Corporate Governance

Improving Corporate Governance in Indonesia

POLICY OPTIONS AND REGULATORY STRATEGIES FOR TACKLING BACKDOOR LISTINGS

OECD

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Foreword

The Organisation for Economic Co-operation and Development (OECD) has engaged closely with Indonesia to support corporate governance reform efforts. This co-operation takes place through the OECD Corporate Governance Committee, the OECD-Asian Roundtable on Corporate Governance, the OECD-Southeast Asia Corporate Governance Initiative and the Indonesia-OECD Policy Dialogue on Corporate Governance.

The first phase of the Indonesia-OECD Policy Dialogue concentrated on enhancing disclosure of beneficial ownership and control as part of overall efforts to improve corporate governance practices in Indonesia. In 2013, a report entitled "Disclosure of Beneficial Ownership and Control in Indonesia: Policy Options for Indonesia" assessed the costs, benefits and practicality of different policy approaches, suggesting options to better identify ultimate beneficial owners in Indonesia. This report has been instrumental in supporting the development of policies to improve access to reliable information about ownership, including the identity of the controlling owners and control structures of listed companies, which have now become a global priority and part of G20 efforts.

The second phase of the Indonesia-OECD Policy Dialogue focused on the issue of transparent and fair rules governing market discipline, specifically back-door listings. As stated in the G20/OECD Principles of Corporate Governance, markets for corporate control should be allowed to function in an efficient and transparent manner. As part of its financial stability efforts, the Indonesian Financial Services Authority (OJK) has committed to enhancing corporate governance practices in Indonesia.

A technical seminar on backdoor listings was held in December 2013 to discuss the challenges and different regulatory approaches to backdoor listings. A subsequent workshop on the Transparency of Backdoor Listings was held on 30 October 2014 to further explore national and expert views with the aim of exploring good practices. A comparative report provided background to the workshop, with a study of regulatory responses to backdoor listings in other markets and discussed whether there is a need to

promulgate specific rules and regulations for backdoor listings in Indonesia. This final report builds on the Technical Seminar, the workshop and the Comparative Report.

This report was prepared by Fianna Jurdant, Senior Policy Analyst in the Corporate Affairs Division of the OECD Directorate for Financial and Enterprise Affairs, and is the result of work conducted by Erik Vermeulen, consultant for the OECD. The report benefitted from contributions by OJK and reviews of earlier drafts by participants of the OECD-Indonesia Corporate Governance Policy Dialogue. The OECD would like to thank the Government of Japan for their financial support of this work.

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Preface

Indonesia, as a G20 member, shares a responsibility to maintain its financial stability. As part of its financial stability efforts, the Indonesia Financial Services Authority (OJK) has committed to enhance corporate governance practices in Indonesia. In this regard, we value our cooperation with the Organisation for Economic Co-operation and Development (OECD) to undertake an in-depth review of specific corporate governance issues and provide policy options.

This report, "*Improving Corporate Governance in Indonesia: Policy Options and Regulatory Strategies for Tackling Backdoor Listings*", is the result of the second phase of the Indonesia-OECD Corporate Governance Policy Dialogue, focusing on the topic of transparent and fair rules for governing backdoor listings. The first phase of the Policy Dialogue delivered a report with recommendations on how to improve disclosure of beneficial ownership and control in Indonesia.

This report builds on the technical Seminar on Backdoor Listings held in December 2013 and the workshop on Transparency of Backdoor Listings in October 2014, where a comparative study of regulatory responses to backdoor listings was presented. This report concludes that, despite current rules and regulations where companies are required to comply with a stringent disclosure regime, the authorities are considering introducing specific guidelines to enhance legal certainty with regard to backdoor listings.

The report reveals four policy strategies to be considered, including special disclosure requirements for backdoor listings, assessment of backdoor listings on a case-by-case basis, re-admission rules, and a flexible regulatory strategy.

OJK would like to express its highest gratitude to the OECD for preparing this report and providing invaluable policy and technical support during the process. We certainly hope that the report will further support our effort to enhance the implementation of sound corporate governance in

Indonesia. The OECD would like to commend OJK for its commitment to improve corporate governance practices. This report will serve as a valuable reference globally, including in the OECD-Asian Roundtable on Corporate Governance.

Muliaman D. Hadad
Chairman of OJK

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Executive summary

Costly and lengthy regulatory barriers, together with sluggish stock markets, have motivated companies and their shareholders to look for alternatives to Initial Public Offerings (IPOs). A popular alternative has been to pursue a backdoor listing – often accomplished through a reverse merger or reverse takeover. This alternative "transforms" a private company into a publicly traded company by combining directly or indirectly with a listed company (whether through a merger, exchange offer, rights offer or otherwise). Backdoor listings not only allow companies to focus more on their business, and less on compliance with the rules and regulations of "going public", but also the companies gain access to more liquid and robust (often foreign) stock markets. In addition to the cheaper and quicker access to capital and liquidity, backdoor listings have also been employed to receive tax benefits that stem from tax-loss carry-forwards in the public shell. If the backdoor listing involves a public company that operates in the same or complementary industry or sector as the private company, synergies are often the reason for the backdoor listings. Furthermore, in addition to a private company becoming instantly "listed" on a stock exchange, a backdoor listing usually gives the shareholders of the private company the opportunity to receive the majority of the shares of the public entity, allowing them a tight grip on control (as if they still run a private company).

Considering that backdoor listings are often not excessively burdened by complex listing rules and regulations, it is arguable that they are also prone to fraud and abuse. The question then arises whether or not policymakers and regulators should introduce special rules and regulations that govern backdoor listings. This becomes even more critical in areas where we see a dramatic increase in the popularity of backdoor listings, as has been the case in Indonesia. Although it is difficult to provide an easy and simple answer, what is remarkable in this respect is that recent research has appeared to indicate that a backdoor listing is usually a sustainable alternative to the "front door" IPO; thereby, offering several advantages to the companies and its investors. Certainly, there are probably more examples of instances where a backdoor listing has been a prudent and effective alternative to an IPO (calling for a laissez-faire approach). However, there is also evidence

suggesting that lower quality firms pursue listings through the backdoor, justifying the introduction of special rules and regulations.

This report, which has been requested by the Indonesian Financial Services Authority (OJK) builds on a comparative report on “Rules on Backdoor Listings: A Global Survey” as well as the presentations and discussions at a OECD Technical Seminar on Backdoor Listings and a OECD Workshop on Transparency of Backdoor Listings that were held in Indonesia in December 2013 and in October 2014 respectively (Vermeulen, 2014). It describes regulatory strategies that stakeholders, in the process of regulating and monitoring backdoor listings in Indonesia, may consider when examining the advantages and disadvantages of these “going public” alternatives. Adopting one or more of these strategies will arguably support OJK in its efforts to improve listing and corporate governance standards in Indonesia.

Key findings and conclusions

These regulatory strategies can be divided into four. The first strategy consists of “special rules and regulations”, such as the “seasoning rules” in the United States which include maintaining a closing share price beyond a certain threshold and complying with additional disclosure requirements. Second, in countries such as Hong Kong China, policymakers and regulators determine on a case-by-case basis the applicable rules and regulations. The third strategy can be found in the United Kingdom and Australia; it includes the application of re-admission rules. Under this regime, listings of companies involved in a backdoor listing are usually cancelled, forcing companies to fulfill re-admission requirements. Finally, regulators in countries that have no history with backdoor listings generally allow alternative public offerings, but have sometimes introduced a temporary “observation status” to alert investors about certain risks and uncertainties associated with backdoor listings.

Which strategy would work best for Indonesia? An analysis of the existing backdoor listing cases shows that companies in a backdoor listing process are already required to comply with stringent IPO-style disclosure and transparency rules and regulations. However, since the applicable regulatory regime is designed without “backdoor listings” in mind, it may be appropriate to introduce specific disclosure rules and guidelines to better accommodate backdoor listings.

