

Practice Note 20 (PN20) – Guidance note on announcements and documents under the Codes on Takeovers and Mergers and Share Buy-Backs (Codes)

Purpose

1. The purpose of this Guidance Note and Checklist (see Appendix 1) is to provide informal and non-exhaustive guidance to parties and their advisers. The Guidance Note consolidates a number of previous guidance letters and reminders issued by the Executive during the course of an offer or whitewash transaction and refers to ~~Practice Notes~~⁴Practice Notes and Takeovers Bulletin issued by the Executive from time to time. **It remains the sole responsibility of the issuer of a document (and its directors and advisers) to ensure that the Codes and any other applicable laws and regulations are fully complied with. Non-compliance with Practice Note 20 may lengthen the Executive’s vetting process and in appropriate circumstances, the Executive may suspend vetting until all documents complying with required under Practice Note 20 have been submitted.** As always, when there is any doubt as to whether a proposed course of conduct is in accordance with the Codes, parties or their advisers should consult the Executive in advance.

Vetting of documents

2. Rule 12.1 of the Takeovers Code requires all documents (other than those referred to in the Post-Vet List (see paragraph 56 below)) to be *~~“filed with submitted to the Executive for comment prior to release or before publication and must not be released or published until the Executive has confirmed that it has no further comments thereon. Documents should be submitted electronically unless otherwise directed by the Executive.”~~*
3. ‘Document’ is defined in the Codes to include *“any announcement, advertisement or document issued or published by any party to an offer or possible offer in connection with such offer or possible offer, other than documents which are required to be put on display for inspection under Notes 1 and 2 to Rule 8 of the Takeovers Code.”*
4. At the outset of a transaction, issuers and advisers should carefully consider whether an announcement is a “document” for the purpose of the Codes and if so, comply with Rule 12.1 and other disclosure requirements. The Executive should be given reasonable time to review a document when it is submitted for comment. The first draft of the document submitted should be in advanced form and points of difficulty or any unusual aspects should be drawn to the attention of the Executive as early as possible.

⁴ <http://www.sfc.hk/web/EN/regulatory-functions/listings-and-takeovers/takeovers-and-mergers/practice-notes.html>

5. All submissions to the Executive, including documents required under the Codes, must be made electronically to cfmailbox@sfc.hk unless otherwise directed.

Post-vetting

5.6. Certain routine announcements are not required to be submitted to the Executive for comment prior to release or publication under Rule 12.1 of the Takeovers Code. Instead, a published version of the announcement (both English and Chinese versions) and the translation confirmation must be ~~filed~~ with submitted to the Executive immediately after the announcement is published. ~~Practice Note 5~~²Practice Note 5 provides practical and prescriptive guidance in respect of announcements appearing in the Post-Vet List. If there is any doubt as to whether an announcement qualifies for post-vetting, please consult the Executive at the earliest opportunity.

Changes subsequent to “no further comment” confirmation

6.7. A document should be resubmitted to the Executive for further comment prior to release or publication if any material change is made to the document after the Executive has issued the “no further comment” confirmation (other than changes made to address the comments attached to the “no further comment” confirmation). If there is any doubt as to whether or not a change is material, please consult the Executive as soon as possible.

Publication and confirmations

7.8. All documents in respect of listed ~~offeree~~ companies must be published ~~on the website of Hong Kong Exchanges and Clearing Limited (HKEX)~~ in accordance with the requirements of the Listing Rules. ~~All announcements in respect of unlisted offeree companies must be published as a paid announcement in at least one leading English language newspaper and one leading Chinese language newspaper published daily and circulated generally in Hong Kong.~~ All documents published in respect of unlisted offeree companies must be delivered to the Executive in electronic form for publication on the SFC’s website (see Rule 12.2 of the Takeovers Code). In addition, announcements made under Rule 19.1 must also be published no later than 7:00pm on the closing date or the date an announcement is made on the level of acceptances.

