Throughout the past quarter-century, China has recorded remarkable levels of economic growth. China’s development, however, has left an unexpected mark on the global financial system: Chinese companies listed on other countries’ exchanges are increasingly facing serious allegations of securities fraud around the world. One significant casualty of this phenomenon is Singapore, a city-state and developing financial center in Southeast Asia. After betting heavily on Chinese stock as a growth engine for the Republic’s own burgeoning financial sector, Singapore’s reputation for regulatory prowess began to deteriorate amid repeated instances in which Chinese companies defrauded Singaporean investors. Local authorities face myriad incentives—chief among which are China’s economic muscle and the Singaporean government’s focus on economic development—to avoid prosecuting Chinese companies in Singapore. Yet the financial risks and collective action problems inherent to Singaporean securities litigation impede investors’ own private enforcement efforts. As a result, Chinese companies listed in Singapore are inadequately deterred from continuing to commit securities fraud. This Note begins by detailing the state of securities law enforcement in Singapore, and continues on to analyze the occurrence of Chinese fraud and the causes of Singa-
porean regulatory forbearance. In light of this discussion, it considers a number of potential reforms to the Singaporean securities framework, ultimately recommending a combination of procedural and institutional measures to patch the “deterrence gap” that Chinese firms in Singapore have exploited to the detriment of the city-state and its investing public.

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INTRODUCTION

Singapore is widely recognized among emerging economies
for the effectiveness of its financial regulatory regime. For over a
decade, the country has ranked at or near the top of both Transpare-
cy International’s Corruption Perceptions Index and the Heritage

Since 2008, however, numerous scandals involving Chinese companies listed on the Singapore Exchange have called into question Singapore’s reputation for effective financial regulation.


2. See, e.g., Amar Gill et al., CG Watch 2010: Corporate Governance in Asia, CLSA ASIA-PACIFIC MARKETS, 98 (2010) (ranking and assessing Singapore’s corporate governance framework and describing recent developments in Singaporean corporate law). See also infra Part I.A.


4. CURTIS J. MILHAUPT & KATHARINA PISTOR, LAW & CAPITALISM 145 (2008). See, e.g., Rafael La Porta et al., Law and Finance, 106 J. OF POL. ECON. 1113, 1142 (1998) (assigning country scores based on the rule of law in relation to finance). Cf. id. at 1116 (“Common-law countries give both shareholders and creditors—relatively speaking—the strongest, and French-civil-law countries the weakest, protection.”); Rafael La Porta et al., Legal Determinants of External Finance, 52 J. FIN. 1131, 1149 (1997) (“Because a good legal environment protects the potential financiers against expropriation by entrepreneurs, it raises their willingness to surrender funds in exchange for securities, and hence expands the scope of capital markets.”). But cf. Paul G. Mahoney, The Common Law and Economic Growth: Hayek Might Be Right, 30 J. LEGAL STUD. 503, 523 (arguing that the correlation between common law and growth is a result of different philosophies generally, but not universally, found in common law countries rather than discrete legal mechanisms inherent to the common law tradition); Daniel Berkowitz et al., Economic Development, Legality, and the Transplant Effect, 47 EUR. ECON. R. 165, 168–74 (arguing that legal origins do not influence the effectiveness of legal institutions); MILHAUPT & PISTOR, supra, at 22–23 (“[I]n order for law to perform any useful function in support of markets it must fit local conditions and thus continuously evolve in tandem with economic, social, and political developments . . . [E]conomics literature implicitly considers only the ‘supply’ of law in a given society, completely neglecting the role of demand.”).

5. Kirsty Green, Where the S-Chips Fall, WALL ST. J., (Mar. 10, 2009), http://online.wsj.com/article/SB123668027115082001.html (suggesting that Singaporean regulators have not gone far enough in regulating Chinese companies listed on SGX).
Forced sales, accounting irregularities and cash-flow problems among Chinese issuers have pushed critics to call for increased scrutiny on the part of the Singaporean government. Yet good relations with China are imperative to Singapore’s economic health, creating an incentive to forbear in the regulation of Chinese companies. As a result, Singaporean authorities have developed a reputation for collusive, light-touch regulation where China is concerned.

Singapore must take action to combat this perception. With continuing scandals marring the Republic’s investment landscape, investors have sold their stakes in Singaporean listings and abandoned the Singapore Exchange. Moreover, competent and transparent financial regulation has become increasingly important as investors worldwide raise concerns that markets are “rigged against retail investors” and “run by insiders for insiders.” Indeed, Singapore will not be able to maintain its viability as a financial center—or sustain continued economic development—unless its government can institute reforms that end forbearance.

This Note argues that Singapore should draft a statutory securities fraud class action and establish a private, nonprofit securities enforcement organization in order to better deter securities fraud among Singapore-listed Chinese companies. Part I discusses Singapore’s present securities regulatory framework and the private en-
enforcement options available to shareholders. Part II describes the conflicts of interest that encourage Singaporean authorities to forbear in the regulation of Chinese issuers, as well as the serious risks and collective action problems that prevent private litigation from serving as a backstop to public enforcement. Finally, Part III explores potential remedies to the problem of forbearance, ultimately arguing for the enactment of a statutory securities class action and the establishment of a nonprofit enforcement organization. These steps, respectively, would eliminate the high *ex ante* risk that potential securities litigants face in Singapore and would mitigate the collective action problems that investors encounter when they wish to enforce their rights.\(^\text{12}\)

Commentators have recognized that private rights of action are potent tools that can fill gaps in public enforcement frameworks and bolster the forces that deter fraud in the capital markets.\(^\text{13}\) Moreover, such measures have proven feasible elsewhere in Asia. Korea, for example, instituted a statutory securities class action without suffering adverse consequences.\(^\text{14}\) Japan, Korea and Taiwan each established nonprofit enforcement agents to improve investors’ ability to police securities fraud.\(^\text{15}\) Given these triumphs, targeted reform to strengthen private enforcement could work well to close the deterrence gap that benefits Chinese issuers in Singapore. By ensuring accountability among Chinese companies, such steps would reduce securities fraud, bring stability to the Singapore Exchange and bolster the Republic’s efforts at continued economic development.\(^\text{16}\)

\(^{12}\) See *infra* Part III.C.

\(^{13}\) Merritt B. Fox, *Why Civil Liability for Disclosure Violations When Issuers Do Not Trade?*, 2009 Wis. L. Rev. 297, 328 (2009) (“Civil liability . . . provides resources in cases where . . . the responsible governmental agency does not act . . . . [P]rivate enforcement can enhance the ‘rule of law,’ something that might be particularly important in countries where government administrators are prone . . . to the politicized application of justice, but where the judiciary is . . . less subject to such pressures.”).


\(^{15}\) See sources cited *supra* note 14.

\(^{16}\) See *infra* Part III.C. See, e.g., Milhaupt, *supra* note 14, at 175–82 (discussing nonprofit enforcement in Japan, Korea and Taiwan).
I. SEcurities Law and Enforcement in Singapore

A variety of sources expound corporate law in Singapore. The Companies Act sets out most of the country’s rules of corporate governance. The contractual listing rules of the Singapore Exchange (SGX) govern the conduct of listed companies. The Securities and Futures Act, however, is most pertinent to the present discussion: it defines securities fraud and governs all dealings in securities. Those who contravene the Securities and Futures Act may face three types of consequences: criminal sanctions, publicly enforced civil penalties and private civil liability.

The following lays out Singapore’s securities regulation model. Section A presents an overview of Singapore’s rules on securities fraud and the potential criminal penalties for contravening the Securities and Futures Act. Section B examines Singapore’s public civil enforcement mechanisms. Section C describes the Republic’s private civil enforcement mechanisms, including analysis of Singapore’s civil procedure framework and group litigation mechanisms. Finally, Section D discusses shareholder activism in Singapore.

A. Securities Fraud and Criminal Liability

Prohibitions on fraudulent conduct underpin Singaporean securities law. The Securities and Futures Act prohibits insider trading, defined as any trade in which an insider knowingly “possesses information that is not generally available” to the public but, if made available, would have a material effect on the price of the securities. The statute also defines, at length, a number of additional of-

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17. Companies Act, 2006, c. 50, § 2 (Sing.) (listing in full the titles of the provisions of the Act).


19. Securities and Futures Act, 2006, c. 289, §§ 197–201 (Sing.).

20. Id. §§ 204, 221, 232, 234 (setting forth penalties for securities fraud).


22. Id. § 219 (defining insider trading). The Securities and Futures Act also provides exceptions for dealings involving a collective investment scheme, for underwriters, for purchases pursuant to legal requirements and for individuals acting with knowledge of their
fenses. Such offenses include false trading and market rigging, market manipulation, dissemination of misleading information, fraudulently inducing persons to deal in securities and employment of manipulative and deceptive devices.  

Sections 221 and 204 of the Securities and Futures Act set forth the criminal penalties, respectively, for breach of the statute’s insider trading provisions and for breach of its other fraud provisions. For any form of securities fraud, a natural person faces public prosecution resulting in fines of up to S$250,000 or a maximum of seven years’ imprisonment. In cases of insider trading, a convicted corporation similarly faces fines of up to S$500,000. A company officer is subject to prosecution if and when his company contravenes the statute “with the consent or connivance of, or [due] to any neglect on the part of” the officer in question. Offenders are also subject to publicly enforced civil penalties and private civil liability, discussed below. Authorities may not, however, bring criminal charges against offenders who have already faced publicly enforced civil penalties.
B. Public Securities Enforcement and Civil Penalties

The Singapore Exchange (SGX) and the Monetary Authority of Singapore (MAS) may enforce Singapore’s securities rules and regulations in civil actions. SGX is responsible for regulating listed companies and for enforcing its contractual listing rules. MAS, Singapore’s central bank, bears primary responsibility for enforcing the Securities and Futures Act through civil litigation. MAS is also responsible for the regulation of SGX, in the latter’s capacities as both a bourse and a listed company. This section will consider each regulator’s role in turn, focusing first on SGX, which regulates listed companies’ day-to-day securities-related conduct, and then on MAS, Singapore’s ultimate financial authority.

1. The Singapore Exchange Regulates Issuers’ Day-to-Day Securities-Related Conduct

SGX is the stock market’s primary, “front-line” regulator. In addition to traditional supervisory functions—including the admission of issuers and risk management—SGX has set forth a collection of listing rules, including disclosure requirements. Listed companies must comply with both the rules themselves and the rules’ “spirit, intention and purpose.” SGX may also impose additional requirements or waive compliance where it sees fit. Breach of the rules does not constitute a criminal offense, but the rules are “subject to the approval of MAS” and “can be enforced by court order,” endowing them with a “quasi-statutory status.”

SGX has instituted a number of enforcement mechanisms. First, it employs a “real-time market surveillance system” to monitor

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31. *Id.* § 232 (granting “the Authority” the power to bring an action in court for a civil penalty).


33. Tjio, *supra* note 22, at 608.

34. *Id.* (delineating the regulatory functions of SGX).

35. SGX, *supra* note 18, § 105.

36. *Id.* §§ 106–07.

the market for unusual trading activity, for which SGX can hold companies accountable.\textsuperscript{38} Second, it may place a failing company on its “watch-list,” which requires the company to notify the market of such placement and submit quarterly financial updates.\textsuperscript{39} Most importantly, SGX may suspend trading of or delist a class of securities when an issuer contravenes listing rules or when such sanctions are “necessary or expedient in the interest of maintaining a fair, orderly and transparent market.”\textsuperscript{40} In essence, SGX monitors\textsuperscript{41} and governs issuers’ day-to-day securities-related conduct.

2. The Monetary Authority of Singapore Holds Ultimate Regulatory Jurisdiction

MAS also plays a substantial part in Singapore’s securities regulation framework. In addition to its role as Singapore’s central bank, MAS possesses “general powers to make regulations and issue directions to the SGX” and can require both SGX and individuals to disclose information related to securities dealings.\textsuperscript{42} MAS further administers the licensing of securities market participants and is responsible for collecting companies’ statutory annual reports.\textsuperscript{43}

MAS “seldom intervenes” in the day-to-day conduct of listed companies, but may pursue civil penalties in court and settle cases outside of court for contravention of the Securities and Futures Act.\textsuperscript{44} These actions complement criminal enforcement, and do not engender criminal convictions or penalties.\textsuperscript{45} They are considered under a preponderance-of-the-evidence standard.\textsuperscript{46} If the court finds that an individual has violated the statute, it may prescribe a civil penalty of up to three times the amount of that person’s profit gained or loss

\textsuperscript{38} SGX, supra note 18, Practice Note 7.2, §§ 3–4.
\textsuperscript{39} Id. §§ 1313.
\textsuperscript{40} Id. §§ 1303, 1305.
\textsuperscript{41} But cf. Tjio, supra note 22, at 608 (“[S]ince 2003, the MAS has carried out the inspection of SGX member firms pursuant to an arrangement in which SGX pays MAS S$2.3 million a year.”).
\textsuperscript{42} Loke & Baey, supra note 32.
\textsuperscript{43} Id.
\textsuperscript{44} Woon, supra note 37, at 735; Securities and Futures Act, 2006, c. 289, § 232(1), (5) (Sing.).
\textsuperscript{45} Securities and Futures Act, 2006, c. 289, § 232(1) (Sing.).
\textsuperscript{46} Tan Lay Hong et al., Corporate Governance of Listed Companies in Singapore 214 (2006).
avoided, with a minimum penalty of S$50,000\textsuperscript{47} for natural persons and S$100,000\textsuperscript{48} for corporations.\textsuperscript{49} Where there was no profit or loss avoided, the court can prescribe a civil penalty “of a sum not less than [S]S$50,000\textsuperscript{50} and not more than [S]S$2 million.”\textsuperscript{51} In such cases, courts use a seven-factor test to determine the amount of the penalty.\textsuperscript{52} Thus, as both a rulemaker and a civil prosecutor, MAS is the entity to which all market participants ultimately answer.

