



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

Consultation Conclusions
on proposed amendments to
the Codes on Takeovers and Mergers
and Share Repurchases

Hong Kong
June 2008

**Consultation Conclusions on proposed amendments to the Codes on Takeovers and
Mergers and Share Repurchases**

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Introduction

On 17 September 2007 the Securities and Futures Commission (“SFC”) issued a Consultation Paper inviting public comment on a number of proposed changes to the Hong Kong Codes on Takeovers and Mergers and Share Repurchases (“Codes”). These proposals were formulated in close consultation with the Takeovers Panel.

The Consultation Paper was set out in three parts.

Part 1 proposed to introduce a new Rule 21.7 to the Takeovers Code to deal with securities borrowing and lending (“SBL”) activity involving parties connected to an offer. It also proposed a number of amendments to the Takeovers Code to clarify the treatment of borrowed or lent shares in respect of the mandatory offer obligation and the acceptance condition in general offers.

Part 2 proposed to amend Rule 21.6 of the Takeovers Code to provide increased guidance regarding dealings by connected discretionary fund managers and principal traders before and during an offer period.

Part 3 proposed to introduce a new Note 7 to Rule 2 to clarify that the Takeovers Code might apply to transactions involving the disposal by a company of its assets and/or operations and the possibility of delisting of the trading in the shares of that company.

The consultation period ended on 9 November 2007. The SFC received nine responses including one respondent who represented 11 financial institutions. A list of respondents is set out in **Appendix 1**. The Takeovers Panel and the SFC welcome these responses and are grateful to those who have participated. The comments of the respondents and the Executive’s responses to those comments are discussed in this paper.

The proposals contained in the Consultation Paper and the responses received involve technical and complex issues. In arriving at the conclusions set out in this paper the Executive has carefully considered these issues including holding discussions with other parties.

The Executive notes that some respondents have asked for more prescriptive guidance in the Codes on a number of the proposed amendments. When applying the Codes to complex issues, such as those considered in the Consultation Paper, the Executive believes that it is fundamental to maintain the flexibility to apply the General Principles and Rules in accordance with their spirit in order to achieve the underlying purposes of the Codes. As there is at times a tendency on the part of practitioners to view guidance lists as exhaustive and as

the application of the relevant provisions is likely to be primarily dependent on the circumstances of each case the Executive does not propose to set out lists of criteria in the Codes as requested. Nevertheless, where appropriate, some guidance has been provided in this paper. If it becomes apparent that further guidance is required after the amendments become effective, the Executive will ensure that the market is provided with further guidance such as in the form of Practice Notes in the Takeovers Bulletin. As always where there is any doubt as to the application of the Codes market participants are encouraged to consult the Executive at the earliest opportunity.

The marked up text of all the amendments to the Codes arising from the consultation is set out in **Appendix 2**. All these amendments will become effective on **1 August 2008**. Where this timing may produce major difficulties, for example, in the case of transactions in progress, the Executive should be consulted and will endeavour to reach a solution which is fair to all parties.

The Consultation Paper, the responses and this Conclusion Paper are available on the SFC website at www.sfc.hk.

PART 1

SECURITIES BORROWING AND LENDING

1. In this part of the Consultation Paper, the Executive proposed to introduce a new Rule 21.7 to the Takeovers Code to deal with SBL activity involving parties connected to an offer. The Executive also proposed a number of amendments to the Codes to clarify the treatment of borrowed or lent shares in respect of the mandatory offer obligation and the acceptance condition in general offers.
2. The six respondents who commented on this part of the Consultation Paper generally agree with the proposals relating to this part. Their comments and the Executive's response are considered below.

Question 1: Do you agree with the introduction of new Rule 21.7?

Application of new Rule 21.7

3. One respondent suggested that the proposed new Rule 21.7 should only apply to offerors and their concert parties.

Executive's response

4. The Executive continues to believe that the risk of abuse associated with SBL activity during an offer period attaches to parties who are connected to an offer and certain persons associated with them as set out in new Rule 21.7.

SBL activity conducted in an agency capacity

5. Two respondents asked for confirmation that the proposed new Rule 21.7 would not apply to SBL activity carried out by persons in an agency capacity. In particular, one of the respondents is concerned that new Rule 21.7 may affect banking groups that operate agency lending platforms whereby securities which have been contributed by their clients to a central lending pool are lent out by them as agents.

Executive's response

6. The Executive confirms that new Rule 21.7 does not apply to persons conducting SBL activity in an agency capacity. Accordingly, SBL activity conducted by banking groups or other financial institutions in an agency capacity will not be caught by new Rule 21.7.
7. If a person to which new Rule 21.7 applies has, before the commencement of an offer period, placed its shares in the hands of an agent for the purpose of lending out such shares and the agent has sole discretion in respect of the lending (such as an agency

lending platform operated by a bank or other financial institution), such person should consult the Executive at the earliest opportunity.

Certain SBL activity conducted by financial institutions as principals for the purpose of facilitating client trading

8. One respondent raised queries regarding the application of the proposed new Rule 21.7 on SBL activity conducted by a financial institution as principal for the purpose of facilitating client trading and related hedging. This respondent is concerned that new Rule 21.7 would unnecessarily affect those SBL transactions which are conducted by banking groups for client facilitation purposes and thereby have a negative impact on the market. This respondent has provided examples of such SBL transactions which include:
 - borrowing and on-lending by banking groups to facilitate client activities and settlement obligations during an offer period (such as conduit lending programs and failed trade coverage programs);
 - borrowing and lending by banking groups which form a necessary part of their liquidity provider obligations under their derivative warrant programs, or index or stock options market making;
 - hedging activities arising out of the above and out of other activities such as to limit exposure under a pre-existing derivative;
 - borrowing and lending to facilitate the conduct of exempt principal trading; and
 - borrowing and lending to a banking group's exempt fund managers ("EFMs").
9. In light of the above concern, the same respondent suggested that there should either be an express exemption for SBL transactions of this nature or an amendment to the definition of exempt principal trader ("EPT") to expressly include SBL activity to facilitate client trading and related hedging and an indication by the Executive that it would be willing to grant EPT status for these activities.

Executive's response

10. The Executive confirms that SBL activity conducted by an EPT should not be subject to new Rule 21.7. In order to clarify this, the definition of EPT in the Definitions section of the Codes will be amended as follows:

***“Exempt principal trader:** An exempt principal trader is a person who trades as a principal in securities only for the purpose of derivative arbitrage or hedging activities such as closing out existing derivatives, delta hedging in respect of existing derivatives, index related product or tracker fund arbitrage in relation to the relevant securities or*

other similar activities assented to by the Executive during an offer period, and is recognised by the Executive as an exempt principal trader for the purposes of the Codes. An exempt principal trader who carries out securities borrowing and lending transactions (including the unwinding of such transactions) in the ordinary course of its business is not subject to Rule 21.7.

11. As a consequence of the above amendment to the definition of EPT, new Rule 21.7(d) will be amended as follows:

“(d) a financial or professional adviser to the offeror or the offeree company, to a company which is an associate of the offeror or offeree company by virtue of paragraph (1) of the definition of associate or to a person acting in concert with an offeror or with the directors of the offeree company, and persons controlling#, controlled by or under the same control as any such adviser (except for an exempt principal trader ~~(only in respect of the specified activities for which it has obtained exempt status)~~ or an exempt fund manager); and”

Relevance of EPT status

12. In light of the amendments set out in paragraphs 10 and 11 above, entities that conduct SBL activity as part of their business operations and which may be subject to new Rule 21.7 during an offer period (e.g. as a result of being in the same group as the financial adviser to the offeror) could apply to the Executive for EPT status. General guidelines in relation to an application for EPT status can be found on the SFC website under “Prospectuses, Takeovers & Mergers” – “Takeovers & Mergers” – “Exempt Status (EFM/EPT)”. There is also a simplified application procedure which is available to entities which form part of complex international financial groups. If an entity forms part of a complex international group and wishes to apply for EPT status, it should consult the Executive on whether the simplified application procedure applies.
13. For those entities that already have EPT status, they should consult the Executive as to whether their EPT status would cover all relevant personnel responsible for carrying out SBL transactions. In such cases, the Executive would expect the entity to confirm, in particular, that:
- there are appropriate Chinese Walls and compliance procedures in place to maintain independence of such relevant personnel; and
 - all such relevant personnel have had explained to them and understand the relevant provisions of the Codes.

14. The Executive notes that the SBL desk of an entity with EPT status may sometimes in the ordinary course of business take a proprietary position in securities in anticipation of possible future borrowing demands. Given the amendment to the definition of EPT as set out in paragraph 10 above, an SBL desk with EPT status will be free to carry out securities borrowing and lending transactions (including the unwinding of such transactions) in its ordinary course of business during an offer. However, it should be noted that any proprietary dealings (i.e. acquisition or disposal of securities) by a SBL desk with EPT status during an offer period will be subject to the normal restrictions on dealings by an EPT. Pursuant to Rule 35.1 of the Takeovers Code, an EPT is subject to the overriding safeguard that it should not carry out dealings with the purpose of assisting an offeror or the offeree company. Failure by an EPT to comply with this may lead to revocation of its exempt status and/or other appropriate action being taken by the Executive. In this respect, the Executive believes that this safeguard should also apply to securities borrowing and lending transactions carried out by an EPT. Given this, Rule 35.1 of the Takeovers Code will be amended as follows:

“35.1 Prohibited dealings and securities borrowing and lending transactions”

An exempt principal trader connected with an offeror or the offeree company must not carry out any dealings or securities borrowing and lending transactions with the purpose of assisting the offeror or the offeree company, as the case may be.”

The requirement to obtain consent from the Executive

15. One respondent commented that it is not clear why action by a lender to recall securities which it had lent out required the consent of the Executive as reflected by the drafting of Note 2 to the proposed new Rule 21.7. The reason being that a lender had a pre-existing legal right to recall the securities and it was not clear why a recall of shares to exercise voting rights in a particular way, or to count towards an acceptance condition, could be construed as being “manipulative or otherwise abusive”.

Executive’s response

16. The purpose of new Rule 21.7 is to ensure that SBL activity initiated by persons who are connected to the offer during the offer period is not manipulative or otherwise abusive. Whilst the Executive understands that a lender has a legal right to recall securities which it has lent out, the Executive believes that a lender should nevertheless be required to obtain consent before doing so during an offer period which would provide the Executive with an opportunity to consider the reason(s) for the recalling of the securities.