8.9. Following publication of any document, the following should be submitted to the Executive as soon as practicable possible and in any event no later than 5:00pm on the business day after the publication of the document (see Notes 4 and 5 to Rule 12.1 of the Takeovers Code):

- (i) a copy of the published version of the announcement/document (both English and Chinese versions);

² http://www.sfc.hk/web/EN/files/CF/pdf/Practice_Notes/Practice%20Note%2005_EN_revised%20on%2031%20March%202014.pdf

- (i) a ~~marked-up~~compared version of the announcement/document showing all changes ~~(including deletions in strikethrough)~~ made subsequent to the Executive's "no further comment" confirmation;—
- (ii) with additions shown as mark-ups and deletions as strikethroughs or where no changes have been made after the Executive's clearance, a confirmation as such;
- (iii) written confirmation by the issuing party or its advisers that:
- (a) the announcement/document has been published and the time and date of publication; and
 - (b) there has been no material change to the version of the announcement/document in respect of which the Executive has confirmed that it has no further comment; and
- (iv) written confirmation by the directors of the issuer of the announcement/document that the Chinese version of the announcement/document is a true and accurate translation of the English version (or vice versa). The provision of the confirmation does not absolve the responsibility of the directors of the issuing party in this regard.
- (a) The translation confirmation should be signed by a director (on behalf of the board of directors) of the issuer of the announcement/document. If the announcement/document is jointly issued, a confirmation should be provided by each of the parties issuing that announcement/document.
 - (b) The confirmation should be provided as soon as possible after the issue of the "no further comment" confirmation and in any event no later than 5:00pm on the business day after the publication or posting of the announcement/document. If the announcement falls within the Post-Vet List (see paragraph 6 above), the confirmation should be provided no later than 5:00pm on the business day after publication.
 - (c) The confirmation should contain the following wording or wording of similar effect:

"We, [name of issuer], refer to the [description of the general offer/whitewash transaction/special deal/share buy-back/privatisation] and hereby confirm that the Chinese translation of the English version of the [description of the Document] issued by [name of issuer] on [date of Document] in relation to [description of the general offer/whitewash transaction/special deal/share buy-back/privatisation] (the "Document") is a true and accurate translation of the English version of the Document, and that it is consistent with the English version of the Document. A copy of the published versions of each of the English and Chinese version of the

Document dated [date] is ~~enclosed~~attached for identification purposes.”

Section 8.3 certificates

10. Section 8.3 certificates confirming truth, accuracy and completeness of submissions to the Executive are only required for ruling applications, consultations and responses to requisitions. It is not necessary to submit section 8.3 certificates for draft documents or responses to the Executive’s comments on draft documents unless directed by the Executive. In any event, parties to Codes transactions are reminded that all submissions to the Executive must be true, accurate and complete and the provision of any record or document which is false or misleading in a material particular is an offence under section 384(3) of the Securities and Futures Ordinance.

Stage 1 - Announcements of a proposed or possible offer, share buy-back, privatisation or whitewash transaction

Identity of potential offeror

~~9.11.~~ In the case of an announcement made under Rule 3.7 of the Takeovers Code, where the identity of the potential offeror is not disclosed in the announcement, the Executive should be informed of the identity of the potential offeror including its ultimate shareholders.

Blackout period

~~10.12.~~ In the case of an offer by the directors of the offeree company, the directors are reminded that they should not make an offer or trigger a mandatory general offer obligation during a blackout period (see Rule A3(a) of the Model Code for Securities Transactions by Directors of Listed Issuers, Appendix 10 to the Listing Rules and Rule 5.56(a) of the GEM Listing Rules). It is solely the duty of the director concerned to apprise himself of all applicable rules and regulations before proceeding with an offer or triggering a mandatory general offer for the securities of the offeree company or otherwise dealing in any securities of the offeree company. This is in line with General Principle 4 of the Takeovers Code that an offeror should announce an offer only after careful and responsible consideration. Directors are reminded that if they announce a firm intention to make an offer or trigger a mandatory general offer obligation for the securities of the offeree company during a blackout period, they will be required to proceed with the offer in accordance with the Takeovers Code. Please refer to the Frequently Asked Questions Series 14 to the Rules and Guidance on Listing Matters as set out on the HKEX³ website for further information.

³ http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_14.pdf

Appointment of Financial Advisers

~~11-13.~~ 11-13. It is important for an offeree and offeror respectively to retain a financial adviser to assist them in Codes transactions (see Issue No. 37 of the Takeovers Bulletin). As soon as possible and in any event within three business days after the publication of the announcement which commences an offer period or the first announcement of the whitewash proposal, the potential offeror, the offeror, the offeree company and the whitewash applicant (as appropriate) should provide the Executive with a list of their financial advisers who are advising them ~~in relation to~~ the transaction which involve the issue of an offer document, offeree board circular, whitewash document, share buy-back offer document or off-market share buy-back circular under the Codes. The list should set out:

- (i) the types of licences held by each financial adviser and any conditions attached to such licences;
- (ii) the names and titles of the responsible officers in charge of the transaction;
- (iii) the name and title of each team member involved in the transaction;
- (iv) the detailed responsibility and role to be played by each team member during the transaction; and
- (v) the types of licences held by each team member and any conditions attached to his or her licences.

