

**Sent:** Monday, April 26, 2010 10:24 AM

**To:** 'cfconsult@sfc.hk'

**Subject:** Consultation paper re clearance of routine announcements and miscellaneous amendments to T/O Code

Dear CFD,

We have only a few comments. We think that this is a move in the right direction (and is in line with the streamlining of procedures that the HKEx Listing Division has been doing under Mark Dickens). It is sensible to have a review of the effectiveness of these changes 6 months after their implementation in the final form.

Q.1: Yes

Q.2: Yes

Q.3: No material comments – just a very minor comment (please see the attached file)

Q.4: While we agree with the Executive's recommended approach of ensuring that publications of rulings by the Panel and Takeovers Appeal Committee be made as soon as practicable, we disagree to the Panel and the Takeovers Appeal Committee delaying the publication of a ruling on grounds of it being price-sensitive, as this might place the relevant parties to a takeover bid (together with their advisers and potentially others) at an advantage to the rest of the market - a theoretical example would be if a bid was in progress and there was some ruling that might have a significant bearing on the willingness of shareholders in an offeree company to tender their shares to the offer. Under such circumstances a delay in release of such ruling could place the offeror (and/or other parties involved in making the application for the ruling) in a position of material advantage over the minority shareholders of the offeree company. We believe that under such circumstances such information should be released to the wider market as soon as possible to ensure that no particular group of people is in a privileged position of knowing such information.

We believe that the Panel and the Takeovers Appeal Committee should be more strict on the application of this section and where possible resist applications for delay in release of rulings. Both the Panel and the Takeovers Appeal Committee should closely check applications for delay of publication of rulings and, in event of what might be deemed to be 'delaying tactics' or 'nuisance applications' take

appropriate steps to reject them and make an appropriate announcement to this effect as soon as possible.

(We note that in this context that in Australia, for example, a decision not to conduct a hearing in relation to an application by the Takeovers Panel on 9 April 2010 was published with reasons on the next day 10 April 2010.)

We suggest that the wording of the proposed revised section 16.1 be amended so that the last sentence reads *"However, in matters where the Panel and the Takeovers Appeals Committee (as the case may be), in their absolute discretion, deem that there are significant confidential or materially commercially sensitive considerations in relation to the ruling, they may, in their absolute discretion, agree to delay publication of the ruling."* This proposed amendment has been marked on Appendix 1 (see attached).

Q.5: Yes

Q.6: Yes

Q.7: Yes

Q.8: Yes

Q.9: Yes

Q.10: Yes

Q.11: Yes

Q.12: Yes

Q.13: Yes

Regards

SBI E2-Capital (HK) Limited



Appendix 1

Proposed amendments to the Codes

Section 16.1 of the Introduction to the Codes

16.1. Irrespective of the outcome of a matter, ~~and subject to confidentiality considerations of a commercial nature,~~ it is the policy of the Panel and the Takeovers Appeal Committee to publish their rulings, and the reasons for those rulings on the SFC's website, as soon as reasonably practicable, so that their activities may be understood by the public. This includes a ruling of the Panel involving a finding of breach or breaches of the Codes which is pending appeal to the Takeovers Appeal Committee. However, in matters where the ruling is price sensitive, or otherwise subject to confidentiality considerations of a commercial nature, the announcement of the ruling will be published as soon as the information is no longer price sensitive or commercially confidential the Panel and the Takeovers Appeal Committee (as the case may be) may, in its absolute discretion, agree to delay the publication of the ruling.

~~subject to~~  
Panel and  
the Takeovers  
Appeal  
Committee  
(as the case  
may be)  
in their  
absolute  
discretion  
deem  
that  
these are  
significant  
confidential  
or materially  
commercially  
sensitive  
considerations  
in relation  
to the  
content  
of the  
ruling,  
they may  
X

New paragraph after paragraph (h) of Rule 3.5 of the Takeovers Code

3.5 Announcement of firm intention to make an offer  
...  
In the event that any of paragraphs (c) to (h) above is not applicable because no such matter or arrangement exists, a negative statement to this effect must be made.  
...

Notes 1 and 2 to Rule 8 of the Takeovers Code

Notes to Rule 8:

1. Documents to be on display

...

~~[This note will apply from 1 January 2006. Note 1 to Rule 8 of the February 2002 edition continues to apply until such date. Please keep pages 4.36, 4.37 and 4.38 of the February 2002 edition until 1 January 2006.]~~

2. Display of documents on websites

...

~~[This note will apply from 1 January 2006. Note 2 to Rule 8 of the February 2002 edition continues to apply until such date. Please keep pages 4.36, 4.37 and~~



### New Note to Rule 12.1 of the Takeovers Code

#### Note to Rule 12.1:

The Executive will from time to time publish, on the SFC's website, a list of documents that will not normally be regarded as subject to Rule 12.1 and therefore will not be required to be submitted to the Executive for comment prior to release or publication. A published version of the document must be filed with the Executive immediately after the document is published.

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.

### Note 2 to Rule 12 of the Takeovers Code

#### Notes to Rule 12:

...

#### 2. Verification-The Executive's role in the commenting process

The Executive's role in the commenting process is no more than a consulting role where the Executive provides assistance in resolving any Code issues raised by the Executive or identified by the parties and their advisers. It is the sole responsibility of the issuer of the document (and its directors and advisers) to ensure that the Codes are fully complied with.

Where the Rules prescribe specific disclosure to be made, parties and their advisers are expected to exercise due diligence to ensure that the required information is fully disclosed in the first draft document submitted to the Executive for comment under Rule 12.1.

Most importantly, parties and their advisers should not be under the misconception that by expressing that it has no further comment on a draft announcement or document the Executive is confirming that the announcement or document fully complies with the Codes. The Executive will not verify the accuracy of statements made in documents submitted for comment. If it subsequently becomes apparent that any statement was incorrect, or any document was incomplete, the Executive may require an immediate correction to be issued in addition to considering any possible disciplinary action in accordance with the Codes.

...

submitted to it for comment

(by)



noted that in the event that the Executive does not grant a waiver under Note 6 on dispensations from Rule 26 and the top-up transaction proceeds as proposed a mandatory general offer obligation under Rule 28 would be triggered. Please also see the article entitled "Responsibility of financial advisers or placing agents to verify and confirm independence of places in placing and top-up transactions" in the December 2009 Takeovers Bulletin.

### Responsibility for documents

13. Finally, the Executive would like to remind parties and their advisers who are involved in Code transactions about new Note 2 to Rule 12 which provides that:

*"The Executive's role in the commenting process is no more than a consulting role where the Executive provides assistance in resolving any Code issues raised by the Executive or identified by the parties and their advisers. It is the sole responsibility of the issuer of the document (and its directors and advisers) to ensure that the Codes are fully complied with."*

*Where the Rules prescribe specific disclosure to be made, parties and their advisers are expected to exercise due diligence to ensure that the required information is fully disclosed in the first draft document submitted to the Executive for comment under Rule 12.1.*

*Most importantly, parties and their advisers should not be under the misconception that by expressing that it has no further comment on a draft announcement or document, the Executive is confirming that the announcement or document fully complies with the Codes. The Executive will not verify the accuracy of statements made in documents submitted for comment. If it subsequently becomes apparent that any statement was incorrect, or any document was incomplete, the Executive may require an immediate correction to be issued in addition to considering any possible disciplinary action in accordance with the Codes."*