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By email : cfdconsult@sfc.hk

And by Hand

Corporate Finance Division
The Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

Dear Sirs,

Re: Consultation on (1) proposal to stop commenting on routine announcements under the Codes on Takeovers and Mergers and Share Repurchases and (2) proposed miscellaneous amendments to the Codes

This is a submission by Baker & McKenzie in response to the *Consultation Paper on (1) proposal to stop commenting on routine announcements under the Codes on Takeovers and Mergers and Share Repurchases and (2) proposed miscellaneous amendments to the Codes* (***Consultation Paper***), published by the Securities and Futures Commission (***SFC***) on 21 April 2010.

We appreciate the opportunity to comment on the proposals. We set out below our responses to the questions raised in the Consultation Paper.

Capitalised terms used in this submission have the same meanings as those defined in the Consultation Paper.

Proposal to stop commenting on routine announcements under the Codes

Question 1: Do you agree that the Executive should stop commenting on certain routine announcements as listed in paragraph 6 above?

1.1 Yes, we agree in principle with this proposal.

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1.2 We agree that, generally, documents issued under Rule 3 should not fall within the Post-Vet List. However, we believe that it is appropriate to make an exception for the following type of routine announcement under Rule 3.7 which does not normally involve substantive Code issues:

> Monthly update under Rule 3.7 on the progress of talks that were taking place or of the consideration of a possible offer, that does not disclose any material new development since the previous announcement.

You may therefore consider adding the above type of announcement to the Post-Vet List. The following consequential amendment can be made to paragraph 6 of the proposed Practice Note set out in Appendix 2 to the Consultation Paper (***Practice Note***):

> *"For the avoidance of doubt any "document" that is not specified in the Post-Vet List (for example a circular or an announcement issued under Rule 3 of the Takeovers Code, other than an announcement issued under Rule 3.7 as specified in the Post-Vet List) is still required to be submitted to the Executive for comment before publication in accordance with Rule 12.1."*

1.3 We agree that the Executive should reserve an overriding power to require the relevant parties to submit draft announcements for its review as it considers necessary or appropriate (as referred to in paragraph 9(f) of the Consultation Paper). However, our main concern is that the parties be afforded sufficient advance notice of the decision of the Executive to exercise this power.

We can understand that the Executive may wish to exercise this power in the following cases in the following manner:

(a) Where, in light of the nature, size or complexity of the transaction, the Executive determines at the **beginning of a transaction** that the requirement should be applied to all announcements in the Post-Vet List for that transaction.

(b) Where, in light of new developments, the Executive determines that the requirement should **from then on** be applied to all announcements in the Post-Vet List for that transaction.

(c) Where, in light of special circumstances from time to time (e.g., undue share price movements and market rumours), the Executive determines that the requirement should be applied to a **specific announcement** in the Post-Vet List for that transaction.

If the above is in line with what is envisaged by the Executive, then we suggest that the Executive clarifies in paragraph 10 of the Practice Note that, in cases under (a) and (b) above, it will notify the relevant parties upfront or in advance.

1.4 We think the guidance on the contents of announcements in the Post-Vet List (set out in paragraphs 11 and 12 of the Practice Note) is very helpful to the relevant parties and their advisers.

In connection with announcements of delay in despatch of circulars, Rule 8.4 provides that the Executive's consent will only be given if the offeror agrees to an extension of the first closing date by the number of days in respect of which the delay in the posting of the offeree board circular is agreed (as noted in paragraph 12(c) of the Practice Note). For the avoidance of doubt, we suggest that the Post-Vet List be amended as follows:

> *"delay in despatch of circulars under Rule 8.2 or Rule 8.4 and any corresponding extension of the first closing date under Rule 8.4"*

1.5 Since the Post-Vet List is restricted to the **announcements** listed in paragraph 6 of the Consultation Paper, the actual list itself that is set out in Appendix 3 to the Consultation Paper should refer to "announcements" only, and not to "documents" which is defined to include announcements, circulars, etc.

1.6 Our consolidated suggested amendments to the Post-Vet List in Appendix 3 are set out below for your easy reference:

> ***"List of documents that need not be submitted to the Executive for prior comment under Rule 12.1 of the Takeovers Code***
>
> *The following types of ~~documents~~ announcements need not be submitted to the Executive for prior comment under Rule 12.1 of the Takeovers Code:*
>
> - *appointment of independent financial advisers under Rule 2.1*
> - *monthly update under Rule 3.7 on the progress of talks that were taking place or of the consideration of a possible offer, that does not disclose any material new development since the previous announcement*
> - *despatch of circulars under Rule 8 or Rule 25*
> - *delay in despatch of circulars under Rule 8.2 or Rule 8.4 and any corresponding extension of the first closing date under Rule 8.4*
> - *appointment and resignation of directors of the offeree company under Rule 26.4 and Rule 7*
> - *placing and top-up transactions under Note 6 on dispensations from Rule 26"*

Question 2: If your answer to Question 1 is yes, do you agree with the proposed amendments to Rule 12.1 and Note 2 to Rule 12 as well as the introduction of a new Note to Rule 12.1?