If no financial adviser has been engaged, a negative statement to this effect should be made, and the relevant information should be provided to the Executive within three business days after an appointment is made.

Within three business days after the end of an offer period or the general meeting for approving a whitewash transaction, the Executive should be provided with all changes (including interim changes) to the information submitted under this paragraph. If there is no such change, a negative statement should be provided.

~~12-14.~~ 12-14. Section 1.7 of the Introduction to the Takeovers Codes provides that financial advisers must possess the competence, professional expertise and adequate resources to fulfil their roles and to discharge their responsibilities under the Codes. If there is any doubt about a financial adviser's ability to meet this requirement, parties are encouraged to consult the Executive before the appointment is made.

Appointment of Independent Financial Advisers (IFA)

~~13-15.~~ 13-15. Rule 2.1 requires that "[t]he board must announce the appointment of the independent financial adviser in the initial announcement of the offer or possible offer, or as soon thereafter as the appointment is made." Rule 2.6 further sets out persons not regarded to be suitable to give independent advice.

~~14-16.~~ The Executive should be informed about the appointment or proposed appointment of an IFA. The IFA should as soon as possible send to the Executive a confirmation of independence. The confirmation should address the questions set out in the standard questionnaire in Appendix 2 to assist the Executive's consideration of whether the financial adviser is suited to give independent advice.

~~15-17.~~ If there is any doubt regarding compliance with Rules 2.1 and 2.6, parties are encouraged to consult the Executive before the appointment is made and announced.

Previous six months dealings

~~16-18.~~ An offeror should check carefully against its trading records to confirm whether it has dealt in any relevant securities of the offeree company (and of the offeror in the case of a securities exchange offer) in the six months prior to (i) the date of submission of the first draft of the Rule 3.5 announcement; or (ii) the commencement of the offer period, whichever is earlier. The offeror should also make similar enquiries with its concert parties for this purpose. This ~~should~~would assist parties to ensure that relevant requirements of the Codes are met including ~~those that arise~~disclosures of concert parties holdings in a Rule 3.5 announcement and issues affecting the offer consideration under Rules 23, 24 and 26.3.

~~17-19.~~ Likewise, a whitewash applicant should also check its trading records in the six months prior to (i) the date of the submission of the first draft of the Rule 3.5 announcement; or (ii) the date of the first announcement of the whitewash proposal, whichever is earlier, to ensure there is no disqualifying transaction that may prevent the Executive from granting a whitewash waiver ~~or invalidate any whitewash waiver granted~~ (see Note 1 on dispensation from Rule 26 and paragraph 3 of Schedule VI to the Codes). The whitewash applicant should also make the same enquiry with its concert parties for this purpose.

Financial resources confirmation

~~18-20.~~ The financial adviser to the offeror should provide the Executive with a confirmation of the sufficiency of financial resources at the same time as the submission of the first draft of a firm intention to make an offer announcement (see Note 3 to Rule 3.5 and Practice Note 15).

~~19-21.~~ Financial advisers should note that whilst their confirmations constitute evidence to support their statement that sufficient financial resources are available to satisfy the offeror's obligations in respect of the offer, it remains the responsibility of the financial adviser, and not the Executive, to ensure that sufficient resources are available to satisfy the offeror's obligations. Financial advisers should observe the highest standard of care to satisfy themselves of the adequacy of resources. The provision to the Executive of a letter of confirmation will not absolve the financial adviser's responsibility in this respect.

Offer period

~~20-22.~~ An offer period commences when an announcement of a proposed offer or possible offer is made, ie, i.e. announcements made under Rule 3.5 or Rule 3.7 of the Takeovers Code. It generally ends at the latest of:

- (i) the date when the offer closes for acceptances;
- (ii) the date when the offer lapses;
- (iii) the time when a possible offeror announces that the possible offer will not proceed;
- (iv) the date when an announcement is made of the withdrawal of a proposed offer; and
- (v) where the offer contains a possibility to elect for alternative forms of consideration, the latest date for making such election.

~~21-23.~~ In the case of a whitewash, if the whitewash applicant reserves the right to waive the whitewash condition, the possibility of shareholders receiving a general offer as a result of completion of the transaction cannot be ruled out. An offer period will therefore commence on the date the transaction is first announced. If the whitewash applicant does not reserve its right to waive the whitewash condition, an offer period will not commence. (see Practice Note 10).