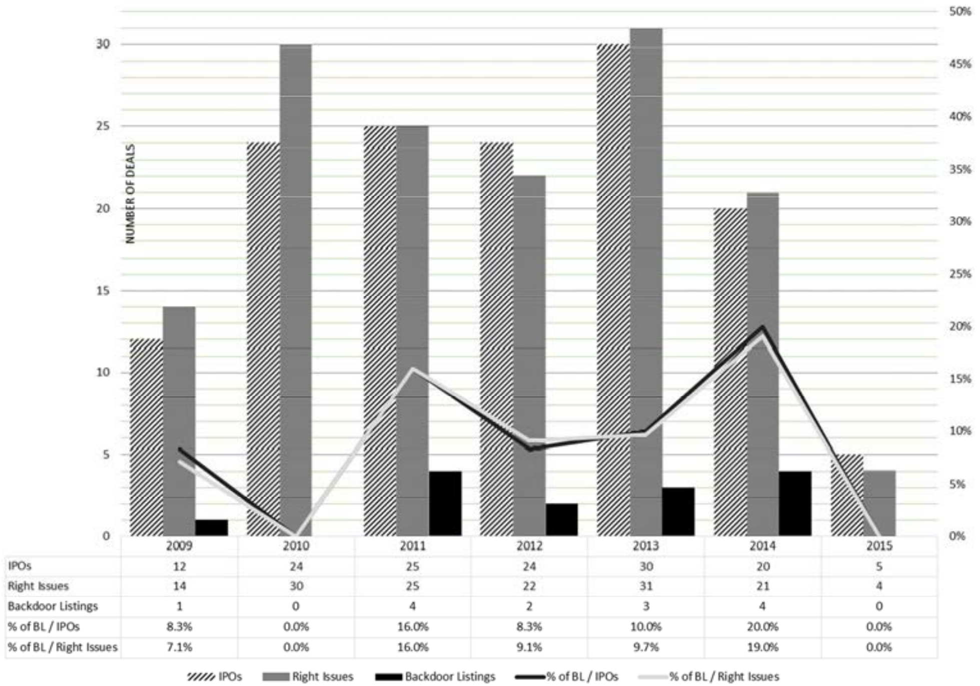
Why should regulators in Indonesia care about backdoor listings?

IPOs engender the obligation for companies to comply with a set of rules and regulations to protect shareholders (and other stakeholders) and prevent mismanagement. These rules and regulations can be divided into three categories: (1) listing requirements that determine whether a company is eligible to go public, (2) disclosure and transparency rules that provide financial and other information to the market and enhance investor confidence, and (3) corporate governance requirements that ensure that a company's affairs are conducted in the interests of all concerned. The regulatory framework for the the IPO process can be expensive and time-consuming, often encouraging parties to look for alternatives. The costs of an IPO include the fees paid to investment banks, accountants, auditors, lawyers and other service providers for advice and for preparing registration statements, prospectuses and other legal documents. Low valuations and disappointing IPO performances may also be reasons for companies to forego the IPO route (Vermeulen, 2015; Lawrence, 2006).

For these reasons, the prospect of avoiding the costs associated with an IPO by "going public" through the backdoor can be appealing, in particular for companies that operate in volatile and frequently changing markets (Brown et al., 2010). A backdoor listing offers a company control over the timing of the listing and the information that is released regarding the going public process. Indeed, control over both timing and information not only enables a smoother transition from non-listed status to being listed on public markets, but also provides these companies with the opportunity to withdraw their plans without alerting the public. Backdoor listings have gained popularity in recent years and have at the same time been subject to controversy because an increasing number of them have failed to live up to the expectations of investors in the post-listing period.

Indonesia has experienced a moderate increase in the number of backdoor listings in recent years (see Figure 1) (Iman, 2013). Table 1 contains several recent and important cases. There are currently no specific "backdoor listings" rules in Indonesia, and the regulator (OJK) and the Indonesia Stock Exchange have deliberately chosen not to introduce new "backdoor listing" regulations. This is not to say that the process of undertaking a backdoor listing is entirely unregulated.

Figure 1. **IPOs versus backdoor listings in Indonesia**



	2009	2010	2011	2012	2013	2014	2015
IPOs	12	24	25	24	30	20	5
Right Issues	14	30	25	22	31	21	4
Backdoor Listings	1	0	4	2	3	4	0
% of BL / IPOs	8.3%	0.0%	16.0%	8.3%	10.0%	20.0%	0.0%
% of BL / Right Issues	7.1%	0.0%	16.0%	9.1%	9.7%	19.0%	0.0%

Source: Eric Chunata, Research for the LLM International Business Law master thesis at Tilburg University (2015).

A backdoor listing can be achieved in several ways in Indonesia, including through a "reverse merger" scheme. As is reflected in Figure 2, however, Indonesian backdoor listing transactions usually include a "rights issue" procedure to raise capital and enable a new shareholder (usually a "standby buyer") to acquire control of an already listed company (*step one*).[1] Companies that issue new shares have to acknowledge preemptive rights obligations, which allow existing shareholders to purchase new shares and avoid dilution of their ownership stake. With the new capital raised, the listed company acquires the shares of one or more private companies (*step two*). This transaction often triggers the application of "material transactions" rules which usually lead to "material" disclosures in the prospectus. The change of the listed company's objectives and name (*step three*), which usually completes the backdoor listing, is also subject to specific rules and regulations. Table 2 provides an overview of possible applicable capital market rules and regulations in Indonesia.

Table 1. **Backdoor listings in Indonesia (through a rights issue)**

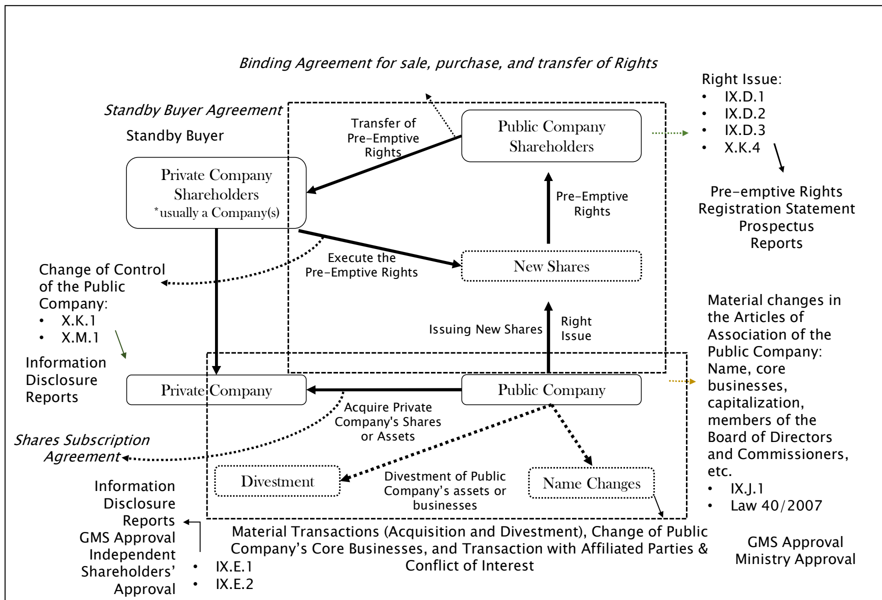
Year	Standby buyer (rights issue)	Target company	New name target company
2011	Amstelco Plc Ltd	PT Indo Citra Finance Tbk	PT Amstelco Indonesia Tbk
2011	PT Smart Telecom	PT Mobile-8 Telecom Tbk	PT Smartfren Telecom Tbk
2012	J&Partners Asia Ltd	PT Pelita Sejahtera Abadi Tbk	PT J Resources Asia Pasifik Tbk
2014	PT Red Planet Hotels Indonesia	PT Pusako Tarinka Tbk	PT Red Planet Indonesia Tbk
2014	PT Fundamental Resources	PT Sekawan Inti Pratama Tbk	PT Sekawan Inti Pratama Tbk
2014	PT Rajawali Capital International	PT BW Plantation Tbk	PT Eagle High Plantations Tbk

Source: Author's research.