17. The same respondent commented that it is not clear why the single consent relief under Note 3 to the proposed new Rule 21.7 is limited to the entering into and unwinding of lending transactions. This respondent believes that there is no good reason why a borrower should not be able to obtain a single consent where it intends to effect several borrowings during an offer period all for a related purpose (which the Executive accepts is not manipulative or otherwise abusive). This respondent further suggested that if the Executive intends to retain this limitation the second sentence in Note 3 should be amended to make clear that it is limited to lenders only.

Executive's response

18. The Executive believes that borrowing transactions initiated by persons subject to new Rule 21.7 during an offer period would give rise to greater concerns regarding possible manipulation or abuse than lending transactions given that in borrowing transactions such persons are obtaining control of additional voting rights during an offer period. As such, the Executive does not believe that it is appropriate for the single consent relief to apply to borrowing transactions. As regards the availability of the single consent relief, the Executive believes that it is clear from the wording of Note 3 to new Rule 21.7 that the single consent relief will only be available for lending transactions.
19. Two respondents enquired as to what information the Executive would require in giving consent to a proposed SBL transaction under the proposed new Rule 21.7 and in giving a single consent to a proposed series of lending transactions under Note 3 to the proposed new Rule 21.7.

Executive's response

20. The Executive believes that it is impractical to set out an exhaustive list of information that might be required in its consideration of whether or not to give consent to a proposed SBL transaction or a single consent to a proposed series of lending transactions as each application would depend on its own facts. However, as with any other application made under the Codes, the Executive would expect all material facts relating to the proposed SBL transaction (such as information about the applicant and the counterparty, the purpose of the proposed SBL transaction, the number of securities involved, the timing of the proposed SBL transaction, relevant terms of the proposed SBL transaction and the resultant number of securities held by the applicant) are provided for its consideration.

Disclosure matters

21. Two respondents asked for clarification of:

- whether the disclosure relating to the redelivery or the acceptance of the redelivery of relevant securities required under Note 2 to the proposed new Rule 21.7 should be public or private;
- whether the disclosure relating to the carrying out of a SBL transaction which has been consented to by the Executive under Note 3 to the proposed new Rule 21.7 should be public or private;
- the requirements for the public notice relating to a single consent obtained from the Executive for a series of proposed lending transactions under Note 3; and
- the expected time frame for disclosure and whether a form for disclosure will be prescribed for each of the above.

Executive's response

22. The disclosure required under Notes 2 and 3 to new Rule 21.7 should be publicly disclosed as if it were a dealing in accordance with Notes 5, 6 and 7 to Rule 22. Any public disclosure required to be made under Notes 2 and 3 needs to be made no later than 10.00 a.m. on the business day following the date of the occurrence of the relevant event in accordance with Note 5 to Rule 22.
23. The Executive has revised the existing prescribed public disclosure form to include a section on disclosure of securities borrowing and lending transactions under new Rule 21.7. A specimen of the revised public disclosure form is attached as **Appendix 3**. The revised public disclosure form will be available for download on the SFC website under "Prospectuses, Takeovers & Mergers" – "Takeovers & Mergers" – "Forms" once the relevant amendments become effective.
24. In respect of the public notice required to be issued under Note 3 relating to a single consent obtained from the Executive for a series of proposed lending transactions, the Executive would expect the notice to contain information such as the identity of the person conducting the proposed lending transactions and the nature of the transactions. Additional information may be required but this will need to be determined on a case by case basis. In this regard, an applicant should consult the Executive on the content and the timing for the issue of the notice at the time when consent is given.
25. In light of the above, Notes 2 and 3 to new Rule 21.7 will be amended as follows:

"2. Return of borrowed relevant securities

The Executive's consent will not normally be required under Rule 21.7 by a borrower taking action to redeliver relevant securities (or equivalent securities)

which have been recalled, or a lender taking action to accept the redelivery of relevant securities (or equivalent securities) which have not been recalled, in each case in accordance with an existing securities borrowing or lending agreement. However, the Executive will normally require the redelivery or the accepting of the redelivery of such relevant securities to be publicly disclosed as if it were a dealing in the relevant securities in accordance with Notes 5, 6 and 7 to Rule 22.

3. *Disclosure or notice where consent is given*

Where the Executive consents to a person to whom Rule 21.7 applies entering into or taking action to unwind a securities borrowing or lending transaction in respect of relevant securities, the Executive will normally require the transaction to be publicly disclosed by that person as if it were a dealing in the relevant securities in accordance with Notes 5, 6 and 7 to Rule 22. Where a person wishes to enter into or take action to unwind more than one lending transaction in respect of relevant securities, the Executive may instead require that person to give public notice that he might do so. The Executive should be consulted as to the content and timing for the issue of such notice.

Transition period

26. One respondent enquired about whether there is any transition period before the proposed new Rule 21.7 and related amendments to the Codes take effect.

Executive's response

27. The Executive does not believe that a transition period is necessary before new Rule 21.7 and related amendments to the Codes take effect. If a person faces difficulties in complying with new Rule 21.7 when it becomes effective, the Executive should be consulted at the earliest opportunity. As mentioned in paragraph 12 above, entities that conduct SBL activity as part of their business operations and which may be subject to new Rule 21.7 during an offer period should apply to the Executive for EPT status in accordance with the applicable procedure.

<p>Question 2: Do you agree with the consequential amendments as a result of new Rule 21.7? If not, which of the consequential amendments do you not agree with? Please give reasons.</p>
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28. The two respondents who responded to this question agree with the consequential amendments as a result of new Rule 21.7. These include various amendments to the

Takeovers Code (namely, Rule 3.5, Note 1 to Rule 3.5, Rule 19.1 and Note 7(a) to Rule 22), the Share Repurchase Code (namely, Rule 5.1(j)) and the Schedules to the Codes (namely, paragraph 4 of Schedule I, paragraph 2 of Schedule II and paragraph 5 of Schedule III) as set out in Appendix 2.

29. As a result of the amendments to Notes 2 and 3 to new Rule 21.7 as set out in paragraph 25 above, certain changes will be made to the consequential amendments to Note 7(a) to Rule 22 which is set out in Appendix 2.

Question 3: Do you agree with the introduction of new Note 21 to Rule 26.1?
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30. In paragraph 12 of the Consultation Paper, the Executive proposed to add a new Note 21 to Rule 26.1 of the Takeovers Code to clarify the treatment of borrowed or lent shares in respect of the mandatory offer obligation. New Note 21 to Rule 26.1 is consistent with Note 17 on Rule 9.1 of the London Code.

Appropriateness of counting borrowed shares

31. One respondent suggested that for the purpose of triggering a mandatory offer shares that are borrowed should not be counted but shares that have been lent should be counted even if the lending transaction has not been unwound so as to avoid any double counting under the proposed new Note 21 to Rule 26.1.

Executive's response

32. The Executive understands that there would be an element of double counting but believes, for the reasons stated in paragraph 10 of the Consultation Paper, that for the purpose of Rule 26 of the Takeovers Code it is appropriate to count borrowed shares. In particular, a borrower of shares acquires voting rights within the meaning of the Takeovers Code which he can exercise at any time unless he on-lends or sells the shares or returns them to the lender.
33. As regards lent shares, the Executive believes that it is clear from the wording of new Note 21 that lent shares would be counted for the purpose of the mandatory offer obligation.

Application of new Note 21 to Rule 26.1

34. One respondent made the following comments on the proposed new Note 21 to Rule 26.1:
- Given the fungible nature of securities and that the majority of SBL transactions carried out by banking groups are conducted on a principal-to-

principal basis, it is not clear how an “original lender” and an “end borrower” of particular securities would be determined under the proposed new Note 21.

- Under the current drafting of new Note 21, the number of voting rights taken to be held by a person conducting SBL transactions may be affected by the sequence in which the transactions are effected as illustrated by the following example:

Example: If a shareholder has a 29% interest in an issuer and loans out 2% of the shares, and then subsequently borrows a further 2%, it is not clear whether the shareholder would be taken to have a 31% interest or a 29% interest for the purposes of Rule 26.1. According to a strict reading of new Note 21 as currently drafted it would seem that the shareholder would have a 31% interest. However, if the shareholder had effected the share borrowing first and then loaned the same amount, it may not be treated as the “end borrower” and hence would not cross the 30% threshold.

- New Note 21 should expressly exclude borrowings which are effected for the purpose of covering shorts or engaging in conduit loans (i.e. a person acting as a conduit who borrows shares for the purpose of on-lending them) similar to that found under Part XV of the Securities and Futures Ordinance in respect of disclosure of interests¹. Such exemption should also specifically be extended to include a situation where, for example, shares that a borrower has on-lent are returned, and are subsequently on-lent to another borrower rather than returned to the original lender.

Executive’s response

35. In practice, the Executive believes that new Note 21 is unlikely to have a significant impact on entities (e.g. banking groups) that conduct SBL activity in the ordinary course of business. The reason for this is that the Executive understands that it is extremely rare for borrowings by such entities, when aggregated with the group’s interests in the relevant securities of a company, to reach such a level that they would trigger the mandatory offer thresholds in Rule 26.1 of the Takeovers Code. In cases where there is any doubt as to whether an entity’s borrowings might have any implication under new

¹ Under Part XV of the Securities and Futures Ordinance, regulated persons that act as conduits who borrow and on-lend shares within 5 business days after the shares in which the interest is acquired are allowed to exclude such shares for the purposes of aggregation.

Note 21, the Executive should be consulted immediately in order to determine, in light of all the circumstances, whether a general offer obligation has been triggered. Such determination would include the Executive making enquiries as to whether or not the entity is to be treated as an “original lender” or “end borrower”.