~~22-24.~~ Once an offer period commences, a number of Code disciplines will start to apply to relevant parties, including dealing disclosure obligations (Rule 22 and see paragraphs ~~26 to 26~~ to 28 below) and the rule against frustrating action by offeree company directors (Rule 4). This is not an exhaustive list and the Executive should be consulted when in doubt.

~~23-25.~~ Once an announcement has been made under Rule 3.7, relevant parties are required to issue monthly update announcements until the issuance of either an announcement of a firm intention to make an offer under Rule 3.5 or an announcement of a decision not to proceed with an offer. This requirement also applies to whitewash transactions regardless of whether the whitewash condition is waivable or not.

Dealing Disclosures

~~24-26.~~ An offer period commences upon an announcement of a proposed or possible offer. Rule 22 of the Takeovers Code requires certain persons to make dealing disclosures during an offer period if they deal in “relevant securities” (as defined in Note 4 to Rule 22). Potential offerors (if named in announcements), offerors and offeree companies should remind their associates (including persons holding 5% or more of a class of relevant securities of the offeror or the offeree company) of the dealing disclosure obligations under the Takeovers Code.

25-27. Persons who are required to make dealing disclosures include a potential offeror (if it has been the subject of an announcement that talks are taking place and irrespective of whether it has been named – see Note 13 to Rule 22), an offeror, an offeree company or any of their associates as defined in the Codes. Associates include a person who owns or controls 5% or more of any class of relevant securities of an offeror or offeree company (see class (6) of the definition of “associate”) or certain advisers to the parties to an offer.

28. Where an offer is, or is likely to be, solely in cash, an offeror’s or potential offeror’s class (6) associates will not be required to make dealing disclosures under Rule 22. In addition, dealings by an offeror’s or offeree’s associates (other than an offeror’s concert parties) do not have to be disclosed after an offer has become or is declared unconditional in all respects (see Note 3 to Rule 22).

26-29. As soon as possible and in any event within three business days after publication of the announcement which commences an offer period, each of the potential offeror, the offeror and the offeree company should ~~provide~~submit the following to the Executive ~~with~~:

- (i) a list of their class (6) associates;
- ~~(a) the shareholder register;~~
- (ii) ~~notifications received under Part XV of the Securities and Futures Ordinance (Cap. 571);~~ details of any financial or other professional adviser (including a stockbroker) who is advising it or any of its group companies in relation to the current offer; (please also see paragraph 13 above for the details required from a financial adviser); and
- (iii) details of any financial adviser or stockbroker that is currently retained by it, or any of its group companies, in relation to any advisory projects (other than the current offer) which are significant in size or nature.

In the event there is no such person in any of paragraphs (i) to (iii) above, a negative statement to this effect should be provided.

During the offer period, the potential offeror, the offeror and the offeree company should notify the Executive immediately of any changes or updates to the information previously submitted under this paragraph.

30. In cases where a person’s class (6) associates do not have to make dealing disclosures (see paragraph 28 above), such person will not be required to submit a list of class (6) associates to the Executive. In all other cases, the Executive expects an offeror, potential offeror or the board of an offeree company is to consult all available sources to identify its respective class (6) associates including the following prior to submission:

- (a) the shareholder register;
- (b) notifications received under Part XV of the Securities and Futures Ordinance (Cap. 571); and

~~(b)(c)~~ any information previously received, or readily available, from the offeree company's stockbroker or other advisers.

Stage 2 – Document vetting

~~27-31.~~ This section provides guidance about the vetting process of a document that is to be despatched to shareholders, ~~(i.e.,~~ an offer document, offeree board circular, composite document, whitewash circular, share buy-back circular, special deal circular or scheme document~~).~~

~~28-32.~~ **Monthly update announcements** – ~~where~~Where an offer document, composite document, whitewash circular, share buy-back circular or scheme document cannot be despatched within 21 days (or 35 days in the case of a securities exchange offer) of the date of the Rule 3.5 announcement as required under Rule 8.2, relevant parties should issue monthly update announcements until the relevant shareholder's document is despatched to keep the market regularly informed of the progress of the transaction. The obligation to issue a monthly update announcement equally applies when a special deal circular cannot be despatched within one month of the announcement of the special deal.