C. Private Securities Enforcement and Civil Liability

Individual investors may also bring civil actions to prosecute misconduct under the Securities and Futures Act. A plaintiff must prove that he dealt in the securities in question “contemporaneously with the contravention” and that he “suffered a loss” between the actual price of the securities and their likely price absent the contravention; plaintiffs can only collect damages to the extent of their own losses, up to a maximum amount of the defendant’s gain realized or loss avoided.\textsuperscript{53} These restrictions on damages are considerably more prohibitive than those that govern MAS enforcement actions.\textsuperscript{54} Unlike cases involving a MAS-enforced civil penalty, however, plaintiffs may bring civil actions where the offender in question has already faced a criminal penalty.\textsuperscript{55} Litigants may also pursue an action subsequent to a MAS civil enforcement action.\textsuperscript{56} To understand the framework within which these private litigants must operate, the first part of this section will consider key provisions of Singaporean civil procedure, and the second part will look specifically at Singapore’s

\textsuperscript{47} At the time of publication, roughly $40,000 (U.S.).
\textsuperscript{48} At the time of publication, roughly $80,000 (U.S.).
\textsuperscript{49} Securities and Futures Act, 2006, c. 289, § 232(2) (Sing.).
\textsuperscript{50} At the time of publication, roughly $40,000 (U.S.).
\textsuperscript{51} Securities and Futures Act, 2006, c. 289, § 232(3). At the time of publication, S$2 million was equal to roughly $1.6 million (U.S.).
\textsuperscript{52} TAN ET AL., supra note 46, at 216. The test’s factors include the offense’s adverse effect on the markets, the extent to which the behavior was deliberate or reckless, whether the person is an individual, the amount of profits accrued or loss avoided, conduct following the behavior of the concern, difficulty of detecting or enforcing against the activity in question and prior conduct.
\textsuperscript{53} Securities and Futures Act, 2006, c. 289, § 234 (Sing.).
\textsuperscript{54} Compare id. § 234(2) (Sing.) (delineating bounds of civil liability) with id. § 232(3) (delineating bounds of civil penalties).
\textsuperscript{55} Id. § 234.
\textsuperscript{56} Id.
group litigation framework.

1. Key Provisions of Singaporean Civil Procedure Create Both Risks and Benefits for Litigants

Singapore’s judicial system follows a common-law tradition of the English model. Despite its roots, however, the system is not as conducive to litigation as one might expect. Singapore’s provisions concerning litigation costs, discovery and the quality and efficiency of adjudication all affect the prospects of a given action’s success. While some of these qualities benefit litigants, others do not.

Litigation cost provisions represent such mixed prospects for litigants. Favorably, court fees, while substantial, are usually not prohibitive. Attorney fees may present litigants with a more serious obstacle. Singaporean lawyers are not permitted to work on a contingency basis, leaving shareholders to bear the full costs of their representation even if they lose. In fact, because Singapore follows the “loser pays” principle, litigants can expect to bear both parties’ expenses in the event of an unfavorable outcome: courts may allocate costs on any basis, but convention holds that an action’s loser bears both sides’ expenses. In addition to these risks, group litigants may find it difficult to share costs or otherwise amass the resources necessary to initiate a class action due to Singapore’s weak group litigation framework.

Singapore’s discovery rules also present a combination of favorable and unfavorable provisions. Investors are not entitled to on-demand review of a company’s finances prior to formal discovery.

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58. See infra Parts II.C.1–2, II.D.
59. Compare SINGAPORE CIVIL PROCEDURE 2007 1284–86 (GP Selvam et al. eds., 2007) (O. 90A, r. 1) (describing Singapore’s various litigation fee structures, which follow a flat fee system rather than the more onerous proportional fee system, in which court fees represent a certain percentage of damages sought), with Ok-Rial Song, Improving Corporate Governance Through Litigation: Derivative Suits and Class Actions in Korea, in TRANSFORMING CORPORATE GOVERNANCE IN EAST ASIA 91, 103, 106 (Hideki Kanda et al., eds. 2008) (discussing filing fees in Korea).
60. Legal Profession Act, 2009, c. 161, § 107(b) (Sing.).
61. See SINGAPORE CIVIL PROCEDURE, supra note 59, at 904 (O. 59, r. 3).
63. Chee Keong Low, A Road Map for Corporate Governance in East Asia, 25 NW. J.
Once litigation begins, however, shareholders may use discovery to inspect company documents. The court may alternatively order discovery, in the interest of justice, before the commencement of proceedings against a prospective party. During such pre-action discovery, “the plaintiff does not yet know whether he has a viable claim against the defendant, and the rule is there to assist him in his search for the answer.” In order to take advantage of these pre-action procedures, however, the plaintiff must “set out the substance of his claim to enable a potential defendant to know what the essence of the complaint was.”

In a positive development, the Singaporean judicial system has undertaken significant reforms to improve the quality and efficiency of adjudication. The average lifetime of a case fell from between five and six years in the 1980s to just over one year in 2000; by 1999, 95% of civil cases cleared within a year. These statistics are especially remarkable given case disposition rates elsewhere: in the United States, for example, about 35% of federal cases take longer than a year to resolve. Singapore also receives high marks for

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INT’L L. & BUS. 165, 175 (2004) ("Aggrieved shareholders also face a number of obstacles in their attempts to take directors of the company to court, the most evident being the restriction on their access to the books and records of the company."). See also Lan Luh Luh, Enforcement of Corporate Rights, in WALTER WOON ON COMPANY LAW 351, 388 (detailing investors’ problems in obtaining companies’ financial information).

64. Litigants, however, are not permitted to inspect company documents produced subsequent to the suit’s commencement. Woodhouse & Co. (Ltd.) v. Woodhouse (1914), 30 T.L.R. 559 (“[I]f people had a common interest in property, an opinion having regard to that property, paid for out of the common fund, i.e., company’s money or trust fund, was the common property of the shareholders, or shareholder cestuis que trust. But where the parties were sundered by litigation such an opinion . . . obtained by one of them . . . was privileged.”) (opinion of Phillimore, J.).

65. SINGAPORE CIVIL PROCEDURE, supra note 59, at 447 (O. 24, describing Singapore’s discovery framework).

66. Kuah Kok Kim v. Ernst & Young, [1996] 3 SLR(R) 485 (Sing.).

67. Id. (stating that the plaintiff need not set out his cause of action in great detail, but must at least offer “some evidence to show that they may have a cause of action and that the documents [sought] were likely to be relevant to an issue pertaining to the cause of action”). See also Jeffrey Pinsler, Disclosure of Evidence Before Trial: The Development of the Rules of Court and the Transformation of Policy, 1998 SING. J. LEGAL STUD. 15, 26–28 (1998) (explaining the basis of the Kuah Kok Kim decision).


the quality of its adjudication.\textsuperscript{70} Despite these benefits, however, shareholders wishing to undertake civil litigation still face the major risks outlined above.


The costs associated with private enforcement actions suggest that the opportunity to litigate as a group may prove important to retail investors. In smaller cases, plaintiffs can rely on Singapore’s procedures for joinder of parties. According to Singapore’s Rules of Court, joinder is appropriate when “some common question of law or fact would arise in all the actions” and when “all rights to relief claimed in the action . . . arise out of the same transaction or series of transactions.”\textsuperscript{71} Unless the court gives special authorization to litigate separately, plaintiffs who are jointly entitled to the relief in question must be party to the action.\textsuperscript{72} If any such party does not consent to joinder as a plaintiff, the court must, for administrative purposes, make that party a defendant.\textsuperscript{73} This roundabout procedure does not alter the substance of any party’s claim or legal posture, but merely ensures that all parties entitled to relief have no choice but to participate in the litigation.

Of greater interest is the Republic’s procedural framework for larger cases. The “representative action” is Singapore’s only group litigation mechanism, and is considered appropriate where the number of plaintiffs is too large “for them to be joined as actual parties.”\textsuperscript{74} According to the Rules of Court, “Where numerous persons have the same interest in any proceedings . . . the proceedings may be begun . . . by or against any one or more of them as representing all or as representing all except one or more of them.”\textsuperscript{75} Courts need not pre-approve the commencement of a representative action, but may terminate representative actions that do not meet the above

\textsuperscript{70}. See, e.g., World Bank, supra note 3.

\textsuperscript{71}. \textit{SINGAPORE CIVIL PROCEDURE}, supra note 59, at 174 (O. 15, r. 4.).

\textsuperscript{72}. \textit{Id.}

\textsuperscript{73}. \textit{Id.}


\textsuperscript{75}. \textit{SINGAPORE CIVIL PROCEDURE}, supra note 59, at 206–13 (O. 15, r. 12).
“Representative proceedings have no specific case management procedure,” but the court may “give administrative directions as it deems fit.” Representative actions do not involve set opt-out, notification or cost-sharing procedures. The court may appoint a representative even where potential members of the class cannot be found or ascertained. The representative plaintiff is not required to notify class members, but “may take whatever steps necessary to communicate with the other members of the class.” Finally, lead plaintiffs are responsible for either bearing their own costs or taking the initiative to arrange a cost-sharing procedure. Singapore’s legal framework thus embraces an especially ad hoc approach to group litigation: Singaporean shareholders wishing to commence a class action are technically empowered to do so, but may face a number of practical obstacles in the course of such a pursuit.

D. Alternatives to Securities Enforcement: Shareholder Activism

The court system is not shareholders’ only avenue of redress when they suspect fraud or other corporate malfeasance. While generally rare, shareholder activism has become an increasingly plausible undertaking in Singapore. In order to fully understand the Singaporean securities framework, one must therefore consider the rights that shareholders possess as alternatives to litigation. Below, the first part of this section will examine shareholders’ rights under Singaporean law. The second part of this section will then provide a brief overview of the shareholders’ rights movement in Singapore.

76. Id. at 298 (O. 18, r. 13).
77. Pinsler, supra note 74, at 297.
78. Compare id. at 296–300 (describing Singapore’s representative action framework) with FED. R. CIV. P. 23 (delineating American class action rules).
79. SINGAPORE CIVIL PROCEDURE, supra note 59, at 214–16 (O. 15, r. 13).
80. Pinsler, supra note 74, at 298.
81. See id. at 299–300. Despite the absence of formal procedures, “it is normal for the purpose of costs, the presentation of evidence, and other litigation issues that the members of the class are ascertained and invited to join the action.” Id. at 298. Singaporean plaintiffs have found increasingly creative ways of going about this process given the absence of reliable civil procedure rules regarding group litigation in Singapore. See, e.g., id. (describing one case in which plaintiffs used a web page to notify and inform class members).
82. See Gill, supra note 2, at 97–100 (describing shareholder activism in Singapore).
1. Shareholders Face Practical Limitations in Exercising Their Rights Under Singapore Law

Singaporean law affords shareholders voting rights, disclosure benefits and certain statutory rights of action. Shareholders are entitled to cast votes at annual general meetings, including votes to elect or recall company directors. Two or more shareholders holding at least 10% of a company’s shares may also call for additional meetings throughout the year. These rights, however, are of limited utility to shareholders who do not possess, individually or in concert, a controlling vote.

Complicating this state of affairs, corporate ownership in Singapore is highly concentrated. Roughly 45% of large Singaporean firms are government-owned. A disproportionate number of SGX-listed companies have a block-shareholder—usually either the government or a family—holding at least 15% of shares. Pyramid ownership structures, in which controlling shareholders in one “top” firm amass disproportionate control rights over that firm’s subsidiaries, are also common. Singapore’s high proportion of state-owned firms and the concentrated ownership structures within firms are both unique among free-market economies, and critics argue that, under these circumstances, voting rights exist “only in theory” for minority shareholders.

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83. Companies Act, 2006, c. 50, §§ 152, 216, 409A (Sing.) (laying out rules for removing directors, remedies in cases of oppression and injunctions, respectively).

84. Id. § 177(1) (“Two or more members holding not less than 10% of the total number of issued shares of the company (excluding treasury shares) . . . may call a meeting of the company.”).

85. Low, supra note 63, at 173–74, 185 (providing an overview of and recommendations regarding the rights of shareholders in East Asia).


87. Id. at 188–89.

88. TAN ET AL., supra note 46, at 24.

89. Conyon, supra note 86. In such “pyramid” structures, an individual controlling one firm would also exercise control over that firm’s subsidiaries, even if the firm owns only a minimal control stake in a given subsidiary. As an example, a 51% owner could exercise complete control over a subsidiary in which her firm holds a 51% stake; the owner, however, would personally hold only the risk associated with a stake of approximately 26% in the subsidiary.

90. TAN ET AL., supra note 46, at 24.

91. Low, supra note 63, at 173–74.
Corporate disclosure requirements are of similarly limited utility to shareholders. Investors are not entitled to on-demand review of companies’ accounts.\textsuperscript{92} Instead, companies have a statutory duty to report on their accounts annually.\textsuperscript{93} Under SGX listing rules, any company with a market capitalization in excess of S$75 million\textsuperscript{94} must also issue quarterly financial statements.\textsuperscript{95} SGX rules further require all listed companies to immediately announce any material price-sensitive information and certain changes in corporate policy.\textsuperscript{96} In practice, however, shareholders are “often kept in the dark” with regard to corporate affairs: “[s]ometimes, the first inkling that a member has that his company is in trouble comes when he reads in the newspapers that an investigation into its affairs has been commenced.”\textsuperscript{97}

Many additional forms of shareholder activism do not effectively require majority ownership of a given company. “Common tactics” include “initiating dialogues with the management and the board of directors, lobbying support from other shareholders through letter writing campaigns . . . and invoking the use of statutory rights under the legal regime to enforce their rights.”\textsuperscript{98} Such statutory rights include those enumerated in Section 216 of the Companies Act, which offers shareholders a number of judicial remedies where a board’s powers “are being exercised in a manner oppressive to one or more of the members . . . or in disregard of his or their interests as members,” or where a passed or proposed resolution discriminates against or is prejudicial toward minority shareholders.\textsuperscript{99} Yet those who invest in listed companies may face an uphill battle in convinc-

\textsuperscript{92} See sources cited supra note 63.