2. Yes, we agree with the proposals in question 2. In connection with the provision

in the new Note to Rule 12.1 that the Post-Vet List will from time to time be published on the SFC's website, we suggest that:

(a) the Post-Vet List be set out in the Practice Note; and

(b) whenever the Post-Vet List is amended from time to time, the Practice Note be updated at the same time.

This would allow users to refer to the Post-Vet List and the corresponding Practice Note in the same document. Furthermore, when the Post-Vet List is amended from time to time and new practice notes are issued, this would avoid users having to separately refer to two or more practice notes for the one Post-Vet List.

Question 3: Do you have any comment on the draft Practice Note (attached as Appendix 2)?

3. Please see our suggested amendments to paragraphs 6 and 10 of the Practice Note in sections 1.2 and 1.3 above, and our comments about the Post-Vet List and the Practice Note in sections 2(a) and (b) above.

Section 16.1 of the Introduction (publication of rulings)

Question 4: Do you agree with the proposed changes to section 16.1 of the Introduction to the Codes?

4. Yes, we agree with this proposal.

Rule 3.5 – requirement of negative statements in announcements

Question 5: Do you agree with the proposal to clarify that negative statements should be made if any of the disclosures required under paragraphs (c) to (h) of Rule 3.5 is not applicable?

5. Yes, we agree with this proposal. The negative statement could simply refer to the relevant paragraph number (or numbers) of Rule 3.5 or it could actually reiterate the substance of the required disclosure. In the interests of making meaningful (reader-friendly) disclosures, different paragraphs may warrant a different approach, depending on the nature of the required disclosure. Please consider if the Executive would like to clarify which option should be used for each of those paragraphs in Rule 3.5.

Notes 1 and 2 to Rule 8 (documents to be on display and display of documents on websites)

Question 6: Do you agree that the final paragraph of each of Notes 1 and 2 to Rule 8 should be deleted as proposed?

6. Yes, we agree with this proposal.

Rule 10.2, Rule 10.4 and Note 6(a) to Rule 22 (profit forecasts, publication of reports and consent letters and disclosure of dealings)

Question 7: Do you agree that references to "press" in Rule 10.2, Rule 10.4 and Note 6(a) to Rule 22 should be deleted as proposed?

7. Yes, we agree with this proposal.

Rule 10.7, paragraph 12(a)(i) of Schedule I, paragraph 6(a)(i) of Schedule II and paragraph 16(a)(i) of Schedule III (financial information – extraordinary items, exceptional items and minority interests)

Question 8: Do you agree with the proposed amendments to Rule 10.7, paragraph 12(a)(i) of Schedule I, paragraph 6(a)(i) of Schedule II and paragraph 16(a)(i) of Schedule III?

8. Yes, we agree in principle with this proposal.

Rule 19.1 (nature of announcement)

Question 9: Do you agree with the proposed amendments to Rule 19.1?

9.1 Yes, we agree in principle with this proposal. We believe that, to make it easier for the readers of the Rule, it would be helpful to state the requirements of the Listing Rules more explicitly in Rule 19.1 and suggest amending the proposed amendment as follows:

> *"The offeror must publish an announcement in accordance with the requirements of the Listing Rules ~~on the Stock Exchange's website~~ [on the Stock Exchange's website and the offeror's website (if applicable)] 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)."*

9.2 Rule 19.1 and Note 1 to Rule 19 provide that the offeror:

(a) must notify the Executive and the Stock Exchange of its decision in relation to the offer;

(b) should inform the offeree company and any competing offeror about the notification; and

(c) must publish the results announcement.

In practice, the results announcement is in most cases issued jointly by the offeror and the offeree company (being a listed company) and published on the listed offeree company's website. Please consider if Note 1 to Rule 19 should be amended to provide that this practice should be followed in the case of a listed offeree company, i.e., that upon receipt by the listed offeree company of the notification, it should issue jointly (with the offeror) and publish the results announcement on its website.

Rule 22.1(b)(ii) (dealings by parties and by associates for themselves or for discretionary clients)

Question 10: Do you agree with the proposed amendment to Rule 22.1(b)(ii)?

10. Yes, we agree with this proposal.

Note 6 to Rule 22 (method of disclosure)

Question 11: Do you agree with the proposed amendments to Note 6 to Rule 22?

11. Yes, we agree with this proposal. We would like to clarify if the amendment to Note 6(a) on public disclosure means that the completed prescribed form needs not be submitted in electronic form and may, for instance, be submitted by fax?

Note 5 to Rule 23.1 (acquisitions for securities)

Question 12: Do you agree with the proposal to clarify Note 5 to Rule 23.1?

12. Yes, we agree with this proposal.

Rule 26.7 (method of disclosure)

Question 13: Do you agree that Rule 26.7 should be deleted?

13. Yes, we agree with this proposal.

* * *

Yours faithfully,
Baker & McKenzie