~~29-33.~~ **Schedule disclosure requirements** - ~~the~~The Executive will not~~–~~ raise comments about compliance with the Schedule disclosure requirements during the commenting process unless they also relate to substantive Code issues. Every effort should be made to ensure that the draft document fully complies with the relevant Schedule requirements before it is submitted: (see Issues No. 29 and 34 of the Takeovers Bulletin). Where the issuer of a document (or its directors or advisers) foresees any difficulty in meeting a Schedule disclosure requirement or has any doubt whether the disclosure fully meets a Schedule disclosure requirement, the Executive must be consulted at the earliest opportunity and be given a reasonable time to consider the matter before the due date for despatch of the document.

~~34.~~ To initiate the vetting process, parties should be provided withsubmit the following for vetting when to the Executive:

~~30.~~ a draft document is first submitted:

- ~~(i)~~ two hard copies (including the acceptance forms, where applicable) and one electronic version of the draft document which should be in advanced form;
- (ii) document fees and statement of calculation in accordance with Schedule IV of the Takeovers Code;
- (iii) draft confirmation of no material change as required by Rule 10.11 of the Takeovers Code to be dated as at the LPD (as defined below) addressing all the points set out in the Note to Rule 10.11; and

~~(iv) draft update of the confirmation from the financial adviser to the offeror confirming that sufficient resources remain available to the offeror to satisfy full acceptance of the offer (see Issue No. 23 of the *Takeovers Bulletin*).~~

(iv) draft updated financial resources confirmation (see Issue No. 23 of the *Takeovers Bulletin*).

35. For each subsequent draft (including acceptance forms, where applicable), the Executive, parties should be provided with two hard copies and an electronic submit the following:

(i) a response table to the Executive's comments setting out the page numbers of the revised pages;

(ii) a compared version of the full draft revised document and showing all changes made since the last draft submitted to the Executive with additions ~~a set of revised pages~~. All insertions should be shown as mark-ups and all deletions as strikethroughs;

(iii) a clean version of the revised document; and

(iv) ~~a set of revised pages. must be in strikethrough.~~

Material changes made to the draft document that may carry ~~Code~~Codes implications should also be highlighted to the Executive.

~~Electronic versions of all documents including revised pages should be sent to cfmailbox@sfc.hk.~~

36. Prior to clearance of the document, the Executive must be provided with the following which should not be dated earlier than the LPD (as defined in paragraph 37 below):

(i) signed confirmation by a director of the offeree company (on behalf of the board of directors), and in securities exchange offer a director of the offeror (on behalf of the board of directors), confirming matters required under Rule 10.11; and

(ii) (for offers only) signed letter by the financial advisers to the offeror reconfirming sufficient resources remain available to the offeror to satisfy full acceptance of the offer.

34-37. The following should be noted in the preparation of a document:

(i) **Latest Practicable Date (LPD)** – ~~the~~The LPD of ~~the~~a document should not be more than three days from the date of ~~despatch of~~ the relevant document. When the LPD falls on a day which is not a “business day” (defined under the Codes), the LPD can be set on the preceding business day. If the LPD is set on a date which is more than three days

before despatch, the Executive should be consulted prior to release or publication of the document.

- (ii) **Property valuation report** – ~~where~~Where a property valuation report is included in the document (under Rule 11.1(f) of the Takeovers Code or otherwise), the requirements in Rule 11 (including but not limited to Rules 11.2(d) and 11.3 and Rule 10 in the case of valuations involving discounted cash flow or projections of profits) must be complied with. The valuation should clearly state the relationship between the property owner and the offeree company.

~~(iii) Prior to clearance of the document and as close to the LPD as possible, the Executive must be provided with the following:~~

~~(a) signed confirmation by the board of directors of the offeree company/offeree confirming matters required under Rule 10.11 which should be dated as at the LPD.~~

~~(b) signed letter by the financial advisers to the offeror reconfirming sufficient resources remain available to the offeror to satisfy full acceptance of the offer.~~

~~(iv)~~(iii) **Documents on Display (DoDs)** - Notes 1 and 2 to Rule 8 set out the requirements in relation to documents being made available for inspection on websites. The DoD Submission Form and the “How to use” guide can be downloaded in the ~~“Forms – Takeovers and Mergers”~~“Forms – Takeovers and Mergers” section of the SFC website (www.sfc.hk):

(a) The electronic version of the DoDs together with the Submission Form should ~~normally be provided~~uploaded to the ~~Executive~~SFC Portal (WINGS) by 5:00pm one business day before the date ~~on which of despatch of~~ the document is to be despatched using the unique hyperlink contained in a notification email from the Executive. Please consult the Executive as soon as possible if you foresee difficulties in meeting the deadline.

