

An SFC newsletter to help participants in Hong Kong's financial markets better understand the Codes on Takeovers and Mergers and Share Buy-backs

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The Executive publicly censured Yeung Wing Yee and imposed a cold shoulder order for breach of mandatory offer requirement

On 30 August 2017, we publicly censured and imposed a 24-month cold shoulder order against Yeung Wing Yee for breaching the mandatory general offer obligation under Rule 26.1 of the Takeovers Code. Yeung is denied direct or indirect access to the Hong Kong securities market until 29 August 2019.

Yeung became a shareholder of Union Asia Enterprise Holdings Limited (Union Asia) in July 2016. He increased his interest in Union Asia to 31.13% on 1 August 2016, triggering a mandatory general offer under Rule 26.1(a) of the Takeovers Code, but no offer was made. He further increased his interest to 32.87% on 3 August 2016.

Yeung submitted that he had no intention to acquire control of Union Asia and was not aware that he had incurred an obligation to make an offer. His action deprived Union Asia's shareholders of the right to receive a general offer. Yeung agreed to the current disciplinary action against him.

Practitioners and parties who wish to take advantage of the securities market in Hong Kong should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Takeovers Code and Share Buy-backs Code. If they fail to do so, they may find by way of sanction that the facilities of the Hong Kong securities market are withheld in order to protect those who participate in them.

A copy of the Executive Statement dated 30 August 2017 can be found in the "Regulatory functions – Listings & takeovers – Takeovers & Mergers – Decisions & statements – Executive decisions and statements" section of the SFC website.

Highlights

- Cold shoulder order imposed on Yeung Wing Yee for breach of mandatory offer requirement
- Public censure of Chen Chi-Te and Kenneth C.M. Lo for breaches of dealing provisions
- Public censure of China Life Insurance (Overseas) Company Limited for dealing disclosure breaches
- Scheme of arrangement results announcements
- Revision to Practice Note 12
- Review of monthly update announcements
- Reminder to fund managers on the discontinuation of HKEX's Portfolio Valuation service
- Quarterly update on the Takeovers Team's activities

Chen Chi-Te and Kenneth C.M. Lo publicly censured for breaches of dealing provisions

On 7 September 2017, we publicly censured Chen Chi-Te and Kenneth C.M. Lo for breaching the dealing provisions under the Takeovers Code during the proposed privatisation of TCC International Holdings Limited by Taiwan Cement Corporation (TCC). Under the proposal, scheme shareholders would be entitled to receive either a cash payment of \$3.60 or 0.42 TCC share for each scheme share. Chen and Lo are directors of TCC and are therefore parties acting in concert with it.

Chen held shares in TCC International through his related trusts which sold all his shares between 25 April and 28 June 2017. The sale of these shares and the failure to make public disclosures of these dealings constituted breaches of Rule 21.2 and Rule 22 of the Takeovers Code.

Lo, together with his close relatives, controls four investment companies which acquired a total of 4 million TCC shares between 27 and 31 July 2017. These purchases and the failure to disclose them constituted breaches of Rules 21.3 and Rule 22 of the Takeovers Code.

A copy of the Executive's Statement dated 7 September 2017 can be found in the "Regulatory functions - Listings & takeovers – Takeovers and Mergers – Decisions & statements – Executive decisions and statements" of the SFC website.

We wish to remind practitioners and parties who wish to take advantage of the securities market in Hong Kong that they should conduct themselves in matters relating to takeovers and mergers in accordance with the Takeovers Code. If there is any doubt about the application of the rules, the Executive should be consulted at the earliest opportunity.

China Life Insurance (Overseas) Company Limited publicly censured for dealing disclosure breaches

On 3 August 2017, we publicly censured China Life Insurance (Overseas) Company Limited for breaching the dealing disclosure requirements under Rule 22 of the Takeovers Code.

China Life failed to file disclosures during an offer period in accordance with Rule 22 of the Takeovers Code for its 2,139 trades in the shares of Glorious Property Holdings Limited between 9 May and 5 August 2016. During this time, China Life held more than 5% of Glorious Property's issued shares and was therefore an associate of the company.

A copy of the Executive's Statement dated 3 August 2017 can be found in the "Regulatory functions - Listings & takeovers – Takeovers and Mergers – Decisions & statements – Executive decisions and statements" of the SFC website.

We wish to remind practitioners and parties that associates with a 5% or more interest in an offeree company or offeror company must report their dealings in the offeree company (and the offeror company in the case of a securities exchange offer) during an offer period in accordance with Rule 22 of the Takeovers Code.