36. The Executive believes that new Note 21 will mainly apply to persons who hold close to a controlling stake (inclusive of interest in borrowed shares) or who already hold a controlling stake of between 30% and 50% (inclusive of interest in borrowed shares), and who proposes to make further acquisitions or borrow additional shares which would result in their holdings exceeding the 30% threshold or the 2% creeper. In all such cases, the Executive would expect to be consulted in accordance with new Note 21.
37. In respect of the example given by the respondent (i.e. the second bullet point in paragraph 34 above), a person who is interested in 29% and lends out 2%, then borrows 2%, would be taken to hold 31% under new Note 21. If he had borrowed the 2% first and then lent out 2%, he may be taken to remain holding 29% on account of him on-lending the borrowed 2%. However, before such person borrows the 2% (whether in the first or the second scenario) he should consult the Executive first as required under new Note 21. It is exactly this kind of SBL activity conducted by persons holding a close to controlling stake which the Executive is most concerned about and which new Note 21 is designed to cover.
38. On the other hand, the Executive agrees with the respondent that borrowing shares for the purpose of covering shorts or engaging in conduit loans should be exempted. In this respect the Executive notes that new Note 21 already excludes “*borrowed shares which the borrower has either on-lent or sold*”.
39. In light of the above, new Note 21 to Rule 26.1 will be amended as follows:

“21. *Borrowed or lent shares*

For the purpose of ~~this~~ Rule 26, if a person has borrowed or lent shares he will be treated as holding the voting rights in respect of such shares save for any borrowed shares which the borrower has either on-lent or sold. A person must consult the Executive before acquiring or borrowing shares (irrespective of whether the borrowed shares are intended to be on-lent or sold) which, when taken together with shares in which he or any person acting in concert with him is already interested, and shares already borrowed or lent by him or any person acting in concert with him, ~~would result in this Rule being triggered~~ might trigger a mandatory offer under Rule 26. In such circumstances If it is determined that a mandatory offer under ~~this~~ Rule 26 will be triggered as a result of such

acquisition or borrowing of shares, the Executive will then decide, inter alia, how the borrowed or lent shares should be treated for the purpose of the acceptance condition.”

40. The same respondent commented that the proposal in the Consultation Paper that the original lender as well as the borrower should be treated as holding the voting rights is confusing as this is not always the case at law and would be determined as a matter of contract between borrower and lender. However, this respondent welcomes clarification in relation to the trigger of a mandatory general offer whereby lenders are treated as continuing to hold the voting rights in lent shares and suggests that a separate Note to Rule 26.1 should be added to expressly state that the return of shares to a lender will not trigger a mandatory general offer by the lender. This respondent is concerned that the reference in new Note 21 to “acquiring” shares could be construed as including the acceptance of the redelivery of lent shares.

Executive’s response

41. The Executive notes that new Note 21 already expressly states that a person who lent shares would be treated as holding the voting rights of the lent shares for the purpose of Rule 26.1. It follows that the acceptance of the redelivery of the lent shares would not be considered an acquisition. The Executive does not believe that it is necessary to add a separate Note to Rule 26.1 in this respect.
42. The same respondent requested for clarification of the effect of paragraph 19 of the Consultation Paper. It is of the view that, from a lender’s perspective, it would not be consistent with the policy behind new Note 21 to suggest that where lent shares are redelivered to a lender (i.e. a transaction is unwound at the initiative of the borrower) and potentially takes the lender back over the 30% threshold the lender would be required to either make a mandatory offer or reduce its holding in some other way. Furthermore, this respondent requests confirmation that this would not, in fact, affect the borrower’s ability to return lent shares, i.e. that the restrictions on the lender unwinding the transaction would not preclude a passive acceptance of redelivered shares. This respondent is also concerned that if the Executive determines that the lender should reduce its holding this may not always be possible or desirable under the prevailing market conditions. In addition, this respondent is not clear as to whether the effect of paragraph 19 is that if an offeror withdraws a mandatory offer, or the acceptance condition is not fulfilled, it will be prohibited from making another offer within 6 months.

Executive’s response

43. Since a person is considered to continue to hold the voting rights in shares which he has lent out, the acceptance of the redelivery of such shares by him would not trigger an offer obligation. The scenario described in paragraph 19 of the Consultation Paper would arise where, if prior to the return of the lent shares, the lender acquires or borrows additional shares which triggers a mandatory offer under new Note 21 and such offer lapses because of insufficient acceptances (i.e. as a result of the lent shares not being counted towards the acceptance condition). In such circumstances, the lender may be required to make a second offer or to sell down his stake in the event that the lent shares are redelivered to him shortly after the lapsing of the offer.
44. The Executive believes that the above situation would be rare in practice given that the lender would be expected to apply to the Executive for its consent to recall the lent shares so that they can be counted towards the acceptance condition during the offer period. The Executive currently does not see any reasons why it would not give such consent.
45. On the other hand, the measures suggested in paragraph 19 of the Consultation Paper (i.e. to make a second offer or to sell down) are only likely to be implemented in exceptional cases where the acceptance condition has not been fulfilled as a result of the lender's failure to recall the lent shares.
46. For the avoidance of doubt, if a lender is required to refrain from unwinding a lending transaction for a fixed period of time after the lapsing of an offer as a result of insufficient acceptances, this would not affect the borrower's right to redeliver the shares to such lender albeit that the lender may be required to perform some other remedial action after accepting redelivery of the shares. In addition, an offeror to a lapsed offer made as a result of new Note 21 will be subject to the usual prohibitions under the Codes in respect of the making of a subsequent offer unless such subsequent offer is required to be made by the Executive (for example, if a second offer is required in the situation described in paragraph 19 of the Consultation Paper).

Counting of borrowed or lent shares toward an acceptance condition in a mandatory offer

47. One respondent asked the Executive to set out the criteria which would be applied in determining whether borrowed or lent shares should in fact be counted towards an acceptance condition under the proposed new Note 21 to Rule 26.1.

Executive's response

48. In a conditional mandatory offer, the acceptance condition is to ensure that the offeror is only able to acquire shares in the offer where it and persons acting in concert with it together hold more than 50% of the voting rights of the company. As such, this would be an important factor for the Executive to consider in determining whether borrowed or lent shares are allowed to count towards the acceptance condition. However, the Executive does not believe that it would be appropriate to set out a list of criteria as each case would depend on its own facts.

Question 4: Do you agree with the introduction of new Note 8 to Rule 30.2?

49. In paragraph 15 of the Consultation Paper, the Executive proposed to add a new Note 8 to Rule 30.2 to the Takeovers Code to clarify the treatment of borrowed shares in respect of the acceptance condition in general offers. New Note 8 to Rule 30.2 is consistent with Note 8 on Rule 10 of the London Code.

Application of new Note 8 to Rule 30.2

50. One respondent commented that for the purpose of the acceptance condition borrowed shares should not be counted but lent shares should be counted if, at that time, the lending transaction has been unwound and the shares have been redelivered to the offeror and persons acting in concert with it. If the lending transaction has not been unwound and the shares have not been redelivered to the offeror (or persons acting in concert with it), those shares should not be counted towards the acceptance condition. If there is any possible abuse, the Executive may require the offeror (and persons acting in concert with it) to unwind such lending transaction on or before the close of any offer for the purpose of calculating the acceptance level.

Executive's response

51. The Executive agrees that in practice the normal course of action for an offeror and its concert parties would be to unwind outstanding SBL transactions either before or during the offer period so that there would not be an issue relating to acceptances.
52. One respondent suggested that the proposed new Note 8 to Rule 30.2 should be extended to cover borrowings by concert parties of the offeror. In addition, this respondent asked for confirmation that securities which are legitimately returned by a borrower to the offeror, or to a person acting in concert with the offeror, could be counted towards the acceptance condition.

Executive's response

53. The Executive agrees that new Note 8 should cover borrowings by concert parties of an offeror. In addition, so as to avoid confusion, the Executive believes that new Note 8 should be amended to reflect that borrowed shares may be counted towards an acceptance condition in a conditional mandatory general offer if the Executive so determines pursuant to new Note 21 to Rule 26.1. As such, new Note 8 to Rule 30.2 will be amended as follows:

“8. *Borrowed shares*

Subject to Note 21 to Rule 26.1, ~~Except with the consent of the Executive,~~ shares which have been borrowed by the offeror or any person acting in concert with it may not be counted towards fulfilling an acceptance condition except with the consent of the Executive.”

54. As regards the redelivery of lent shares to an offeror or any of its concert parties before the close of an offer, the Executive does not see any reasons why such shares should not count towards an acceptance condition unless the redelivery is coupled with other arrangements which are manipulative or abusive.

Consent for counting of borrowed shares toward an acceptance condition

55. One respondent asked the Executive to state the circumstances in which it is envisaged that borrowed shares would be allowed to count towards fulfilling an acceptance condition under the proposed new Note 8 to Rule 30.2.

Executive's response

56. The counting of borrowed or lent shares towards an acceptance condition in a mandatory offer is discussed in paragraph 48 above. In a voluntary offer, the counting of borrowed shares towards an acceptance condition would require the consent of the Executive under new Note 8. In determining whether consent should be given for the counting of borrowed shares towards an acceptance condition in a voluntary offer, the most important thing which the Executive would need to be satisfied is that the acceptance condition could clearly be fulfilled. However, the Executive does not believe that it would be appropriate to set out the circumstances in which it would give consent as each case would depend on its own facts.

<p>Question 5: Do you agree with the consequential amendments as a result of new Note 8 to Rule 30.2? If not, which of the consequential amendments do you not agree with? Please give reasons.</p>
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57. The two respondents who responded to this question agree with the proposed consequential amendments as a result of new Note 8 to Rule 30.2. These include various amendments to the Takeovers Code (namely, Notes 2 and 7 to Rule 30.2) and the Schedules to the Codes (namely, the Note at the beginning of Schedule VIII and paragraphs 8 and 9 of Schedule VIII) as set out in Appendix 2.

Question 6: Do you agree with the introduction of new Note 3 to paragraph 3 of Schedule VI to the Codes?

58. In paragraph 24 of the Consultation Paper, the Executive proposed to add a new Note 3 to paragraph 3 of Schedule VI to clarify that the borrowing and lending of shares would be considered as disqualifying transactions in respect of whitewash transactions.

Appropriateness of SBL transactions being considered as disqualifying transactions in whitewash transactions

59. One respondent agreed with the introduction of the proposed new Note 3 to paragraph 3 of Schedule VI whilst two respondents did not support the proposal. In particular, one of the respondents noted that SBL transactions are not considered to be disqualifying transactions under the London Code. The other respondent did not agree that borrowing and lending of securities should be construed as acquisitions and disposals of securities.