\textsuperscript{93} Companies Act, 2006, c. 50, § 201 (Sing.) (promulgating rules on the keeping and publication of company accounts).

\textsuperscript{94} At the time of publication, roughly $60 million (U.S.).

\textsuperscript{95} SGX, supra note 18, § 705 (requiring large, listed companies to issue quarterly financial statements).

\textsuperscript{96} Id. § 703–04 (promulgating disclosure rules for listed companies). See also id. § 706 (“In addition to the information required under Rule 705, the Exchange may require additional information to be disclosed.”).

\textsuperscript{97} Wee Meng Seng, Memorandum and Articles of Association, in WALTER WOON ON COMPANY LAW 125, 157 (Tan Cheng Han ed., 3d ed. 2009).

\textsuperscript{98} TAN ET AL., supra note 46, at 249.

\textsuperscript{99} Companies Act, 2006, c. 50, § 216 (Sing.) (empowering courts to void any transaction or resolution, “regulate the conduct of the affairs of the company in [the] future,” authorize a derivative action, compel the repurchase of an individual’s shares, compel the company to refund a portion of a share’s purchase price or wind up the company where a proposed course of action violates minority shareholder rights).
ing a court to restrain or sanction a company, given dissidents’ ability to sell their shares when they disagree with or disapprove of that company’s management.\textsuperscript{100}

2. The Shareholder Empowerment Movement in Singapore is Gaining Momentum

Given the narrow scope of minority shareholder rights, Singaporean investors have increasingly turned to shareholder activism in an effort to buttress those rights and improve corporate governance.\textsuperscript{101} One report, for example, observed that minority shareholders defeated two Chinese companies’ delisting proposals in 2009, and that minority shareholders have increasingly sought to nominate independent directors to companies’ boards.\textsuperscript{102} “Despite failing in their efforts,” the report notes, “minorities in Singapore are more active in this regard than their counterparts in most other Asian markets.”\textsuperscript{103}

The rise of the Securities Investors Association (Singapore) (SIAS) represents a particularly striking development in Singapore’s shareholder rights movement. SIAS is the “largest organized investor lobby group in Asia,” boasting a membership of nearly 70,000 retail investors.\textsuperscript{104} The stated mission of SIAS is “[t]o empower investors through education and information,” to “protect, safeguard and champion the rights of investors,” and “[t]o lead and advocate fair, open and transparency [sic] industry regulations, governance, policies and practices.”\textsuperscript{105} SIAS is perhaps most widely known for its range of investor education efforts, including a variety of courses and seminars open to the general public.\textsuperscript{106} In addition to these efforts,
SIAS advocates on behalf of minority shareholders, offers dispute resolution services for investors and their companies, conducts lobbying efforts and recognizes conscientious companies through various corporate governance honors and awards. The organization carries the “tacit support” of MAS and is “increasingly being consulted on major corporate transactions.” Notably, however, SIAS shuns litigation—which it believes to be ineffective and impolitic—as an advocacy technique.

Singaporean investors thus possess a wide range of rights in theory, but in practice face obstacles in controlling corporate management and litigating cases of securities fraud. These obstacles to private enforcement contribute to a gap in the deterrent power of Singapore’s securities law where authorities are not inclined to bring public enforcement actions. Considering this challenge in greater detail, Part II discusses the consequences of China’s entry into the Singaporean securities market and the securities fraud deterrence gap that has developed as a result of Singapore’s relationship with China.

II. CHINESE FRAUD AND SINGAPOREAN FOREBEARANCE

When Chinese companies list on SGX, securities enforcement falls to Singaporean authorities. This state of affairs represents the “outsourcing” of law enforcement, a concept that has garnered increasing attention in recent years. The “outsourcing,” or “bonding,” hypothesis holds that companies in countries with weak corporo-


107. See Leong, supra note 106, at Contents. Of course, one such award-winning company, China Aviation Oil, went on to collapse only a few years after receipt of its “Most Transparent Company” recognition. Stewart Hamilton & Jinxuan (Ann) Zhang, Doing Business with China: Avoiding the Pitfalls 75, 110–112 (2012).

108. Low, supra note 63, at 187.

109. See Leong, supra note 106, at 44 (describing the shareholder advocacy philosophy of SIAS).

110. See generally Loke & Baey, supra note 32, at 505–07, 510–12 (describing Singaporean securities regulation and requirements for foreign issuers).

rate governance frameworks can list on foreign exchanges, outsourcing enforcement by bonding themselves to stronger disclosure regimes and stricter governance standards abroad.\textsuperscript{112} This strategy helps firms to raise their share prices by signaling higher corporate governance standards to potential investors.\textsuperscript{113}

Nevertheless, Chinese companies wishing to bond themselves to Singaporean law may invert this hypothesis and import weaker, rather than stronger, corporate governance norms when they list on SGX.\textsuperscript{114} China’s economic power disincentivizes public enforcement in Singapore, where buoyant relations with China and continued economic growth are intimately related.\textsuperscript{115} As Curtis Milhaupt and Katharina Pistor observe, such regulatory forbearance could engender situations in which “minority investors are . . . victimized by a distant parent company operating according to very different rules.”\textsuperscript{116}

The following therefore argues that Singapore’s relationship with China and its centralized regulatory structure incentivize and facilitate Singapore’s forbearance in the regulation of Chinese companies, creating a gap in securities fraud deterrence. To better understand this hypothesis, Section A describes the fraud and mismanagement that disproportionately afflict Chinese issuers in Singapore. Section B goes on to analyze the Singaporean government’s incentive to forbear in enforcing securities law against Chinese companies. Section C considers the interaction of Singaporean governance norms and the forbearance incentive. Finally, Section D analyzes the obstacles that prevent private enforcement from serving as an adequate backstop when public regulation fails.

\textsuperscript{112} MILHAUPT \& PISTOR, supra note 4, at 134 (laying out and considering the potential inversion of the “outsourcing” hypothesis).

\textsuperscript{113} Id.

\textsuperscript{114} Id. See also Curtis J. Milhaupt, Introduction: The (Uneven, Incomplete, and Unpredictable) Transformation of Corporate Governance in East Asia, in TRANSFORMING CORPORATE GOVERNANCE IN EAST ASIA 1, 2 (Hideki Kanda et al. eds., 2008) (“The emergence of publicly held Chinese firms, and their listing on overseas stock exchanges, has highlighted serious corporate governance issues in the world’s fastest growing major economy.”).

\textsuperscript{115} MILHAUPT \& PISTOR, supra note 4, at 146 (describing Singapore’s economic interest in “maintaining good relations with China”).

\textsuperscript{116} Id. at 134.
A. Chinese Securities Fraud and Singaporean Response

Chinese companies listed on SGX, nicknamed “S-chips,” have proven persistently problematic. Several S-chips have forced shareholders to accept the consequences of forced sales, accounting irregularities and credit defaults.117 “The running trend of inquiry findings includes missing cash, questionable transactions and fraud, often with the use of fake bank statements.”118 Chinese steelmaker FerroChina, for instance, defaulted in 2008 “just weeks after announcing upbeat quarterly results.”119 China Printing & Dyeing, a textile company, offers another representative example: it “ceased operations” amid reports that its chief executive was “in police custody on suspicion of illegally raising funds and destruction of accounting documents.”120 In 2010, both firms delisted without making exit offers to their shareholders, an increasingly common phenomenon among S-chips.121

These cases do not constitute isolated incidents in Singapore.122 A string of scandals—including those involving FerroChina
and China Printing & Dyeing—came to light in 2008, and another “rash of accounting problems” broke in 2011. Of the roughly 150 S-chips listed on SGX in 2011, and excluding those “that had been delisted or that needed to be saved by a white knight,” nearly 10% had been “suspended due to governance or accounting issues.” To its credit, SGX has moved to better monitor Chinese firms. The bourse has also “taken a tougher line” on delistings, disallowing them where “the terms offered to minority shareholders were ‘neither fair nor reasonable under current market conditions.’” Nonetheless, authorities still face extraordinary incentives to forbear in enforcing regulations against Chinese issuers.

B. Singaporean Incentives to Forbear

Even as analysts across markets have suggested that Chinese companies are risky bets, demand for Chinese listings has persisted. Writing about SGX, one observer noted, “[t]he bourse’s long-running charm offensive in China means Chinese stocks . . . now make up around 20 percent of its 779 listed companies, up sharply from April 2004 when there were just 41 mainland firms listed on the exchange.” In fact, in July 2011, SGX installed a new senior vice-president “to help tap the initial public offering (IPO) business potentials of Chinese firms.” To explore this preoccupation with S-chips.


123. Eveline Danubrata & Charmian Kok, Accounting Woes Threaten Chinese Listings in Singapore, _REUTERS_ (July 1, 2011), http://www.reuters.com/article/2011/07/01/singapore-listings-idUSL3E7HU0AB20110701 (describing continuing S-chip problems even subsequent to Singaporean authorities’ unveiling of new measures meant to deter mismanagement and fraud among such companies).


125. Gill, _supra_ note 2, at 99 (“In response to a false-accounting disclosure crisis in late 2008 and early 2009 among [S-chips], the Exchange initiated an exercise to strengthen oversight of these firms and instructed auditors to conduct a detailed examination of bank balances.”). While the majority of S-chips passed a subsequent SGX inspection, roughly 20% were subject to adverse findings. Id.

126. _Id._


128. Danubrata & Kok, _supra_ note 123.

129. _SGX Names New Head for China IPO Business, CHINA DAILY_ (July 29, 2011),
Chinese listings and the incentive to forbear that regulators face, the first part of this section analyzes the potentially lucrative nature of such listings, the second part considers global competition between exchanges and the third part outlines Singapore’s dependence on its financial sector. Together, these factors incentivize Singapore’s forbearance in the regulation of Chinese companies listed on SGX.

1. Chinese Listings are Lucrative Assets for Securities Exchanges

Notwithstanding the corporate governance problems that many S-chips have faced, Chinese listings furnish a “tremendous opportunity for growth.”\(^{130}\) China’s economic growth rate is among the highest in the world, with gross domestic product having increased by at least 9%—and by as much as 14.2%—annually since 2002.\(^{131}\) Global portfolio investors have allocated increasing portions of their portfolios to China due to the country’s “strong economic fundamentals and market liquidity.”\(^{132}\) One especially notable investor seeking to expand its China portfolio is Temasek Holdings, the Singaporean government’s investment arm.\(^{133}\)

Securities exchanges can reap great profits from investors’ demand for Chinese securities. In 2010 and 2011, Hong Kong, “the only Chinese exchange fully open to foreign investors,” was the “leading global stock exchange for funds raised.”\(^{134}\) Hong Kong has been able to leverage its dealings in Chinese securities to attract foreign issuers “seeking a foothold in China.”\(^{135}\) Moreover, China consistently surpasses the United States as the “top venue” for IPOs;\(^{136}\)

\(^{130}\) Leu, supra note 122 (describing mismanagement and fraud among S-chips and discussing potential responses).


\(^{133}\) See MILHAUPT & PISTOR, supra note 4, at 146 (noting Temasek’s desire to invest in China); TEMASEK, BUILDING FOR TOMORROW: TEMASEK REVIEW 2011, at 9 (2011) (“China remained our largest investment destination.”).

\(^{134}\) ERNST & YOUNG, supra note 132, at 9–10.

\(^{135}\) Id. at 9.

it accounted for nearly half of global funds raised in 2010137 and for over a quarter of underwriters’ commissions in 2010 and 2011.138 In this light, Chinese companies offer impressive opportunities for market participants—and thus for the exchanges that collect issuers’ listing fees and process transactions—around the world.

2. The Singapore Exchange Faces Increasing Global Competition

Despite the economic opportunities that Chinese companies make available to investors, such opportunities are not evenly distributed across the world’s exchanges.139 Singapore is hardly the only aspiring financial center in Asia. Instead, the Republic must compete with long-established exchanges like Tokyo and Hong Kong as well as “newcomers” like Sydney, Shanghai and Seoul.140 Even Indonesia, Malaysia, Thailand and Taiwan have initiated plans to develop into financial centers.141 As they seek to gain the upper hand over one another, these aspirants must also compete with powerhouse bourses in New York and London.142 As one commentator remarked, “[t]he competition is real and fierce.”143

Singapore has thus found itself in the trenches of an increasingly intense battle to capture Chinese listings. To a unique degree,

137. ERNST & YOUNG, supra note 132, at 5.
139. See Congsheng Wu, Overseas Listing of Chinese Companies, in CHINA’S CAPITAL MARKETS: CHALLENGES FROM WTO MEMBERSHIP 249, 252–54 (Kam C. Chan et al. eds., 2007) (giving an overview of the overseas listing of Chinese companies).
140. Dosoung Choi et al., Competition Among Financial Centres in Asia-Pacific: Prospects, Benefits, Risks and Policy Challenges, in COMPETITION AMONG FINANCIAL CENTRES IN ASIA-PACIFIC: PROSPECTS, BENEFITS, RISKS AND POLICY CHALLENGES 3, 3 (Soogil Young et al. eds., 2009) (remarking on increasing competition between exchanges around the world).
142. David Hong, Comments by David Hong, in COMPETITION AMONG FINANCIAL CENTRES IN ASIA-PACIFIC: PROSPECTS, BENEFITS, RISKS AND POLICY CHALLENGES 299, 300 (Soogil Young et al. eds., 2009) (“Because of globalization, deregulation and liberalization, Asia’s exchanges face very strong competition from established financial centres like New York and London, which are attracting an increasing number of Asian companies to go to their capital markets.”).
143. Choi, supra note 140, at 4.
“[t]he future of the SGX depends on its ability to attract a constant flow of firms from mainland China.” Yet Singapore faces severe structural disadvantages in the competition for new listings, including its small domestic market and the comparatively low share prices that S-chips draw in Singapore. In spite of its efforts to attract Chinese firms, SGX has found itself shedding S-chips as Chinese issuers opt to list on exchanges that offer greater potential market capitalization. For these reasons, Singapore must attempt to attain lucrative Chinese listings through increasingly innovative and responsive policies.