If the rules and regulations applicable to the process that eventually lead to a "backdoor" listing in Indonesia require compliance with IPO-style disclosures and transparency rules, it could be argued, as is currently done by Indonesian regulators, that regulators should assume that the information in the market is sufficient for investors to make well-considered decisions about their current or future investments in Indonesian "backdoor-listed" companies. However, since the applicable rules and regulations (as reflected in Table 2) were designed without regard to companies that seek to "secretly" float their shares, the introduction of regulations or other rules and/or guidelines that specifically apply to backdoor listings appears to be justified.

Special rules and regulations arguably enhance the legal certainty surrounding backdoor listings. More importantly, a unique "backdoor listings" regime increases the regulatory effectiveness (particularly from the perspective of foreign investors) in that it encourages regulators to pay "special" attention to potential irregularities and concerns related specifically to backdoor listings (such as non-disclosure of audited financial reports, non-transparent business models, questions about future capital needs and issues with the independence of asset valuations). Perhaps more importantly, special backdoor listing rules make it more explicit to investors that the "backdoor" process has checks and balances built in that are similar to the IPO process. Furthermore, as will be discussed in the following section, a "special regulation" approach would be in line with the strategies used by regulators in other countries that have experienced or are experiencing a surge in listings through the backdoor. Rather than setting out a detailed blueprint for backdoor listing regulation, the next section will focus on four regulatory strategies to develop a solution to some of the issues in backdoor listings in Indonesia.

Figure 2. **"Common" backdoor listings transactions in Indonesia**



- Law 40/2007, Law 8/1995, and IDX Regulation I-A
- Disclosure of Information that Must be Made Public Immediately: X.K.1
- Planning and Conducting the General Meeting of Shareholders: 32/POJK.04/2014
- Other reporting requirements for Issuers and Public Companies: X.K.2, X.K.5, X.K.6, and X.K.7
- Accounting Standards Regulations
- Fraud, Manipulation, and Insider Trading Regulations

Source: Eric Chunata, Research for the LLM International Business Law master thesis at Tilburg University (2015).

Table 2. **Capital market regulations in Indonesia**

BAPEPAM (OJK)	*Regulation No. IX.D.1* Concerning Preemptive Rights
BAPEPAM (OJK)	*Regulation No. IX.H.1* Concerning Takeovers of Listed Companies
BAPEPAM (OJK)	*Regulation No. IX.G.1* Concerning Mergers and Consolidations of Listed Companies or Issuers
OJK	*Regulation No. 32/POJK.04/2014* Concerning Convening and Conducting General Meetings of Shareholders
BAPEPAM (OJK)	*Regulation No. X.M.1* Concerning Disclosure Requirements for Certain Shareholders
BAPEPAM (OJK)	*Regulation No. IX.E.1* Concerning Transactions with Affiliated Parties and Conflicts of Interest
BAPEPAM (OJK)	*Regulation No. IX.E.2* Concerning Material Transactions and Changes in Core Business
BAPEPAM (OJK)	*Regulation No. IX.J.1* Concerning Main Substances of Articles of Association of Companies Pursuing a Public Offering and Publicly Listed Companies
IDX	*Regulation No. 1-A* Concerning the Listing of Shares and other Securities

Source: Tumbuan & Partners

Backdoor listings: Four regulatory strategies

Backdoor listings are becoming increasingly popular as a mechanism to go public in Indonesia. An interesting point is that companies that have pursued a backdoor listing often belong to a group of high performers on the Indonesian Stock Exchange (IDX). Consider PT Pelita Sejahtera Abadi Tbk, which after completion of the "backdoor listing" transaction was renamed J Resources Asia Pasifik Tbk. In the year of the backdoor listing, their stock price surged from IDR 450 in December 2011 to IDR 5 000 in December 2013. The increase of approximately 1000 per cent has clearly unlocked significant value for the existing shareholders of the listed company. With this and several other success stories in mind, the Indonesian regulator and the stock exchange view backdoor listings as a means to eliminate the companies struggling the most (which undoubtedly adds to the development of a robust stock market with more liquidity and higher than average trading volume).

This section introduces four regulatory strategies that could be deployed by the Indonesian regulator in an attempt to prevent fraudulent and abusive backdoor listings, without putting a halt on the increasingly popular and successful listing alternative.

Strategy 1 – Special disclosure requirements for backdoor listings

Strategy 2 – Assessment of backdoor listings on a "case-by-case" basis

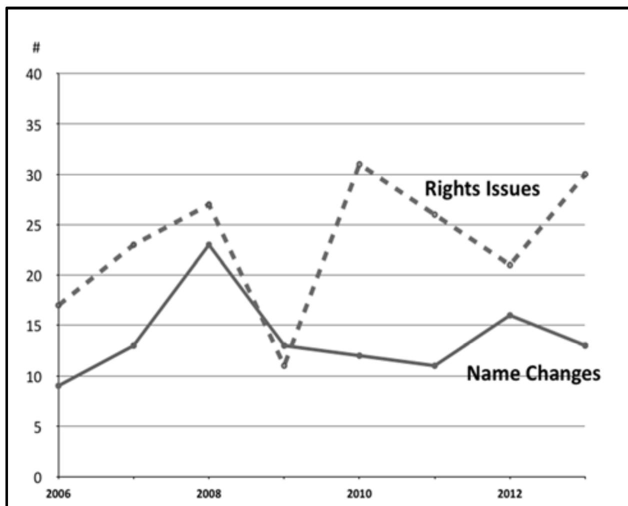
Strategy 3 – Re-admission rules

Strategy 4 – A flexible regulatory strategy

Strategy 1 – Special disclosure requirements for backdoor listings

Is it always necessary to introduce rules and regulations that specifically deal with backdoor listings? The backdoor listing cases in Indonesia seem to suggest that the introduction of specific rules and regulations is redundant when the "backdoor listing process" already requires companies to comply with a stringent "IPO-style" disclosure and transparency regime. Indeed, it could be argued that in order to determine whether a listed company is a target in a backdoor listing transaction, investors should take the following criteria/actions (indicating that a "backdoor listing" is at hand) into account: (1) the listed company initiates a rights issue, (2) subsequently, the listed company acquires a private company, and (3) the listed company changes its name following the acquisition. However, as we have already concluded in Section 2, it may nevertheless be appropriate to introduce special rules and regulations that require the listed company (as well as its prospective controlling owner) to immediately disclose the backdoor listing intention to the public. This would not only prevent speculation at the time of a rights issue, but could also avoid confusion in the market. Indeed, rights issues are not necessarily connected to a backdoor listing. This is reflected in Figure 3 which shows that the market should be careful with drawing conclusions from "rights issues" and "name change" information. There is often no correlation between the two actions, making it very difficult for investors to determine when a backdoor listing is intended.

Figure 3. **Recorded right issues and name changes in Indonesia**



Source: Indonesia Stock Exchange (IDX).

Here it should be noted that the introduction of backdoor listing-specific rules and regulations do not necessarily make these listings less attractive. Trends and developments in the United States seem to suggest that a special regulatory regime makes backdoor listings an unattractive alternative for companies that desperately want to avoid the scrutiny of the IPO process. However, a closer look at the "backdoor listings" market in the United States shows that particularly lower quality companies have refrained from pursuing a backdoor listing after the special rules have been implemented. Other "higher quality" companies value having more control over the timing of a listing, which is arguably provided by a backdoor listing, higher than the increased transactions costs that are associated with the application of more stringent regulatory requirements. This is an important observation for the regulator in Indonesia that so far had no reason or desire to discourage backdoor listings.

