



Takeovers Bulletin

Highlights

- Public criticism in relation to Hopewell Holdings Limited
- Reminder to submit Code documents for vetting
- PN 20 revised to require updates to list of financial advisers after close of offer
- Quarterly update on the activities of the Takeovers Team

Kwok Tse Wah publicly criticised for Takeovers Code breaches

On 10 April 2019, we publicly criticised Kwok Tse Wah for breaching the dealing restrictions and dealing disclosure obligations under Rule 21.2 and Rule 22 of the Takeovers Code. Kwok, a party acting in concert with the offeror, sold shares in Hopewell Holdings Limited during the offer period. He also failed to disclose the sale publicly within the applicable time limit.

A copy of the Executive Statement can be found in the "Regulatory functions – Listing & takeovers – Takeovers & mergers – Decisions & statements – Executive decisions and statements" section of the SFC website.

Reminder to submit Code documents to the Executive for comment prior to release or publication

In Issues No. 30 and No. 33 of the *Takeovers Bulletin*, we reminded issuers and their advisers to carefully consider whether an announcement or document is a "document" for the purpose of the Codes on Takeovers and Mergers and Share Buy-backs (Codes), and to comply with Rule 12.1 and other disclosure requirements as appropriate. Rule 12.1 of the Takeovers Code requires all Code-related announcements and documents (other than announcements appearing in the Post-Vet List) to 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"*.

The Codes define "document" as including any announcement, advertisement or document issued or published by a party to an offer or possible offer in connection with such offer or possible offer, other than documents required to be put on display under Notes 1 and 2 to Rule 8 of the Takeovers Code. It also includes any announcement, advertisement or document issued or published by any person in connection with a transaction:

- (1) where a ruling is sought that no offer obligation arises;
- (2) which is stated to be conditional on no such offer obligation arising; or
- (3) which is stated to be conditional on a ruling being given that no such offer obligation arises.

It is clear that in addition to announcements, "advertisements" and "other documents" in connection with a transaction or offer also fall under the definition of "document".

There have been recent instances of parties to an offer having overlooked this requirement for advertisements and press articles that were published in newspapers. These were published without first being submitted to the Executive for comment prior to release and they did not comply with the necessary disclosure requirements, such as the inclusion of the requisite directors' responsibility statement under Rule 9.3 of the Takeovers Code. In these cases, clarification announcements have been issued.

The main purposes of Rule 12.1 are to facilitate the identification of possible Code issues before a document is published and to encourage early consultation with us. Therefore, issuers and their advisers are reminded that prior to releasing any information in connection with an offer or a possible offer, they should carefully consider whether it is a document for the purpose of the Takeovers Code, and to comply with Rule 12.1 and other disclosure requirements as appropriate. Advertisements, press articles or notices (regardless of nomenclature) in connection with an offer or a possible offer which are released through any form of media would normally fall under the definition of "document" and should be filed with the Executive for comment prior to publication. If in doubt, parties must consult the Executive at the earliest opportunity.

Parties are also reminded that they are ultimately responsible for the information disclosed as well as for compliance with the Codes and any other applicable laws and regulations. The "no-comment" confirmation should not be taken as a confirmation from us that the announcement or document is fully compliant. Parties should also be aware of any possible criminal liability arising under Section 384 of the Securities and Futures Ordinance for any false or misleading information contained in announcements and documents.

Further guidance on the submission of announcements and documents under the Codes can be found in Issues No. 30 (September 2014) and No. 33 (June 2015) of the *Takeovers Bulletin* as well as Practice Note 20 (PN 20) on the SFC website.

Updated list of financial advisers to be submitted following close of an offer

Currently, we require the names of financial advisers to potential offerors, offerors, offeree companies and whitewash applicants to be provided to us along with other details, and that we be notified as soon as possible of any changes or updates to this information. This is set out in paragraph 11 of PN 20.

We have noted that during the course of a transaction, there may be a number of changes to the team members who are responsible for handling it. Going forward, we will request that an updated list showing all changes (including interim changes) to this information be submitted to us within three business days after the end of the offer period or the general meeting for approving the whitewash waiver. Where there is no such change, a negative statement should be provided. Interim updates will no longer be required.

PN 20 has been amended to reflect the above. A marked-up version and a clean version of the revised PN 20 can be found in the "Regulatory functions – Listing & takeovers – Takeovers & mergers – Practice notes" section of the SFC website.

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 March 2019, we received 14 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), five whitewashes and 69 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*

All issues of the *Takeovers Bulletin* are available under 'Published resources – Industry-related publications – Takeovers Bulletin' on the SFC website at www.sfc.hk.

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