



# Takeovers Bulletin

## Highlights

- Takeovers and Mergers Panel: Retirement of Mr Stephen Clark and appointment of Mr Freeman Chan as Chairman
- Additional disclosure of future intentions for unlisted securities
- Application of Rule 35.3 on connected exempt principal traders
- Appointments and reappointments to the takeovers-related committees
- Quarterly update on the activities of the Takeovers Team

## Retirement of Mr Stephen Clark and appointment of Mr Freeman Chan as Chairman of the Takeovers and Mergers Panel

Mr Stephen Clark retired from his role as the Chairman of the Takeovers and Mergers Panel (the Panel) on 31 March 2021. We would like to express our deepest gratitude to Mr Clark for his outstanding contribution to the Panel for more than 30 years, including serving as a Deputy Chairman of the Panel from 2004 to 2009 and as Chairman since 2009. Mr Clark has provided exceptional leadership and invaluable insights in Panel meetings and guided many important and far-reaching Panel decisions. To ensure a smooth transition, Mr Clark has taken up the role of the Panel's Deputy Chairman.

We are pleased to announce that, following the recommendation of the Nominations Committee, the Board of the Securities and Futures Commission has approved the appointment of Mr Freeman Chan as the new Chairman of the Panel with effect from 1 April 2021. Mr Chan will also become an ex-officio member of the Nominations Committee. A member of the Panel for 13 years and a Deputy Chairman for seven of those years, Mr Chan is currently a partner

at Cleary Gottlieb Steen & Hamilton. His leadership qualities, experience and deep understanding of the Codes on Takeovers and Mergers and Share Buy-backs (the Codes) will make a significant contribution to the Panel.

## Additional disclosure of future intentions for unlisted securities when offered as consideration

We note an increasing trend for offerors to propose offering unlisted securities as consideration for the shares of an offeree company, particularly when a privatisation proposal is involved.

The nature of the consideration offered is one of the key factors for shareholders in deciding whether or not to accept a general offer or to vote for or against a privatisation proposal. In a securities exchange offer (including those offering part payment in cash and part payment by securities), the Codes require additional disclosures on the securities being offered, regardless of whether they are the offeror's own securities or another company's, so as to allow shareholders to make an informed decision. Where unlisted securities are offered, the disclosure of

such information is even more vital for shareholders due to their illiquid nature. Schedule I of the Codes prescribes the additional matters to be disclosed, such as information relating to the value of the offeror's securities, business operations and latest financial position.

General Principle 5 provides, among other things, that shareholders should be given sufficient information, advice and time to reach an informed decision on an offer, and that no relevant information should be withheld. In line with this spirit, going forward, in all offers, including privatisation proposals, where unlisted securities are offered as consideration, in addition to the disclosures required under Schedule I, we will require the offeror to state whether it intends to seek a listing of the unlisted securities (or the business of the offeree company in question) on a stock exchange, whether locally or in another jurisdiction. We believe this additional disclosure would assist shareholders in deciding whether to accept the unlisted securities as consideration.

### Restrictions on assenting securities under Rule 35.3 of the Takeovers Code

Rule 35.4 prohibits connected exempt principal traders (EPTs) from voting in the context of an offer. However, in circumstances where an EPT is holding shares in its capacity as a custodian on behalf of non-discretionary clients, the Executive<sup>1</sup> is prepared to relax the application of Rule 35.4 if an EPT could confirm the matters set out in [Issue No. 53](#) of the *Takeovers Bulletin*.

On a number of occasions, the Executive has been consulted whether the same approach would be applied to Rule 35.3, where connected EPTs are not allowed to accept an offer until the offer has become unconditional as to acceptance. In circumstances where the securities are held by a connected EPT on a purely non-discretionary basis, the Executive is prepared to relax the application of Rule 35.3. Similar to the approach taken towards Rule 35.4, the Executive would expect a connected EPT to confirm the following in writing:

1. The connected EPT holds the shares (the Relevant Shares) as a simple custodian for and on behalf of non-discretionary clients; and
2. Contractual arrangements are in place between the connected EPT and its clients which strictly prohibit the EPT from exercising any discretion over the Relevant Shares. In particular, all instructions relating to an offer shall originate from the client only, and if no instructions are given, then no action shall be taken on the Relevant Shares.

In addition, the EPT should also confirm in the results announcement that it did not tender any shares for acceptance (other than those shares held as a simple custodian for and on behalf of non-discretionary clients) under the offer or where the offer has become unconditional, prior to the offer becoming unconditional as to acceptance. The number of shares an EPT holds but has no discretion over should also be included in the details of long and short positions of relevant securities submitted to the Executive pursuant to paragraph 7.3 of Practice Note 9.

<sup>1</sup> The Executive Director of the SFC's Corporate Finance Division or his delegate.

## Appointments and reappointments to the takeovers-related committees

We welcome the following new appointments and reappointments of members to the Panel and the Takeovers Appeal Committee (Appeal Committee) with effect from 1 April 2021.