The impact of special rules and regulations for backdoor listings: The United States experience

Backdoor listings have become an attractive alternative to an IPO in the United States in the previous decade. The number of these listings was even higher than the number of regular IPOs in 2008 (Semenenko, 2011). A backdoor listing in the United States is usually accomplished through a reverse merger: A private company that wishes to go public through the "backdoor" merges with a public shell. Clearly, in order to maintain the trading status, the public shell must survive the merger (this explains the term "reverse"). In the United States, trades in the public shell companies are usually carried out through electronic quotation venues such as the Over-the-Counter Bulletin Board (OTCBB) or the "Pink Sheets" system (referring to the color of the paper the quotations were printed on). This over-the-counter (OTC) market mainly deals in low-grade securities issued by firms in economic distress or "microcap" issues that fail to qualify for a regular listing on a stock exchange. Most of the shares traded in these OTC markets are of such low value – "penny stock" (shares trading under USD 1) are common – that they form perfect targets for backdoor listings.

Parties involved in a backdoor listing usually employ a "reverse triangular merger", instead of a direct merger. This form of merger enables the parties to circumvent expensive and time-consuming disclosures under the listing rules and securities regulations. Let us look at the "reverse triangular merger" in more detail. The publicly listed company typically creates a new wholly owned subsidiary, which subsequently merges into the private company. The merger must be approved by the public shell (as a shareholder of its new subsidiary) and the shareholders of the private company. Approval from the shareholders of the public shell company can

be avoided if the company trades on the OTCBB. As a result of the merger, the private company becomes the wholly owned subsidiary of the public shell, which in return issues shares to the shareholders of the private company. Finally, the name of the shell is changed, usually to the name of the private company – the directors and officers of which usually replace those of the listed shell. Despite how reverse mergers might be for a broad range of companies, the lack of regulatory scrutiny has increased the concerns regarding the degree to which these mergers are used as a means of committing fraud or other securities violations (particularly in the area of misleading financial statements).

The fact that reverse mergers are prone to abuse and inappropriate listings is not new. In the early days of the reverse merger practice (in the 1970s and 1980s), a number of opportunistic promoters were fraudulently establishing new shell companies that subsequently raised capital through their IPOs. After the shell company was established, they leaked speculative information about an upcoming (reverse) merger to the market in the hope that the stock price would rise, which would then give them the opportunity to sell shares and make a significant profit. In response to this fraudulent practice, the Securities and Exchange Commission (SEC) passed a number of amendments to the Securities Act 1933 in 1992. The most important rule in this context is Rule 419 which introduced a "blank check company", which is defined as: (i) a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person and (ii) issuing "penny stock". Rule 419 also introduced special rules for the blank check companies. For example, under Rule 419 it was required to place virtually all cash raised during the IPO into escrow. Additionally, it was prohibited to trade in the shell's stock prior to a reverse merger and a time limit of 18 months was introduced to complete a transaction – failure to do so would lead to a return of the invested cash to the shareholders.

The regulatory restrictions on blank check companies are the reason for the emergence of Special Purpose Acquisition Vehicles (SPAC). Interestingly, SPACs largely mirror the blank check companies of the 1980's that caused Congress to adopt Rule 419. The business plan for a SPAC is simple. A SPAC is a shell company without historical operations that was taken public through an IPO solely for the purpose of acquiring an operating business, which is typically not pre-determined prior to listing, within an eighteen to twenty fourth month timeline. For entities looking to list through a reverse merger, a SPAC can be a favorable partner (for a variety of reasons) by offering the operating company an immediate cash infusion directly from the proceeds of the SPAC's IPO as well as a liquid

trading market for its securities. Even though a merger with a SPAC eliminates the primary downsides associated with a traditional reverse merger, a merger via a SPAC is often not possible for less than exceptional operating companies and the likelihood of such a deal is at the whim of the SPAC's management group.

Despite the introduction of Rule 419 and the restrictions on the use of SPACs, the reverse merger or reverse takeover was utilised at a greater frequency as a mechanism to list publicly in the lead up to 2010 (see Figure 4). In fact, as was already mentioned, the number of reverse mergers eclipsed the IPO count in 2008 for the first time in the United States. However, this growing trend was not necessarily the consequence of a shift towards a more preferable listing option. Literature denouncing reverse mergers as a suitable substitute to IPOs is plentiful and with some even venturing so far as to say that they are not even comparable. For example, a recent empirical study argues that going public via an IPO is simply not feasible for many companies that do not exhibit significant growth potential, meet minimum revenue and income levels or purely due to an inability to convince an investment bank to underwrite its offering, typically the gatekeepers to the public. It also shows that most "reverse merger" companies begin trading in over-the-counter (OTC) markets (Lee et al., 2013). Here it should be noted that gaining access to traditional forms of additional capital and ensuring a liquid market for its shares that typically come along with an IPO listing are virtually non-existent when pursuing a reverse merger.

Consider the Chinese companies that listed in the United States via reverse mergers. According to data collected by the Public Company Accounting Oversight Board (PCAOB), 159 Chinese companies completed a reverse merger between 1 January 2007 and 31 March 2010. Because the reverse merger route allows them to avoid the scrutiny that is usually required by the state and federal rules and regulations in the United States, the reverse merger count outnumbered the number of Chinese companies that completed an IPO in the United States in the same period. Clearly, even though legally accepted, this trend was only possible with the help of a network of US advisors and consultants, such as underwriters, investment banks, lawyers and auditors (Barboza and Ahmed, 2011).

What is remarkable in this respect is that filings with the SEC reveal that Chinese reverse mergers tended to retain their own auditors post-merger as opposed to those of the former shell company (Templin, 2011). Audit quality concerns in these mergers were only to be expected when compliance with PCAOB accounting standards increasingly faltered. The large majority of accounting firms employed by Chinese reverse mergers were only inspected by the PCAOB on a triennial basis rather than the

typical annual basis, which had only compounded concerns over fraud whirling around Chinese reverse mergers (see Table 3). It should also be noted that the questionable audit quality and non-compliance has stemmed partially from the added difficulty for US registered accounting firms to conduct comprehensive audits on companies based abroad due to language barriers, accounting standard discrepancies, use of under qualified assistants, the lack of enforcement of accounting laws in China, and additional expenses as well.

Table 3. **PCAOB inspection accountancy firms: Chinese reverse merger companies**

	Number of Chinese companies	Percentage	Market capitalisation (USD millions)	Percentage
Annual Inspection	10	6	390	3
Triennial Inspection	147	94	12 453	97

Source: Capital IQ, PCAOB

Though poor performing Chinese reverse merger companies are inextricably tied to the general perception of reverse mergers as they account for a large proportion of entities pursuing backdoor listing through public shell companies, research indicates that the negative spillover effects of fraudulent activity or reporting by Chinese companies have not harmed other non-Chinese companies' reverse merger activities. Reverse mergers involving non-Chinese entities appear to largely escape the wrath of investors as the stock market reaction to news of fraud are focused on Chinese companies as opposed to questioning reverse mergers in general as a viable mechanism to list publicly (Darrough et al., 2012). Still, global turbulence in the credit markets, triggered by turmoil in the subprime mortgage market in 2007-2008, largely brought an end to the large numbers of reverse mergers as well as the laissez-faire era approach to the reverse merger process in the United States. In response to a number of reverse merger scandals, the government introduced legislation that subjects reverse mergers to registration requirements and provisions targeted at improving accountability.