(b) The DoDs shall be accompanied by a confirmation which should contain wording along the following lines:

“We, [name of Issuer], refer to the [description of the general offer/whitewash transaction/special deal transaction (if applicable)/privatisation/share buy-back by general offer/off-market share buy-back] and the requirement to provide to the SFC in electronic format copies of documents for display on the SFC’s website imposed under Note 2 to Rule 8 of the Code on Takeovers and Mergers (the “DoDs”). This confirmation is now submitted together with the DoD Submission Form dated [date] (the “Form”).

We confirm that:

1. *[name], [position] of [Issuer] has reviewed the Form and the information in the DoDs submitted together with this confirmation;*
2. *the DoDs listed on the Form match the soft copies of the documents submitted; and*
3. *we take full responsibility for the description and information in the DoDs.*

We are aware that the provisions of section 384 of the Securities and Futures Ordinance (Cap. 571) will apply to this submission.”

32-38. Following despatch of the document, in addition to the items specified in paragraph ~~8(ii) to (iv)~~9 above, the Executive should be provided with the following immediately after the document is posted:

~~(i) Two hard copies and one electronic version evidence of the published version date of the document (both English and Chinese versions);~~

~~(ii)(i) posting certificate for the document despatch~~ (see Note 4 to Rule 8); and

~~(iii)(ii)~~ checklists of compliance with Schedules I, II, III and VI of the Codes as appropriate. The checklists must clearly mark the page number of the published version of the document against the relevant schedule requirement evidencing compliance. If any requirement is not applicable because no such matter or arrangement exists, an appropriate negative statement should then be clearly marked against the relevant schedule requirement. Every effort should be made to ensure that the document fully complies with the relevant Schedule disclosure requirements before the document is posted to shareholders.

The Executive will accept a posting certificate issued by a registrar as evidence of despatch where documents are sent physically. For documents which are published electronically, parties should submit either: (i) a confirmation signed by a director of the offeree company (on behalf of the board of directors) for composite and response documents and circulars; or (b) a confirmation signed by the director of an offeror company (on behalf of the board of directors) for offer documents.

33-39. The Executive will review the relevant document primarily for Schedule compliance after publication and make appropriate enquiries where necessary. Parties and their advisers are expected to respond promptly to any follow-up enquiries made by the Executive and provide all necessary information (see General Principle 10). A party and/or its advisers should make every effort to resolve an issue once it has been raised which may include the need to publish a clarification announcement or a supplementary document.

34-40. Notwithstanding the above, the Executive may, where it considers it necessary or appropriate, require a party and/or its advisers to submit checklists of

Schedule disclosure compliance prior to publication of the shareholder's document.

Stage 3 – ~~First closing date~~Announcements of general offer or general meeting for Codes transactions
~~Closeresults of offer or poll results~~ announcements/~~announcements declaring offer unconditional as to acceptances~~ – the Executive should be provided with

~~35.41.~~ Announcements of results of offer – An offeror or its advisers must submit a copy of the receiving agent's certificate evidencing acceptance prior to clearance of an announcement made under Rule 19 which includes an announcement declaring an offer unconditional as to acceptances (see Note 2 to Rule 30.2).

~~36.42.~~ Announcements of results of a general meetingmeetings for approving a whitewash transaction, share buy-backs, delistingCodes transactions – An offeree or privatisation by scheme of arrangement – the Executive ~~should be provided with~~its advisers must submit a copy of the scrutineer's certificate prior to the Executive's clearance of a poll results announcement.

Stage 4 – Restrictions and confirmations following offers, possible offers and whitewash transactions

~~37.43.~~ Share purchases after close of offer – In a general offer, Rule 31.3 of the Takeovers Code provides that, except with the Executive's consent, if the offeror and parties acting in concert with it hold more than 50% of the voting rights of the offeree company, then the offeror and any person acting in concert with it may not within six months of the close of the offer:

- make a second offer to, or
- acquire any shares from

any shareholder in the offeree company at a price higher than the offer price. ~~Practice Note 18 further clarifies that~~In a partial offer, Rule 31.3 also applies to general offers that are unconditional at the outset~~Takeovers Code prohibits an offeror and its concert parties from acquiring any voting rights of an offeree company in the 12-month period after the close of offer.~~

~~38.44.~~ Special deals - Rule 25 of the Takeovers Code provides that, except with the Executive's consent, the offeror and parties acting in concert with it or in the case of whitewash transactions, the whitewash applicant and its concert parties, may not make or enter into any arrangements with shareholders of the offeree company (including persons acting in concert with the offeror or the whitewash applicant, as the case may be) which have favourable conditions not extended to all shareholders of the offeree company within six months after the close of the offer.

