

BT Journalist Kenneth Lim had written an interesting & thought provoking article in The Business Times today (31st Aug 2022) about the need to seek recourse for shareholders who bear the brunt of wrongdoings of Malfeasant Companies.

Worth a read & also hopefully motivate MAS to act with some urgency to raise the level of Investor Protection thereby enhancing market vibrancy of our Capital Markets. 🇸🇬🇵🇸

HOCK LOCK SIEW

## It's fine to fine Noble, but maybe nobler to pass it on



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SHAREHOLDERS of Noble Group who lost money because of the commodities company's misleading disclosures may find little solace in justice, even after investigations led to penalties on the company and its former directors and auditors.

Without practical mechanisms that help victims of financial market malfeasance recover their losses, those investors can only lick their wounds and hope to do better next time – if they were not already wiped out the first time.

Singapore needs to create injury compensation avenues for such victims. Doing so improves equity in our financial system, because large numbers of retail investors are often hurt when wrongdoing occurs in a publicly listed company. It also de-risks investments in

our financial markets, since investors have a better chance of recovering some losses when they are misled.

On Aug 24, the Monetary Authority of Singapore (MAS), the Accounting and Corporate Regulatory Authority (Acra) and the Singapore Police Force's Commercial Affairs Department (CAD) jointly announced the conclusion of joint investigations into Noble and its wholly owned subsidiary, Noble Resources International.

In addition to sanctions doled out to former Noble directors and auditors, MAS imposed a civil penalty of S\$12.6 million on Noble Group for publishing misleading information in its financial statements – stating that publication of those statements from 2016 to 2018 “were likely to have induced the sale or purchase by investors” of Noble’s securities listed on the Singapore Exchange.

The relevant authorities got their sanctions against responsible parties. MAS got its fine. Those “likely” investors whose trades in Noble shares were induced by the misleading statements? Not so much.

One of the biggest obstacles to recovery for victims of stock mar-

ket shenanigans is the difficulty of pursuing class-action lawsuits in Singapore. Changing that would require fundamental changes to Singapore’s judicial system, which has dimmed the prospects for class actions to provide the way forward.

But there are civil-action mechanisms that might provide a work-around. In the United States, the Securities and Exchange Commission establishes Fair Funds to distribute disgorgements and penalties to defrauded investors. Before the Fair Fund mechanism was established by the Sarbanes-Oxley Act in 2002, civil penalties went straight into the US Treasury’s coffers and stayed there.

With the Fair Funds mechanism, the SEC deposits cash it recovers from wrongful profits or monetary penalties from a wrongdoer. The administrator of the Fair Fund then assesses claims from defrauded investors and disburses money from the Fair Fund accordingly, similar to how disbursements and claims in a class action are handled. According to Institutional Shareholder Services, Fair Funds have returned about US\$50 billion to injured shareholders in the past decade.



Investors hurt by Noble Group’s misleading disclosures have no relief in Singapore at the moment. PHOTO: BLOOMBERG

There are aspects of the Fair Funds that do not suit Singapore’s circumstances, including often being based on settled class-action lawsuits. But there are also elements that can apply to Singapore. The first is the use of the finan-

cial market regulator, which has investigation and sanctioning powers, to determine liability as well as to recover money from responsible parties, whether these are in the form of disgorgements or penalties. MAS already does

that to a certain extent, as seen from the S\$12.6 million fine.

The second element is the creation of a civil route through which recovered monies can be disbursed to injured parties. This would serve as a practical alternative to class actions.

Just as with class actions, there should be no expectation of full recovery of losses. Still, something is better than nothing. That bit of relief could help ease public frustration about the pace of investigations into potential wrongdoing. If hurt investors are more likely to recover some money because of a thorough investigation, they are more likely to be patient when complex cases require more time – which would ease the pressure on MAS, Acra and CAD.

In cases such as Noble’s, investigators have already established wrongdoing and liability. There is a strong likelihood that the errant actions led to trades that may have resulted in losses. And if MAS can collect its fine, there would also be recovery from the wrongdoers. The pieces all seem to be in place. Why not return that money to those who were hurt? What would MAS do with the fines anyway?