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Submission to the SFC consultation Paper on 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

May, 2010

CompliancePlus Consulting Limited provides comprehensive compliance support and solutions to hedge fund managers, mutual fund management companies, SFC licensed entities, representatives, companies and individuals to ensure their compliance with regulatory requirements.

CompliancePlus Consulting Limited understands and agrees that our name and/or submission may be published by the SFC.

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Introduction

This submission is in response to the Consultation Paper named “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 (“the Consultation Paper”) issued by the Securities and Futures Commission (the “SFC”).

In principle, we agree with the proposal in the Consultation Paper as it will increase the efficiency of the parties in issuing certain announcements and then will make the publication of such market information in a more timely and efficient manner bringing benefits to investors. In addition, the proposal may facilitate a better use of resources within the SFC.

Our responses to the List of Questions in the Consultation Paper are attached to this submission for consideration by the SFC.

CompliancePlus Consulting Responses to questions posed in the Consultation Paper

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

Yes, agreed.

We believe that this relaxation can increase the efficiency in releasing information about listed companies and enable faster publication of certain announcements which are routine in nature, thus bringing benefits to investors as well.

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 new Note to Rule 12.1?

Rule 12.1 – Agreed with amendments with suggestion below:

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We agree generally with Rule 12.1, and the potential to reduce the burden of parties and/or their advisers, but we are concerned with the Note to Rule 12.1.

Our concern relates to the following proviso of the Note to Rule 12.1 regarding the overriding power of the Executive:

“Notwithstanding the above exemption the Executive may require parties and/or their advisers to submit drafts of any relevant document for comment prior to publication if considered necessary or appropriate”

We agree with the underlying purpose of this proviso, namely to discourage relevant parties from abusing the proposed relaxation. But we are concerned that this proviso provides too much discretion to the Executive in deciding under what circumstances or situation this power is to be exercised.

In particular the words “necessary or appropriate” do not provide much confidence as to when this power may or may not be exercised. Furthermore, the fact that this power is not transparent may cause problems relating to the consistency of decisions. Nevertheless it is noted that the decisions will be decided according to the facts of each individual case.

It is also noted that further limited guidance is provided as to when the power is to be exercised by the Executive under paragraph 5 of the Practice Note in Appendix 2 (Para 5) as follows:

“As stated in Rule 12.1 the Executive will not normally comment on drafts of announcements set out in the Post-Vet List. This change recognizes the routine nature of such announcements and serves to reduce the cost and burden of compliance for relevant parties and their advisers.”

According to Para 5 in normal cases the Executive will not require comment for announcements set out in the Post-Vet List. It should be evident that in not normal cases a comment is required. It is our concern as to the wording “not normally”, which may pose potential problems in the future.

We suggest the word “normally” should be deleted. It is noted that the deletion of the word should cause no effect on the ability of the Executive to exercise its overriding power, as this power is already set out in the proviso of the Note to Rule 12.1.

In addition, an extra safeguard is given to the Executive under paragraph 9 of the Practice Note in Appendix 2 (Para 9), which provides the Executive with the power to review announcements after publication and to take follow up action.

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Note 2 to Rule 12 – Agreed with amendments with suggestion below:

The Executive should consider whether adding a statement to the effect below so that the investors are aware that such announcements are not required to be submitted to the Executive prior to release publication whilst also indicating that the Executive is acting as a role which is no more than a consulting one. It remains the SOLE RESPONSIBILITY of the issuer of the document to ensure that the Codes are fully complied with.

“This document has not been submitted to the SFC for comment prior to release or publication and the issuer of this document confirms that the contents in this document is in compliance with the Codes on Takeovers, Mergers and Share Repurchases.”

In addition, we believe that by requiring a statement to the effect above should further help to promote adherence to the particular rules.

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

Yes - See response to Question 2 above.

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

Agreed with amendments.

It is our belief that the proposed changes provide, on the outset, a shift in emphasis towards the prompt publishing of rulings. This is because the proposed amendments, if adopted, will mean that in cases where a ruling that contains matters relating to confidentiality considerations of a commercial nature will no longer be required, by default, to be not published.

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However, we note that the effect of the latter part of the proposed amendment to section 16.1, provides in effect, that the ultimate decision making power as to whether to publish or not will rest with the Panel and the Takeovers Appeal Committee, if the ruling concerns price sensitive or is otherwise subject to confidentiality considerations of a commercial nature.

This is because the Panel and Takeovers Appeal Committee is given “absolute discretion [to] agree whether to delay the publication of a ruling” in matters where the ruling is price sensitive or otherwise subject to confidentiality considerations of a commercial nature.

We acknowledge a need to maintain a certain degree of discretion to the Panel and the Takeovers Appeal Committee in deciding whether to publish sensitive information, but we are also concerned that by giving the Panel and Takeovers Appeal Committee with “absolute discretion”, may defeat the purpose of the proposed amendments, namely in the interests of transparency and prompt publication.

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?

Agreed.

We believe that it would provide more clarity on the information disclosed by the listed companies enhancing transparency in the market for investors' benefits.

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

Agreed.

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?

Agreed.

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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?

Agreed.

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

Agreed.

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

Agreed.

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

Agreed.

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

Agreed.

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

Agreed.

END

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