3. Singapore’s Development is Closely Correlated with the Health of its Financial Sector

In recent years, Singaporean leaders have sought to shift from an export economy to a capital economy. The Republic previously

144. MILHAUPT & PISTOR, supra note 4, at 146 (discussing the China Aviation Oil episode in Singapore, in which Singaporean authorities undertook a relaxed course of enforcement).

145. Bennett, supra note 141, at 10. Hong Kong, where the market’s high level of liquidity has allowed Chinese companies to attract higher share prices, has become especially popular among Chinese companies. Yang, supra note 9. Chinese companies have also cited Hong Kong’s larger retail investor base and its better “investing culture” as reasons for delisting from SGX. Id.

146. Yang, supra note 9; Shirlene Tsui, SGX – A Prescription for Growth, WALL ST. J. BLOG (March 14, 2011, 1:30 PM), http://blogs.wsj.com/exchange/2011/03/14/sgx-prescription-for-growth (“What makes one equity exchange more attractive to an issuer than another? Liquidity is the largest factor... Hong Kong has... a total market value of $2.7 trillion and daily average trading of $8.8 billion last year. Singapore... has a market value of $840 billion and $1.5 billion in daily trading.”). Initially, Singapore sought to attract the smaller Chinese companies that larger exchanges, like Hong Kong, might ignore. These less advanced companies, however, brought less advanced corporate governance to Singapore. Wu, supra note 139, at 266 (“Nevertheless, Singapore has the niche for smaller companies. The average market capitalization of the China companies listed in Hong Kong is some ten times that of those listed in Singapore.”); Roseme, supra note 7, at 255.

147. Bennett, supra note 141, at 10 (“Singapore’s continued development as an international financial center depends, therefore, on its ability to offer the financial world significant advantages over any of the city-state’s larger regional rivals.”). Cf. Coffee, supra note 111, at 1761 (“[A] deeper regulatory competition over governance and disclosure philosophies thus underlies the surface cross-border competition among market centers for listings and trading volume. Competition need not, however, drive corporate governance in a single direction. If firms have different preferences, competition can result in greater specialization, rather than uniformity.”).

148. Bennett, supra note 141, at 7-10. See also Roseme, supra note 7, at 254-55 (“[T]here was much talk about ‘reinventing’ the economy into a ‘knowledge-based
employed a manufacturing-based economic strategy, but Singapore’s own economic development increased labor costs as neighboring countries began to offer adequately skilled, lower-wage workforces. Unable to sustain a suitably robust manufacturing sector, Singapore’s financial sector has become imperative to its continued development.

Complicating this situation, Singapore’s small domestic economy is “too limited to be a growth engine for [SGX].” Singapore’s financial sector therefore relies disproportionately on the ability of SGX to attract listings from abroad, and particularly from China. For these reasons, as well as those discussed above, the Singaporean government must studiously consider its policies’ potential effects on Chinese companies considering an SGX listing.

C. Singaporean Governance and the Incentive to Forbear

The Singaporean government not only faces an incentive to forbear, but also possesses both the wherewithal and the inclination to do so. The Republic’s centralized governance and its singular focus on economic development both facilitate forbearance. After analyzing both of these features of the Singaporean state, this section will further examine the case of China Aviation Oil (CAO), a well-documented instance of the Singaporean system at work.

Singaporean governance is particularly centralized, with the

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149. Bennett, supra note 141, at 3–7 (describing Singapore’s development as a financial center).

150. Id. at 7–9 (describing the role of the financial sector in Singapore’s continued economic development).

151. Roseme, supra note 7, at 255 (describing Singapore’s need to attract Chinese securities to its bourse); Bennett, supra note 141, at 10 (“If one of the countries in the region with a significantly larger domestic market was able to develop its own financial center that was truly Singapore’s equal, international financial institutions would have little reason to continue using Singapore as a regional base of operations.”).

152. See supra Part II.B.1–2.

153. See supra Part II.B. See also Bennett, supra note 141, at 2–10 (chronicling Singapore’s economic development and the role of financial services).

154. See generally HAMILTON & ZHANG, supra note 107, at 69–97 (chronicling the downfall of China Aviation Oil from a business perspective); MILHAUPT & PISTOR, supra note 4, at 125–48 (describing the China Aviation Oil episode from a law and development perspective); Roseme, supra note 7, at 249–71 (analyzing China’s influence on Singapore’s corporate governance through the lens of the China Aviation Oil episode).
Republic’s leaders exercising tight control over every aspect of the law. The system is “highly state-centered and state-administered,” with “[p]ersonal relationships and coordination of state- and private-sector interests” constituting “key components of the economic governance structure.” Connie Carter describes this model as one in which law does not primarily protect rights or restrain government actors, but rather plays the role of “mature policy.” In essence, Singaporean authorities see law as a “pragmatic tool” above all else, believing in “rule by law” rather than “rule of law.”

The Singaporean government relies on centralization to advance its “utter commitment” to economic development. Lee Kuan Yew, Singapore’s first Prime Minister, gave this principle a more direct summation: “Certain liberties in a developing nation sometimes have to be sacrificed for the sake of economic development and security . . . .” In this sense, “the system [exposes] individual shareholders to the risk that their financial interests might be sacrificed for whatever [the government] might deem to be the greater social good.”

The case of China Aviation Oil, the Singaporean subsidiary of a Chinese state-owned holding company, substantiates this concern. The events central to the CAO case unfolded between 2003 and 2005. When poor corporate governance resulted in heavy


156. MILHAUPT & PISTOR, supra note 4, at 146.

157. See CONNIE CARTER, EYES ON THE PRIZE: LAW AND ECONOMIC DEVELOPMENT IN SINGAPORE 162, 261–65 (2002) (explaining that law in Singapore is geared toward facilitating or legitimizing government policy and describing the political priorities of the Singaporean government).

158. Id. at 263 (emphasis in original).

159. Id. at 261, 265 ("The first lesson to be considered is the pervasiveness of the government’s strategic intent: that is, its determination and utter commitment to economic development . . . . [E]conomic development became an obsession."). See also Roseme, supra note 7, at 256–57, 260.

160. CARTER, supra note 157, at 262.

161. MILHAUPT & PISTOR, supra note 4, at 147.

162. See MILHAUPT & PISTOR, supra note 4, at 125–48, for a complete narrative of the CAO collapse.

163. MILHAUPT & PISTOR, supra note 4, at 125–28; Roseme, supra note 7, at 264.
trading losses and, ultimately, bankruptcy. CAO’s parent company arranged to trade a portion of its stake in CAO and to remit the sale’s proceeds to its failing subsidiary. While “not uncommon in China,” these actions were “sanctioned as insider trading and securities fraud in Singapore and many other developed market economies.”

Once the nature of the sale came to light, Singaporean authorities investigated; in 2005, the parent company admitted civil liability for insider trading. Singapore responded with a combination of criminal actions against CAO directors and officers and a civil penalty settlement with the parent. In other words, “with the exception of the important criminal prosecution of the executives involved, resolution of the financial crisis at CAO rested on a negotiated solution among governmental entities and affiliates from Singapore and China.” Critics have suggested that this course of action, while nominally severe, was in fact “rather mild.” Such a “light penalty,” which stood in “stark contrast to Singapore’s strong corporate governance reputation,” likely reflected Singaporean authorities’ conscious consideration of both a large state investment in CAO and Singapore’s “strong national interest in maintaining good relations with China.” In fact, it is unlikely that Singapore could have proceeded with criminal charges “without at least tacit approval from mainland China.”

164. Roseme, supra note 7, at 265–267.
165. Id. The strategy did not technically require disclosure of CAO’s finances. See Milhaup & Pistor, supra note 4, at 128, 137. Notably, Temasek, Singapore’s state-owned investment entity, and a number of its affiliates took this opportunity to buy a 2% stake in CAO, constituting the “largest single purchase of shares in the placement.” Id. at 137.
166. Milhaup & Pistor, supra note 4, at 128.
167. Id.; Securities and Futures Act, 2006, c. 289, § 218(2)(a) (Sing.).
168. Milhaup & Pistor, supra note 4, at 145.
169. Id.
170. Id. at 145–46.
171. Roseme, supra note 7, at 267.
172. Milhaup & Pistor, supra note 4, at 146. Following these enforcement actions, the state investment arm, Temasek Holdings, in consultation with MAS and SGX, spearheaded CAO’s rescue. CAO’s minority shareholders were compensated in kind as a part of the company’s bankruptcy process, but no provision of Singapore law guaranteed such treatment. No shareholder brought a civil action against CAO, its management or directors, or its holding company. As such, “investor protection was achieved not principally by enforcement of corporate and securities laws but through political mechanisms.” Id. at 128, 133–35, 145.
173. Id. at 133.
The outcome of the CAO case represented a compromise “aimed at confirming Singapore’s reputation for law enforcement while disturbing as little as possible the country’s economic relations with mainland China.” As the case demonstrates, the government’s incentive to forbear, Singapore’s malleable legal framework and the prioritization of economic development over investor protection have resulted in real gaps in Singapore’s standards of governance. Complicating this dilemma, the private backstops that might ensure public accountability and bolster securities fraud deterrence are inadequate in Singapore.

D. Absence of a Private Enforcement Backstop

Even given the problem of forbearance at the public enforcement level, private litigation does not play a major role in the Singapore’s securities framework. This defect in Singapore’s legal system appears to stem from two major contributing factors. The first part of this section explores the lopsided risks facing potential litigants in Singapore. The second part of this section goes on to describe the collective action problems preventing shareholders from coming together to litigate securities fraud. Together, these phenomena perpetuate Singapore’s securities fraud deterrence gap with respect to Chinese issuers.

1. Potential Litigants Face High Ex Ante Risks

One factor preventing private enforcement is the financial risk that the Singaporean civil procedure model forces litigants to accept. The combined effects of a ban on contingency fees and a customary system in which the action’s loser bears both sides’ expenses—effectively doubling the costs of a losing action—serve as

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174. Id. at 134–35. It is likely that China sought to “[downplay] the crisis as a one-off event resulting from excessive [speculative trading].” Id. at 135.

175. See id. at 133–34, 145 (describing the workings of Singapore’s enforcement framework, through the lens of the collapse of China Aviation Oil).


177. Low, supra note 63, at 197 (analyzing the challenges that minority shareholders in East Asia face in efforts to protect and enforce their rights and interests).
incentives to avoid litigation.\textsuperscript{178} Such costs are highly influential in this regard.\textsuperscript{179} Moreover, statute may restrict the benefits of a victory even when shareholders can cover the expenses of a suit: Section 234 of the Securities and Futures Act places constraints on potential damages in cases of securities fraud.\textsuperscript{180} Where many shareholders suffer the loss, the amount that any individual might recover could indeed prove paltry.\textsuperscript{181}

Complicating these financial risks, litigants may find it difficult to meet the burden of proof for securities actions. Shareholders do not have extensive opportunities to examine companies’ financial records before bringing suit; the statute only requires that companies disclose their balance sheets once annually, and Singapore’s civil procedure rules place pre-litigation discovery at the court’s discretion.\textsuperscript{182} These restrictions complicate the already difficult process of proving that an alleged fraud caused actual financial loss, as the Securities and Futures Act requires.\textsuperscript{183} Together, such risks may compel shareholders to avoid litigation altogether, even when they have a legitimate complaint.

Most shareholders also enjoy the benefits of close substitutes for private enforcement. Investments in listed companies are highly liquid, allowing shareholders to “vote with their feet” when they disagree with corporate policy or perceive inadequate corporate governance.\textsuperscript{184} Moreover, Singaporean authorities receive high marks for their enforcement capabilities in cases not involving Chinese issu-

\begin{footnotesize}
\textsuperscript{178} See supra Part I.C.

\textsuperscript{179} One study, for example, found that lowering court filing fees from a percentage of requested damages to a flat fee contributed to an “explosion” of derivative actions in Japan. Mark D. West, \textit{Why Shareholders Sue: The Evidence from Japan}, 30 J. LEGAL STUD. 351, 352–53 (2001) (analyzing a sudden increase in shareholder litigation in Japan).

\textsuperscript{180} Securities and Futures Act, 2006, c. 289, § 234 (Sing.) (requiring that litigants have suffered a loss and limiting damages to the extent of the defendant’s profit gained or loss avoided).


\textsuperscript{182} SINGAPORE CIVIL PROCEDURE, supra note 59, at 447–487.

\textsuperscript{183} Securities and Futures Act, 2006, c. 289, § 234(1)(b) (Sing.). See also Low, supra note 63, at 170 (detailing investors’ difficulty in enforcing their rights in East Asia); Tjio, supra note 181, at 345–50 (explaining the factors underlying the determination of causation). Notably, however, plaintiffs in derivative actions face an overwhelming likelihood of victory in Singapore, suggesting similarly good prospects for other commercial and financial litigation. CGFRC, supra note 176, at 13.

