TAKEOVERS AND MERGERS PANEL

Panel Decision

Re: Wing Hang Bank, Limited

Purpose of the hearing

1. The Panel met on Wednesday, 20th August 2008 to consider a referral by the Executive pursuant to Section 10 of the Introduction to the Codes on Takeovers and Mergers and Share Repurchases (the "Code") for a ruling on whether or not a proposed acquisition by the Fung Family comprising the various members as set out in paragraph 3 below (the "Fung Family") of a 5% interest and by China Life Insurance Company Limited ("China Life") of a 10% interest in Wing Hang Bank, Limited ("Wing Hang Bank") from BNY International Financing Corporation ("BNY") would give rise to an obligation to make a general offer for Wing Hang Bank under Rule 26.1 of the Code.

2. The Executive and the following parties (the "parties") were present at the hearing:

   i) The Fung Family
   represented by Freshfields Bruckhaus Deringer and in person

   ii) BNY
   represented by Richards Butler, Reed Smith LLP, Goldman Sachs (Asia) LLC and in person

   iii) China Life
   represented by Deacons, Citigroup Global Markets Asia Limited and in person

Background and facts

3. Wing Hang Bank was founded by the late Mr. Y. K. Fung of the Fung Family in 1937 and was listed on The Stock Exchange of Hong Kong Limited on 2nd July

1993. It is currently held as to 23.58% by the Fung Family as follows:

	Shares	%
Mr. Patrick Y. B. Fung	2,982,000	1.01
Mr. Michael Y. S. Fung	3,060,000	1.03
Po Ding Company Limited	24,156,000	8.19
YFK Holdings Corporation	24,098,400	8.17
Majestic Investment Limited	4,628,000	1.57
Tessel Inc.	10,639,200	3.61
Total	69,563,600	23.58

4. BNY first acquired a 51% interest in Wing Hang Bank in 1973. It currently owns 20.28% of Wing Hang Bank.

5. The Fung Family and BNY have had a close relationship for over 30 years. Since 1973, the Fung Family and BNY closely cooperated in the management of Wing Hang Bank, with the secondment of various employees of BNY to Wing Hang Bank over an extended period. At the shareholders' level, the Fung Family and BNY have historically aligned themselves in terms of voting, whilst at the board level BNY supported the nomination by the Fung Family of the Chairman and Chief Executive (currently Mr. Patrick Y. B. Fung) and various executive directors whilst the Fung Family supported the nomination by BNY of two non-executive directors.

6. Moreover the Fung Family (except Tessel Inc.) and BNY are bound by a shareholders' agreement between them (the "Existing Shareholders' Agreement") which provides, inter alia, that BNY shall not dispose of any Wing Hang Bank shares without the consent of the Fung Family and the Fung Family shall have a right of first refusal in relation to any such shares BNY intends to dispose of.

7. BNY now intends to dispose of a significant portion of its Wing Hang Bank shares to the Fung Family and China Life, respectively (the "Subject Disposals") and for this purpose Deacons, on behalf of China Life, sought to consult the Executive on the matter pursuant to Section 6.1 of the Introduction to the Code. For the purpose and as a result of such consultation Deacons, between 28th May and 4th

July 2008 (both dates inclusive), made a total of four submissions to the Executive. The fourth submission made on 4th July 2008 (the "4th submission") which superceded the previous three submissions set out the following proposed arrangements:

i) The Fung Family would acquire 5% of BNY's Wing Hang Bank shares, raising the Fung Family stake in Wing Hang Bank to 28.58%.

ii) China Life would acquire a 10% interest in Wing Hang Bank from BNY and become a 10% shareholder of Wing Hang Bank.

iii) After the Subject Disposals totalling 15% as set out in i) and ii) above, BNY would remain as a 5.28% shareholder of Wing Hang Bank.

iv) The Existing Shareholders' Agreement would be revised to include China Life as a new party with terms broadly similar to the Existing Shareholders' Agreement but with, inter alia, the following additional terms:

a) that the Fung Family shall have the right, at all times, to nominate one more director than China Life to the board of Wing Hang Bank except during the period, if any, when China Life's stake in Wing Hang Bank exceeds that of the Fung Family by 5% of the issued share capital of Wing Hang Bank.

b) that neither China Life nor BNY can hold more than 25% of Wing Hang Bank unless the Fung Family disposes of 5% or more of its stake in Wing Hang Bank.

c) That the Fung Family has the right to require China Life and BNY to sell all their Wing Hang Bank shares to the same third party to whom the Fung Family shall transfer or shall have transferred the whole of its stake in Wing Hang Bank, on the same terms.

d) that BNY shall remain a 5.28% shareholder of Wing Hang Bank for at least 12 months after the completion of the Subject Disposals and thereafter shall not sell any more Wing Hang Bank shares without the prior written consent of the Fung Family so long as the

Fung Family's stake in Wing Hang Bank does not fall below 20%.

8. The Executive is of the view that the arrangements as set out in paragraph 7. above would trigger an obligation to make a general offer for Wing Hang Bank by the Fung Family under Rule 26.1 of the Code, but decided to refer the matter to the Panel under Section 10 of the Introduction to the Code.