In light of the string of alleged fraudulent activities and accounting gaffes concentrated within entities that have undertaken reverse mergers in the latter half of the 2000s, the SEC and the PCAOB acted swiftly in an attempt to halt further incidents. In addition to issuing an investor bulletin highlighting the additional potential risks associated with investing in companies that were engaged in a backdoor listing process (SEC, 2011), the SEC imposed a wave of more stringent listing rules in order to simply be

eligible to list publicly. Additional listing requirements imposed include maintaining a closing share price beyond a certain threshold, complying with all periodic filing requirements of financial reports, and having been traded in the United States on the OTC market or another regulated exchange for at least one-year prior ("seasoning rules"). These amendments ultimately approved by the SEC in November 2011, referred to concerns about the inaccuracies of financial statements produced by reverse merger companies (see Table 4) (SEC, 2011).

Table 4. Backdoor listing rules and regulations in the United States

Stock exchange	Reverse merger rules
NASDAQ, NYSE and NYSE Amex	Under the new rules, NASDAQ, NYSE, and NYSE Amex will impose more stringent listing requirements for companies that become public through a reverse merger. Specifically, the new rules would prohibit a reverse merger company from applying to list until: o The company has completed a one-year "seasoning period" by trading in the U.S. over-the-counter market or on another regulated U.S. or foreign exchange following the reverse merger, and filed all required reports with the Commission, including audited financial statements. o The company maintains the requisite minimum share price for a sustained period, and for at least 30 of the 60 trading days, immediately prior to its listing application and the exchange's decision to list. Under the rules, the reverse merger company generally would be exempt from these special requirements if it is listing in connection with a substantial firm commitment underwritten public offering, or the reverse merger occurred long ago so that at least four annual reports with audited financial information have been filed with the SEC.

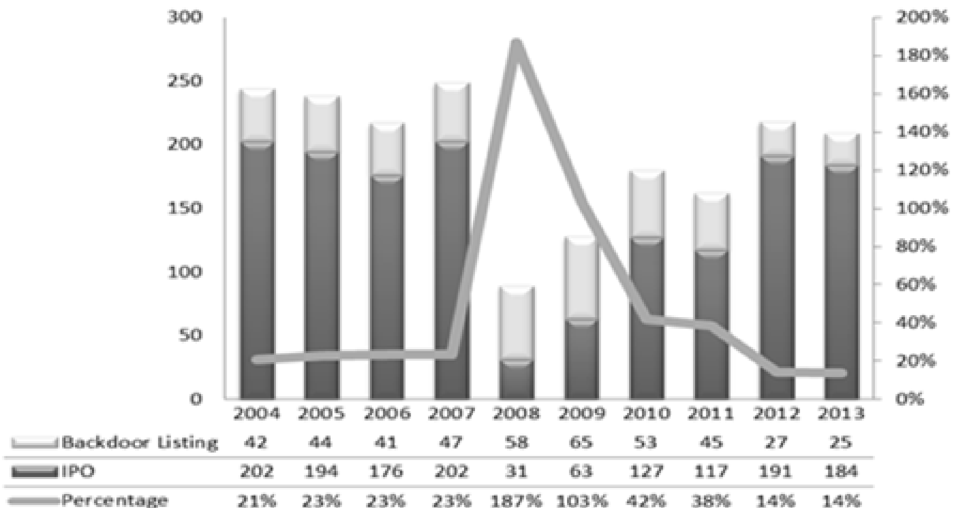
Source: Author's research.

In addition, the PCAOB proposed to implement a set of supplementary auditing standards in the fall of 2011 as well by requiring audit reports to disclose and identify the names of audit firms or individuals that provided more than 3 percent of the total hours spent on the most recent audit.[2] The rationale for this additional requirement was twofold. First, such a standard helps fulfill consistent requests from investors for further information about the firms that are performing audits on their investments. Second, the names of auditing firms that are located in jurisdictions beyond the PCAOB's current investigatory scope would be publicised under this mandate, thus

helping investors to be better informed about the quality of firms conducting the company's auditing. This is particularly relevant in China where the PCAOB along with other foreign regulatory bodies are currently barred from inspecting China-based audit firms. Though the PCAOB has consistently attempted to further cooperate with jurisdictions where it is unable to inspect (such as China, which makes up almost 5 percent of the PCAOB registered firms), additional measures, including the publication of the names of foreign auditing firms is a step toward greater transparency in audit practices in favor of investors.

The impact of these rules and regulatory scrutiny appears to be significant. Data provider PrivateRaise recorded that in 2010 there were 257 reverse mergers, but after the introduction of the rules the number decreased to 124 in 2013. It is interesting to note, however, that US healthcare and biotech companies are increasingly willing to pursue a backdoor listing despite the special backdoor listing rules that were introduced. According to PrivateRaise, at least 69 companies availed themselves of the reverse merger option during the first half of 2014. Most of these companies were healthcare and biotech companies, and 28 of the companies were able to raise a respectable total of USD 85.6 million in private placements (Meagher, 2014a, 2014b).

Figure 4. **IPOs versus backdoor listings in the United States**



	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Backdoor Listing	42	44	41	47	58	65	53	45	27	25
IPO	202	194	176	202	31	63	127	117	191	184
Percentage	21%	23%	23%	23%	187%	103%	42%	38%	14%	14%

Source: Exchange Websites, Australian Securities and Investment Commission (ASIC 2013) (Adapted from the presentation by Ms. O'Rourke at the Indonesia-OECD Corporate Governance Policy Dialogue, October 2014).

Strategy 2 – Assessment of backdoor listings on a "case-by-case" Basis

Early disclosure empowers regulators to immediately cancel or suspend the trading in the shares of a listed "target" company if the regulator is of the opinion that more accurate information should be provided to the market. This would arguably promote an early disclosure of the relevant information and documents pertaining to the transactions leading to the backdoor listing. Of course, it goes without saying that the regulator should assess the quality of the listings on a case-by-case basis (rather than focus on the chosen path to public market). They should only intervene when they are of the opinion that information asymmetries justify the application of more stringent IPO requirements. For instance, the regulator could request the listed company to disclose more financial information, such as audited financial reports, information about the valuation of assets as well as future capital needs, or ask the company to focus more on non-financial information, such as business models, related party transactions and the composition of the board of directors.

Even though the "case-by-case" determination of the applicable rules for backdoor listing sounds attractive, there are several practical issues that must be addressed when implementing this relatively flexible regime. For instance, regulators are often understaffed, lack sufficient experience and/or tend to work under budget constraints, thus making effective and adequate application of a "case-by-case" approach difficult and time-consuming. Consider in this respect the rules in Hong Kong, China.

The implications of a case-by-case approach: The Hong Kong, China experience

Rule 14.06(6) of the Main Board Listing Rules of the Hong Kong Stock Exchange (HKEx) governs the listings of entities that undertake reverse takeovers. Rules 14.06(6)(a) and 14.06(6)(b) outline two common forms of reverse mergers, which effectively make up the so-called "bright line" tests employed by the Hong Kong Stock Exchange to govern the validity of backdoor listings (see Table 5). However, these two forms of reverse mergers that are outlined are far from being an all-encompassing list under the purview of the regulators. Three recent cases reflect how strict adherence to rules 14.06(6)(a) and 14.06(6)(b) does not necessarily ensure a successful listing for entities undertaking reverse takeovers. The final judgment on whether the proposed transaction is in fact a reverse takeover boils down to if the deal is an attempt to achieve a listing by ways of avoiding initial listing requirements or not.