### Panel and Appeal Committee

*New appointments* – Mr Freeman CHAN (Chairman of the Panel), Mr Stephen Edward CLARK and Ms Benita YU (Deputy Chairmen of the Panel) and Mr Stephen John CLARK

*Reappointments* – Mr David WEBB (Deputy Chairman of the Panel), Ms Alexandra BIDLAKE, Ms Melissa BROWN, Mr Ernest IP, Mr Bonn LIU, Ms Yoo Kyung PARK, Mr Asit SHAH, Mrs Judy VAS, Mr WONG Wai Ming, Mr Jackson WOO and Mr Frank YUEN

### Full list of members of takeovers-related committees

Members are appointed for a term of two years until 31 March 2023 unless otherwise stated. The membership lists for the Panel, the Appeal Committee, the Disciplinary Chair Committee and the Nominations Committee are set out below.

### Panel

The Panel hears disciplinary matters in the first instance, reviews rulings by the Executive at the request of any party dissatisfied with such a ruling and considers novel, important or difficult cases referred to it by the Executive. It also reviews, upon request by the SFC, the provisions of the Codes and the Rules of Procedure for hearings under the Codes and recommends appropriate amendments to the Codes and Rules to the SFC.

#### Chairman

Mr CHAN Yuk Sing Freeman

#### Deputy Chairmen

Mr CLARK Stephen Edward  
Ms KO Teresa Yuk Yin, JP\*  
Ms LAM Chor Lai, Celia\*  
Mr MAGUIRE John Martin\*  
Mr SCHWILLE Mark Andrew\*  
Mr WEBB David Michael  
Ms YU Ka Po, Benita

#### Members

Ms BIDLAKE Alexandra  
Ms BROWN Melissa  
Mr CHAN Che Chung (Alias: Conrad CHAN)\*  
Ms CHARLTON Julia Frances\*  
Mr CHENG Wai Sun, Edward, GBS, JP\*  
Mr CLARK Stephen John  
Mr IP Koon Wing, Ernest  
Mr LEE Kam Hung, Lawrence, BBS, JP\*  
Ms LEUNG Po Wah, Pauline\*  
Mr LIU Yun Bonn  
Ms LLOYD Victoria Sally Tina\*  
Mr NORMAN David Michael\*  
Mr NORRIS Nicholas Andrew\*  
Ms PARK Yoo-kyung  
Mr SABINE Martin Nevil\*  
Mr SHAH Asit Sudhir

\* Reappointed on 1 April 2020 for a two-year term until 31 March 2022.

Mr STEINERT Timothy A.\*  
 Mr TYE Philip Andrew\*  
 Mrs VAS CHAU Lai Kun, Judy  
 Mr WINTER Richard David\*  
 Mr WOLHARDT Julian Juul\*  
 Mr WONG Richard\*  
 Mr WONG Wai Ming  
 Mr WONG Yu Tsang, Alex\*  
 Mr WOO Ka Biu, Jackson  
 Mr YUEN Ka Fai (Alias: Frank YUEN)

### Appeal Committee

The Appeal Committee reviews disciplinary rulings of the Panel for the sole purpose of determining whether any sanction imposed by the Panel is unfair or excessive. It comprises a Chairman who is a member of the Disciplinary Chair Committee and other members of the Panel who are selected on a case-by-case basis.

### Disciplinary Chair Committee

Members are nominated by the Nominations Committee on the basis that they are duly experienced senior counsels. Their role is to act as Chairman of the Panel in disciplinary proceedings under the Codes or of the Appeal Committee on a case-by-case basis.

#### Members

Mr DAWES Victor, SC  
 Mr JAT Sew Tong, SC, JP  
 Mr LAM Douglas Tak Yip, SC  
 Mr SHIEH Wing Tai Paul, SC  
 Mr WONG Man Kit, Anson, SC

### Nominations Committee

The Nominations Committee nominates members of the Panel, Appeal Committee and Disciplinary Chair Committee.

#### Ex officio Members

Mr ALDER Ashley Ian, SBS, JP (Chairman)  
 Mr CHAN Yuk Sing Freeman  
 Mr HO Yin Tung Brian

#### Members

Mr LUI Tim-leung Tim, SBS, JP  
 Mr DAWES Victor, SC

#### Alternate members to CHAN Yuk Sing Freeman

Mr CLARK Stephen Edward  
 Ms KO Teresa Yuk Yin, JP  
 Ms LAM Chor Lai, Celia  
 Mr MAGUIRE John Martin  
 Mr SCHWILLE Mark Andrew  
 Mr WEBB David Michael  
 Ms YU Ka Po Benita

A full list of members of the Panel, Appeal Committee, Disciplinary Chair Committee and Nominations Committee can be found in the [“Regulatory functions – Corporates – Takeovers and mergers – Takeovers Panel and related committees”](#) section of the [SFC website](#).

## Quarterly update on the activities of the Takeovers Team

In the three months ended 31 December 2020, we received 23 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), four whitewashes and 95 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 – Newsletters – Takeovers Bulletin' on the SFC website at [www.sfc.hk](http://www.sfc.hk).

Feedback and comments are welcome and can be sent to [takeoversbulletin@sfc.hk](mailto:takeoversbulletin@sfc.hk).

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