\textsuperscript{184} CGFRC, supra note 176, at 7.
\end{footnotesize}
In this light, investors who would face major risks in initiating a suit and who have access to cheap substitutes for litigation may seek to avoid litigation, opting instead to take a less fraught course of action.186

2. Collective Action Problems Prevent Effective Group Litigation

Collective action problems may also detract from investors’ appetite for litigation. When one shareholder wishes to bring an action against a company or its leaders, she must incur substantial costs.187 Yet the benefits she wins may accrue, directly or indirectly, to many shareholders.188 Singapore’s ad hoc group litigation framework—missing, for example, formal notification, risk-spreading and opt-out procedures—only serves to complicate this situation.189

Although a number of Singapore’s neighbors possess similarly weak procedural frameworks, several have pioneered a path between centralized public securities enforcement and decentralized private enforcement. In these systems, nonprofit organizations serve as “aggressive enforcement agents,” using private litigation to enforce shareholder rights.190 SIAS, Singapore’s primary investor-protection organization, does not fit that mold. Despite SIAS’s extensive work educating investors and lobbying for large-scale change in Singapore’s corporate governance framework, its investor advocacy capabilities are subject to certain caveats.191

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185. See, e.g., Gill, supra note 2, at 97–101 (ranking Singapore first among Asian nations in corporate governance); World Bank, supra note 3 (ranking Singapore first worldwide in ease of doing business).

186. MILHAUPT & PISTOR, supra note 4, at 40 (explaining the role of demand for law in determining the effectiveness of legal policy). Note, however, that minority investors in Singapore largely find themselves at the mercy of block shareholders, among which the government is the most prominent. See supra notes 86–91 and accompanying text.

187. Milhaupt, supra note 14, at 184 (analyzing investor protection as a public good).

188. Id.

189. See SINGAPORE CIVIL PROCEDURE, supra note 59, at 214–17 (O. 15, rr. 13–13A, laying out Singapore’s representative action procedure); Pinsler, supra note 74, at 298 (explaining the legal and practical workings of Singapore’s representative action framework).


191. In addition to its refusal to litigate, one might argue that its relationship with the government and strong identification with the government’s development-minded objectives further suggest that SIAS may not be well suited to take on a “watchdog” role. SIAS developed primarily as a government substitute, rather than a complement to public
Chief among these caveats is the uneasiness with which SIAS approaches litigation. Eschewing more confrontational practices, SIAS has traditionally opted to represent shareholders “in the boardroom” rather than “in the courtroom.” In doing so, the organization’s leaders typically meet with a company’s management to raise any issues at hand, allow managers to respond to investor concerns and relay the explanation to shareholders. In the few cases in which this approach failed to satisfy the SIAS leadership, SIAS reported alleged transgressions to SGX or the media. As one commentator argued, “SIAS has a strategy unlike the established western style of aggressive shareholder activism . . . .” SIAS founder David Gerald has described SIAS’s “amicable approach” as one that is

security enforcement, when it stepped in to represent Singaporean shareholders after Malaysian authorities froze nearly 11.5 billion Singaporean-owned shares in Malaysian companies traded on Singapore’s Central Limit Order Book (CLOB) market and refused to negotiate with Singaporean authorities. For a narrative of the origins of SIAS, see Conrad Raj, Don’t Rush to Accept Effective Offer—SIAS, THE BUSINESS TIMES (Sing.), Jan. 19, 2000, available at Factiva, Doc. No. stb000020010817dwj000ja (detailing the work of SIAS against Malaysian authorities freezing Singaporean assets). Furthermore, the organization’s origins reflect its political stature, including founder David Gerald’s extensive public service. Gerald was an attorney with extensive political connections prior to founding SIAS; in fact, when he founded SIAS, the media speculated that he was either a government representative or an aspiring politician. LEONG, supra note 106, at 12, 15 (“In a career spanning some 25 years, Mr Gerald had served as a Magistrate, Coroner, Deputy Public Prosecutor, legal officer in government ministries and in private practice as an Advocate and Solicitor.”). Since then, SIAS has enjoyed a symbiotic relationship with the government, obliging, for example, requests from the Republic’s Ministry of Finance and SGX to undertake certain investor education programs. GARRY RODAN, TRANSPARENCY AND AUTHORITARIAN RULE IN SOUTHEAST ASIA: SINGAPORE AND MALAYSIA 63 (2004); LEONG, supra note 106, at 33–34. SIAS prides itself on its close relationship with Singaporean authorities, reasoning that “[working] closely with the regulators” improves its ability to push its corporate governance agenda. LEONG, supra at 112, 118. Yet as one observer notes, such public-private collaboration “appears to have been possible without taking up any sensitive issues.” Rodan, supra, at 63.

192. LEONG, supra note 106, at 43–44. In the CAO case, for example, SIAS actively discouraged minority shareholders from bringing any type of civil action, reasoning that such would deter Chinese authorities from attempting to restructure CAO, and that “[i]f CAO were not restructured, Singapore investors would lose a lot more confidence in Chinese companies.” Id. at 58–59.

193. See id. at 46–78 (offering case-by-case descriptions of Singapore’s major investor advocacy engagements).

194. See, e.g., id. at 81, 88 (describing the results of cases in which companies failed to negotiate with SIAS).

195. Id. at 44.
in line with “Asian culture.” Whether such an approach has helped to deter securities fraud in Singapore, however, is unclear.

Singaporean shareholders wishing to use private litigation to prosecute securities fraud thus face few realistic options in commencing a civil class action. Deprived of the tools necessary to effectively carry out private enforcement strategies, shareholders are, in most instances, likely to remain dependent on public enforcement. Yet Singaporean authorities face a strong incentive to avoid penalizing Chinese companies that commit fraud. This phenomenon has created a distinct gap in the deterrent forces of Singapore’s securities law with respect to Chinese issuers, leaving such companies’ investors vulnerable to corporate fraud and mismanagement.

III. BOLSTERING DETERRENCE THROUGH PRIVATE ENFORCEMENT

A strong securities market must provide shareholders with “confidence that the company’s insiders . . . won’t cheat investors out of most or all of the value of their investment through ‘self-dealing’ transactions . . . or even outright theft.” In this respect, Singapore’s regulatory framework is open to criticism. Even given authorities’ incentive to avoid enforcing securities law against Chinese companies, the inordinately high risks of litigation in Singapore and the absence of mechanisms that could mitigate collective action problems curtail private enforcement. As such, Chinese issuers and their corporate officers are inadequately deterred from defrauding their investors and the market.

To their credit, Singaporean authorities have attempted to improve corporate disclosure requirements and corporate governance rules. Yet continued S-chip scandals demonstrate that these efforts have proven insufficient. To better deter securities fraud among

196. Id. Notably, however, SIAS’s anti-litigation stance stands in contrast to a number of similarly prominent investors’ associations in Asia. See Milhaupt, supra note 14, at 175–80. Moreover, shareholder activism is gaining increasing traction in Singapore. See supra Part I.D.2.
198. See supra Part II.
199. Gill, supra note 2, at 99 (describing new measures instituted to better regulate Chinese companies).
200. See, e.g., Danubrata & Kok, supra note 123 (describing continuing S-chip problems even subsequent to Singaporean authorities’ unveiling of new measures meant to
Chinese companies issuing securities in Singapore, the Republic must fortify its private enforcement framework by decreasing \textit{ex ante} risk for potential litigants and by helping shareholders to overcome collective action problems. Because such measures could help to close the deterrence gap in Singapore, it is likely that they could also do a great deal to improve the Republic’s tarnished reputation as a financial center.\footnote{See, e.g., Green, supra note 5.}

This section considers three potential routes for reform. Section A analyzes self-enforcing securities regulation as a potential \textit{ex ante} backstop to the government’s incentive to forbear. Section B considers the so-called “private attorney general” model and the question of whether Singapore would tolerate a fully decentralized securities enforcement system. Considering precedent from similar successful reforms throughout East Asia, Section C proposes a third option that combines the enactment of a statutory securities class action with the establishment of a private, nonprofit enforcement institution. In such a framework, a statutory right of action would diminish the risks of litigation, while institutional support for securities litigation would mitigate collective action problems. Together, such targeted reforms could close Singapore’s deterrence gap.

\textbf{A. Self-Enforcing Securities Regulation and Ex Ante Protections}

A self-enforcing regulatory framework offers one potential route to reform. Such a model would in many respects remove the government from Singapore’s securities enforcement framework, neutralizing the incentive to forbear and theoretically closing the deterrence gap in relation to Chinese companies. Bernard Black and Reinier Kraakman have proposed such a system, described in greater detail below, with the intention of ameliorating problems related to poor governance in emerging markets.\footnote{See generally Bernard Black & Reinier Kraakman, \textit{A Self-Enforcing Model of Corporate Law}, 109 HARV. L. REV. 1911, 1913–79 (1996).}

The self-enforcing system leverages “a combination of voting rules and transactional rights” to ensure that companies are run competently and honestly.\footnote{Id. at 1916.} Specific provisions include the requirement of supermajority votes for certain transactions, provision to shareholders of put and call options triggered by “specified corporate ac-
tions,” structural constraints such as the appointment of independent directors and a cumulative voting rule allowing “large outside shareholders to elect representatives to the board.”\(^2\) Intuitively, this model is an apt response to the problem of foreign corporations importing weak corporate governance: augmenting the Singaporean voice in a company’s leadership could facilitate improved alignment with Singaporean legal norms.\(^2\)

Despite its merits, however, this approach is not well suited to Singapore’s market structure. Its strength rests largely on the proposition that “[a]ll shareholders benefit if large outside shareholders can monitor management performance and control self-dealing.”\(^2\) Yet Singapore is prone to highly concentrated ownership and state ownership of large firms, including listed companies: by the nature of the system, very few large, minority shareholders exist. To overcome this obstacle, a successful self-enforcing model would need to set very high shareholder voting thresholds to approve corporate actions.

To have worked in the CAO case, for example, an effective “supermajority” constraint would require a shareholder supermajority of greater than 75% to approve some transactions.\(^2\)

\(^{204}\) Id. at 1917, 1934–35.


\(^{206}\) Black & Kraakman, supra note 202, at 1918.

\(^{207}\) See supra notes 86–91 and accompanying text.

\(^{208}\) Cf. MILHAUPT & PISTOR, supra note 4, at 127 (“According to CAO’s 2003 annual report, its twenty largest shareholders included [its holding company], with 75 percent, and nineteen others (including Singapore subsidiaries of Citibank and HSBC), each holding an average of 0.82 percent, and none more than 1.78 percent, of the shares.”).

\(^{209}\) See id. (stating that China Aviation Oil Holding Company maintained a 75% share
holders, however, could easily use such “veto power” as an excuse to hold resolutions hostage, demanding disproportionate control over corporate policy. A more realistic model would fail to counteract lax corporate governance and attempted securities fraud \textit{ex ante} because control would remain in the hands of those managers and directors already engaging in fraud.

Structural constraints, such as stronger rules regarding independent directors, are similarly problematic where S-chips are concerned. Although S-chips are required to follow SGX listing rules, such companies ultimately answer to holding companies that operate outside of Singapore and are not subject to its corporate governance regime.\textsuperscript{210} In the CAO case, for example, \textit{ex ante} measures in Singapore might not have prevented the fraudulent measures that the board of CAO’s Chinese holding company took, because the holding company was subject to Chinese, rather than Singaporean, corporate law.\textsuperscript{211} Because CAO was not an aberration with respect to its ownership structure, this consideration is an important one.\textsuperscript{212}

Given these obstacles, bolstering \textit{ex ante} protections, as SGX has sought to do in the wake of the S-chip scandals,\textsuperscript{213} may indeed improve S-chips’ overall corporate governance. Such reforms can only engender limited deterrent effects on securities fraud, however.\textsuperscript{214} A better solution would ensure that those who commit fraud are held financially liable for their actions. In other words, a primarily \textit{ex ante} reform model may improve overall governance, but does not provide the deterrence patch that the Singaporean framework requires, especially where relevant actors include the leaders of foreign holding companies.

\textsuperscript{210} See, e.g., id.

\textsuperscript{211} \textit{Id.} at 127–28 (explaining the corporate structure of China Aviation Oil).

\textsuperscript{212} \textit{Compare} MILHAUPT & PISTOR, su\textit{pra} note 4, at 127 (describing the ownership structure of China Aviation Oil) \textit{with} Conyon, su\textit{pra} note 86, at 188–89 (describing the concentrated ownership structure endemic in Singapore).

\textsuperscript{213} Gill, su\textit{pra} note 2, at 99 (describing new corporate governance rules instituted to improve corporate governance among S-chips).

\textsuperscript{214} \textit{Cf.} Song, su\textit{pra} note 59, at 91 (“Recent research using U.S. data found that \textit{ex ante} corporate governance devices may not be as efficient as expected.”). \textit{But cf.} Keitha Dunstan et al., \textit{Public Regulatory Reform and Management Earnings Forecasts in a Low Private Litigation Environment,} 51 ACCT. \& FIN. 437, 463 (2011) (“A possible interpretation is that public regulatory reforms are able to have a greater benefit in circumstances where private enforcement is a less viable alternative.”).
B. The “Private Attorney General” Model

If Singapore’s problem comprises unreliable public enforcement, shifting to a more decentralized enforcement framework may provide a solution. The American-style “private attorney general” model offers the principal example of a decentralized enforcement system. Instead of primarily public enforcement with private backstops, the American system endorses primarily private enforcement with the U.S. Securities and Exchange Commission serving as a public backstop. This model is “most closely associated with the federal antitrust and securities laws and the common law’s derivative action.”

Despite such association, “[t]he key legal rules that make the private attorney general a reality in American law today . . . are not substantive but procedural—namely, those rules that establish the fee arrangements under which these plaintiff’s attorneys are compensated.” The American system relies on contingency fees, which compensate attorneys based on an action’s total award, to “provide incentives for lawyers to organize and pursue class actions.” Taking this basic point as the principle underpinning the system, the first part of this section assesses the strengths and weakness of the private attorney general model, while the second part considers the model’s application in Singapore.


218. Id. at 669–70.

219. Wang & Chen, supra note 215, at 134. To calculate the fees, taking a set percentage of the award “remains the dominant method, with an average of around 20%.” Id.
1. The Private Attorney General Model Encompasses Both Strengths and Weaknesses

The main strength of the private attorney general model is its effectiveness in promoting both monitoring and enforcement with respect to securities fraud. Contingency fees motivate attorneys to actively monitor and prosecute securities violations “still unknown to prospective clients.” Moreover, class actions help to eliminate collective action problems, “[enabling] clients who are dispersed or have suffered relatively small injuries to receive legal representation without incurring the substantial transaction costs of coordination.” Although the model relies on civil litigation, its primary objective is to deter securities fraud, rather than to compensate the victims of securities fraud.