In the case of HKEx-LD57-2013, neither of the bright line tests were violated as the proposed transaction would not have resulted in a change of control as discussed in Rule 14.06(6)(a), nor would the target have acquired a controlling stake in the purchaser 24 months prior to the consummation of the acquisition as imposed by Rule 14.06(6)(b). Nevertheless, it was determined that the acquisition was an attempt at a reverse merger by the authorities. The Hong Kong Stock Exchange cited how the transaction would be a substantial acquisition and that the acquiring company's assets would only represent a minimal amount of the greater group's total assets as a signal of a reverse takeover. The regulatory authority highlighted how neither the acquired assets nor the assets of the merged entities would meet the requirements of Rule 8.05(1) as well indicating that the proposed transaction was in essence an extreme example of a reverse takeover. Rule 8.05(1) requires prospective listing applicants to meet three minimum thresholds: a trading record of 3 financial years, HKD 20 million in profits in the most recent year, and HKD 30 million in aggregate profits in the preceding two years.

Table 5. **Backdoor listing rules and regulations in Hong Kong, China**

Stock exchange	Reverse merger rules
HKEx	14.05 A listed issuer considering a transaction must, at an early stage, consider whether the transaction falls into one of the classifications set out in rule 14.06. In this regard, the listed issuer must determine whether or not to consult its financial, legal or other professional advisers. Listed issuers or advisers which are in any doubt as to the application of the requirements in this Chapter should consult the Exchange at an early stage. The classifications are: (6) reverse takeover, which normally refers to: (a) an acquisition or a series of acquisitions (aggregated under rules 14.22 and 14.23) of assets constituting a very substantial acquisition where there is or which will result in a change in control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries); or (b) acquisition(s) of assets from a person or a group of persons or any of his/their associates pursuant to an agreement, arrangement or understanding entered into by the listed issuer within 24 months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries), where such gaining of control had not been regarded as a reverse takeover, which individually or together constitute(s) a very substantial acquisition.

Source: Author's research.

Case HKEx-LD58-2013 is within the scope of the bright line test propagated by Rule 14.06(6)(a) effectively making the applicable acquisition highlighted within the case a reverse takeover. However, the acquiring company was under the impression that the proposed transaction did not constitute a backdoor listing, as the target would comply with the trading record requirements in order to list under Rule 8.05. The Exchange ultimately rejected such overtures as the transaction was clearly within the scope of Rule 14.06(6)(a) and that the acquirer, a shell company, was trying to list the target without having to go through the standard listing application process. Both the seller and acquirer cited a past decision (HKEx-LD95-1) in rebuttal, but it was deemed inapplicable, as the target did not inject assets into the acquirer to the extent that was the case in this particular case.

In Case HKEx-LD59-2013, the proposed transaction constituted a reverse takeover under Rule 14.06(6)(a) and effectively within the scope of the bright line test as in HKEx-LD58-2013. However, the Exchange granted a waiver in favor of the acquirer by dubbing the transaction as a substantial and connected transaction, but without falling under the category of a reverse takeover. The acquirer's submission that the target's patents were related to its business within the video gaming space and was thus not an attempt to attain a listing by avoiding the standard listing requirements was ultimately accepted. This particular case serves as a stark contrast to HKEx-LD58-2013 as a waiver was granted although the deal was within the scope of Rule 14.06(6)(a).

The implications of these three particular decisions highlight the increased level of uncertainty regarding the application of listings in the form of reverse takeovers. Building deals around the Exchange's bright line tests can no longer ensure a successful listing via a reverse takeover. In essence, these developments suggest that the requirements imposed by the regulatory authority at the Hong Kong Stock Exchange are tightening as the vetting process of flagged transactions will be more extensive. Close consultation with the Exchange to clarify the potential interpretation of potential reverse takeovers may be a sensible measure.

Strategy 3 – Re-admission rules

Under a re-admission regime, the regulator generally seeks to cancel the listing of a company's shares following completion of a backdoor listing. Companies that intend to pursue a backdoor listing are thus forced to fulfill re-admission requirements (as if a company were applying for an IPO). It will not be surprising that re-admission requirements not only reduce the benefits of lower costs and a more speedy process, but also alter the motivation for pursuing a backdoor listing (Faelten et al., 2013). What is interesting, however, is that in a regulatory environment, backdoor listings are still frequently used by private companies that (1) are mainly interested in the synergies that can be achieved by merging with (or taking over) a listed operating company (this is often combined with raising new capital, and (2) seek access to a wider exposure to investors and liquidity when the IPO market is weak.

The UK Experience with re-admission rules

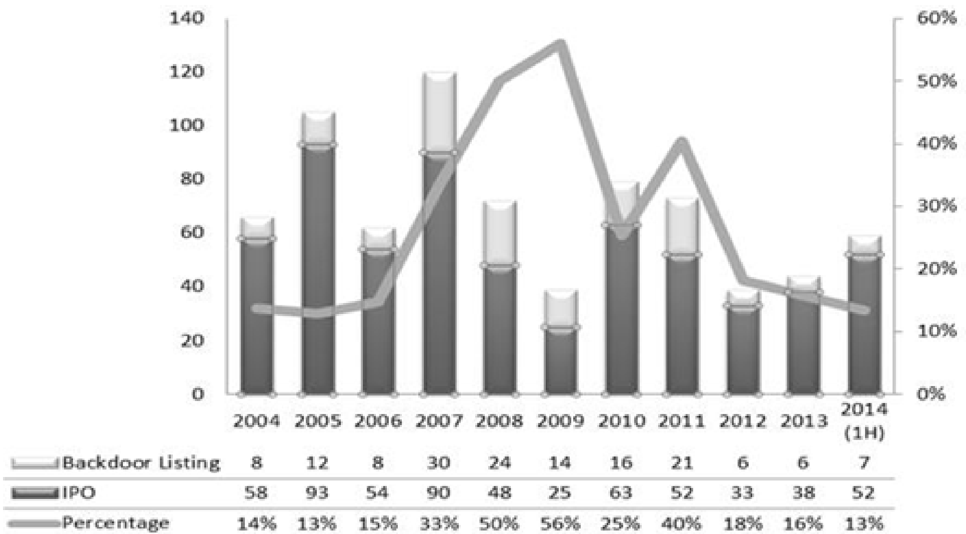
What is interesting about the experience in the United Kingdom is that it shows that specific rules and regulations do not necessarily make backdoor listings less attractive. On the contrary, for long the "backdoor listing" practice in the United Kingdom was more widespread than in the United States (Roosenboom and Schramade in Gregoriou and Renneboog, 2007). This explains why in contrast to the United States, the United Kingdom has until recently not expressed much concern in the form of increased or tighter listing requirements for companies pursuing backdoor listings. Perhaps the relatively minimal academic and policy attention compared to the United States is a consequence of the stopgaps that were already built into the London Stock Exchange Listing Rules (which generally resulted in the suspension of the listing of the acquiring company's shares unless sufficient information was provided to the market). However, the lack of a significant reform in the United Kingdom should not be confused with a lack of awareness on the matter. Following alleged irregularities at subsidiaries of Bumi, an Indonesian company that listed on the London Stock Exchange through a reverse merger in the summer of 2011 (Oakley, 2012), the Financial Services Authority (FSA) (2012a) – now the Financial Conduct Authority (FCA) – introduced new rules with the aim to prevent reverse takeovers of companies that are not eligible for listing (at one of the listing segments) and tighten the governance around these takeovers in October 2012 (Dunkley, 2012).

Table 6. **Backdoor listing rules and regulations in the United Kingdom**

Stock exchange	Backdoor listing rules
London Stock Exchange	LR 5.6.19: The FCA will generally seek to cancel the listing of an issuer's equity shares or certificates representing equity securities when the issuer completes a reverse takeover. LR 5.6.23 G to LR 5.6.29 G set out circumstances in which the FCA will generally be satisfied that a cancellation is not required. Where the issuer's listing is cancelled following completion of a reverse takeover, the issuer must re-apply for the listing of the shares or certificates representing equity securities and satisfy the relevant requirements for listing.

Source: Author's research.