~~45.~~ If the whitewash applicant or its concert party acquires shares in the six-month period after the shareholders' meeting from a person who was a director

or substantial shareholder of the offeree company at the time of the whitewash, such acquisition will be deemed to be a special deal prohibited under Rule 25 of the Takeovers Code (see Note 2 to paragraph 3(b) of Schedule VI of the Takeovers Code).

~~39-46.~~ **In the case of general offers, the** offeror should confirm in writing within three business days of the expiry of six months from the end of the offer period that it and all persons acting in concert with it have complied with Rule 31.3 and Rule 25.

~~47.~~ **In the case of a whitewash transaction**~~**In the case of privatisations by way of scheme of arrangement or share buy-back offers,**~~ the offeror should confirm in writing within three business days of the expiry of six months from end of the offer period that it and all persons acting in concert with it have complied with Rule 25.

~~40-48.~~ **In the case of whitewashes,** the whitewash applicant should confirm in writing within three business days of the expiry of six months from the shareholders' meeting that it and all persons acting in concert with it have complied with Rule 25. ~~If the whitewash applicant or its concert party acquires shares in the six months period after the shareholders' meeting from a person who was a director or substantial shareholder of the offeree company at the time of the whitewash, such acquisition will be deemed to be a special deal prohibited under Rule 25 of the Takeovers Code (see Note 2 to paragraph 3(b) of Schedule VI of the Takeovers Code).~~

~~41-49.~~ **In the case of partial offers,** the offeror should confirm in writing within three business days of the expiry of 12 months from the end of the offer period that it and all persons acting in concert with it have not acquired voting rights of the offeree company in compliance with Rule 28.3.

~~42-50.~~ **Final completion announcement for whitewash transaction** – Once the issue of the new securities has completed, ~~ana completion~~ announcement ~~relating to the completion~~ should be ~~issued~~made. In a transaction which involves a subscription for new shares by a whitewash waiver applicant, completion will be taken as the time the new shares are issued to the whitewash waiver applicant. In a transaction which involves an issue of convertible securities to a whitewash waiver applicant, completion will be taken as the time the convertible securities are issued to the whitewash waiver applicant, and not when the conversion rights are exercised (see ~~Issue No. 14 of the Takeovers Bulletin~~).Issue No. 14 of the Takeovers Bulletin).

~~5-October 2020~~29 September 2023

Appendix 1 – Checklist of items for submission to the Executive

	Items required	Check/Date
I	Rule 3.7 announcements	
	<ul style="list-style-type: none"> (i) identity of potential offeror if not otherwise disclosed in the announcement, including its ultimate shareholders (ii) publication confirmation (iii) translation confirmation (iv) list of class (6) associates and <u>details of advisers (including financial advisers) of offeree company, offeror or potential offeror, where required</u> (v) list of class (6) associates and financial advisers of potential offeror <p>Note: Offeree company/potential offeror should send dealing disclosure reminders to their respective associates._</p>	
II	Rule 3.5 announcements – offers/whitewash transactions	
	<ul style="list-style-type: none"> (i) confirmation of sufficiency of financial resources by offeror’s financial adviser (ii) IFA independence confirmation (iii) publication confirmation (iv) translation confirmation (v) list of class (6) associates and <u>details of advisers (including financial advisers) of offeree company, offeror or potential offeror, where required</u> (vi) list of class (6) associates and financial advisers of offeror <p>Note: Offeree company/potential offeror should send dealing disclosure reminders to their respective associates._</p>	
III	Offer documents / response documents / composite documents / share buy-back documents / scheme documents – offers / share buy-backs	
	2 hard copies of	