Yet American-style class actions may not actually achieve the goal of deterrence: even when a company’s managers commit securities fraud, the company itself usually bears the costs of litigating and settling both sides of the action. In other words, shareholders engaged in securities class actions under the private attorney general model are litigating against themselves. This is not an intractable problem, however; John Coffee, for example, advocates increased managerial liability in cases involving securities fraud. Because managers are the individuals most likely to commit such fraud, shifting the allocation of costs toward managers and away from share-

221. Id.
222. See Coffee, supra note 216, at 1536; Myriam Giles & Gary B. Friedman, Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers, 155 U. Pa. L. Rev. 103, 108–11 (2006). Cf. Song, supra note 59, at 93 (“[T]he social gain from litigation, which should be distinguished from the stock-price gain of specific shareholders of the defendant company . . . comes from the ex ante disciplinary or threatening nature of the suits, and thus the mere possibility of litigation, not the actual bringing of lawsuits, accounts for social gains.”).
223. Coffee, supra note 216, at 1536 (“[T]he costs of securities class actions—both the settlement payments and the litigation expenses of both sides—fall largely on the defendant corporation, [so] its shareholders ultimately bear these costs indirectly and often inequitably.”).
224. See id. at 1575 (“Specifically, these directors should be expected to assess the apportionment of liability among the corporation and its officers and explain in a public statement if and why they consider it to be fair to the corporation.”); see also Michael Klausner, The Uncertain Value of Shareholder Suits in Asian Corporate Governance, in TRANSFORMING CORPORATE GOVERNANCE IN EAST ASIA 324, 324–29 (Hideki Kanda et al. eds., 2008) (considering Coffee’s hypothesis in the Asian context).
holders could effect better deterrence.\textsuperscript{225} If Singapore were to construct an American-style system from the ground up, it could certainly institute the reforms that Coffee envisions.

Critics also suggest that the introduction of a decentralized system leads to an inevitable, attorney-driven “flood of litigation.”\textsuperscript{226} As one observer points out, however:

The potentially huge financial awards driving U.S. attorneys are a combination of factors, such as the frequent granting of exemplary awards, the use of civil juries . . . and the absence of the “loser pays” rule. These procedures are neither the prerequisite of class actions nor are they commonly adopted by other jurisdictions.\textsuperscript{227}

Singapore would not need to adopt such exacerbating measures, especially given its legislature’s keen interest in tailoring judicial procedure to its policy goals.\textsuperscript{228} Although there is no way to know with certainty how the mechanics of a shift from a centralized public enforcement model to a decentralized private enforcement model might play out in Singapore, there is little reason to assume that such a shift would involve excessive litigation. Yet while the model’s problems are not necessarily fatal, the model is not a suitable alternative for Singapore.

2. The Private Attorney General Model is Ill-Suited to the Singaporean Context

A shift to a decentralized securities enforcement model would

\textsuperscript{225} See Coffee, supra note 216, at 1572–73; (“The persons most responsible for the accounting irregularities at Enron, WorldCom, and a host of other companies were managers . . . . Thus, corporate managers, facing enhanced incentives to engage in fraudulent reporting, are the key actors who most need to be deterred.”).

\textsuperscript{226} Wang & Chen, supra note 215, at 136 (“A typical criticism is that a disproportionate number of frivolous actions reduce average shareholder welfare. Common concerns by foreigners include the fear of legal blackmail and conflicts of interest for attorneys.”).

\textsuperscript{227} Id.

\textsuperscript{228} See Thorpe, supra note 155, at 1052–53 (describing the Singaporean legislature’s willingness to override the Singaporean judiciary). Commentators have also advocated adoption of the class action without its concomitant contingency fee policies, but the “private attorney general” model requires the attorney-driven litigation that such a cost structure engenders. See Low, supra note 63, at 197 (advocating a system that does not adopt contingency fees); Coffee, supra note 217, at 669–70 (arguing that its litigation cost structure defines the American private attorney general model).
likely result in under-enforcement in Singapore. Singapore’s present centralized enforcement model is not comprehensively deficient, but rather subject to a single—albeit major—blind spot. While Singapore may forbear in the regulation of Chinese companies, the system has received relatively high marks for its effectiveness and efficiency otherwise. Notably, Singapore’s only comparable foray into “privatized” regulation, its shift to disclosure-based securities regulation, is widely considered to have proven ineffective.

In this light, converting to a fully decentralized regulatory system could mean abandoning a more efficient regulatory framework. “[N]ot all corporate fraud litigation is created equal,” and public enforcement tends to engender the strongest deterrent effect. This point might carry special weight in Singapore, which

229. See, e.g., Gill, supra note 2, at 97–101 (ranking Singapore first in Asia for effective corporate governance); World Bank, supra note 3 (ranking Singapore first in the world for ease of doing business).

230. See, e.g., Low, supra note 63, at 175 (criticizing disclosure-based regulation as insufficient to protect minority investors). Cf. John C. Coffee, Jr., Privatization and Corporate Governance: The Lessons from Securities Market Failure, in CORPORATE GOVERNANCE LESSONS FROM TRANSITION ECONOMIC REFORMS 265, 273–303 (Merritt B. Fox & Michael A. Heller eds., 2008) (explaining how the results of Polish and Czech reforms are consistent with the hypothesis that inadequate securities regulation, rather than inadequate protection of minority shareholders under a country’s corporate law, plays the primary role in explaining privatization failures). Yet perhaps Singapore’s weak disclosure culture is a red herring: after all, shareholder activism is becoming more common than it was in 1997, when the Republic renounced merit-based regulation. See CGFRC, supra note 176, at 5 (offering information on shareholder litigation in Singapore).


232. Id. at 49, 54, 78–79 (analyzing the effectiveness of different enforcement regimes and techniques in relation to one another). See Howell E. Jackson & Mark J. Roe, Public and Private Enforcement of Securities Laws: Resource-Based Evidence, 93 J. FIN. ECON. 207, 209 (2009) (“To the extent that securities law enforcement matters to financial markets’ breadth and depth, the resource-based evidence here is inconsistent with private enforcement being superior to public enforcement.”); see also Wang & Chen, supra note 215, at 138–39, 141–42 (arguing the merits of centralized, public securities enforcement); Robert A. Prentice, The Inevitability of a Strong SEC, 91 CORNELL L. REV. 775, 828 (2006) (“A strong central agency can deter and punish fraud better than individual investors . . . . In an unregulated environment, gatekeepers are unreliable, and exchanges both suffer serious conflicts of interest and lack viable enforcement mechanisms to prevent most types of securities fraud.”); Coffee, supra note 216, at 1543–44 (“[R]esearch suggests that there are some categories of companies and fraud that are largely beyond the reach of securities class actions . . . . Similarly, there may also be species of fraud for which private enforcement no longer works well.”). But see Rafael La Porta et al., What Works in Securities Laws?, 61 J. FIN. 1, 27–28 (2006) (“Several aspects of public enforcement, such as having an independent and/or focused regulator or criminal sanctions, do not matter, and others matter
lacks the legal infrastructure to handle a total shift to private securities enforcement: its courts are efficient and competent, but the country’s attorney population is small.\footnote{See Seah Chiang Nee, *Interest in the Professions Dropping*, STAR ONLINE (June 14, 2008), http://thestar.com.my/columnists/story.asp?file=2008/6/14/columnists/insightdownsouth/21540353&sec=insightdownsouth (‘‘The attrition rate of lawyers is high, and the supply is not sufficient given the rising demand here,’’ said a recent report.”).} Even the United States—where efforts to combat frivolous filings may have created an environment in which cases not involving a “smoking gun” are left uninvestigated and unlitigated—has struggled to find an effective balance between over- and under-enforcement.\footnote{See Stephen J. Choi, *The Evidence on Securities Class Actions*, 57 VAND. L. REV. 1465, 1523 (2004) (stating that PLSRA reform “may also leave untouched many actual instances of fraud that do not involve . . . a ‘smoking gun’”)} Replacing an entire enforcement model may therefore prove unwise if less extensive reforms would sufficiently close the S-chip securities fraud deterrence gap.\footnote{See in infra Part III.C.}

Finally, instituting a fully decentralized system is not politically viable in Singapore. At present, there is only modest demand for private litigation.\footnote{Stephen J. Choi, *The Evidence on Securities Class Actions*, 57 VAND. L. REV. 1465, 1523 (2004) (stating that PLSRA reform “may also leave untouched many actual instances of fraud that do not involve . . . a ‘smoking gun’”)} Moreover, important stakeholders like SIAS founder David Gerald insist that confrontation stands in opposition to Singaporean culture.\footnote{See, e.g., Leong, supra note 106, at 44.} The Singaporean economic landscape remains dominated by large corporate shareholders and government actors,\footnote{See sources cited supra notes 86–91 and accompanying text. Indeed, the American system emerged only as these entities began to lose their bargaining power.} which may not greet full decentralization with enthusiasm. Finally, the Singaporean government is unlikely to embrace a system that stands fundamentally in opposition to its collectivist values and penchant for centralization.\footnote{See Carter, supra note 157, at 260–64 (“[T]he PAP government cultivated its own mix of communitarian ideology, which exalted the national interest over the interests of individuals.”); Milhaüpt & Pistor, supra note 4, at 145 (describing Singapore’s centralized
C. Targeted Procedural and Institutional Reform

While neither the “hands off,” institutional approach of self-enforcing law nor the “hands on,” procedural approach of a decentralized enforcement system would suit Singapore’s unique political and economic framework, these models are not the only options available. Instead, a centrist path involving targeted reforms could eliminate the securities fraud deterrence gap that presently characterizes the Singaporean framework. Commentators have found that opportunities for private securities litigation contribute to more successful markets, and that private enforcement can serve to fill the gaps that governmental conflicts of interest may create in public enforcement systems. An improved private backstop to regulatory forbearance is therefore key to plugging Singapore’s deterrence gap. In order to craft a successful private enforcement framework, reforms must focus on both the high level of ex ante risk that potential litigants face and the collective action problems that typify Singapore’s group litigation model.

To address ex ante risk, Singapore should undertake procedural reform aimed at instituting a statutory securities class action. Below, the first part of this section explores such reforms, looking first at other East Asian countries that might provide precedent for a statutory right of action; it then proposes a Singaporean statutory action framework and responds to potential critiques of the proposed model. To mitigate collective action problems, Singapore should augment such procedural reform with institutional reform, establishing a private, nonprofit organization focused on undertaking securities litigation. The second part of this section therefore discusses institutional reform in greater detail, looking first at comparable reforms in East Asia, and second at the theoretical considerations that

securities enforcement structure). Although the private attorney general model may conflict with the Singaporean government’s values, it is important to note that “Asian culture” and “Confucian values” have had little to do with previous instances of regulatory success or failure. See CARTER, supra note 157, at 72–74; Milhaupt, supra note 14, at 198–99.

240. La Porta et al., supra note 232, at 27–28 (finding that private liability standards are correlated with larger stock markets).

241. Fox, supra note 13, at 332 (“[C]ivil liability may be a safeguard provided by a legislature against inappropriately low future budgetary allocations for enforcement that it knows are likely because of expected special-interest pressure or against a politicized or corrupted administrative enforcement body.”).
support the adoption of such reforms in Singapore. Such a dual intervention—focusing on both procedural and institutional reform—could ensure that investors possess both the wherewithal and the inclination to prosecute securities fraud. Finally, the third part of this section analyzes the Singaporean government’s incentives to institute these reforms, thereby subjecting wrongdoers to the threat of litigation and plugging Singapore’s securities fraud deterrence gap.

1. A Statutory Securities Class Action Could Decrease *Ex Ante* Risk for Potential Litigants

A key problem facing potential plaintiffs wishing to hold Chinese companies responsible for misconduct in Singapore is the lopsided *ex ante* financial risk—brought about by shareholders’ inability to access crucial evidence, the lack of a formalized group litigation procedure and a number of ancillary problems specific to Singapore’s securities enforcement framework—that litigants bear under the country’s civil procedure rules. In order to decrease such risk and thus establish a private backstop to regulatory forbearance, Singapore should enact a statutory securities class action. Such a solution would provide a basis for some decentralized enforcement, but would not institute a change as drastic as total decentralization. Critics have recognized the usefulness of civil liability mechanisms as gap-filling devices in primarily public enforcement frameworks, particularly in light of the deterrent power of private enforcement. As such, the following examines existing models for statutory rights of action in Section A, proposes a statutory securities class action framework in Section B and responds to potential critiques of such a proposal in Section C.

a. Precedent for Statutory Rights of Action in Asia

Singapore’s statutory securities class action would not be the first of its kind in Asia. In 2005, Korea instituted a securities class action. In doing so, it borrowed extensively from class formation and notification rules in the Federal Rules of Civil Procedure of the United States. Korea limited the statutory action to cases of disclosure violations, negligence in periodic reporting, market manipulation, insider trading and fraudulent audits; these limitations resemble those

242. See supra Part II.D.

243. See Fox, supra note 13, at 331–32 (describing the deterrent power and gap-filling capacities of private securities litigation with respect to fraud on the market actions).
instituted under the Private Securities Litigation Reform Act of the United States. Certain aspects of the Korean framework, however, are unique. The statute requires that litigants pay in advance substantial filing fees, the costs of class notification and the costs of appraisal procedures. Moreover, Korean attorneys expect large retainers when they take cases.

Similarly, Japan has instituted a statutory derivative action, allowing shareholders to bring suits against directors on behalf of their companies. This statutory action also resembles the American legal framework, albeit the framework for derivative actions. The Japanese system has proven remarkably successful: enactment of the statutory action resulted in an increase in suits of over 10,000%. Mark West attributes this success to attorney incentives and an “amalgam” of minor factors, but notes that attorney fees did not increase with enactment of Japan’s statutory action.

