

Practice Note 2 (PN2) – Treatment of profit forecasts under certain circumstances where Rule 10.4 may be relaxed

During the course of a Code-related transaction, an offeree company (or an offeror in the case of a securities exchange offer) may be required under the laws and regulations of an overseas jurisdiction to include certain financial projections in documents that are sent to shareholders containing details of the transaction. Alternatively, an offeree company may see the need to issue a profit warning or positive profit alert announcement pursuant to the requirements of Rule 13.09 of the Listing Rules (Rule 17.10 of the GEM Listing Rules).

Such financial projections, profit warning or positive profit alert announcements would normally be regarded as profit forecasts under Rule 10 of the Takeovers Code and would therefore need to be 'reported on' by both the offeree company's financial advisers and its accountants or auditors in accordance with Rule 10.4. In particular (i) the offeree company's financial advisers would have to satisfy themselves that the profit forecasts were prepared with due care and consideration by the directors of the company, and (ii) the offeree company's accountants or auditors would have to satisfy themselves that the profit forecasts, so far as accounting policies and calculations are concerned, were properly prepared on the basis of the assumptions made.

Notwithstanding this if the only reason for publishing the profit forecasts is that it is required by the laws and regulations of certain overseas jurisdictions (and is not otherwise proposed to be published by the offeree company) and the parties have encountered genuine practical difficulties (time-wise or otherwise) in meeting the reporting requirements set out in Rule 10.4, the Executive will normally be prepared to permit publication of the forecasts without full compliance with Rule 10. In this instance the profit forecasts must be accompanied by an appropriate warning that they do not meet the standard required by Rule 10 and that shareholders and potential investors should exercise caution in placing reliance on such forecasts in assessing the merits and demerits of the transaction. The Executive will also normally require the forecasts to be reported on as soon as reasonably practicable and the relevant reports to be contained in the next document to be sent to shareholders. This may require the issue of a supplemental document to shareholders if an offer document

or whitewash document has already been sent out. In determining what constitutes “practical difficulties”, the Executive will take into account the specific facts and circumstances of each case.

In the case of profit warning or positive profit alert announcements, the Listing Rules require them to be issued as soon as practicable. The Executive understands that in practice they are issued almost immediately after the directors of the listed issuer come into possession of the relevant price-sensitive information. Given the time constraints faced by listed issuers when issuing profit warning or positive profit alert announcements, the Executive will adopt a similar approach as described above.

In all cases involving this issue the Executive should be consulted at the earliest opportunity.

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