Staving off the onslaught of short sellers

An issuer which has institutionalised good corporate governance and integrity in its business and financial management will never need to flinch or cringe in the face of a short seller's attack. PHOTO: AFP

Good corporate governance is indispensable, issuers can only fight back when there are no skeletons in the closet or any financial or corporate skullduggery. BY ROBSON LEE

THE Singapore Exchange, like many other stock markets, believes that allowing bullish investors to go long, and bearish investors to short-sell, supports market liquidity and efficient price discovery which are cardinal for a dynamic market.

A company that is on an upward trajectory and whose shares are actively traded by short sellers should always be prepared for possible bearish attacks by institutional short sellers. Such attacks via negative research reports disseminated online can trigger a wave of panic selling that can rapidly erode its share price.

The Singapore Exchange (SGX) Regulation's unequivocal position requires an issuer under attack (whether through highly critical reports by research firms or otherwise) to expeditiously announce a full and complete response to all allegations.

SGX will allow a trading halt or suspension, pending the company's response to prevent the share price from being distorted by sudden and one-sided criticism(s).

The focus of the market regulator is to ensure a fair and orderly trading of the company's shares with full transparency. The exchange will not hesitate to initiate investigations and precipitate enforcement actions if the criticisms contain any false or misleading statements, or if the issuer has been tardy in its previous disclosures and management actions that substantiate the criticisms.

An issuer should be able to stand up against any bearish analysts' reports or negative criticisms if it has consistently and conscientiously practised good corporate governance in the management and operations of its businesses.

An issuer must always ensure that its corporate actions and market disclosures can withstand scrutiny. The cornerstone of good corporate governance lies in the integrity of management that ensures compliance with all laws and regulations in the issuer's operations wherever located.

The issuer must, in addition, also ensure timely, true and accurate market disclosures of all material and price-sensitive information.

Compliance with the law by the group should not only be with respect to the letter but more importantly adherence to the spirit of the regulatory provisions.

While the business and financial performance of an issuer could go up and down depending on industry factors and/or geopolitical and other factors beyond the control of management, what is most cardinal is the company's ability to stave off a Blitzkrieg by malicious short sellers purely on the basis of good honest corporate governance.

Investors buy on hope, hold in greed, and sell in fear. An issuer which has institutionalised good corporate governance and integrity in its business and financial management will never need to flinch or cringe in the face of a short seller's attack.

The best natural resistance to any toxic reports is to affirmatively announce that the reports are malicious and patently false. The issuer can only do this when there are no skeletons in the closet or any financial or corporate skullduggery.

Resources-consuming defensive measures, such as aggressive share buybacks or declaring an unprecedented generous interim dividend, should not be the issuer's first response.

Engaging in protracted public spats with the short seller or instituting defamation suits would serve only to perpetuate greater confusion and uncertainty.

An issuer facing a "Pearl Harbour" attack should be mindful not to play right into the hands of malicious rumour mongers who have engineered a confidence crisis and are waiting to profiteer from a tail-spin of the company's share price.

⌘The writer is a partner at Gibson Dunn & Crutcher LLP.