Executive's response

60. The rationale for disqualifying transactions is set out in paragraphs 21 to 23 of the Consultation Paper. In particular, an applicant of a whitewash waiver should not (i) acquire shares which would provide an exit for certain shareholders whilst not to others and (ii) dispose of shares which would create uncertainty. After further considering the nature of SBL transactions and the rationale for disqualifying transactions, the Executive agrees that a borrowing of shares is not an acquisition of shares which would provide the lender (i.e. the shareholder) with an exit and, similarly, a lending of shares is not an out and out disposal of shares. As such, the proposed new Note 3 to paragraph 3 of Schedule VI will not be adopted.

PART 2

DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS

61. In this part of the Consultation Paper, the Executive proposed to amend Rule 21.6 of the Takeovers Code to provide increased guidance regarding dealings by connected discretionary fund managers and principal traders before and during an offer period.
62. Five respondents commented on this part of the Consultation Paper. Three respondents agree with the proposals relating to this part. The other two respondents who commented also welcome the proposed changes and have provided a number of comments which are considered below.

Question 7: Do you agree with the proposed amendments to Rule 21.6?
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Application of amended Rule 21.6

63. One respondent suggested that there should be express recognition in the amended Rule 21.6(a) that knowledge is not automatically attributed to connected principal traders and connected fund managers which operate within the same legal entity as the financial adviser where the firm's usual Chinese wall is effective in such circumstances.

Executive's response

64. The amended Rule 21.6 refers to connected fund managers and principal traders who have "**actual** knowledge of the possibility of an offer being made ..." and not attributed knowledge. The Executive believes that the wording of the amended Rule 21.6 is sufficiently clear.
65. The same respondent welcomed the inclusion of Rule 21.6(c) to clarify the position of EFMs and EPTs throughout an offer period. However, it believes that in order for this relief to have its full and proper effect, particularly in relation to SBL, the definition of EPT should be broadened as suggested in paragraph 9 above.

Executive's response

66. The Executive agrees that the position of EPTs should be clarified and therefore the definition of EPT will be amended as set out in paragraph 10 above.
67. The other respondent asked for clarification that under the amended Rule 21.6 certain previous dealings of connected discretionary fund managers and principal traders would not have any implications for an offer as in the case of dealings by EFMs and EPTs.

Executive's response

68. The Executive believes that since the drafting of the amended Rule 21.6 (in particular, Note 1 to Rule 21.6) is clear as to when the presumption of concertedness and the relevant rules would start to apply to connected discretionary fund managers and principal traders and their dealings, it is not necessary to provide further clarification.

Question 8: Do you agree with the consequential amendments as a result of the amended Rule 21.6? If not, which of the consequential amendments do you not agree with? Please give reasons.

69. The respondents generally agreed with the proposed consequential amendments as a result of the amended Rule 21.6. These include various amendments to the Takeovers Code (namely, Note 5 to Rules 21.1 and 21.2, Note 9 to Rule 23.1, Note 8 to Rule 24, Note 19 to Rule 26.1 and Note to Rule 28.3) and other parts of the Codes (namely, Note 4 to the definition of acting in concert and Note 6 to paragraph 4 of Schedule I) as set out in Appendix 2.

Further proposed consequential amendments

Note 3 to Rule 21.6

70. As a consequence of the proposed amendment to the definition of EPT as set out in paragraph 10 above, Note 3 to the amended Rule 21.6 will further be amended as follows:

“3. *Dealings by exempt principal traders not covered by their exempt status*

An exempt principal trader who is connected with an offeror or potential offeror may stand down from its dealing activities after the identity of the offeror or potential offeror is publicly announced or, if prior to that, the time at which the exempt principal trader had actual knowledge of the possibility of an offer being made by the offeror or potential offeror with whom it is connected. In such circumstances, with the prior consent of the Executive, the exempt principal trader may reduce its interest in offeree company securities or offeror securities, or may acquire interests in such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 21.2, 21.5, 23, 24, 25, 26 and 28. ~~The Executive will also normally, pursuant to Rule 21.7, consent to connected exempt principal traders taking action to unwind a securities borrowing or lending transaction in such circumstances. The Executive will not normally require such dealings to be disclosed under Rules 21.7 and 22.4.~~

Any such dealings must take place within a time period agreed in advance by the Executive.

The above will also apply to an exempt principal trader (in respect of dealing activities not covered by their exempt status) who is connected with the offeree company after the commencement of the offer period or, if prior to that, the time at which the exempt principal trader had actual knowledge of the possibility of an offer being made for the offeree company.”

Note 13 to Rule 22

71. Note 13 to Rule 22 currently provides special mechanisms for dealing disclosures by certain associates (i.e. financial advisers and entities in their group) after the commencement of the offer period but before the identity of the offeror is publicly known. Note 13 in its current form is not consistent with the spirit of the amended Rule 21.6. Note 13 will therefore be replaced by the following:

“13. Potential offerors

If a potential offeror has been the subject of an announcement that talks are taking place (whether or not the potential offeror has been named) or has announced that it is considering making an offer, the potential offeror and persons acting in concert with it must disclose dealings in accordance with Rule 22 and such disclosures must include the identity of the potential offeror.”

72. The amended Note 13 to Rule 22 is consistent with its equivalent provision in the London Code (i.e. Note 12 on Rule 8).

PART 3

PRIVATISATIONS AND DELISTINGS

73. In this part of the Consultation Paper, the Executive proposed to introduce a new Note 7 to Rule 2 of the Takeovers Code to clarify that the Takeovers Code may apply to transactions involving the disposal by a company of its assets and/or operations and the possibility of delisting of the trading in the shares of that company. This amendment is aimed at addressing a regulatory loophole which arises as a result of certain inconsistencies between the shareholder approval thresholds in relation to significant asset disposals and withdrawal of listings (under the Listing Rules) and the shareholder approval thresholds that apply to privatisations and delistings (under the Takeovers Code). The concern is that this regulatory loophole enables a company to effectively privatise and delist in a manner which circumvents the voting thresholds and other provisions of the Takeovers Code.
74. Seven respondents commented on this part of the Consultation Paper. Their comments and the Executive's response are considered below.

<p>Question 9: Do you agree with the introduction of new Note 7 to Rule 2? If not, why not?</p>
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Regulatory loophole

75. The majority of the respondents agreed that there is a regulatory loophole which needs to be addressed.
76. One respondent did not believe that there is a regulatory loophole that needs to be addressed. This respondent suggested that if a proposed disposal would necessarily result in delisting or would otherwise unfairly prejudice the rights of minority shareholders, the Stock Exchange already has the authority to instruct the listed company to amend the terms of the transaction (for example, the Stock Exchange could require the listed company to obtain the approval of disinterested shareholders consistent with the 75%/10% voting thresholds of Rule 6.12 of the Listing Rules).
77. The same respondent further suggested that the Stock Exchange, as the listed company's primary supervisory authority with respect to corporate transactions, is well placed to determine if abusive conduct is taking place. As the respondent believes that there already exists a mechanism to address this issue, it suggests that it could not be said that there is a true "regulatory loophole" in the Codes that requires an amendment to be made.

Executive's response

78. The Executive has carefully considered these comments but continues to believe that a regulatory loophole exists which needs to be addressed. In particular, the Executive believes that shareholders who are affected by transactions which arguably enable a company effectively to privatise and delist in a manner which circumvents the provisions of the Takeovers Code should not be deprived of the benefits or protection of all applicable disciplines under the Codes. As such, even though the Stock Exchange may exercise its discretion under the Listing Rules and require companies to apply the 75%/10% voting thresholds in these transactions, this would not fully address the loophole.

Appropriateness of amending the Codes

79. Four respondents did not support the introduction of the proposed new Note 7 to Rule 2. The main reasons put forward are summarised below:

- It is in the interests of the market to maintain the current clear distinction between regulating the actions of the listed company/board under the Listing Rules on the one hand and matters of control of a company by its shareholders under the Takeovers Code on the other. These respondents suggest that the current proposal would reduce the clarity of the regulatory regime and introduce uncertainty.
- One respondent argued that in an asset purchase, unlike a share purchase or a scheme of arrangement, the minority shareholders are not deciding on how to dispose of their shares but are deciding how management of the target company exercises its business judgment. The general principle ought to be that if the power of the board of directors is subject to shareholders approval, the voice of the majority of shareholders should prevail over the voice of the minority. Where, in particular, the interests of majority shareholders are no different from that of the minority shareholders and they are treated in the same way, there is no reason why the views of majority shareholders should not prevail.
- The same respondent regards a share purchase and a scheme of arrangement as involving a possible expropriation of the proprietary interests of minority shareholders in the shares of the target company. It suggested that an asset purchase did not have such an effect given that the minority shareholders continue to own their shares following an asset purchase albeit that the economic value of the shares may have been affected. The adverse effect on economic value is a less compelling case, it argued, for regulatory intervention than the

expropriation of property, particularly where the majority shareholders bear the same economic consequences.

- Another respondent pointed out that there are no similar requirements imposed by other major jurisdictions.

Executive's response

80. The Executive has carefully considered these comments and notes that transactions falling under new Note 7 are not those that are typically regulated by the Codes. However, the Executive continues to believe that a regulatory loophole has been identified and needs to be addressed. The concern remains that the interests of minority shareholders who are affected by transactions contemplated in new Note 7 are similar to the interests of shareholders in a privatisation and in both cases minority shareholders should be afforded the same protection.
81. If the loophole is not addressed a listed company may effectively privatise and delist in a manner which circumvents the provisions of the Takeovers Code thereby depriving shareholders of the voting requirements in Rules 2.2 and 2.10 and other applicable disciplines in the Codes. In this respect the Executive would like to confirm that new Note 7 has been drafted to ensure that disposals of assets by a listed company will not fall within the jurisdiction of the Codes unless coupled with the possibility of delisting. As a result, the Executive does not believe that the introduction of new Note 7 into the Codes would create significant uncertainty in the current regulatory regimes.

Appropriateness of amending the Listing Rules

82. Three respondents who agreed that there is a regulatory loophole believe that in order to address the loophole it is more appropriate for amendments to be made to the Listing Rules instead of the Codes.² A summary of the main arguments is set out below:
- Given that (i) the disposal of substantial assets by a listed company; (ii) the question of suitability of listing; and (iii) the withdrawal of listings; are all issues that are currently regulated under the Listing Rules, it would be more appropriate to include any tightening of the requirements in the Listing Rules instead of the Codes.
 - If the loophole is addressed in the Listing Rules, it may simplify the approval process from the point of view of the listed company in that it will only need to

² The respondent who did not agree that there is a regulatory loophole also commented that, if there is a loophole, amendments should be made to the Listing Rules instead of the Codes.

deal with the Stock Exchange and so will not need to deal with two regulators on closely related issues arising from a transaction. The introduction of an additional layer of regulatory review may increase confusion and uncertainty.