Singapore itself has also enacted a statutory derivative action. Under that model, litigants must apply to the court for leave to commence an action. The court then rules on whether the litigants have met the standard of evidence required to commence a suit on behalf of the company in question. At that point, the court may also issue a number of orders dealing with the mechanics of the case, particularly with regard to financing and discovery. Following all of these procedures, the litigant may finally commence his suit. In

244. Song, supra note 59, at 100-03 (laying out the specifics of Korea’s securities class action procedure).
245. Id. at 103.
246. Id. at 106.
247. West, supra note 179, at 354–57 (describing the mechanics of the Japanese derivative action).
248. Id. at 353–55.
249. Id. at 352–53. In Japan, plaintiffs have continued to press derivative actions even in spite of both low success rates and, at best, small increases in their share prices as a result of the rare victory. Id.
250. Id. at 354, 381.
251. Lan, supra note 63 (describing the mechanics of the Singaporean statutory derivative action); Companies Act, 2006, c. 50, § 216(5) (Sing.) (describing how to initiate the Singaporean statutory derivative action).
252. Lan, supra note 63, at 383–85 (describing the court’s considerations in authorizing a suit).
253. Id. at 385–86 (describing the court’s authority to issue orders within the statutory derivative action framework).
254. Id. at 383–85.
In this light, a new statutory securities class action could employ a number of procedures that would prove familiar to market participants and potential litigants by virtue of other statutory rights of action instituted in neighboring countries and in Singapore itself. Such would provide comfort in implementation and certainty for shareholders who might wish to engage in litigation.

b. Proposed Singaporean Securities Class Action

A new statutory securities class action could begin with plaintiffs’ application to the court to commence an action, similar to existing class action systems and to Singapore’s statutory derivative action.255 At that stage, the court could seek to discern whether the action was brought in good faith and could make a number of orders dealing with specific issues relevant to the litigation. The statutory right of action could also enshrine a number of context-specific alterations to the present Singaporean civil procedure framework. More specifically, the action should address three issues in order to decrease ex ante risk for litigants hoping to prosecute securities fraud when the government fails to do so: litigation costs, evidentiary access and organizational procedure. Such an action could also address ancillary issues that would increase the potential upside of litigation.

To address ex ante risk, the statutory framework must deal with litigation costs. Lan Luh Luh describes litigants’ predicament: “If [the shareholder] loses, he pays the costs of all the parties. It will be appreciated that this requires a shareholder of great altruism (or monumental stupidity).”256 Under a statutory framework, the court could allocate the costs of the action among class members. The court could also assist the class in arriving at a favorable fee and retainer structure with its attorneys, if necessary. The statutory framework could even include case-by-case approval of contingency fees. Optimally, the statute would go on to dispense with or soften Singapore’s “loser pays” principle.257 Dealing with these issues prior to the more expensive phases of litigation could help to eliminate ex ante risk.

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255. See, e.g., Fed. R. Civ. P. 23 (outlining American class action procedures); Lan, supra note 63, at 381–86 (describing Singapore’s statutory derivative action procedure).

256. Lan, supra note 63, at 387 (describing the issue of finances in the context of Singapore’s statutory derivative action).

257. Cf. Low, supra note 63, at 197 (proposing that the loser pay principle in civil litigation be dispensed with” in order to improve minority shareholder protections in East Asia).
Like Singapore’s statutory derivative action framework, the class action could further empower the court to “make such orders . . . as it thinks fit in the interests of justice.” Lan suggests that courts could use such a provision to give shareholders “access to the company’s records in order to gather the evidence for the action against the malfeasors,” a task that might otherwise involve immense difficulty for shareholders. Enabling the court to grant plaintiffs access to such information before proceeding to costlier phases of litigation could help to improve the information that shareholders use in determining whether proceeding with a suit is warranted, thereby reducing \textit{ex ante} risk.

A statutory securities class action could also decrease \textit{ex ante} risk to litigants through the mere institution of formal, predictable procedures. Korea’s securities class action, for example, utilizes Rule 23 of the U.S. Federal Rules of Civil Procedure in prescribing its rules for class formation. Such a transplant might also prove successful in Singapore. Among other things, Rule 23 requires that class members be numerous; that the class members share similar cases, interests and claims; that the lead plaintiff protect the interests of the class and that the class action prove superior to other

\begin{footnotesize}
\begin{enumerate}
\item Companies Act, 2006, c. 50, § 216A (Sing.) (enacting the statutory derivative action).
\item Lan, \textit{supra} note 63, at 388 (“To commence a speculative action in the hope of obtaining evidence would be expensive. Yet [a minority shareholder] will not be able to get his hands on the evidence until discovery can be made in an action against the malfeasors.”).
\item Note that Singapore’s rules of civil procedure do allow for discovery before proceedings against a prospective party. \textit{See supra} Part I.C.1. Here, however, plaintiffs require not a costly preliminary discovery process, but rather access to the corporate accounts and certain discrete corporate records; as such, the court could play a useful role in compelling the disclosure of such documents without initiating formal discovery procedures. One might also argue that the institution of a securities class action could potentially improve companies’ disclosure practices, although evidence is mixed. \textit{See generally} Choi, \textit{supra} note 234, at 1504–07 (“If the threat of class actions (particularly frivolous suits) causes firms to disclose less, this may reduce the overall amount of information in the market to the detriment of investors.”).
\item Song, \textit{supra} note 59, at 101.
\item \textit{But see} Berkowitz et al., \textit{supra} note 4, at 174–81 (detailing the effects of receptive and unreceptive legal transplants); \textit{cf.} Lynn A. Stout, \textit{On the Export of U.S.-Style Corporate Fiduciary Duties to Other Cultures, in Global Markets, Domestic Institutions: Corporate Law and Governance in a New Era of Cross-Border Deals} 46, 47–48 (Curtis J. Milhaupt ed., 2003) (“If this hypothesis is correct, a successful transplant of formal U.S. corporate law may depend, to a significant degree, on the extent to which we can expect the local population to exhibit a similar degree of altruistic compliance with fiduciary standards.”).
\end{enumerate}
\end{footnotesize}
measures for fair and efficient adjudication of the dispute. Like Korea, Singapore could tailor opt-out and notification procedures to complement its present civil procedure framework. The Korean experience, however, counsels against a level of notification stringency that would create untenable costs for plaintiffs. In any case, Singapore has a wide berth in determining the specifics of these procedures; put broadly, almost any system would represent a major improvement over Singapore’s present, ad hoc representative action framework.

Finally, the statutory securities class action could encompass certain general improvements to Singapore’s model of civil liability for securities fraud, primarily by increasing the potential upside to a securities action. Increasing the damages available to litigants—currently capped at the gains made or losses avoided as a result of the fraud—could help to spur greater interest in private enforcement. Similarly, the statute could relax the burden of proof for securities fraud, no longer requiring a direct causal connection between a specific fraudulent transaction and a specific gain or loss. Given that MAS does not face these constraints in its own pursuit of civil penalties, providing such benefits to private litigants would hardly constitute radical reforms. Set within a statutory securities class action framework, such measures could substantially improve Singapore’s enforcement framework.

c. Critiques of the Proposed Model: Potential Effects on Litigation Rates

In addition to its risk-reducing features, this model offers the benefit of familiarity. Yet it is open to a number of critiques. One might argue that a securities class action would lead to a “flood” of frivolous litigation. Alternatively, critics could assert that class actions are ineffective deterrents to securities fraud. This section will

263. Fed. R. Civ. P. 23(a), (b)(3).

264. Song, supra note 59, at 101 (“The problem with the notification requirements is that they are likely to increase the cost associated with filing a suit, without substantial benefits . . . [T]he court is obliged to make every effort to identify the addresses. But this system does not make sense.”).

265. See supra Part I.C.2.

266. Securities and Futures Act, 2006, c. 289, § 234 (Sing.) (authorizing civil liability in cases of securities fraud).

267. See id.

268. See id. § 232(3) (authorizing publicly enforced civil penalties in cases of securities fraud).
deal with both of these potential problems.

All of the measures described above should significantly open securities fraud enforcement to private actors without engendering a “flood” of litigation. The model does not rely on certain aspects of the more litigation-heavy American system, such as contingency fees and provisions that increase the value of awards; the absence of these provisions limits any potential for attorney-driven litigation. Similarly, limiting use of the procedure to cases involving securities fraud and requiring judicial approval of all actions would restrict the privilege of mass litigation. Recourse to Korea’s securities class action has proven exceedingly rare, and Singapore’s statutory derivative action is, if anything, underutilized. In sum, the system smooths procedural bumps, but does not incentivize frivolous suits.

These considerations, however, give rise to another critique: previous statutory rights of action have achieved only moderate success in some of the jurisdictions that have instituted them. With respect to Singapore’s statutory derivative action, “[t]he courts tend to take a cautious rather than a ‘liberal’ approach in favour of the complainant.” Over the course of nearly a decade following the institution of the right of action in Singapore, investors brought only two statutory derivative actions against directors. Considering the

269. Low, supra note 63, at 197 (explaining the relationship between contingency fees and excessive litigation); Wang & Chen, supra note 215, at 136 (discussing aspects of the American system that increase litigation levels). But see Adrian Yeo, Access to Justice: A Case for Contingency Fees in Singapore, 16 SING. ACAD. L.J. 76, 139–65 (2004) (arguing for the adoption of contingency fees in Singapore).

270. Song, supra note 59, at 104 (“[N]o class action has been brought since the enactment of the Securities Class Action Act.”).

271. See CGFRC, supra note 176, at 9 (providing statistics on the number of derivative suits in Singapore during the decade following the statute’s enactment).


273. Lan, supra note 63, at 384.

274. Koh, supra note 272, at 64. See also CGFRC, supra note 176, at 9 (“There were
matter from the perspective of deterrence, however, helps to diminish this concern. One might argue that corporate directors would alter their behavior in order to avoid the mere prospect of litigation. In fact, commentators consider deterrent power one of the greatest potential benefits of private securities rights of action. One might further note that the Japanese have made ample use of their own statutory derivative action.

Nevertheless, resembling Singapore’s lackluster experience with the derivative action, the statutory securities class action has arguably been underutilized in Korea. As Ok-Rial Song argues, however, the relative rarity of corporate litigation in Korea appears to bear a relation to the country’s litigation cost structure. Despite use of the contingency fee system, lawyers require high retainers before commencing a suit, and courts demand comparatively high filing fees and pre-litigation expense payments. Additionally, Korean litigants are subject to the “loser pays” rule. These findings bolster the argument for a more efficient cost framework in Singapore and make clear that Singapore must take special care to control litigation costs.

In sum, the institution of a statutory securities class action could go a long way toward diminishing the ex ante risk that litigants presently face in Singapore. In dealing with financial risk, evidentiary problems, organizational mechanisms and other ancillary procedural obstacles, this proposal makes the prospect of litigation more palatable to retail investors and other minority shareholders. At the same time however, the problems noted above—in addition to other

only five cases where the shareholders made or applied to make derivative claims on behalf of the company either under common law derivative actions or under Section 216A of the Companies Act.”)

275. See, e.g., Song, supra note 59, at 93 (“The social gain comes from the ex ante disciplinary or threatening nature of the suits, and thus the mere possibility of litigation, not the actual bringing of lawsuits, accounts for social gains.”). But see Choi, supra note 234, at 1508–10 (pointing out that suits may only deter fraud in countries with a preponderance of large companies, because “firms offering relatively small potential damage awards for plaintiffs are rarely sued in a securities class action”).

276. Cf. Fox, supra note 13, at 331 (“Despite the weakness of its compensatory justification, the [fraud on the market] cause of action serves important deterrence functions that are unlikely to be equally well performed by public enforcement alone.”).

277. See West, supra note 179, at 353.

278. Song, supra note 59, at 105–06 (describing the comparative role of finances in Korea’s litigation framework).

279. Id. at 103, 106.

280. Id. at 106.
minor challenges such as the danger of collusive settlements\textsuperscript{281} and the problem of cross-border enforcement\textsuperscript{282}—might hamper the deterrent effects of such a measure. Still, the statutory securities class action could help to close the deterrence gap in a way that complements, rather than attempts to replace, Singaporean authorities’ attempts at law enforcement.


Instituting a statutory securities class action could equip shareholders with the tools necessary to police securities fraud; alone, however, the measure might not persuade shareholders to make use of those tools. To ensure that shareholders privately prosecute securities fraud, Singapore must complement risk-reducing procedural reforms with institutional reforms that mitigate collective action problems. In this regard, establishing one or more nonprofit enforcement organizations could contribute to the construction of a credible private backstop to public forbearance. Below, Section A considers examples of nonprofit enforcement in East Asia, and Section B analyzes the factors that could determine the model’s appropriateness to the Singaporean context.

\textit{a. Nonprofit Enforcement is on the Rise in Asia}

Nonprofit enforcement has proven successful in countries like Korea,\textsuperscript{283} Japan\textsuperscript{284} and Taiwan.\textsuperscript{285} Each country’s enforcement organization litigates securities cases, but each does so in a different

\textsuperscript{281}. Both defendant managers and plaintiffs’ attorneys experience incentives to settle class actions, resulting in collusive settlements. Song, \textit{supra} note 59, at 108. “The problem with this practice is not merely that lawyers file frivolous suits to threaten innocent persons, but rather that the final settlement does not depend on the merits of the suit.” \textit{Id.} At the same time, this problem is subject to easy fixes, such as capped settlements, barring the applicability of contingent fees and subjecting settlements to judicial approval. \textit{Id.} at 108–09.

\textsuperscript{282}. \textit{But see} Milhaupt \& Pistor, \textit{supra} note 4, at 132–33 (recounting enforcement actions against Chinese officials in relation to the China Aviation Oil fraud).