Scheme of arrangement results announcements

Rule 19.1 requires an announcement be released by 7:00 p.m. on each closing date setting out, among other things, the total number of shares for which acceptances of an offer have been received. In the context of a scheme of arrangement, this Rule is modified in practice to require (i) the announcement be published on the date on which any court or shareholder meeting to approve the scheme of arrangement is held; and (ii) disclosure of the information prescribed in Rule 2.9, ie, the number of shares voted for and against the resolution and the number of shareholders voting for and against it.

Disclosure of the number of shareholders voting for and against the resolution is consistent with the requirement in certain jurisdictions (eg, the Cayman Islands and Bermuda) that a scheme of arrangement must be subject to approval by a majority in number representing 75% in value of the shareholders present and voting.

In order to facilitate greater transparency and in light of the number of shares typically held within the Central Clearing and Settlement System (CCASS) established and operated by Hong Kong Securities Clearing Company Limited, the announcement of the results of any court or shareholder meeting to approve a scheme of arrangement should, in addition to the details required under Rule 2.9, disclose the number of CCASS participants (as defined under the General Rules of CCASS) instructing HKSCC Nominees Limited to vote for and against the resolution and the number of shares held by such CCASS participants.

Revision to Practice Note 12

From time to time we have been consulted by potential offerors or their advisers about the earliest time that a potential offeror might be permitted to approach shareholders of an offeree company to obtain irrevocable commitments for a potential offer.

Note 4 to Rules 3.1, 3.2 and 3.3 provides that “[a]n offeror may approach a very restricted number of sophisticated investors who have a controlling shareholding to obtain an irrevocable commitment. In all other cases the Executive must be consulted before any approach is made to a shareholder to obtain an irrevocable commitment in connection with an offer. In appropriate circumstances, the Executive may permit particular shareholders to be called and informed of details of a proposed offer which has not been publicly announced. . . .”

As Note 4 suggests, the Executive’s consent is not required where an offeror wishes to approach a very restricted number of sophisticated investors who have a controlling shareholding to obtain an irrevocable commitment. In such cases, it is therefore not necessary for the parties to seek the Executive’s consent. This is consistent with the principle under Rule 1.4 which provides that the maintenance of confidentiality before the announcement of an offer is crucial. We have amended Practice Note 12 to clarify this.

A marked-up version and a clean version of revised Practice Note 12 can be found in the “Regulatory functions - Listings & takeovers – Takeovers and Mergers – Practice Notes” section of the SFC website.

Review of monthly update announcements

In Issue No. 40 (March 2017) of the Takeovers Bulletin, we announced that monthly update announcements will be required (i) following the announcement of all new and existing possible whitewash transactions under Rule 3.7, (ii) in all cases when a relevant shareholder’s document is not despatched within 21 days (or 35 days in the case of a securities exchange offer) of a firm intention announcement and (iii) when a special deal circular cannot be despatched within one month of the announcement of a

special deal. This is consistent with General Principle 6 which provides that all persons concerned with offers should make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of a false market, and Rule 3.7 which provides that monthly update announcements be made following an announcement that talks are taking place.

We are pleased to note that issuers and their advisers have generally complied with the new requirement without difficulty. We believe that this is a good practice to improve transparency and keep the market regularly informed.

Irrespective of the requirement to provide monthly updates, an offeror or an offeree company, as appropriate, should issue a prompt announcement about any material development relating to an offer or whitewash transaction such as the fulfilment of an important pre-condition or condition precedent.

Reminder to fund managers on the discontinuation of HKEX's Portfolio Valuation service

In Issue No. 26 (September 2013) of the Takeovers Bulletin, we mentioned that to ensure timely and appropriate compliance with dealing disclosure obligations under Rule 22 of the Takeovers Code, one of the steps that fund managers might take is to subscribe to the New Alerts service on the HKEX website (www.hkex.com.hk) to receive relevant announcements and information. This applies equally to any relevant party.

HKEX has announced that at the end of September 2017 it will discontinue its Portfolio Valuation service on its website. In this regard, we wish to remind fund managers and other users who subscribed to HKEX News Alerts using the "Your Portfolio" service that they will need to resubscribe using the "Your Alert" service to keep receiving all relevant company announcements. Existing subscriptions made via the "Your Alert" service will not be affected.

Quarterly update on the activities of the Takeovers Team

In the three months ended 30 June 2017, we received 25 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), 11 whitewashes and 96 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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