- The introduction of the proposed new Note 7 would be unfair to the purchaser of a listed company's assets as it is not acquiring shares in the company.
- The Takeovers Code is designed to deal with a change in control of any public company either by public offer or by way of privatisation, and is not designed to deal with any transaction of a listed company with no change in control after such transaction.
- The Takeovers Code should not extend its ambit to cover disposals which, in substance, are not or are not meant to be, an acquisition of voting rights or a "takeover" of a company, as such term is commonly understood in the market. The proposed new Note 7, in its current form, has the potential effect of extending the scope of the application of the Codes to any form of corporate disposals and deeming corporate disposals as takeovers. It is considered that this would not be desirable. Although it is noted that a substantial disposal, coupled with a subsequent withdrawal of listing, may result in a company being effectively "privatised" in a manner which circumvents Rule 2.10 of the Takeovers Code (especially in a case where there is a controlling shareholder)³, not all substantial disposals, even with the possibility of the company being regarded as a "cash company" under Rule 14.82 of the Listing Rules and in the context of a possible withdrawal of listing to be effected after the disposal, should be regulated as an "offer" such that Rule 2.10 and other requirements of the Takeovers Code would normally apply. The problem stems from a loophole under the Listing Rules and should therefore be dealt with by amending the Listing Rules; not by expanding the scope of the Codes which has the effect of creating unnecessary uncertainty for the market and the conduct of corporate transactions.

Executive's response

83. The Executive notes that whilst a number of respondents accept that a regulatory loophole exists which needs to be addressed the majority of those respondents believe

³ Under the Takeovers Code, "privatisation" is defined to mean an offer (other than a partial offer) however effected, for a company by a shareholder which has control (i.e. 30% or more voting rights) of that company or by any person or persons acting in concert with such shareholder.

that this should be effected by way of amendments to the Listing Rules. In this regard the SFC has previously raised concerns with the Stock Exchange about the differences between the shareholder approval thresholds for significant asset disposal that might render a company unsuitable for listing and for delisting (under the Listing Rules) and privatisation proposals (in the Takeovers Code).

84. The Listing Committee has considered the matter and concluded that the current requirements for significant asset disposals in the Listing Rules are appropriate. Given the evolving nature of the structure of these types of transactions and arrangements there was a concern that a rule change may not cater for all circumstances where there is a possibility of circumvention, including circumvention of the Takeovers Code, in a proportionate manner. Given this, the Listing Committee concluded that the existing Listing Rules which enable the Stock Exchange to impose additional requirements or conditions as appropriate in individual cases (the powers under Listing Rule 2.04), coupled with the safeguards provided by a listed issuers' rights of appeal to the Listing Committee, ensure there is sufficient means for the Stock Exchange to deal with any regulatory concerns arising out of a particular transaction or arrangement.
85. The Executive notes that the majority of respondents who expressed a view consider that a regulatory loophole exists which needs to be addressed. In all the circumstances the Executive believes that the proposed amendments to the Takeovers Code are a pragmatic way to address the regulatory loophole and safeguard the interests of affected shareholders.

Specific comments on the drafting of new Note 7 to Rule 2

86. Five respondents commented that the proposed new Note 7 to Rule 2 is too widely drafted and lacks certainty. Their main comments are summarised as follows:
- There are no specific criteria or factors for determining whether a company may be regarded as unsuitable for listing.
 - There is no certainty as to how significant and substantial the asset disposal has to be so it will be caught by the proposed new Note 7.
 - The proposed new Note 7 does not state what other Code provisions may apply to transactions caught by it in addition to Rule 2.10 of the Takeovers Code.

Executive's response

87. The Listing Rules set out the relevant criteria as to when a listed company may be considered unsuitable for listing. The application of new Note 7 is intentionally limited

to when a listed company is considered unsuitable for listing **as a result** of a disposal or series of disposals of its assets or where there is an actual delisting proposal to withdraw the company's listing. Whilst the Executive wishes to emphasise that the general application of new Note 7 is intended to be limited (as discussed above) there is a concern that the Note should not be over-prescriptive and should maintain sufficient flexibility to prevent abuse by ensuring that it applies to transactions which are in substance the same as a privatisation.

88. In view of some of the comments received the Executive should like to clarify that in the event new Note 7 applies to any proposed transaction or series of transactions, Rule 2.10 and the other provisions of the Codes would normally apply as if the transaction(s) was a privatisation within the meaning of the Codes. It follows that in such circumstances all parties involved in the transaction(s) would be required to comply with the Codes.
89. As to the application of specific rules in the Codes this would depend upon the facts of the particular matter which would be determined on a case by case basis. Parties are therefore encouraged to consult the Executive at the earliest opportunity.
90. Three respondents commented that the obligation to consult the Executive on the application of the proposed new Note 7 to Rule 2 should not be solely on the person or persons who seek to acquire assets from listed companies. The main reason given is that persons seeking to acquire assets or operations of a listed company may not necessarily be aware of whether a withdrawal of listing of the company would be proposed (as mentioned in paragraph (ii) of new Note 7); or whether the Stock Exchange would take the view that the acquisition would result in the company not being suitable for listing (as mentioned in paragraph (i) of new Note 7). This is even more so when any series of transactions that are completed within 12 months may be aggregated.

Executive's response

91. Having considered the comments of the respondents, the Executive agrees that the primary obligation to consult the Executive under the new Note 7 should rest on the listed company and/or its advisers. As such, new Note 7 to Rule 2 will be amended as follows:

“7. Clarification of the application of Rule 2.2 and Rule 2.10 and other requirements of the Takeovers Code

The purpose of Rule 2.2 is to apply similar requirements as those set out in Rule 2.10 to a delisting proposal which is related to a proposed offer. This prevents

the delisting proposal from being used to coerce independent shareholders into accepting the offer.

If a ~~company person or group of persons~~ proposes to dispose of its ~~acquire or acquires the assets and/or operations of a company~~; and, either,

~~Either~~

(i) as a result of such proposal the company may not be regarded as suitable for listing for the purpose of the Listing Rules; or

~~Or~~

(ii) there is a proposal to withdraw the company's listing on the Stock Exchange;

the Executive must be consulted at the earliest opportunity by the company and/or its advisers and in such circumstances would normally apply Rule 2.10 and other requirements of the Takeovers Code. In such cases the Executive may aggregate any series of transactions if they are all completed within a 12 month period or are otherwise related."

92. One respondent suggested that the proposed new Note 7 to Rule 2 should also cover situations where a withdrawal of listing is proposed within a short period or a specified period after a substantial disposal/acquisition has been completed, the result of which may render the company a "cash company" and unsuitable for listing under the Listing Rules.

Executive's response

93. New Note 7 is aimed at catching disposals of assets by listed companies which are coupled with the possibility of delisting at the proposal stage and not after they have been completed. As such, new Note 7 would be applicable to a proposed disposal of a company's assets if at the same time the criteria set out in either paragraph (i) or (ii) of the Note is also satisfied. Paragraph (ii) would not be applicable if the withdrawal of listing is not proposed at the same time as the proposed disposal of assets. However, paragraph (i) would apply to those proposed disposals of assets by listed companies which might lead to those companies being regarded as not suitable for listing. It is the Executive's understanding that if there is any issue relating to the possibility of a listed company being regarded as not suitable for listing after completion of a proposed disposal it should normally arise at an early stage and in any event before the announcement is issued. As such, the Executive does not believe that the wording of new Note 7 needs to be extended in this respect.

LIST OF RESPONDENTS

Respondents whose comments are published on the SFC website in full

1. Timothy Loh, Solicitors
2. The Law Society of Hong Kong
3. Pan Asia Securities Lending Association
4. Clifford Chance
5. The Chamber of Hong Kong Listed Companies
6. Linklaters on behalf of:
 - ABN AMRO Bank N.V.
 - Bear Stearns Asia Limited
 - Citigroup Global Markets Asia Limited
 - Credit Suisse (Hong Kong) Limited
 - Deutsche Bank AG, Hong Kong Branch
 - Goldman Sachs (Asia) L.L.C.
 - J.P. Morgan Securities (Asia Pacific) Limited
 - Lehman Brothers Asia Limited
 - Merrill Lynch (Asia Pacific) Limited
 - Morgan Stanley Asia limited
 - UBS AG

Respondents who requested their comments to be published on the SFC website on a “no name” basis

One submission

Respondents who requested their comments not to be published on the SFC website

Two submissions

MARKED UP TEXT OF AMENDMENTS TO THE CODES

Definition of exempt principal trader:

Exempt principal trader: An exempt principal trader is a person who trades as a principal in securities only for the purpose of derivative arbitrage or hedging activities such as closing out existing derivatives, delta hedging in respect of existing derivatives, index related product or tracker fund arbitrage in relation to the relevant securities or other similar activities assented to by the Executive during an offer period, and is recognised by the Executive as an exempt principal trader for the purposes of the Codes. An exempt principal trader who carries out securities borrowing and lending transactions (including the unwinding of such transactions) in the ordinary course of its business is not subject to Rule 21.7.

Note 4 to the definition of acting in concert:

Notes to the definition of acting in concert:

...

4. *Consortium offers*

Investors in a consortium formed for the purpose of making an offer (e.g. through a vehicle company) will normally be treated as acting in concert with the offeror. Where such an investor is part of a larger organisation, the Executive should be consulted to establish which other parts of the organisation will also be regarded as acting in concert. (See also the definitions of connected fund manager and connected principal trader and Rule 21.6 regarding discretionary fund managers and principal traders.)

...

New Note 7 to Rule 2 of the Takeovers Code:

Notes to Rule 2:

...

7. Clarification of the application of Rule 2.2 and Rule 2.10 and other requirements of the Takeovers Code

The purpose of Rule 2.2 is to apply similar requirements as those set out in Rule 2.10 to a delisting proposal which is related to a proposed offer. This prevents the delisting proposal from being used to coerce independent shareholders into accepting the offer.

