

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

Season's Greetings

The Executive wishes all our readers a healthy and happy 2012!

Reminder to fund managers of dealing disclosure obligations under Rule 22 of the Takeovers Code

The Executive has been concerned to note a number of recent breaches of the dealing disclosure obligations under Rule 22 of the Takeovers Code by local and overseas fund managers.

Rule 22 of the Takeovers Code requires parties to an offer and their respective associates to disclose dealings in relevant securities (as defined in Note 4 to Rule 22) of the offeree company and the offeror (in the case of a securities exchange offer) conducted for themselves or on behalf of discretionary clients during an offer period.

An "associate" is defined under the Takeovers Code as, among others, any person who owns or controls 5% or more of any class of relevant securities. It is vital therefore that any associate, including a 5% shareholder, understands that dealing disclosure is required under Rule 22 of the Takeovers Code when an offer period commences for a relevant company.

To ensure that takeovers are conducted within an orderly framework, the Executive would like to emphasise the importance of timely and accurate disclosure of relevant information by associates and any party who may have the ability to exercise a material influence over the outcome of an offer. This is in line with General Principle 6 of the Takeovers Code.

In light of the above and to help raise awareness of the significance of the Takeovers Code requirements and facilitate better compliance among fund managers, on 25 November

Highlights

- Season's Greetings
- Reminder to fund managers regarding dealing disclosure obligations
- "List of Secondary Listed Companies not subject to the Codes" posted on the SFC website
- Fidelity Worldwide Investment publicly criticised for dealing disclosure breaches
- Quarterly update on the activities of the Takeovers Team for the period ended 30 September 2011

2011, the Executive wrote to all registered and licensed fund managers in Hong Kong via FinNet. The letter provides some practical guidance on the steps a fund manager, who is an “associate” under the Takeovers Code, might take to ensure timely and appropriate compliance with its dealing disclosure obligations. The Executive wishes to emphasise that ultimately it is an obligation for each fund manager to take all appropriate measures to ensure compliance with the Takeovers Code.

Relevant fund managers are advised to access the letter through the FinNet systems. Through fund management-related associations in Hong Kong and overseas, a wide spectrum of fund managers also received the letter. Fund managers are advised to remind appropriate persons in their overseas offices, who are likely to deal in the relevant securities of Hong Kong-listed companies, of the relevant provisions of the Takeovers Code, including the obligations under Rule 22.

We hope that fund managers will find helpful the practical guidance below:

(a) Identifying relevant companies in an offer period

- (i) Review regularly the Offer Period Tables under “Prospectuses, Takeovers & Mergers – Takeovers and Mergers – Offer Period Tables” on the SFC website (www.sfc.hk) for details of current offer periods under the Takeovers Code. The tables are updated on a best-effort basis and provide a useful reference to identify issuers in an offer period. We do not recommend using the Offer Period Tables as the sole source of monitoring.
- (ii) Monitor regularly HKExnews on the HKEx website (www.hkex.com.hk) to see whether an announcement has been issued by, or in relation to, a relevant company that has commenced an offer period.
- (iii) Subscribe to the News Alerts service on the HKEx website to receive relevant information.
- (iv) Monitor regularly media sources such as newspaper and financial news services to identify takeovers-related articles.

(b) On-going training of staff

- (i) All appropriate individuals should have proper training on the relevant provisions of the Takeovers Code including, in particular:
 - the meaning of the term “associate” and its significance; and
 - the rules relating to the disclosure of dealings in relevant securities of an offeror or an offeree company contained in Rule 22 and Schedules I and II of the Takeovers Code.

Such training should be conducted on a regular and on-going basis. Practice Note 9 and the Takeovers Bulletin provide a good source of information on, among other things, practical guidance concerning dealing disclosure obligations and related recent developments. These can be found under “Prospectuses, Takeovers & Mergers – Takeovers and Mergers – Practice Notes/Takeovers Bulletin” on the SFC website.

