

Listings and takeovers

Our regulation of listing and takeovers matters involves multiple levels. First, we oversee SEHK as it implements the Listing Rules. Second, we vet listing applications alongside SEHK. Third, we govern takeovers and mergers of public companies. In line with enhancing our regulatory role to meet industry challenges, we launched a number of regulatory initiatives regarding listing matters over the past year.



Regulatory enhancements introduced

In May 2011, with the commencement of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011, the regulation of public offers of structured products in the form of shares or debentures was transferred from the prospectus regime of the Companies Ordinance to the regime for public offers of investments under the Securities and Futures Ordinance (SFO). Under the new regime, advertisements and offer documents for all structured products targeting the public must be authorized by the SFC, unless otherwise exempted by the SFO.

In June 2011, we released the consultation conclusions to our proposals to extend the conflicts of interest requirements for research analysts¹ to pre-deal research reports on REITs, other entities that are not established in corporate form (eg, business trusts) as well as to listing applicants. For instance, sponsors of listing applicants are required to take reasonable steps to ensure that all material information, including material forward looking information, disclosed to analysts is contained in prospectuses or listing documents.

Soon after the release, we received requests from market practitioners to defer the implementation date for the new requirements. Considering representations from the industry, we deferred the effective date of the new requirements by two months to 31 October 2011. In the case of a new listing applicant, the new requirements apply to any new listing where the listing application (ie, the A1 Form) is submitted to SEHK from 31 October 2011.

In August 2011, we consulted the public after the Takeovers Panel met to discuss possible amendments to the Takeovers Code² regarding property valuation requirements, confirmation of independence of placees and timing for payment of acceptances. The proposals aimed at facilitating market operations and improving disclosure of relevant information. Responses received in the consultation were discussed in two subsequent meetings of the Panel to finalise the consultation conclusions that were published in March 2012. The amended Takeovers Code has become effective from 23 March 2012.

On 1 January 2012, the streamlined property valuation requirements for a listing applicant's prospectus and an issuer's circular took effect. We had consulted the public jointly with SEHK and released the conclusions last October. One objective of the initiative is to allow for the disclosure of more focused and relevant information in prospectuses and circulars; the other is to make the process more cost-effective for applicants and issuers.

During the year, we also approved various other changes to the Listing Rules to facilitate listing-related activities and to streamline requirements or procedures as follows:

- enhancing rules and comply-or-explain requirements in relation to corporate governance in terms of the duties of directors, the functions and roles of board committees and disclosure of senior management remuneration, etc;
- simplifying application and approval procedures on the listing of debt issues to professional investors only;
- introducing ex-entitlement trading rules to prevent shares from trading ex-entitlement before shareholder approval;
- extending SEHK's trading hours;

¹ The requirements are those stated in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and the Corporate Finance Adviser Code of Conduct governing research analysts.

² Part of the Codes on Takeovers and Mergers and Share Repurchases

- publishing new requirements for Qualified Property Acquisitions³ (QPA) and formation of joint ventures, such as expanding the scope of the QPA exemption and removing the exemption conditions, to facilitate bidding or tendering by property developers of different sizes for government land for real estate development in Hong Kong and the Mainland; and
- reducing the minimum number of shareholders required for market capitalisation/revenue test from 1,000 to 300.

Scrutinising listing, takeovers matters

Under the dual filing regime, of the 191 listing applications received via SEHK during the year, we commented on 168 listing applications and deferred commenting on nine cases due to serious deficiencies in the initial submissions. Such deficiencies included sub-standard drafting of the initial listing documents and uncertainties over the legality and sustainability of the listing applicants' businesses. Consequently, the sponsors had to make significant changes to the draft listing documents and perform additional due diligence.

In 2011, we dealt with 71 takeovers-related transactions and handled 212 applications. We noted an increase in the number of unsolicited offers and cases with increasingly complex deal structures. When reviewing all cases, we sought to ensure that all shareholders were being treated fairly, that a fair and informed market was maintained and that participants complied with the Codes on Takeovers and Mergers and Share Repurchases.

The Takeovers Panel met twice during the year to consider matters referred by the Takeovers Executive⁴ as particularly novel, important or difficult points were at issue.

Decisions on the two cases considered by the Panel were published in May and June respectively. In one case, the Panel ruled that the party making the acquisition of 29.9% voting rights would not trigger an obligation to make a general offer for Hung Hing Printing Group Ltd, the target company. In the case of Husky Energy Inc, the Panel decided that in the event of its secondary listing the Canadian oil company should not be treated as a Hong Kong public company and as a result the Takeovers Code would not apply to it.

We publicly criticised FIL Investment Management (Hong Kong) Ltd (trading under the brand name Fidelity Worldwide Investment in Hong Kong) in November 2011 and Penta Investment Advisers Ltd in March 2012 for breaches of dealing disclosure requirements under Rule 22 of the Takeovers Code. To promote awareness and facilitate compliance in light of the breaches of Rule 22 by local and overseas fund managers, the Takeovers Executive issued a letter to all registered and licensed fund managers in Hong Kong to offer practical guidance on the steps a fund manager might take to ensure timely and appropriate compliance with its dealing disclosure obligations if it is also an "associate" under the Takeovers Code. A wide range of fund managers also received the letter through fund management-related associations in Hong Kong and overseas.

Separately, following our annual review of SEHK's performance in the regulation of listing matters, the report for 2010 was published last October. We noted that the operational procedures and decision-making processes used were appropriate to enable SEHK to discharge its statutory obligation – which is, to maintain an orderly, informed and fair market.

Keeping industry participants informed

We keep the industry updated on latest regulatory developments and compliance concerns. During the year, we published four issues of the Takeovers Bulletin to provide updates and reminders to the industry on takeovers-related matters, such as, dealing disclosure obligations, the rulings of the Takeovers Panel and revised Practice Notes. Meanwhile, through the Dual Filing Update, we reminded sponsors of their professional obligations to understand the applicants' businesses and to ensure that all fundamental issues are properly addressed before submitting the listing applications.

³ Qualified Property Acquisitions refer to acquisitions of government land by listed property developers through public auctions or tenders in Hong Kong and, upon the new rules becoming effective, the Mainland.

⁴ The Takeovers Executive refers to the Executive Director of the Corporate Finance Division of the SFC or any delegates of the Executive Director.