If a company proposes to dispose of its assets and/or operations; and, either,

(i) as a result of such proposal the company may not be regarded as suitable for listing for the purpose of the Listing Rules; or

(ii) there is a proposal to withdraw the company's listing on the Stock Exchange; the Executive must be consulted at the earliest opportunity by the company and/or its advisers and in such circumstances would normally apply Rule 2.10 and other requirements of the Takeovers Code. In such cases the Executive may aggregate any

series of transactions if they are all completed within a 12 month period or are otherwise related.

Rule 3.5 of the Takeovers Code and Note 1 to Rule 3.5:

3.5 Announcement of firm intention to make an offer

The announcement of a firm intention to make an offer should be made only when an offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.

When a firm intention to make an offer is announced, the announcement must contain:-

- (a) the terms of the offer;
- (b) the identity of the offeror and, where the offeror is a company, the identity of its ultimate controlling shareholder and the identity of its ultimate parent company or, where there is a listed company in the chain between such company and its ultimate parent company, the identity of such listed company;
- (c) details of any existing holding of voting rights and rights over shares in the offeree company:-
 - (i) which the offeror owns or over which it has control or direction;
 - (ii) which is owned or controlled or directed by any person acting in concert with the offeror;
 - (iii) in respect of which the offeror or any person acting in concert with it has received an irrevocable commitment to accept the offer; and
 - (iv) in respect of which the offeror or any person acting in concert with it holds convertible securities, warrants or options;
- (d) details of any outstanding derivative in respect of securities in the offeree company entered into by the offeror or any person acting in concert with it;
- (e) all conditions (including normal conditions relating to acceptance, listing and increase of capital) to which the offer is subject;
- (f) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree company and which might be material to the offer (see Note 8 to Rule 22); ~~and~~
- (g) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result; and
- (h) details of any relevant securities (as defined in Note 4 to Rule 22) in the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

The announcement of an offer should include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.

Notes to Rule 3.5:

1. *Holdings by a group of which an adviser is a member*

It is accepted that, for reasons of secrecy, it would not be prudent to make enquiries so as to include in an announcement details of any holdings or borrowings of offeree company shares or options or derivatives in respect of them held by or entered into by other parts of an adviser's group (see class (5) of definition of acting in concert). In such circumstances, details should be obtained as soon as possible after the announcement has been made and the Executive consulted. If the holdings or borrowings are significant, a further announcement will be required.

...

Rule 19.1 of the Takeovers Code:

19.1 Nature of announcement

By 6.00 p.m. (or such later time as the Executive may in exceptional circumstances permit) on a closing date the offeror must inform the Executive and the Stock Exchange of its decision in relation to the revision, extension, expiry or unconditionality of the offer. The offeror must publish an announcement on the Stock Exchange's website by 7.00 p.m. on the closing date stating whether the offer has been revised or extended, has expired or has become or been declared unconditional (and, in such case, whether as to acceptances or in all respects). A draft of such announcement must be submitted to the Executive and the Stock Exchange by 6.00 p.m. for comment. Such announcement must be republished in accordance with Rule 12.2 on the next business day thereafter and must state the total number of shares and rights over shares:–

- (a) for which acceptances of the offer have been received;
- (b) held, controlled or directed by the offeror or persons acting in concert with it before the offer period; and
- (c) acquired or agreed to be acquired during the offer period by the offeror or any persons acting in concert with it.

The announcement must include details of any relevant securities (as defined in Note 4 to Rule 22) in the offeree company which the offeror or any person acting in concert with the offeror has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

The announcement must specify the percentages of the relevant classes of share capital, and the percentages of voting rights, represented by these numbers (see also Rule 2.9, Rule 15.1 and the Note to Rule 15.3).

Note 5 to Rules 21.1 and 21.2 of the Takeovers Code:

Notes to Rules 21.1 and 21.2:

...

5. *Discretionary ~~clients~~ fund managers and principal traders*

Sales of Dealings in securities of the offeree company for ~~discretionary clients~~ by discretionary fund managers and principal traders which are connected with an offeror, unless they are exempt fund managers, may be relevant (see will be treated in accordance with Rule 21.6).

...

Rule 21.6 of the Takeovers Code:

21.6 Dealings for discretionary clients during an offer period by connected discretionary fund managers and principal traders

NB Rule 21.6 and the Notes thereto address the position of connected fund managers and connected principal traders who either do not have exempt status or whose exempt status is not relevant by virtue of the operation of Note 2 to the definitions of exempt fund manager and exempt principal trader. They also address the position of exempt principal traders in respect of dealing activities which are not covered by their exempt status.

~~(a) After the identity of an offeror or potential offeror is publicly known, fund managers who manage investment accounts on a discretionary basis and who are connected with the offeror will, subject to paragraph (b) below, be presumed to be acting in concert with the offeror in respect of those investment accounts. Rules 23, 24, 25 and 26 will then be relevant to purchases of offeree company securities and Rule 21.2 to sales of offeree company securities.~~

~~Similarly, fund managers who manage investment accounts on a discretionary basis and who are connected with the offeree company will, subject to paragraph (b) below, be presumed to be acting in concert with, for example, directors of the offeree company, who are also shareholders, in respect of those investment accounts. Rule 26 may be relevant.~~

~~When obligations under, or infringements of, the abovementioned Rules could arise, the relevant fund managers should consult the Executive before dealing in securities of an offeror or the offeree company as appropriate.~~

~~(b) The presumptions in paragraph (a) will not apply to an exempt fund manager which is connected to an offeror or the offeree company where the sole reason for that connection is that the fund manager controls#, is controlled by or is under the same control as a financial or other professional adviser (including a stockbroker) to the offeror or the offeree company. (See Note 2 to the definitions of exempt fund manager and exempt principal trader.)~~

(a) Discretionary fund managers and principal traders who, in either case, are connected with an offeror or potential offeror, will not normally be presumed to be acting in concert with that person until its identity as an offeror or potential offeror is publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected. Rules 23, 24, 25, 26 and 28 will then be relevant to purchases of offeree company securities and Rule 21.2 to sales of offeree company securities by such persons. Rule 21.7 will be relevant to securities borrowing and lending transactions. (See also the definitions of connected fund manager and connected principal trader.)

(b) Similarly, discretionary fund managers and principal traders who, in either case, are connected with the offeree company, will not normally be presumed to be acting in concert with the offeree company until the commencement of the offer period or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company and that it was connected with the offeree company. Rules 21.5 and 26 may then be relevant to purchases of offeree company securities. Rule 21.7 will be relevant to securities borrowing and lending transactions. (See also the definitions of connected fund manager and connected principal trader.)

(c) An exempt fund manager or exempt principal trader which is connected for the sole reason that it controls#, is controlled by or is under the same control as a financial or other professional adviser (including a stockbroker) to the offeror or the offeree company will not be presumed to be acting in concert even after the commencement of the offer period or the identity of the offeror being publicly announced (as the case may be). (See Note 2 to the definitions of exempt fund manager and exempt principal trader.)

See Note 1 at the end of the definitions.

Notes to Rule 21.6:

1. Dealings prior to a concert party relationship arising

(a) As a result of Rule 21.6(a) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with an offeror or potential offeror will not normally be relevant for the purposes of Rules 21.2, 21.7, 23, 24, 25, 26 and 28 before the identity of the offeror or potential offeror has been publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected.

(b) Similarly, as a result of Rule 21.6(b) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with the offeree company will not normally be relevant for the purposes of Rule 26 before the commencement of the offer period or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company.

42. Qualifications

~~(a) The presumptions in Rules 21.6(a) may be rebutted in appropriate circumstances and the Executive should be consulted in advance.~~

~~(ba) If an exempt fund manager a connected discretionary fund manager or principal trader is in fact acting in concert with an offeror or with the offeree company, the usual concert party consequences will follow apply irrespective of whether the offeree company is in an offer period or the identity of the offeror or potential offeror has been publicly announced.~~

~~(eb) If an offeror or potential offeror, or any company in its group, has funds managed on a discretionary basis by an exempt fund manager, Rule 21.6 may be relevant. If, for example, any securities of the offeree company are owned by the offeror through managed by such exempt fund manager for an offeror or potential offeror, the exception in Rule 21.6(bc) in relation to exempt fund managers may not apply in respect of those securities. The Executive should be consulted in such cases.~~

~~(dc) Where a fund manager or principal trader is connected with an offeror by reason of class (4) of the definitions of connected fund manager and connected principal trader, the Executive may, in appropriate circumstances, waive the acting in concert presumption in Rule 21.6(a), for example where the investment in a consortium is insignificant.~~

~~2 Dealings before an offeror's identity is publicly known~~

~~Dealings for discretionary clients by fund managers connected with an offeror, before its identity is publicly known, will not normally be relevant for the purpose of Rule 21.6. However, if, once that identity is publicly known, it becomes apparent that the shares in the offeree company held by the offeror and persons acting in concert with it, including shares held on behalf of discretionary clients by fund managers to which the presumption in Rule 21.6(a) applies, carry 30% or more of the voting rights of the offeree company, the Executive should be consulted.~~

3. Dealings by exempt principal traders not covered by their exempt status

An exempt principal trader who is connected with an offeror or potential offeror may stand down from its dealing activities after the identity of the offeror or potential offeror is publicly announced or, if prior to that, the time at which the exempt principal trader had actual knowledge of the possibility of an offer being made by the offeror or potential offeror with whom it is connected. In such circumstances, with the prior consent of the Executive, the exempt principal trader may reduce its interest in offeree company securities or offeror securities, or may acquire interests in such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 21.2, 21.5, 23, 24, 25, 26 and 28. The Executive will not normally require such dealings to be disclosed under Rule 22.4. Any such dealings must take place within a time period agreed in advance by the Executive.

The above will also apply to an exempt principal trader (in respect of dealing activities not covered by their exempt status) who is connected with the offeree company after the commencement of the offer period or, if prior to that, the time at which the exempt principal trader had actual knowledge of the possibility of an offer being made for the offeree company.

4. Rule 26

The Executive should be consulted if, once the identity of the offeror or potential offeror is publicly known, it becomes apparent that the number of shares in which the offeror or potential offeror and persons acting in concert with it, including any connected discretionary fund managers and principal traders to which Rule 21.6(a) applies, are interested carry in aggregate 30% or more of the voting rights of the offeree company.

