

A periodic newsletter to help participants in Hong Kong's financial markets better understand the Codes on Takeovers and Mergers and Share Repurchases

## Introduction

1. Offer Period Tables published on the Takeovers page of the SFC website.
2. Reminder to EFMs and EPTs on timely submission of annual confirmations.
3. Practice Note 3 withdrawn as now obsolete.
4. Hyperlinks added to soft version of the Codes for easy cross referencing.
5. Appointments and reappointments to the Takeovers and Mergers Panel, the Takeovers Appeal Committee and the Nominations Committee.

## Offer Period Tables published on line

The Executive is pleased to announce that Offer Period Tables are now published on the Takeovers page of the SFC website. The Offer Period Tables aim to assist relevant parties to discharge their obligations under the Codes, including the dealing disclosure obligations under Rule 22 of the Takeovers Code and dealing restrictions under Rule 21 of the Takeovers Code.

There are three Offer Period Tables:

Table 1 - New offer periods that have commenced in the past 14 days

Table 2 - Offer periods that have closed in the past 14 days

Table 3 - All current offer periods under the Codes

An offer period commences under the Codes once a proposed or possible offer (with or without terms) has been announced. This includes publication of "talks" announcements published under Rule 3.7 of the Takeovers Code. An offer period closes whichever is the latest of (see definition of "Offer period" in the Definitions section of the Codes):

## Highlights

- Offer Period Tables published
- Reminder to EFMs and EPTs on timely submission of annual confirmations
- Withdrawal of Practice Note 3
- Publication of hyperlinked Codes on Takeovers webpage
- Appointments and reappointments to the Takeovers and Mergers Panel, the Takeovers Appeal Committee and the Nominations Committee

- (1) the date when the offer closes for acceptance;
- (2) the date when the offer lapses;
- (3) the time when a possible offeror announces that the possible offer will not proceed;
- (4) the date when an announcement is made of the withdrawal of a proposed offer; and
- (5) where the offer contains a possibility to elect for alternative forms of consideration, the latest date for making such election.

Market practitioners and investors should note that the Offer Period Tables are compiled and updated on a best-efforts basis. Whilst every effort is made to ensure the accuracy and reliability of the information provided, market practitioners and investors are encouraged to refer to announcements and documents published on the website of Hong Kong Exchanges and Clearing Ltd and on the Takeovers webpage of the SFC website. This is particularly important during weekends and public holidays in Hong Kong when information updates may be delayed and trading in relevant securities in respect of an offeree company, which has newly become subject to an offer period, may be continuing on an overseas exchange.

The Offer Period Tables can be found in the “Prospectuses, Takeovers & Mergers” – “Takeovers & Mergers” – “Offer Period Tables” section of the SFC website.

The Executive would like to take this opportunity to remind market practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers and mergers in accordance with the Takeovers Code. Relevant parties include but are not limited to offerors and parties acting in concert with them, offeree companies, exempt fund managers (EFMs), exempt principal traders (EPTs) and associates as defined by the Codes. An associate includes a person who owns or controls 5% or more of any class of the relevant securities of the offeror or the offeree company. All relevant persons should familiarise themselves with their obligations under the Codes and, in particular, report their dealings in the offeree company (or the offeror company as well in the case of a securities exchange offer) during an offer period in accordance with Rule 22 of the Takeovers Code.

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## Reminder: Timely submission of annual confirmations by EFMs and EPTs

Currently all discretionary fund managers and principal traders which have been granted exempt status under the Codes (ie, EFMs and EPTs) belong to complex international financial groups and were granted exempt status under the “fast-track” procedures. As explained in paragraph 8 of Practice Note 9 the “fast-track” application process is available to members of multi-service international financial groups who are regularly involved in corporate finance activities in Hong Kong and carry out principal trading or fund management activities on a day-to-day basis separately from the corporate finance operations. In granting exempt status the Executive places due reliance on the signed confirmations provided by senior compliance personnel that, among other things, sufficient Chinese Walls and compliance procedures are in place to ensure that the fund management or principal trading operations operate independently from the group’s corporate finance operations.

Exempt status is granted on the basis that any subsequent changes to the systems and procedures that affect Chinese Walls in place must be brought to the Executive’s attention. Furthermore, in order to maintain its exempt status an EFM/EPT is required to provide an updated signed confirmation on an annual basis. This requirement is expressly set out in the letter granting exempt status and also highlighted in paragraph 8.3 of Practice Note 9.

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In this regard, the Executive wishes to remind EFMs and EPTs that they must submit their annual confirmations on a timely basis, ie, on or before the relevant deadline set in the grant letter (or in the Executive's letter confirming annual exempt status for subsequent years). Failure to do so may imply a deficiency in the compliance function on the part of the EFM or EPT which may result in action being taken by the Executive, such as a revocation of exempt status.

EFMs and EPTs should consult the Executive in advance if they anticipate any difficulties in meeting the deadline.