Written and Oral Submissions

9. The Panel received and carefully considered the following written submissions

   i. submission from the Executive dated 8th August 2008

   ii. submission from Richards Butler for BNY dated 8th August 2008 which submission was adopted by both the Fung Family and China Life

   iii. Submission from Deacons for China Life dated 15th August 2008

10. At the hearing both the Executive and the parties made further oral submissions which the Panel had also taken into full account in arriving at its findings.

Concert Party relationship between the Fung Family and BNY

11. In the light of the close relationship between them pursuant to the facts set out in paragraphs 5. and 6. above, the Panel found that the Fung Family and BNY have been and are currently still concert parties in respect of Wing Hang Bank. The Panel understands this finding is in line with the stance of both the Executive and the parties and is not in dispute.

The first three Submissions of Deacons to the Executive

12. The Executive invited the Panel to consider all four submissions by Deacons as they illustrated the evolving nature of the proposals and demonstrated the ultimate intention of the parties.

13. Richards Butler, however, took exception to this invitation and argued that the four submissions were made in the course of consultation with the Executive which the parties undertook as contemplated by Section 6.1 of the Introduction to

the Code. The parties had the right to seek to structure a transaction that would fall within the safe harbours allowed under the Code and the evolving nature of the arrangements described in the four submissions were an attempt to achieve this objective.

14. The Panel is of the view that in the present case it was not inconceivable that the parties might have altered their intention as discussion among them developed and as advice/input from the Executive became available. The Panel therefore decided, on the facts of the particular case, that it would only consider the 4th Submission in arriving at its findings and would disregard the first three submissions of Deacons in their totality.

Formation of a new Concert Party triggering an obligation to make a general offer under Rule 26.1 of the Code

15. Richards Butler submitted that with the completion of the Subject Disposals the concert party relationship between the Fung Family and BNY remain unchanged, with China Life joining the existing concert group as a new minority in circumstances where the balance of the concert group would not be significantly changed. Therefore there would not be a new concert group and no obligation to make a general offer would arise.

16. In support of this view Richards Butler submitted that Note 1 to Rule 26.1 of the Code states that

> *"The Executive **will apply** the criteria set out below, and **in particular** in Note 6(a) and Note 7 to this Rule 26.1....."* (emphasis added)

Richards Butler contended that such criteria were the "only set of factors" which the Executive must apply one by one to the Subject Disposals and by doing so the Executive would have to conclude that the Subject Disposals clearly fell on the "safe side" of the Rule 26 mandatory offer requirement.

17. The Executive, on the other hand, submitted that having considered the set of factors included as criteria set out in Rule 26.1 (in so far as they were relevant) and taking into account the factor that the Subject Disposals would be implemented with a revision of the Existing Shareholders' Agreement to enable the Fung Family to consolidate control of Wing Hang Bank, a new concert party

would emerge and an obligation to make a general offer by the Fung Family would be triggered.

18. The Panel has carefully deliberated on the divergent views of Richards Butler and the Executive and noted that Note 6(a) to Rule 26.1 of the Code states, inter alia, that

> *"In addition to the factors set out in Note 7 to this Rule 26.1, the factors which the Executive will take into account in considering whether to waive the obligation to make an offer* ***include****:-*
>
> *(i)* .....
>
> *(ii)* .....
>
> *(iii)* ....."
> (Emphasis added)

It is clear from the word "include" that the criteria set out therein are not meant to be **exhaustive**, and the Executive may take into account other relevant factors. The Panel therefore rejects Richard Butler's submission that the said criteria are the "only set of factors" the Executive must apply.

19. The Panel also noted the following provision in Note 1 to Rule 26.1 of the Code:

> *"There may also be circumstances where there are changes in the make-up of a group acting in concert that effectively result in a new group being formed or the balance of the group being changed significantly. This may occur, for example, as a result of the sale of all or a substantial part of his shareholding by one member of a concert party group to other existing members or to another person."*

20. Applying the provision set out in paragraph 19. above to the present case, the Subject Disposals would result in BNY's disposal of approximately 74% of its current holding (15% out of 20.28%) which is clearly substantial. At the same time China Life would become a 10% shareholder which is also a significant minority position.

21. Furthermore, the Panel is of the view that the proposed revision to the Existing Shareholders' Agreement as described in paragraph 7. iv) above, and in particular iv a), b) and c) therein, together with the Fung Family increasing its stake in Wing Hang Bank from 23.58% to 28.58%, would indeed allow the Fung Family to consolidate control of Wing Hang Bank and this is a relevant factor the Executive may take into account.

Decision of the Panel

22. The Panel has therefore come to the decision that the Subject Disposals would result in a new concert party group led by the Fung Family, giving rise to an obligation to make a general offer for Wing Hang Bank by the Fung Family under Rule 26.1 of the Code.

Publication of the Panel Decision

23. The parties also made an application to the Panel to defer publication of this Panel Decision until the subject matter had become public knowledge.

24. Whilst the Panel appreciates that the confidential and price-sensitive nature of the subject matter does warrant deferring the publication of the Panel Decision pursuant to Section 16 of the Introduction to the Code, the Panel is of the view that such deferment should not be indefinite. The Panel therefore decided that the publication should be deferred to 20th September 2008 or such date as the subject matter would no longer be price-sensitive, whichever is earlier, with liberty for the parties to apply to the Chairman of the Panel for further extension or extensions as are justifiable.

29th August 2008