5. Disclosure of dealings in offer documentation

Holdings of relevant securities and dealings (whether before or after the presumptions in Rules 21.6(a) and 21.6(b) apply) by connected discretionary fund managers and principal traders (unless exempt) must be disclosed in any offer document in accordance with paragraph 4 of Schedule I and in any offeree board circular in accordance with paragraph 2 of Schedule II, as the case may be.

New Rule 21.7 of the Takeovers Code:

21.7 Restriction on securities borrowing and lending transactions by offerors, the offeree company and certain other parties

During the offer period, none of the following persons may, except with the consent of the Executive, enter into or take action to unwind a securities borrowing or lending transaction in respect of relevant securities of the offeree company and, in the case of securities exchange offers, the offeror:

- (a) the offeror;

- (b) the offeree company;
- (c) a company which is an associate of the offeror or the offeree company by virtue of paragraph (1) of the definition of associate;
- (d) a financial or professional adviser to the offeror or the offeree company, to a company which is an associate of the offeror or offeree company by virtue of paragraph (1) of the definition of associate or to a person acting in concert with an offeror or with the directors of the offeree company, and persons controlling#, controlled by or under the same control as any such adviser (except for an exempt principal trader or an exempt fund manager); and
- (e) any other person acting in concert with the offeror or the offeree company.

#See Note 1 at the end of the definitions.

Notes to Rule 21.7:

1. Relevant securities

See Note 4 to Rule 22.

2. Return of borrowed relevant securities

The Executive's consent will not normally be required under Rule 21.7 by a borrower taking action to redeliver relevant securities (or equivalent securities) which have been recalled, or a lender taking action to accept the redelivery of relevant securities (or equivalent securities) which have not been recalled, in each case in accordance with an existing securities borrowing or lending agreement. However, the Executive will normally require the redelivery or the accepting of the redelivery of such relevant securities to be publicly disclosed as if it were a dealing in the relevant securities in accordance with Notes 5, 6 and 7 to Rule 22.

3. Disclosure or notice where consent is given

Where the Executive consents to a person to whom Rule 21.7 applies entering into or taking action to unwind a securities borrowing or lending transaction in respect of relevant securities, the Executive will normally require the transaction to be publicly disclosed by that person as if it were a dealing in the relevant securities in accordance with Notes 5, 6 and 7 to Rule 22. Where a person wishes to enter into or take action to unwind more than one lending transaction in respect of relevant securities, the Executive may instead require that person to give public notice that he might do so. The Executive should be consulted as to the content and timing for the issue of such notice.

4. Discretionary fund managers and principal traders

Securities borrowing or lending transactions by discretionary fund managers and principal traders which are subject to Rule 21.7(d) will be treated in accordance with Rule 21.6.

5. The Executive will normally waive the restrictions in this Rule 21.7 where an offer has been declared unconditional in all respects.

Note 7(a) and Note 13 to Rule 22 of the Takeovers Code:

Notes to Rule 22:

...

7. Details to be included in disclosures

(a) *Public disclosure (Rules 21.7, 22.1(a) and 22.1(b))*

A specimen disclosure form may be obtained from the Executive or the SFC's website. Disclosures should follow that format.

A disclosure of dealings must include the following information:–

- (i) the total of the relevant securities in question purchased or sold, or redeemed or purchased by the company;*
- (ii) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed);*
- (iii) the identity of the associate or other person dealing and, if different, the owner or controller;*
- (iv) if the dealing is by an associate, an explanation of how that status arises;*
- (v) if the disclosure is made by a 5% shareholder or group of shareholders, a statement to that effect;*
- (vi) the resultant total amount of relevant securities owned or controlled by the associate or other person in question (including those of any person with whom there is an agreement or understanding) and the percentage which it represents; and*
- (vii) if relevant, details of any arrangements required by Note 8 to this Rule 22.*

For the purpose of disclosing identity, the ultimate beneficial owner or controller must be specified, in addition to the person dealing. The naming of nominees or vehicle companies is insufficient. The Executive may require additional information to be disclosed when it appears to be appropriate, for example to identify other persons who have an interest in the securities in question. Subject to Note 10 to this Rule 22, in the case of disclosure of dealings by fund managers on behalf of discretionary clients, the clients need not be named.

In the case of option business or dealings in options or derivatives full details should be given so that the nature of the dealings can be fully understood. For options this should include the number of securities under option, the exercise period (or in the case of exercise, the exercise date), the exercise price and any option money paid or received. For derivatives this should include, at least, the number of reference securities to which they relate (when relevant), the maturity date (or if applicable the closing out date) and the reference price.

If an associate is an associate for more than one reason (for example because he falls within classes (6) and (7) of the definition of associate), all the reasons must be specified.

Where a disclosure of a securities borrowing and lending transaction (including the unwinding of such a transaction) is made pursuant to Notes 2 and 3 to Rule 21.7, all relevant details should be given as specified in the specimen disclosure form.

Where a person to whom Rule 21.7 applies discloses a dealing in relevant securities and has previously borrowed relevant securities from, or lent such securities to, another person, the disclosure must be made in a form agreed by the Executive.

...

13. *Potential offerors*

If a potential offeror has been the subject of an announcement that talks are taking place (whether or not the potential offeror has been named) or has announced that it is considering making an offer, the potential offeror and persons acting in concert with it must disclose dealings in accordance with Rule 22 and such disclosures must include the identity of the potential offeror.

~~After an offer period commences, all potential offerors and their associates must disclose dealings in accordance with this Rule 22, and such disclosure must include the identity of the potential offeror. For the purpose of this Note a potential offeror is any party who has approached the board of the offeree company with a view to an offer being made.~~

~~However if a potential offeror is not named in any announcement and so long as the identity of the potential offeror remains undisclosed to the public, with the consent of the Executive, a person who is an associate of such potential offeror solely by virtue of class (2) of the definition of associate may be exempted from strict compliance with this Rule 22 in the following manner:-~~

~~(a) With respect to dealings for discretionary clients (whether or not the associate is an exempt fund manager), the associate may disclose its dealings privately under Rule 22.1.~~

~~(b) With respect to dealings by an exempt principal trader not prohibited by Rule 35, the associate may disclose its dealings privately under Rule 22.4.~~

~~(c) With respect to proprietary dealings (other than those covered by paragraph (b) above), if these dealings are permitted under Rule 21.2, an associate may disclose these dealings privately under this Rule 22. Any other proprietary dealings must be disclosed publicly under this Rule 22.~~

~~Once the identity of the potential offeror is publicly disclosed, these exemptions will no longer apply and the associate will be required to comply fully with this Rule 22.~~

Note 9 to Rule 23.1 of the Takeovers Code:

Notes to Rule 23.1:

...

9. Discretionary clients, fund managers and principal traders

~~Dealings for discretionary clients by discretionary fund managers and principal traders which are connected with an offeror, unless they are exempt fund managers, may be relevant (see will be treated in accordance with Rule 21.6).~~

...

Note 8 to Rule 24 of the Takeovers Code:

Notes to Rule 24:

...

8. Discretionary clients, fund managers and principal traders

~~Dealings for discretionary clients by discretionary fund managers and principal traders which are connected with an offeror, unless they are exempt fund managers, may be relevant (see will be treated in accordance with Rule 21.6).~~

...

Note 19 and new Note 21 to Rule 26.1 of the Takeovers Code:

Notes to Rule 26.1:

...

19. Discretionary ~~clients~~ fund managers and principal traders

Dealings for ~~discretionary clients~~ by discretionary fund managers and principal traders which are connected with an offeror or the offeree company, ~~unless they are exempt fund managers, may be relevant (see~~ will be treated in accordance with Rule 21.6).

...

21. Borrowed or lent shares

For the purpose of Rule 26, if a person has borrowed or lent shares he will be treated as holding the voting rights in respect of such shares save for any borrowed shares which the borrower has either on-lent or sold. A person must consult the Executive before acquiring or borrowing shares (irrespective of whether the borrowed shares are intended to be on-lent or sold) which, when taken together with shares in which he or any person acting in concert with him is already interested, and shares already borrowed or lent by him or any person acting in concert with him, might trigger a mandatory offer under Rule 26. If it is determined that a mandatory offer under Rule 26 will be triggered as a result of such acquisition or borrowing of shares, the Executive will then decide, inter alia, how the borrowed or lent shares should be treated for the purpose of the acceptance condition.

Note to Rule 28.3 of the Takeovers Code:

Note to Rule 28.3:

Discretionary ~~clients~~ fund managers and principal traders

Dealings for ~~discretionary clients~~ by discretionary fund managers and principal traders which are connected with an offeror, ~~unless they are exempt fund managers, may be relevant (see~~ will be treated in accordance with Rule 21.6).

Note 2, Note 7 and new Note 8 to Rule 30.2 of the Takeovers Code:

Notes to Rule 30.2:

...

2. Offeror's receiving agent's certificate

Before an offer may become or be declared unconditional as to acceptances, the offeror's receiving agent must have issued a certificate to the offeror or its financial adviser which states the number of acceptances which have been received which comply with Note 1 to this Rule 30.2 and the number of shares otherwise acquired, whether before or during an offer period, but which do not fall within Note 8 to this Rule 30.2.

Copies of the receiving agent's certificate must be sent to the Executive and the offeree company's financial adviser by the offeror or his financial adviser as soon as possible after it is issued.

...

7. Purchases

A purchase of shares by an offeror or a person acting in concert with the offeror may be counted towards fulfilling an acceptance condition. For this purpose, a purchase made through the Stock Exchange in the normal course of trading securities on the Stock Exchange and with no prearrangement or collusion between the parties to such transaction or their agents may be counted from the time of such dealing on the Stock Exchange. In all other cases, the purchase may be counted if and when the purchase is fully completed and settled. In the event that a purchase made through the Stock Exchange is not fully settled in accordance with the rules of the Stock Exchange, the Executive may require the offeror and/or its concert parties to take such action as the Executive may determine is appropriate in the circumstances, which may include the issue of a correcting announcement.

Note 8 below will also be relevant if the offeror or a person acting in concert with the offeror has borrowed any offeree company shares.

8. Borrowed shares

Subject to Note 21 to Rule 26.1, shares which have been borrowed by the offeror or any person acting in concert with it may not be counted towards fulfilling an acceptance condition except with the consent of the Executive.