Figure 5. **IPOs versus backdoor listings in the United Kingdom**



Source: Exchange Websites, Autralian Securities and Investment Commission (ASIC 2013) (Adapted from the presentation by Ms. O'Rourke at the Indonesia-OECD Corporate Governance Policy Dialogue, October 2014).

In fact, the FSA already issued a consultation paper in January 2012 that outlined a number of proposals aimed at strengthening governance and disclosure issues that have been identified.[3] Listing rules that effectively restrict listed shell companies established with the intention of acquiring an

operating business from becoming premium listed is also implemented as a direct byproduct of these discussions.[4] The new London Stock Exchange Listing Rules generally require entities pursuing a backdoor listing to automatically re-apply for a public listing following the approval of a reverse merger by the shareholders in a general meeting (see Table 6). These rules, together with the negative perception of backdoor listings in the UK, explain the sudden decline in the use and popularity of backdoor listings in 2011 (see Figure 5).

The Australian experience with re-admission rules

Similar to Indonesia, there are no specific references to backdoor listings in the Listing Rules of the Australian Stock Exchange (ASX). Nonetheless, ASX Listing Rules Guidance Note 12 (which was published in December 2013 and revised in October 2014) provides legal certainty for the companies and their advisors by explaining how backdoor listings are regulated under Listing Rules 11.1 (including 11.1.2 and 11.1.3), 11.2 and 11.3 (see Table 7). The Australian Securities Exchange generally compels a listed entity involved in a backdoor listing to re-adhere to listing requirements under ASX Listing Rule 11.1 (proposed change to the nature or scale of activities). Non-compliance with the listing rules may lead to a suspension of the quotation.

Table 7. **Backdoor listing rules and regulations in Australia**

Stock exchange	Backdoor listing rules
Australian Securities Exchange (ASX)	Application of Listing Rules 11.1 to 11.3. Listing Rule 11.1: notification of significant transaction. Listing Rule 11.2: Disposal of an entity's main undertaking. Listing Rule 11.3: Suspension of quotation Listing Rule 11.3 empowers ASX to suspend the quotation of an entity's securities until the entity has satisfied the requirements of Listing Rules 11.1 or 11.2. It is a discretion that ASX can exercise to secure compliance with the requirements of Listing Rules 11.1 or 11.2 and to ensure that the market is supplied with sufficient information about a proposed significant change to the nature or scale of a listed entity's activities for trading in its securities to be taking place on a reasonably informed basis.

Source: Author's research.

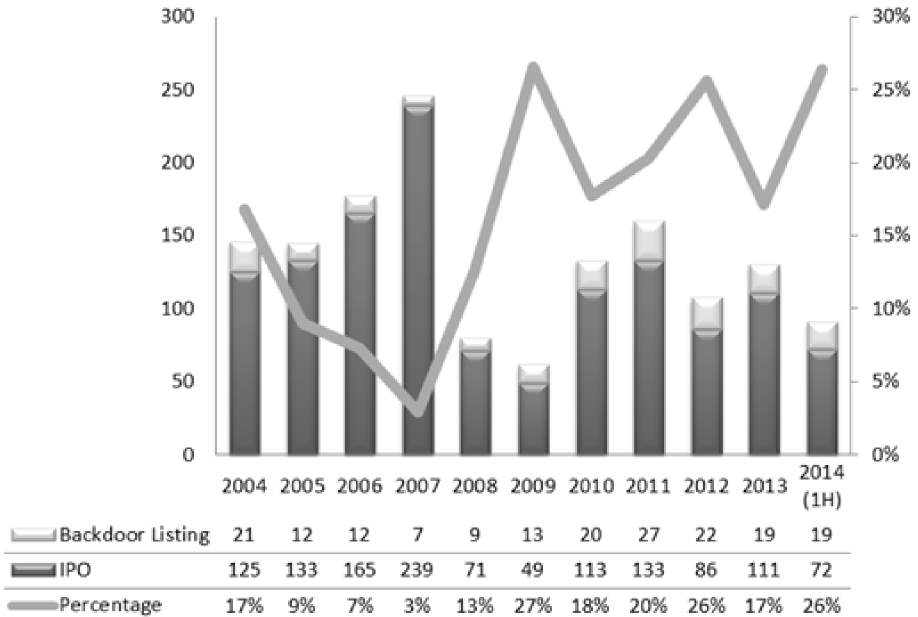
Exceptions to the re-admission process only exist if the backdoor listing does not constitute a significant change in the nature or scale of the activities of the listed company. Not surprisingly, a close reading of the Australian Guidance Note 12 shows that the most common backdoor listings, which are generally pursued by volatile high tech and mining companies, will lead to a significant change to the nature of an entity's activity. Indeed, the following activities are explicitly mentioned in the Guidance Note: (1) an entity whose main business activity is manufacturing consumer goods deciding to switch its main business activity to mining exploration (or vice versa) and (2) an entity whose main business activity is exploring for minerals deciding to switch its main business activity to exploring for oil and gas. As for the scale of the activities, the ASX considers a 25% change to the size of an entity's operations to be significant.

Figure 6 shows that despite the re-admission rules and regulations and increased regulatory scrutiny, we again observe a backdoor listing boom in Australia in 2014. Companies that consider floating their shares on a stock exchange have almost always been able to find a financially distressed listed vehicle that could serve as a shell for a backdoor listing. For instance, high tech companies in Australia are often able to obtain the status of being listed through shell companies that have been active in the mining industry. Undoubtedly, some of these high tech companies have or will become targets themselves and are thus fundamental in attaining the backdoor listing aspirations of new mining companies (Richards, 2012). Recent data on backdoor listings confirms this "cycle": While 76 percent of the Australian backdoor listings were conducted by mining companies in 2012 (Bell, 2013), we observe a significant surge in backdoor listings by particularly high tech companies (using unloved mining shells) in the first half of 2014.

It could be argued that the recently revised Guidance Note 12 makes backdoor listings even more appealing to high-tech and mining companies by giving the ASX more flexibility and leeway in interpreting the re-admission rules. The revised Note appears to take the specifics of backdoor listings into account by offering the possibility to deviate from the requirements regarding the minimum spread of security holders (usually 400 shareholders each holding shares with a minimum value of AUD 2 000) as well as the "20 cent rule" (which would normally require that shares (or other securities) offered as part of a backdoor listing should have a minimum issue price or sale price of 20 cents or more per share). However, there were other changes to the Guidance Note which have the effect of making the process more rigorous, such as the explicit inclusion in the Guidance Note of reference to the requirement that the entity must have a structure, including a capital structure, and operations that are appropriate for a listed entity (i.e., referring to Listing Rule 1.1, condition 1), and the

more rigorous requirements with respect to the information that must be included in the Notice of Meeting for shareholders considering the backdoor listing transaction. Although it is too early to predict the impact of the revisions to Guidance Note 12, technology startups do not appear to have changed their strategy of targeting small mining and exploration companies to get access to stock-market investors.

Figure 6. **IPOs versus backdoor listings in Australia**



Source: ASX, Australian Securities and Investment Commission (ASIC 2013) (Adapted from the presentation by Ms. O'Rourke at the Indonesia-OECD Corporate Governance Policy Dialogue, October 2014).

Strategy 4 – A flexible regulatory strategy

The regulatory responses can be roughly split into three distinct approaches. On one end of the spectrum, the United States has undertaken a number of initiatives spearheaded by organisations such as the SEC and the PCAOB to curb the issues stemming from reverse mergers, in the form of issuing investor warnings to more stringent listing rules for these reverse mergers. Indonesia has currently no special rules on backdoor listings (and has yet to express a level of concern anywhere similar to that of the United States). Regulatory responses to the widely publicised backdoor listings/reverse mergers worldwide waver between these two extremes as evidenced by the changes (or lack thereof) in the respective listing rules following these developments in the United Kingdom, Australia and Hong Kong, China. In general, these jurisdictions allow regulators to assess backdoor listings on a case-by-case basis (and intervene when information asymmetries justify the application of re-admission requirements).

