be confident that it would not repeat this?

Why the resolution by the requisitioning shareholders to stop further diversification for now should be supported

Datapulse now has $90 million-plus in cash. A careful study should be undertaken to determine what is the best use for this cash. No one is arguing that Datapulse should just continue doing what it had been doing all these years as its business has clearly been disrupted. A study could determine the areas that Datapulse could diversify into in order to deliver shareholder value and sustainable performance. However, it is also possible that the best decision for shareholders is to sell the company as a going concern or even go through a voluntary liquidation and distribute the cash back to shareholders. Too often, companies diversify into areas that they have no competitive advantage in or where they do not have the necessary capabilities to succeed, leading to destruction of shareholder value – when a better decision would have been to return cash to shareholders.

Why the resolutions to appoint the new directors should be supported

The proposed directors are considered in their action. They are not asking shareholders to approve a hastily-concocted diversification plan of their own, but merely asking shareholders to appoint them so that they can ensure that a thorough study is first undertaken before any diversification plan is put to shareholders for approval.

Under the circumstances that the company is in, not many good candidates would want to put themselves forward. This is particularly so because the odds are stacked against them to begin with – given the 29 percent versus 16 percent votes that each side is assured of getting. They know there is a good chance that they will lose if the other minority shareholders do not support them. I am pleased that they have stepped forward. At least, shareholders get to vote on their appointment. The same cannot be said about the current directors.

If they succeed, I would certainly urge them to review the board composition again to ensure that the best directors are appointed to take the company forward.

Biography of Associate Professor Mak Yuen Teen

MAK YUEN TEEN is an associate professor of accounting at the NUS Business School, National University of Singapore, where he teaches corporate governance. He holds first class honours, master and PhD degrees in accounting and finance and is a fellow of CPA Australia. He was the founder and director of the first corporate governance centre in Singapore at the National University of Singapore. Over the past 10 years, Prof Mak has also held positions of Asia-Pacific or Singapore head of research in major consulting firms.

Prof Mak has served on key corporate governance committees in Singapore developing and revising codes of corporate governance for listed companies and not-for-profit organisations. He has also been involved in developing several corporate governance ratings and scorecards and has chaired judging panels for corporate governance-related awards in Singapore and the region.

Prof Mak is an active researcher, commentator, speaker and advocate on corporate governance. He has published reports on topics such as corporate governance of banks and insurance companies, board diversity, governance of company groups, annual general meetings, and executive and director remuneration. He is regularly engaged by regulators, companies and other organisations to teach/facilitate workshops for directors, regulators and other industry professionals in Singapore and the region, and has also led governance reviews for listed companies and not-for-profit organisations.

Prof Mak has served on boards of several large not-for-profit organisations in Singapore, including as board chairman, and on audit committees of large not-for-profit organisations in Singapore and in UN funds based in New York. He also served as a member of the Governing Council of the Singapore Institute of Directors from 2000 to 2005.

In 2014, he received the Corporate Governance Excellence Award from the Securities Investors Association (Singapore) for his contributions to corporate governance in Singapore, becoming only the second individual to receive this award. In 2015, he received the Excellence in Corporate Governance Award from the Minority Shareholders Watchdog Group in Malaysia for his contributions to corporate governance in the region. That same year, he was recognised by the Singapore Institute of Directors as a Corporate Governance Pioneer in Singapore.

For more information on Prof Mak's work, visit www.governanceforstakeholders.com.