

19 May 2009

## **SFC Sanctions Koo Ming Kown in relation to breaches of the Takeovers Code**

### **Sanctions against Mr Koo**

1. The SFC announces today that disciplinary action has been taken against Mr Koo Ming Kown (“**Mr Koo**”) in relation to breaches of the Code on Takeovers and Mergers (“**Takeovers Code**”):
  - (a) The Takeovers Executive has imposed an order denying Mr Koo direct or indirect access to the Hong Kong securities markets (a Cold Shoulder Order) for a period of 24 months commencing on 25 May 2009 to 24 May 2011.
  - (b) The Executive also publicly censures Mr Koo in relation to his conduct in this matter.
2. Mr Koo is the only non-executive director of Nam Tam Electronic & Electrical Products Limited (“**NTEEP**”) and the only executive director of Nam Tai Electronics, Inc (“**NTEI**”).

### **Background and relevant provisions of the Takeovers Code**

3. On 14 April 2009 the Hong Kong Panel on Takeovers and Mergers ruled that a voluntary conditional general cash offer by NTEI to privatise NTEEP that had lapsed on 6 April 2009 could not be re-opened. Rule 2.11 of the Takeovers Code provides that except with the consent of the Executive a person seeking to privatise a company by means of an offer and the use of compulsory acquisition rights may keep the offer open for a maximum of 4 months. The Panel noted that *“NTEI was accustomed to takeover and other corporate activity in Hong Kong. It had, for example, attempted to privatise NTEEP in 2005. So there is no suggestion that it did not know what was required of it under the Code or that its financial adviser, Yu Ming, failed to provide the guidance it is required to give its client on understanding the requirements of the Code. When NTEI decided on 6 April, 2009 not to extend the offer in the event it fell short, by whatever margin, of the 90% threshold, it knew or ought to have known the implications of what it was doing.”*
4. The Panel’s full written decision was published on 21 April 2009 and can be found in the “Prospectuses, Takeovers & Mergers” – “Takeovers and Mergers” – “Panel and Executive Decisions / Statements” section of the SFC website at [www.sfc.hk](http://www.sfc.hk).
5. Rule 31.1 of the Takeovers Code provides:

*“(a) Except with the consent of the Executive, where an offer has been announced or posted but has not become or been declared unconditional, and has been withdrawn or has lapsed, neither the offeror nor any person who acted in concert with it in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within 12 months from the date on which such offer is withdrawn or lapses either:–*

*(i) announce an offer or possible offer for the offeree company (including a partial offer which could result in the offeror holding shares carrying 30% or more of the*

*voting rights of the offeree company),”*

6. It follows that, without the consent of the Executive, NTEI is prohibited under the Takeovers Code from making a further offer for the shares in NTEEP for the twelve month period commencing on 6 April 2009.

7. General Principle 10 of the Takeovers Code provides:

*“All parties concerned with transactions subject to the Codes are required to co-operate to the fullest extent with the Executive, the Panel and the Takeovers Appeal Committee, and to provide all relevant information.”*

8. Rule 12.1 of the Takeovers Code provides:

*“All documents must be filed with the Executive for comment prior to release or publication and must not be released or published until the Executive has confirmed that it has no further comments thereon. 6 final copies of the document must be filed with each of the Executive and the Stock Exchange.”*

9. Rule 9.3 of the Takeovers Code provides:

*“All documents should state that all directors of the company issuing the document jointly and severally accept full responsibility for the accuracy of information contained in the document and confirm, having made all reasonable inquiries, that to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration and there are no other facts not contained in the document, the omission of which would make any statement in the document misleading.”*

10. Since publication of the Panel’s decision the Executive has reminded Mr Koo both directly and through his advisers on a number of occasions of the importance of observing the disciplines of the Takeovers Code. In particular the Executive advised Mr Koo that any proposal to wind-up NTEEP would fall within the meaning of Note 7 to Rule 2 and would be regarded as a further privatisation attempt and as such, would be subject to the 12 month prohibition in Rule 31.1 unless the Executive consented otherwise.

11. Note 7 to Rule 2 provides:

*“The purpose of Rule 2.2 is to apply similar requirements as those set out in Rule 2.10 to a delisting proposal which is related to a proposed offer. This prevents the delisting proposal from being used to coerce independent shareholders into accepting the offer. If a company proposes to dispose of its assets and/or operations; and, either,*

*(i) as a result of such proposal the company may not be regarded as suitable for listing for the purpose of the Listing Rules; or*

*(ii) there is a proposal to withdraw the company’s listing on the Stock Exchange;*

*the Executive must be consulted at the earliest opportunity by the company and/or its advisers and in such circumstances would normally apply Rule 2.10 and other requirements of the Takeovers Code. In such cases the Executive may aggregate any series of transactions if they are all completed within a 12 month period or are otherwise related.”*