- (ii) Compliance personnel should keep themselves fully up-to-date on changes to the Takeovers Code. They may find it useful to subscribe to the Update Alert service on the SFC website to receive notifications about Takeovers-related news such as news items relating to the issuance of the Takeovers Bulletin and market consultations on amendments to the Takeovers Code.

(c) Proper compliance systems

A fund manager should ensure that adequate and proper compliance systems are in place to enable it to fully discharge its obligations under the Takeovers Code including dealing disclosure obligations under Rule 22.

The above guidelines are available under “Legislation and Regulatory Handbook – Regulatory Handbook – Codes, Guidelines & Circulars” and “Prospectuses, Takeovers & Mergers – Takeovers and Mergers – Codes & Guidelines” on the SFC website.

Finally the Executive wishes to thank the various fund management associations for their help in communicating the message above to their respective members.

“List of Secondary Listed Companies not subject to the Codes” posted on the SFC website

Further to the article entitled “Update on overseas companies with secondary listings in Hong Kong to which the Codes do not apply” (September 2011 issue), a list of the names and stock codes of the secondary listed companies in Hong Kong not subject to the Codes has been posted on the Takeovers & Mergers section of the SFC website.

Up to the date of publication of this Takeovers Bulletin, the following companies with a secondary listing in Hong Kong are not subject to the Codes:

| Name | Stock Code |
|--------------------------------|-------------------|
| CapitaMalls Asia Ltd | 6813 |
| Coach, Inc | 6388 |
| Glencore International plc | 805 |
| Kazakhmys plc | 847 |
| Manulife Financial Corporation | 945 |
| Midas Holdings Ltd | 1021 |
| SBI Holdings, Inc | 6488 |
| SouthGobi Resources Ltd | 1878 |
| Vale S.A. | 6210/6230 |

Hong Kong shareholders who invest in secondary-listed companies to which the Codes do not apply will not be able to enjoy the protection framework enforced by the SFC in respect of takeovers, mergers and share repurchases.

In addition to the list provided above, investors can also read the prospectus and listing documents of a secondary-listed company on its corporate website or the HKExnews website to check whether it is subject to the Codes.

Further information about the possible application of the Codes to secondary-listed companies can be found in the article, “The Codes do not apply to all listed companies in Hong Kong” (September 2010 issue). To raise awareness of the subject, the SFC also posted an article entitled “Non-application of the Takeovers Code” under “Products - Stocks - Takeovers and Privatisations” of its investor education website (www.invested.hk).

The HKEx website (www.hkex.com.hk) has a section entitled “Listing of Overseas Companies” which contains relevant information about the listing of overseas companies on HKEx. In that section, there is a list entitled “Secondary Listed Issuers” which sets out all the companies with a secondary listing on HKEx.

Fidelity Worldwide Investment publicly criticised for dealing disclosure breaches

On 7 November 2011, the Executive publicly criticised FIL Investment Management (Hong Kong) Ltd (trading under the brand name Fidelity Worldwide Investment in Hong Kong) for dealing disclosure breaches under Rule 22 of the Takeovers Code.

A copy of the Executive’s Statement dated 7 November 2011 can be found under “Prospectuses, Takeovers & Mergers” – “Takeovers and Mergers” – “Panel and Executive Decisions / Statements” on the SFC website.

Quarterly update on the Takeovers Team's activities in administration of the Codes

In the three months ended 30 September 2011, the Executive dealt with eight takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer repurchases) and seven whitewashes. The Executive also received 56 ruling applications.

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.

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.

Securities and Futures Commission, 8/F Chater House,
8 Connaught Road Central, Hong Kong

Phone : (852) 2840 9222

Fax : (852) 2521 7836

SFC website : www.sfc.hk

Media : (852) 2283 6860

InvestEd website : www.InvestEd.hk

E-mail : enquiry@sfc.hk