	Items required	Check/Date
	<p>(i) first and subsequent draft documents<u>document in advanced form</u></p> <p>(ii) soft copies of first and subsequent draft documents together with revised pages to efmailbox@sfc.hk</p> <p>(iii)<u>(ii)</u> document fees and schedule of calculation</p> <p>(iii) signed response table, clean revised draft, compared version of document and revised pages for each subsequent document</p> <p>(iv) reconfirmation of sufficiency of financial resources by offeror's financial adviser</p> <p>(v) signed Rule 10.11 confirmation by directors of offeree company/offeror</p> <p>(vi) DoD submission and related documents</p> <p>(vii) publication confirmation</p> <p>(viii) checklists of Schedules I, II and III as appropriate</p> <p>(ix)(i) posting certificate</p> <p>(x)(viii) translation confirmation</p> <p>(ix) checklists of Schedules I, II and III (as appropriate)</p> <p>(x) posting certificate</p>	
IV	Circulars – <u>special deals</u> / whitewash transactions	
	<p>2 hard copies–</p> <p>(i) <u>advanced draft</u> of first and subsequent draft documents<u>document</u></p> <p>(ii) soft copies of first and subsequent draft documents together with revised pages to efmailbox@sfc.hk</p> <p>(iii)<u>(ii)</u> <u>for whitewashes,</u> document fees and schedule of calculation</p> <p>(iii) signed response table, clean revised draft, compared version of document and revised pages for each subsequent document</p> <p>(iv) <u>for whitewashes,</u> Rule 10.11 confirmation by directors of offeree company</p> <p>(v) DoD submission and related documents</p> <p>(vi) publication confirmation</p> <p>(vii) checklists of Schedules I, II and VI</p>	

	Items required	Check/Date
	(viii)(i) posting certificate <u>(ix)(vii) translation confirmation</u> (viii) posting certificate <u>(ix) for whitewashes, checklists of Schedules I, II, III and VI (as appropriate)</u>	
V	<u>Closing announcements – offers</u> <u>Announcements of results of offer</u>	
	(i) receiving agent's certificate (if applicable) (ii) publication confirmation (iii) translation confirmation (iv) confirmation of compliance with Rules 31.3 and 25 six months after closing date	
VI	<u>Announcements of poll results of general meetings – whitewash for Codes transactions, share buy-backs and court meetings – privatisations by way of scheme of arrangement</u>	
	<u>(i) scrutineer's certificate</u> <u>(ii) publication confirmation</u> <u>(iii) translation confirmation</u>	
VII	<u>Confirmation of compliance with Rules</u>	
	(i) For general offers - confirmation of compliance with Rules 31.3 and 25 six months after the close of offer (ii) For whitewashes – confirmation of compliance with Rule 25 six months after shareholders' meetings (i) For privatisation by way of scheme of arrangement or share buy-back offer – scrutineer's certificate (ii)(i) publication confirmation (iii)(i) translation confirmation (iv)(iii) confirmation of compliance with Rule 25 six months after general meeting (for whitewash	

	Items required	Check/Date
	<p>transactions) or six months after effective date of the scheme (for privatisations by way of scheme of arrangement)the close of offer</p> <p><u>(iv) For partial offers – confirmation of compliance with Rule 28.3 twelve months after the close of offer</u></p>	
VII	Announcements of final completion – whitewash transactions	
	<p>(i) final completion announcement publication confirmation</p> <p>(ii) final completion announcement translation confirmation</p>	

Appendix 2 – Independence of IFA

To assess an IFA's independence, the Executive needs information about the IFA's group and the employees in the division handling the relevant transaction (**relevant employees**).

1. Has the IFA group or any of its relevant employees in the past two years acted as financial adviser to or agent for:

- the offeree company;
 - the offeree company's controlling shareholder(s);
 - parties to the special deal transactions (if any);
- and

In cases of offer:

- the vendor (if applicable);
- the vendor's controlling shareholder(s) (if applicable);
- the offeror;
- the offeror's controlling shareholder(s);

In cases of whitewash/share buy-back with whitewash/off-market share buy-back with whitewash:

- the ~~party seeking~~ whitewash ~~waiver~~ applicant (if not the existing controlling shareholder(s) of the offeree company);
- the whitewash applicant's controlling shareholder(s)

In cases of off-market share buy-back:

- *the vendor of shares*;
 - *the vendor's controlling shareholder(s)*;
- and
- *any party acting, or presumed to be acting, in concert with any of the above; or*
 - *any company controlled by any of it or them?*

2. Has the IFA group or any of its relevant employees in the past two years had any financial or other connection with anyone listed in question 1?
3. Is the IFA group or any of its relevant employees contemplating any business dealings with anyone listed in question 1?

4. Does the IFA group or any of its relevant employees hold, directly or indirectly, any shares, options, warrants or other equity related interests in any party listed in question 1?
5. Are there any inducement fee, break fee or any other special fee arrangements between the IFA and the offeree company?
6. Are there any other matters which may mean the IFA has a conflict of interest?
7. If the answer to any of questions 1 to 6 is “yes”, please give details, and state the reasons why the IFA considers it can give objective advice to the independent board committee.