12. The Executive also warned Mr Koo that any related announcement should be provided to the Executive for comment in advance of publication so that any Code issues raised by the Executive or identified by the parties and their advisers could be addressed. Mr Koo was also warned that failure to do this would amount to a breach of the Takeovers Code. Mr Koo was fully aware that an option was available to him under Rule 31.1 to make an application for consent for a relaxation of the 12 month prohibition.
13. On 11 May 2009 NTEEP announced its latest quarterly results. The announcement states that NTEEP and its subsidiaries have recorded a loss of US\$8 million for the three months ended 31 March 2009 as compared to a net profit of US\$9.6 million for the same period last year. NTEEP has confirmed to the Executive that the quarterly results have been reviewed by NTEEP's auditor and that there was no disagreement between the auditor, the audit committee and the board of directors of NTEEP in respect of the quarterly results.
14. On 12 May 2009 NTEEP issued an announcement regarding a proposed voluntary winding-up of NTEEP and the lack of commitment from NTEI to continue to fund NTEEP. The composite offer document dated 14 March 2009 contained no reference to the deteriorating financial position of NTEEP or the lack of commitment from NTEI to continue to fund NTEEP.
15. The proposed voluntary winding-up falls within the ambit of Note 7 to Rule 2 and is subject to the Code including the restrictions set out under Rule 31.1. The 12 May 2009 announcement was published by Mr Koo in full knowledge that it constituted a number of serious breaches of the Takeovers Code. The issue of the announcement was a clear breach of Rule 31.1. The fact that the draft announcement was not provided to the Executive for comment as required by Rule 12.1 and contained no responsibility statement as required by Rule 9.3 were also clear breaches of the Takeovers Code. Mr Koo had failed to co-operate with the Executive in breach of General Principle 10 of the Takeovers Code.
16. Immediately upon becoming aware of the publication of the 12 May 2009 announcement the Executive raised its grave concerns with Mr Koo. Following further discussions with Mr Koo, an application was submitted for consent under Rule 31.1 for NTEI to make a further general offer for all the shares in NTEEP (other than those shares already owned by NTEI) within 12 months of the lapse of a previous offer by NTEI. On 19 May 2009 the Executive granted consent under Rule 31.1 for NTEI to make a new general offer for all the shares in NTEEP (other than those shares already owned by NTEI) within 12 months of the lapse of the previous offer by NTEI on the basis that the terms of the new offer would, as far as possible, mirror the terms of the previous offer. In reaching the decision to grant consent the Executive took into account all specific facts and circumstances of this case and in particular the following:
  - (a) the composite offer document despatched on 14 March 2009 did not contain reference to the substantial deterioration in the financial position of NTEEP and the lack of continued support from NTEI;
  - (b) the independent non-executive directors have confirmed that they consider the terms of the new offer to be fair and reasonable and they will recommend shareholders to accept it;
  - (c) independent shareholders in the new offer will be given the opportunity to consider the matter afresh. NTEI announced on 16 April 2009 that all share

certificates have been returned to shareholders; and

(d) the offeror had the right under the Takeovers Code to extend the previous lapsed offer although he chose not to do so.

17. The primary purpose of the Takeovers Code is to afford fair treatment of shareholders. As stated in the Introduction to the Takeovers Code it provides an orderly framework within which takeovers, mergers and share repurchases are to be conducted and places important disciplines on those who are engaged in takeover activities. In this instance the conduct of Mr Koo constituted intentional and serious breaches of the Takeovers Code which merit strong disciplinary action. Mr Koo accepts that he has breached the Takeovers Code as described and has consented to the disciplinary action taken against him under section 12.3 of the Introduction to the Takeovers Code. Mr Koo has apologised unreservedly for his conduct in this matter and has undertaken to fully cooperate with the SFC and comply with the regulatory requirements on all matters relating to the Takeovers Code.
18. Finally the Executive wishes to take this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers and mergers in accordance with the Takeovers Code. If they do not, they may find by way of sanction, that the facilities of such markets are withheld in order to protect those who participate in Hong Kong's securities markets. The Listing Rules expressly require compliance with the Takeovers Code.

Ends

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## **SECURITIES AND FUTURES COMMISSION**

### **Order pursuant to section 12 of the Introduction to the Hong Kong Codes on Takeovers and Mergers and Share Repurchases**

#### **Mr Koo Ming Kown**

The Executive Director of the Corporate Finance Division of the SFC ("Executive Director") hereby **REQUIRES** that all licensed corporations, licensed representatives and registered institutions within the meaning of the Securities and Futures Ordinance (Cap. 571) and relevant individuals within the meaning of section 20(10) of the Banking Ordinance (Cap. 155) shall not, without the prior consent of the Executive in writing:

- act or continue to act directly or indirectly in their capacity as licensed corporations, licensed representatives and registered institutions or relevant individuals for Mr Koo Ming Kown or any corporation controlled by him (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Repurchases) other than Nam Tai Electronics, Inc and Nam Tai Electronic & Electrical Products Limited and their respective subsidiaries ; or
- knowingly assist directly or indirectly in a breach of this Order;

during the period commencing on 25 May 2009 and ending on 24 May 2011.

BY ORDER

Gail Humphryes

On behalf of the Executive

19 May 2009

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