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## Withdrawal of Practice Note 3

Practice Note 3 was revised in June 2009 to provide guidance on the application of the then current version of Rule 19.1 of the Takeovers Code regarding transitional arrangements for the implementation of the Stock Exchange's regime for electronic dissemination of regulatory information. Following its amendment in June 2010 Rule 19.1 now reflects the Stock Exchange's current electronic disclosure regime. Given this the guidance provided in Practice Note 3 is now obsolete and accordingly Practice Note 3 has been withdrawn.

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## Hyperlinks to the soft version of the Codes

The Executive would like to inform market practitioners that we have added cross referencing links to the soft English version of the Codes which is available on "Prospectuses, Takeovers & Mergers" – "Takeovers & Mergers" – "Codes & Guidelines" section of the SFC website to facilitate easier navigation throughout the Codes. This will be extended to the Chinese version of the Codes as soon as possible.

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## Appointments and reappointments of members to the Takeovers and Mergers Panel and related committees

We welcome the following new appointments and reappointments to the Takeovers and Mergers Panel (the Panel), the Takeovers Appeal Committee (the Appeal Committee) and the Nominations Committee with effect from 1 April 2011:

### Panel and Appeal Committee

*New appointments* – Mr Edward Lam, Mr Joseph Lo, Ms Teresa Ma, Mr Chris Swift and Ms Judy Vas

*Reappointments* – Mr Stephen Clark (Chairman of the Panel), Mr Roger Denny, Mr Ernest Ip, Mr Bonn Liu, Mr Daniel Rodgers and Mr Andrew Tortoisshell

### Nominations Committee

*New appointment* – Mr Anderson Chow

We wish to thank Ms Christine Wong who has stepped down from the Panel and Appeal Committee, Mr Kenneth Kwok and Mr Anderson Chow who have stepped down from the Nominations Committee and the Disciplinary Chair Committee respectively, for their valuable contributions over the years.

The membership lists for the Panel, the Appeal Committee, the Disciplinary Chair Committee and the Nominations Committee are set out below. Each member is appointed for a term of two years and their current term is until 31 March 2012 unless otherwise stated.

#### *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 Clark Stephen Edward\*

#### Deputy Chairmen

Mr Graham David

Ms Ko, Teresa Yuk Yin, JP

Mr Liu Chee Ming

Mr Maguire John Martin

#### Members

Mr Chan Yuk Sing, Freeman

Ms Charlton Julia Frances

Mr Denny Roger Michael \*

Ms Desai Kalpana

Mr Ip Koon Wing, Ernest \*

Mr Kwok Tun Ho, Chester

Mr Lam Sung Lai, Edward <sup>^</sup>

Mrs Lee Pui Ling, Angelina, JP

Mr Liu Che Ning

Mr Liu Swee Long, Michael

Mr Liu Yun Bonn \*

Mr Lo Kin Ching Joseph <sup>^</sup>

Mr Lung Hak Kau

Ms Ma, Ka Ming Teresa <sup>^</sup>

Mr Nesbitt Gavin Paul

Mr Norris Nicholas Andrew

Mr Rodgers Daniel James \*

Mr Sabine Martin Nevil

Mr Swift, Christopher Lee <sup>^</sup>

Ms Tan Siew Boi, May

Mr Tortoishell Andrew \*

Ms Vas Chau Lai Kun Judy <sup>Δ</sup>  
Mr Webb David Michael  
Mr Winter Richard David  
Mr Yeh V-Nee  
Ms Yu Ka Po, Benita

\* reappointed on 1 April 2011 for a term of two years until 31 March 2013

<sup>Δ</sup> appointed on 1 April 2011 for a term of two years until 31 March 2013

#### *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 Counsel. 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.

Mr Chan Kin Keung, Anthony, SC  
Mr Chan King Sang, Edward, SC  
Mr Ho Ambrose, SC  
Ms Li Gladys Veronica, SC  
Mr Ng Kar Fai, Peter, SC  
Mr Wong Yuk Lun, Horace, SC

#### *Nominations Committee*

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

#### Ex officio members

Mr Wheatley Martin, JP (Chairman)  
Mr Clark Stephen Edward  
Mr Ho Yin Tung, Brian

#### Members

Dr Fong Ching, Eddy, GBS, JP  
Mr Chow Ka Ming, Anderson, SC<sup>Δ</sup>

Alternate members to Mr Clark Stephen Edward

Mr Graham David  
Ms Ko, Teresa Yuk Yin, JP  
Mr Liu Chee Ming  
Mr Maguire John Martin

<sup>Δ</sup> appointed on 1 April 2011 for a term of two years until 31 March 2013

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A full list of members of the Panel, the Appeal Committee, the Nominations Committee and the Disciplinary Chair Committee can be found in the “Prospectuses, Takeovers & Mergers” – “Takeovers and Mergers” – “Takeovers Panel & Appeal Committee” section of the SFC website.

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The Takeovers Bulletin is available under ‘Speeches, Publications & Consultations’ – ‘Publications’ of the SFC website at <http://www.sfc.hk>.

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

If you want to receive the Takeovers Bulletin by email, simply register for the Update Email Alert service at <http://www.sfc.hk> and select Takeovers and Mergers. Intermediaries licensed by the SFC receive the Takeovers Bulletin via their FinNet email accounts.

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