In order to ensure that investors have sufficient information to distinguish between prudent and imprudent backdoor listings, Indonesia could also consider a more flexible "information and signaling" approach. First, information about the number of backdoor listings that occur on a monthly basis could be included in the reports and on the website of the stock exchange. It not only provides information to investors that a listed company has floated on either the main market or the development market through a backdoor listing, but it also helps to change the image of backdoor listings and take away the wrongful connotation that the issuers are doing something devious as this is usually, as we have seen, not the case at all in Indonesia. Second, under this approach, regulators could consider giving companies that were involved in backdoor listings a temporary "observation status" to alert investors about certain risks and uncertainties associated with that specific backdoor listing.

The Swedish approach

The Listing Rules of NASDAQ OMX Stockholm embrace flexibility in assessing backdoor listing processes. This approach is illustrated in Table 8. First, Rule 3.3.8 requires listed companies to disclose information to the market about significant changes in its identity. The information must be equivalent to what is required under the IPO regulations. In order to determine whether there is a significant change in identity, the Swedish regulator typically takes the following criteria into account: (1) changes in ownership structure, (2) the acquisition of a new business and (3) the change in market value of the listed company following an acquisition. What is interesting in this regard is that the exchange has the possibility to give a

company's shares a temporary "observation status" if the disclosed information is insufficient. The rationale behind this status is straight forward, it provides information to the market and warns investors and potential investors that there are risks and uncertainties associated with the company or its shares. The observation status is a flexible, but powerful mechanism to remind investors to be cautious about investing in companies that are subject to a reverse takeover (see Listing Rule 2.7 (v)). The observation status can only be granted for a limited period of time, usually not more than six months.

Table 8. **Reverse merger rules and regulations in Sweden**

Stock exchange	Reverse merger rules
OMX NASDAQ Stockholm	Rule 3.3.8 Change in Identity: If substantial changes are made to a company during a short period of time, or in its business activities in other respects, to such a degree that the company may be regarded as a new undertaking, the company shall disclose information about the changes and consequences of the changes. Rule 2.7 Observation Status: The Exchange may decide to give the company's shares or other securities observation status if the company has been subject to a reverse take-over or otherwise plans to make or has been subject to an extensive change in its business or organization so that the company upon an overall assessment appears to be an entirely new company

Source: Author's research.

Other measures in backdoor listing procedures, available to the Swedish regulator include the cancellation or suspension of the trading in the shares of a listed company. However, if the regulator is of the opinion that more drastic interventions are necessary, flexibility remains an important element in the regulator's decision-making process. Consider Immune Pharmaceuticals Inc., the byproduct of a reverse merger between a privately held Israeli based bio-pharmaceutical company (Immune Pharmaceuticals Limited) with a listed American developer in pain and cancer treatment (EpiCept Corporation). The newly merged entity hoped to be able to achieve a public listing on the NASDAQ OMX in Sweden following the transaction. It also had intentions to list on a US securities exchange in the future as well. Daniel Teper, Immune Pharmaceuticals Inc. Chairman and CEO, highlighted the limitations for Israeli capital markets to fulfill the financing needs of companies operating within the life sciences space that are not concurrently listed in the United States as the primary cause for pursuing a

public listing. A reverse merger was ultimately elected as the mechanism to list, as an IPO was initially not a feasible option at the time of the consummation of the merger. However, even though an active listed company (such as EpiCept as opposed to a shell company) was involved in the reverse merger, the newly merged Immune Pharmaceuticals Inc. was not immediately allowed to maintain its listing on the regulated NASDAQ OMX market in Sweden. Instead, the regulators approved trading of the shares of Immune Pharmaceutical Inc. on NASDAQ OMX First North Premium, a segment designed for high growth companies that are in the process of preparing for a listing on the main market.

Conclusion

In the last decade, backdoor listings became increasingly popular as a mechanism for accessing capital. However, this trend was not necessarily the result of a shift towards a more preferable or cheaper listing option. In the United States, reverse takeovers were typically exercised by smaller and lesser-known entities relative to their larger, more reputable counterparts that list through a traditional IPO. Synergy effects (that were created through a merger between two active operating companies) have often been the reason for the wave of backdoor listings in the United Kingdom. In Australia, high potential growth companies and junior mining companies have usually found that a reverse takeover is quicker and easier than conducting a traditional IPO.

Still, there are a number of misconceptions surrounding the speed and cost-effective nature of backdoor listings. On average a reverse merger is unquestionably timelier than an IPO. However, a quick comparison of the timeline of a backdoor listing that is relatively slower (4 months) with that of an IPO on the quicker end of the spectrum (4 to 5 months), reveals how the speed and cost argument does not necessarily always hold true. After factoring for the expenses associated with a backdoor listing along with the consideration paid to shell promoters in the form of cash and sometimes an equity stake or the increased media attention and more stringent regulation, the cost argument in favor of these backdoor listings becomes questionable. A well-intentioned comparison of the listing options presides on the assumption that a backdoor listing and an IPO are alternatives to one another, which on the contrary is often not the case, especially for companies desperately looking for access to the capital market.

Nonetheless, there is evidence suggesting that particularly lower quality firms pursue listings through the backdoor. This notion of an adverse selection in entities pursuing backdoor listings is supported by evidence. The relatively high number of Chinese entities that listed through a reverse merger in the United States, for example, were subject to a greater frequency of class action lawsuits. In response, policymakers and regulators have increasingly started to consider or introduce legislation that also subjects reverse mergers to more stringent IPO rules and regulations. These

regulatory responses, which can be divided into three categories, have understandably varied depending on each country's respective experience with reverse mergers. For instance, the United States has introduced a number of special regulatory initiatives to curb backdoor listings while the financial regulatory bodies in the United Kingdom, Australia and Hong Kong, China follow a "re-admission approach", which is viewed as a model for a new regulatory framework in China. NASDAQ OMX in Sweden has introduced a light touch approach that focuses on transparency and alerting the market.

Is it always necessary to introduce rules and regulations that specifically deal with reverse mergers and takeovers? The backdoor listing cases in Indonesia seem to suggest that the introduction of specific rules and regulations is redundant when the "backdoor listing process" already requires companies to comply with a stringent IPO-style disclosure and transparency regime. Because the applicable regime is usually designed without "backdoor listings" in mind, it may nevertheless be appropriate to introduce specific rules or guidelines to better accommodate backdoor listings while at the same time increasing the legal certainty and regulatory effectiveness (particularly from the perspective of foreign investors). The Australian Guidance Note is a good example in this regard. The introduction of a specific regulatory regime may cause backdoor listings to lose their allure as effective (and relatively cheap) strategies to tap the financial market.

Notes

1. If the takeover is achieved in a "rights issue" procedure, the transaction is exempted from the mandatory tender offer obligation under the laws of Indonesia.
2. Moreover, the PCAOB and China entered into a cooperative agreement in October 2012 under which PCAOB inspectors are allowed to observe the oversight activities of Chinese regulators. In return, the agreement allows the Chinese regulators to observe the work of the PCAOB.
3. Financial Services Authority, Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules (CP12/2), January 2012.
4. Financial Services Authority, Enhancing the Effectiveness of the Listing Regime and Feedback on CP12/2 (CP12/25), October 2012.

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Corporate Governance

Improving Corporate Governance in Indonesia

POLICY OPTIONS AND REGULATORY STRATEGIES FOR TACKLING BACKDOOR LISTINGS

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Consult this publication on line at ***http://dx.doi.org/10.1787/9789264243972-en.***

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