Rule 35.1 of the Takeovers Code:

35.1 Prohibited dealings and securities borrowing and lending transactions

An exempt principal trader connected with an offeror or the offeree company must not carry out any dealings or securities borrowing and lending transactions with the purpose of assisting the offeror or the offeree company, as the case may be.

Rule 5.1(j) of the Share Repurchase Code:

5.1 Application of Takeovers Code

...

(j) Rules 21.1, 21.3, 21.4, ~~and~~ 21.6 and 21.7;

...

Paragraph 4 of Schedule I and Note 6 to paragraph 4:

Shareholdings and dealings

4. (i) The shareholdings of the offeror in the offeree company;
- (ii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company in which directors of the offeror are interested;
- (iii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which any persons acting in concert with the offeror own or control (with the names of such persons acting in concert);
- (iv) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any persons who, prior to the posting of the offer document, have irrevocably committed themselves to accept or reject the offer, together with the names of such persons; ~~and~~

- (v) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by a person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 8 to Rule 22 of the Takeovers Code; and
- (vi) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which the offeror or any persons acting in concert with the offeror has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

If in any of the above categories there are no shareholdings, this fact should be stated. This will not apply to categories (iv) or (v) if there are no such irrevocable commitments or arrangements.

If any party whose shareholdings are required by this paragraph 4 to be disclosed, including a party who has no shareholdings, has dealt for value in the shares in question during the period beginning 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, must be stated. If no such dealings have taken place, this fact should be stated.

Notes:

...

6. Discretionary ~~clients~~ fund managers and principal traders

Shareholdings of ~~non-exempt the~~ discretionary ~~clients~~ of fund managers and principal traders connected with an offeror, ~~unless they are exempt fund managers, and their dealings since the commencement of the offer period may be relevant and the Executive should be consulted~~ should be disclosed under category (iii) of this paragraph 4. Their dealings should also be disclosed in accordance with this paragraph 4.

Paragraph 2 of Schedule II:

Shareholdings and dealings

- 2. (i) The shareholdings of the offeree company in the offeror;
- (ii) the shareholdings in the offeree company and in the offeror in which directors of the offeree company are interested;
- (iii) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a subsidiary of the offeree company, by a pension fund of the offeree company or of a subsidiary of the offeree company, or by an adviser to the offeree company as specified in class (2) of the definition of associate but excluding exempt principal traders;
- (iv) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a person who has an arrangement of the kind referred to in Note 8 to Rule 22 of the Takeovers Code with the offeree company or with any person who is an associate of the offeree company by virtue of classes (1), (2), (3) and (4) of the definition of associate;
- (v) except with the consent of the Executive, the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror which are managed on a discretionary basis by fund managers (other than

exempt fund managers) connected with the offeree company (the beneficial owner need not be named); ~~and~~

- (vi) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or reject the offer; and
- (vii) the shareholdings in the offeree company and (in the case of a securities exchange offer only) the offeror which the offeree company or any directors of the offeree company has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

If in any of the above categories, other than category (v), there are no shareholdings, then this fact should be stated. This will not apply to category (iv) above if there are no such arrangements.

If any person whose shareholdings are required by categories (i) or (ii) above to be disclosed (whether there is an existing holding or not) has dealt for value in the shares in question during the period beginning 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offeree board circular, the details, including dates and prices, must be stated.

If any person whose shareholdings are required by categories (iii), (iv) or (v) above to be disclosed (whether there is an existing holding or not) has dealt for value in the shares in question during the offer period and ending with the latest practicable date prior to the posting of the offeree board circular, the details, including dates and prices, must be stated.

In all cases, if no such dealings have taken place this fact should be stated.

Notes:

...

Paragraph 5 of Schedule III:

Shareholdings and dealings

- 5. (i) The shareholdings in the offeror in which directors of the offeror are interested;
- (ii) the shareholdings in the offeror in which any persons acting in concert with the directors of the offeror are interested (with the names of such persons acting in concert);
- (iii) the shareholdings in the offeror in which any persons who, prior to the posting of the offer document, have irrevocably committed themselves to accept or reject the offer are interested, together with the names of such persons; ~~and~~
- (iv) the shareholdings of each shareholder of the offeror which holds 10% or more of the voting rights of the offeror; and
- (v) the shareholdings in the offeror which the directors of the offeror or any persons acting in concert with them have borrowed or lent, save for any borrowed shares which have been either on-lent or sold;

and the percentage which such numbers represent of the offeror's outstanding share capital and the identity of each such person.

If in any of the above categories there are no shareholdings, this fact should be stated. This will not apply to categories (iii) or (iv) if there are no such irrevocable commitments or shareholders.

If any party whose shareholdings are required by this paragraph 5 to be disclosed, including a party who has no shareholdings, has dealt for value in the shares in question during the period beginning 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, must be stated. If no such dealings have taken place, this fact should be stated. This will not apply to category (iv) above.

Notes:

...

Note at the beginning of Schedule VIII:

Note: This Schedule VIII should be read in conjunction with Rules 26.2 and 30.2 of the Takeovers Code and, in particular, Notes 1, 2, ~~and~~ 7 and 8 to Rule 30.2.

Paragraph 8 of Schedule VIII:

COUNTING OF PURCHASES

8. The offeror's receiving agent must ensure that all purchases counted as valid meet the requirements (subject to Note 8 to Rule 30.2) set out in Note 7 to Rule 30.2.

Paragraph 9 of Schedule VIII:

DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES

9. Certificates issued by the offeror's receiving agent should be unqualified, save for a disclaimer (if necessary) as to limitations on the responsibility of the receiving agent for the errors of third parties which are not evident from the documents available to the receiving agent. A disclaimer in the following form would normally be acceptable; any variation should be agreed specifically by the Executive in advance:–

“In issuing this certificate we have, where necessary relied on the following matters:

- (i) certifications of acceptance forms by the offeree company's registrar;
- (ii) certifications by the offeree company's registrar that a transfer of shares has been executed by or on behalf of the registered holder in favour of the offeror company or its nominees;
- (iii) confirmation from the offeror of the validity of shares recorded as registered holdings and purchases in the context of Note 8 to Rule 30.2.

As the offeror company's receiving agent, we have examined with due care and attention the information provided to us, and as appropriate, made due and careful enquiry of relevant persons, in order that we may issue this certificate and have no reason to believe that the information contained in it cannot be relied upon but, subject thereto, we accept no responsibility or liability whatsoever in respect of any error of the offeree company's registrar or the offeror company's buying broker for the matters set out above to the extent that we have relied upon them in issuing this certificate.”

Disclosure of dealings and securities borrowing and lending transactions during offer period pursuant to Rules 22 and 21.7 of Takeovers Code

Public disclosures under Rules 21.7, 22.1 and 22.4

1. Dealings or securities borrowing and lending transactions in the relevant securities of _____
state name of company

2. (a) Party required to make disclosure _____
- (b) Party in (a) above is required to make disclosure because it is :
 - Offeror.
 - Offeree company.
 - (i) An associate of _____
state name of offeror or offeree company as appropriate; if status arises solely from class (6) of the definition of associate, state "not applicable" and go to (iii) below
 - (ii) Class of associate _____
state which class or classes of associate (see definition of associate of Takeovers Code)
 - (iii) Details of relevant securities held by class (6) associate _____
 - An exempt principal trader connected with _____
state name of offeror or offeree company as appropriate and disclose details of dealings under section 3 below
 - Party subject to Rule 21.7 as a result of being _____
state which category of the persons subject to Rule 21.7 (see Rule 21.7(a)-(e))
- (c) Dealings were made for :
 - own account of party in 2(a).
 - the account of discretionary investment clients of party in 2(a).

(d) Name of ultimate beneficial owner of party in 2(a) _____
state name of owner, not nominee or vehicle company; also, if relevant, state name of controller of owner e.g. where an owner normally acts on instruction of a controller

3. Details of dealings by an exempt principal trader :

Date	Description of relevant securities	Purchase/Sale	Total number	Highest (H) and Lowest (L) prices paid or received
				(H) (L)
				(H) (L)

also complete section 5 below in case dealings in options or derivatives

4. (a) Details of dealings in ordinary shares :

Date	Purchase/Sale	Number of shares	Price per share	Resultant balance and percentage of class <i>(including those of any person with whom there is an agreement or understanding)</i>
				(%)
				(%)

in case of an average price bargain, each underlying trade should be disclosed

(b) Details of dealings in other class of relevant securities :

Date	Description of relevant securities	Purchase/Sale	Number of securities	Price per unit	Resultant balance and percentage of class <i>(including those of any person with whom there is an agreement or understanding)</i>
					(%)
					(%)

in case of an average price bargain, each underlying trade should be disclosed

5. Details of dealings in options or derivatives :

The options/derivatives				Dealings				Resultant balance
Date	Description	Exercise price	Exercise period <i>(Note I)</i>	Number of derivatives	Nature of dealing <i>(Note II)</i>	Price per unit <i>(Note III)</i>	Number of voting shares concerned <i>(Note IV)</i>	

in case of an average price bargain, each underlying trade should be disclosed

Notes:

I In case of exercise, state also the exercise date.

II The term “dealings” includes the taking, granting, exercising, converting, lapsing or closing out of any derivatives whether in respect of new or existing securities and the acquisition of, entering into, closing out, exercise (by either party) of any rights under, or variation of, a derivative (see Notes 4, 7 and 9 to Rule 22).

III This refers to the transacted price in respect of the derivatives dealt with. This can be the exercise price for conversion or subscription or price paid or received for purchases or sales respectively.

IV State the number of voting shares concerned in respect of the number of derivatives dealt with.

6. If relevant, details of any arrangements as required by Note 8 to Rule 22 _____
indemnity and other arrangements

7. Details of securities borrowing and lending transactions :

Date	Description of relevant securities	Borrowing/Lending/Unwinding of borrowing or lending transaction (Note I)	Number of securities	Resultant balance and percentage of class (including those of any person with whom there is an agreement or understanding) (Note II)

Notes:

I The unwinding of a borrowing transaction refers to the return of relevant securities to the lender. The unwinding of a lending transaction refers to the receipt of relevant securities from the borrower.

II A lender is considered to continue to hold relevant securities which he has lent out. As such, the resultant balance should include all lent securities.

Signed for and on behalf of the party named in section 2(a) above

Signature _____

Capacity _____

Name _____

Telephone _____

Date of disclosure _____

Email _____