\textsuperscript{283}. Milhaupt, \textit{supra} note 14 at 176–77 (detailing the major shareholder derivative suit victories that Korea’s nonprofit securities enforcement organization has achieved).

\textsuperscript{284}. \textit{Id.} at 180–81 (detailing the case load, settlement history and legislative reform victories of Japan’s securities enforcement organization).

\textsuperscript{285}. \textit{Id.} at 178 (detailing the case load of Taiwan’s nonprofit securities enforcement organization).
manner. In Korea, the People’s Solidarity for Participatory Democracy has achieved major victories in derivative actions, including in the country’s very first derivative suit.\textsuperscript{286} The organization has a small staff, relying primarily on volunteer commitments.\textsuperscript{287} Similarly, in Japan, Shareholder Ombudsman “has been involved in many of the high-profile shareholder derivative suits in Japan.”\textsuperscript{288} Although the organization is technically organized as a for-profit company, it is principally funded through its senior attorneys’ donation of the fees that they collect.\textsuperscript{289}

Taiwan’s case is perhaps the most interesting. There, the Securities and Futures Institute “holds 1,000 shares (one trading unit) in each public company in Taiwan, giving it standing to assert claims as a shareholder.”\textsuperscript{290} The Institute, known for being extremely active, “functions as a public interest law firm on investor protection issues” and maintains a large, professional staff.\textsuperscript{291} What sets Taiwan’s case apart, however, is the Institute’s status as something of a “quasi-public organization”: it was founded “through the cooperation of Taiwan’s securities regulatory agency and the local banking and securities industries.”\textsuperscript{292}

In essence, a country wishing to establish a nonprofit organization geared toward private securities enforcement can find a number of examples across Asia. The cases described above suggest that nonprofit enforcement can flourish under extraordinarily disparate conditions, including settings that feature a strong central government. Together, the systems built in Korea, Japan and Taiwan all demonstrate the viability and variability of the nonprofit securities enforcement model in Asia.

\textbf{b. Theoretical Considerations Support Use of the Nonprofit Model in Singapore}

Curtis Milhaupt argues that three theories explain the rise of nonprofit organizations as investor-protection institutions: “demand-side” theory, “contract failure” theory, and “supply-side” theory.

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{286} Id. at 176.
\item\textsuperscript{287} Id. at 175.
\item\textsuperscript{288} Id. at 179.
\item\textsuperscript{289} Id.
\item\textsuperscript{290} Id. at 177.
\item\textsuperscript{291} Id.
\item\textsuperscript{292} Id.
\end{itemize}
\end{footnotesize}
On the demand side, unsatisfied demand for public goods can give rise to nonprofit enforcement. In Singapore, the sufficiency of public enforcement might suppress demand for private enforcement mechanisms. At the same time, however, S-chips represent an important instance of government failure. Indeed, market reactions to the S-chip scandals imply some degree of demand for a gap-filling mechanism to deter Chinese securities fraud. Supporting this inference, private enforcement and shareholder activism have increasingly played a role in Singapore’s regulatory framework. For these reasons, one might argue that Singapore does exhibit demand for collective, private enforcement.

Similarly, a “contract failure” theory suggests that nonprofits can play a role where asymmetrical information prevents consumers from evaluating the quality of public goods, such as private legal enforcement. Because “owners of such organizations have fewer incentives to take advantage of consumers than a for-profit firm,” nonprofits can provide a more “trustworthy” private enforcement option. Singapore’s inexperience with private enforcement suggests that contract failure should be an important consideration in any conception of reform. Moreover, Singapore’s seemingly strong public sentiment against private litigation is rooted in rhetoric condemning private gain at public expense. The notion of contract failure therefore suggests that a nonprofit organization could play an important role in this regard.

Third, on the supply side, a ready stock of social entrepreneurs can also contribute to the nonprofit phenomenon. Singapore’s public life, however, is not conducive to the development of social entrepreneurs, giving rise to a question of whether the nonprof-

293. Id. at 172.
294. See, e.g., Kwok, supra note 119 (reporting analysts’ response to the S-chip scandals); Green, supra note 5 (commenting on the low probability that S-chips could recover from the scandals); Lee, supra note 118 (discussing the potential results of new Singaporean regulatory measures).
295. See CGFRC, supra note 176, at 7–8 (noting an increase in shareholder suits); Gill, supra note 2, at 100 (detailing higher levels of shareholder activism in Singapore); supra Part I.D.2.
296. Milhaupt, supra note 14, at 172.
297. See CARTER, supra note 157, 260–64 (describing communitarian ideology in Singapore).
298. See CGFRC, supra note 176, at 7–8; LEONG, supra note 106, at 43–45.
299. Milhaupt, supra note 14, at 172.
it enforcement model could succeed in Singapore.\textsuperscript{300} Singapore’s political culture emphasizes common good and conformity.\textsuperscript{301} For this reason, “supply-side” considerations in Singapore suggest that establishing a new social actor without strong government backing could prove difficult, at best.

Fortunately, there is precedent for public-private partnership in such ventures; Taiwan’s nonprofit “enforcer” began through collaboration between the Taiwanese government and the nation’s financial sector.\textsuperscript{302} In Singapore, MAS or SGX could facilitate the establishment of an organization funded through, for example, an added listing fee or tax levied on SGX issuers. Such collaborative taxation is not uncommon around the world.\textsuperscript{303} Authorities could alternatively seek to persuade SIAS to fill this role; despite the organization’s instinctive and strategic stand against litigation, it has, in the past, proven amenable to government entreaties.\textsuperscript{304}

While a public-private collaboration may not be optimal given that deliberate regulatory forbearance is the issue at hand, “[t]he [nonprofit] form provides a ‘layer of insulation’ between the government and politically or technically problematic enforcement efforts.”\textsuperscript{305} Moreover, the government appears to understand that its reputation for effective and efficient regulation is at stake in light of the S-chip scandals.\textsuperscript{306} Thus, while it is not clear that this “layer” of separation would prove sufficient, a strict firewall between public and private enforcement may not be necessary. Moreover, given that

\begin{itemize}
\item\textsuperscript{300} Id. ("[A] comparatively larger stock of social entrepreneurs would likely exist in societies with a history of organized protest against the government."); id. at 182–83 (In both Taiwan and Korea, for example, the democratization process helped to create a stock of experienced social entrepreneurs).
\item\textsuperscript{301} Carter, supra note 157, at 261–62.
\item\textsuperscript{302} Milhaupt, supra note 14, at 177. See also Yu-Hsin Lin, Modeling Securities Class Actions Outside the United States: The Role of Nonprofits in the Case of Taiwan, 4 N.Y.U. J.L. & BUS. 143, 165–83 (2007) (discussing Taiwan’s class action and nonprofit enforcement framework).
\item\textsuperscript{303} See, e.g., Milhaupt, supra note 14, at 177 (“[Taiwan’s nonprofit securities enforcement] foundation was initially funded from 1984 to 1987 through a special assessment on securities trading commissions levied against brokerage firms and banks.”); Jake Tapper, Obama Administration to Delay New 15-Cent Christmas Tree Tax, ABC NEWS (Nov. 9, 2011), http://abcnews.go.com/blogs/politics/2011/11/obama-administration-to-delay-new-15-cent-christmas-tree-fee (describing an American program “designed to benefit the [Christmas tree] industry and . . . funded by the growers”).
\item\textsuperscript{304} See, e.g., Leong, supra note 106, at 35.
\item\textsuperscript{305} Milhaupt, supra note 14, at 196.
\item\textsuperscript{306} See supra note 125 and accompanying text.
\end{itemize}
both “demand-side” and “contract failure” theory support the model’s viability in Singapore—and given that Singaporean shareholder activism has reached unprecedented levels of intensity in recent years—nonprofit enforcement could still serve to offer proverbial teeth to the threat embodied by a securities class action framework.

Ultimately, in the effort to better regulate Chinese issuers in Singapore, procedural reform could reduce ex ante risk to litigants and thereby ease the process of private enforcement. Anticipating the likely circumstance that procedural reform will not be enough to make a true private securities enforcement framework viable in Singapore, however, the Republic should also pursue institutional reform. Singapore should therefore buttress a risk-reducing statutory securities class action with the institution of one or more private, nonprofit organizations as enforcement agents to mitigate collective action problems.

3. Targeted Reforms are Key to Singapore’s Continued Development

Singapore has no choice but to rein in its Chinese issuers. Numerous scandals have left the Republic facing serious reputational damage, threatening both the health of its capital markets and the achievement of its economic development goals. In fact, Singapore’s reputation for high corporate governance standards suggests that its market may be especially sensitive to scandal: unlike Hong Kong, which competes for listings with Singapore but offers its issuers access to higher levels of market capitalization, Singapore’s traditional strength rests in the integrity of its regulatory regime. It is likely that many foreign companies list in Singapore to draw attention to their own corporate governance credentials. A decline in regulatory standards would strike a major blow to Singapore’s comparative advantages among the world’s capital markets.

The Singaporean government understands this point well, and


308. See, e.g., Green, supra note 5 (recounting the flight of investors from SGX and discussing the reasons for such movement).

309. See sources cited supra notes 1–2.

310. Wu, supra note 139, at 266 (“The average market capitalization of the China companies listed in Hong Kong is some ten times that of those listed in Singapore.”).

311. See, e.g., sources cited supra notes 1–2 (citing Singapore’s numerous corporate governance regime accolades).

312. Cf. sources cited supra notes 111, 112 (discussing the “bonding” hypothesis).
has taken action to protect its regulatory reputation in the past.\footnote{313}{Milhaupt & Pistor, supra note 4, at 146 ("Given its aspiration to become a leading financial market, Singapore had little choice but to adhere to the dominant Western model of financial market regulation. For the Singaporean authorities, it was therefore crucial to demonstrate that insider trading rules were taken seriously and would be enforced against any violator.").} Moreover, it is clear that forbearance has not impressed market participants: as one commentator explained, "[m]any analysts, seeing few catalysts for S-chips to recover, are ditching coverage of the companies as investor interest evaporates."\footnote{314}{Green, supra note 5. See also Yang, supra note 9.} Without such investor interest, even the Chinese companies that benefit from regulatory forbearance in Singapore have begun to abandon SGX.\footnote{315}{See, e.g., supra note 310.} Singapore thus faces the choice of either enforcing the rules universally—even if that means potentially losing a number of Chinese listings in the process—or continuing down the path of forbearance as its markets weaken, perhaps beyond the point of recovery.

Reform could also help to remove the Singaporean government from situations that require direct sparring with Chinese companies and officials. It would be unreasonable to expect the financial authorities of a small city-state to accept without reluctance the risks inherent in confronting an economic titan like China. Yet improved facilitation of private securities litigation would allow shareholders to enforce their rights without requiring the Singaporean government to repeatedly step into diplomatic minefields. Targeted reforms geared toward minimizing the risks of litigation and mitigating collective action problems among classes of litigants would not fully wrest the government from its traditional regulatory role. Such a course of action would, however, serve as the "hands-tying mechanism" needed to close Singapore’s deterrence gap, committing the government to either enforce the law or stand aside when investors commence a securities class action.\footnote{316}{Cf. Fox, supra note 13, at 328 (discussing the "hands-tying" effects of a private cause of action for fraud on the market).}

The Singaporean government thus has every incentive to reform its securities litigation framework and patch the deterrence gap that presently benefits Chinese issuers. Investors would benefit from the opportunity to enforce their rights against dishonest corporations and managers. Issuers would benefit from improved share prices and greater market capitalization. The market itself would benefit from more accurate share pricing and a fairer investment landscape. Final-
ly, Singaporean authorities would benefit from a rehabilitated reputation, a less politicized enforcement process—that is, the prospect of fewer diplomatic quandaries resulting from public enforcement actions—and from a renewed opportunity to advance Singapore’s economic agenda.

Together, the advantages of bolstering Singapore’s securities enforcement framework would almost certainly outweigh the problems that eschewing a weaker, more collusive system might cause. Targeted reforms that strengthen private securities enforcement could aid the Singaporean government in achieving its twin aims of “promoting a strong corporate governance framework” and “[developing]... Singapore as a regional and international financial centre.”317 In this light, a private backstop to public forbearance would not only close the securities fraud deterrence gap that Chinese firms have exploited to the detriment of their Singaporean investors, but could serve as a mainstay of continued economic development in Singapore for years to come.

CONCLUSION

A new market entrant, not subject to the rules that have underwritten decades of economic development in Singapore, is challenging the efficacy of the Republic’s political and economic framework. China’s economic strength counsels Singaporean authorities against taking action when Chinese companies commit securities fraud in Singapore. Such an incentive to forbear dulls the forces that might have deterred fraud among such companies. To remedy this problem, Singapore must ease investors’ recourse to private enforcement actions. The enactment of a statutory securities class action and the concomitant establishment of a private, nonprofit securities litigation organization could thus help to close the deterrence gap that presently benefits Chinese issuers in Singapore.

These decentralizing measures, although mild, conflict with a political philosophy that has worked for Singapore in the past. Around the world, however, investors’ faith in the market and their trust in the authorities charged with regulating it have begun to ebb.318 Improving the quality of corporate governance and ensuring


318. See, e.g., Tassell, supra note 10.
shareholders a greater hand in policing firm management must become priorities for countries wishing to establish themselves as financial centers. It is therefore unsurprising that recent years have seen countries like Germany, Japan and Korea undertaking programs of rapid decentralization.

Perhaps Singapore’s unique attributes set it apart from nations that have already sought to decentralize securities enforcement. The city-state’s idiosyncratic history, economy and governance structure all contribute to its penchant for bucking trends and beating odds. Nonetheless, an unfamiliar tension is beginning to touch the once symbiotic relationship between Singapore’s centralized governance and its desire to develop into a financial center. While such tension could engender any number of outcomes, it undoubtedly presents the Republic with an opportunity to navigate its own destiny. There is no assurance, however, that Singapore’s path forward will be easy.

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