



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

Consultation Paper on (1) the proposal to amend the requirements for property valuation in the Codes on Takeovers and Mergers and Share Repurchases, (2) the proposed amendment relating to confirmations of independence in placing and top-up transactions and (3) the timing for payment of acceptances

24 August 2011

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Introduction

The Securities and Futures Commission (**SFC**) invites market participants and interested parties to submit written comments on this Consultation Paper on proposed amendments to the Codes on Takeovers and Mergers and Share Repurchases (**Codes**).

The Codes apply to takeovers, mergers and share repurchases affecting public companies in Hong Kong and companies with a primary listing of equity securities in Hong Kong. The current proposals result from a review conducted by the Executive in consultation with the Takeovers Panel (**Panel**).

Proposals

This paper is set out in three parts:

Part 1 proposes to amend Rule 11.1(f) of the Takeovers Code in relation to the requirements for property valuation.

Part 2 proposes to amend Note 7 on dispensations from Rule 26 of the Takeovers Code relating to confirmations of independence in placing and top-up transactions.

Part 3 proposes to amend the 10-day payment period for the settlement of consideration set out in Rule 20.1 of the Takeovers Code.

The proposed amendments discussed in this paper are marked up against the current version of the Codes in **Appendix A**.

Consultation period

The consultation will last for one month until 26 September 2011. Any person wishing to submit comments on behalf of an organisation should provide details of the organisation. In addition, respondents who wish to suggest alternative approaches are encouraged to submit the proposed text of possible amendments that would be necessary to incorporate their suggestions into the Codes.

All changes to the Codes will be set out in the Consultation Conclusions Paper that will be published after consultation period.

Comments may be submitted as follows:

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

Re: Consultation Paper on (1) the proposal to amend the requirements for property valuation in the Codes on Takeovers and Mergers and Share Repurchases; (2) the proposed amendment relating to confirmations of

independence in placing and top-up transactions; and
(3) the timing for payment of acceptances

By fax to: (852) 2810-5385

By online submission at: <http://www.sfc.hk>

By e-mail to: cficonsult@sfc.hk

Please note that the names of respondents and the contents of their submissions may be published, in whole or in part, on the SFC's website and in other documents to be published by the SFC. In this connection, please read the [Personal Information Collection Statement](#) attached to this consultation paper.

If you do not wish the SFC to publish your name and/or submission please say so in a statement when making your submission.

Personal information collection statement

1. This Personal Information Collection Statement (**PICS**) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

Purpose of collection

2. The personal data provided in your submission to the SFC in response to this consultation paper may be used by the SFC for one or more of the following purposes:
 - (a) to administer the relevant provisions² and codes and guidelines published pursuant to the powers vested in the SFC;
 - (b) in performing the SFC's statutory functions under the relevant provisions;
 - (c) for research and statistical purposes; or
 - (d) for other purposes permitted by law.

Transfer of personal data

3. Personal data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere as part of the public consultation on this consultation paper. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the SFC website and in documents to be published by the SFC during the consultation period or at its conclusion.

Access to data

4. You have the right to request access to and correction of your personal data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your personal data provided in your submission on this consultation paper. The SFC has the right to charge a reasonable fee for processing any data access request.

¹ Personal data means personal information as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

² Defined in Schedule 1 of the Securities and Futures Ordinance (Cap. 571) (**SFO**) to mean provisions of the SFO and subsidiary legislation made under it; and provisions of Parts II and XII of the Companies Ordinance (Cap. 32) so far as those Parts relate directly or indirectly, to the performance of functions relating to prospectuses; the purchase by a corporation of its own shares; a corporation giving financial assistance for the acquisition of its own shares etc.

Retention

5. Personal data provided to the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

Enquiries

6. Any enquiries regarding the personal data provided in your submission on this consultation paper, or requests for access to personal data or correction of personal data, should be addressed in writing to:

The Data Privacy Officer
The Securities and Futures Commission
8/F Chater House
8 Connaught Road Central
Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.

Part 1

Proposal to amend the requirements for property valuation

Introduction

1. Rule 11.1(f) requires a valuation of properties in the case of an offer for a company with significant property interests, or in the case of a securities exchange offer, where the offeror company has significant property interests. The Executive has recently explored whether it might be appropriate to amend this requirement so that it only applies to offers where the offeror is a related party or which involve a special deal that requires shareholder approval under Rule 25 of the Takeovers Code.

Requirements under Rule 11.1(f) of the Takeovers Code

2. Rule 11 of the Takeovers Code sets down detailed requirements relating to asset valuations. Rule 11 ensures that when asset valuations are given in connection with an offer the valuation is supported by the opinion of a named independent valuer. The reason for this is that depending on the nature of a company's business the value attributed to particular assets may be critical to the question of whether an offer is fair and reasonable and therefore to a shareholder's decision on the merits and demerits of an offer. Rule 11 applies not only to land, buildings and process plant and machinery but also to other tangible and intangible assets.
3. Rule 11 reflects one of the fundamental principles of the Codes (General Principle 5) that shareholders should be given sufficient information to enable them to reach an informed decision on an offer and that no relevant information should be withheld (see also Rule 8.1). Furthermore the information must be made available sufficiently early to enable shareholders to reach a decision in good time (see Rule 9.2).
4. Rule 11.1(f) specifically requires a valuation of properties when a company holds "significant property interests" as follows:

"Except with the consent of the Executive, a valuation of properties will be required in the case of an offer for a company with significant property interests and, in the case of a securities exchange offer, where the offeror company has significant property interests. As a general guide, this should be taken to refer to a company or group of companies, the book value of whose property assets or consolidated property assets, respectively, exceeds 15% of the book value of total assets or total group assets, as the case may be.

When the company or group of companies has significant property interests but the respective property assets or consolidated property assets represent less than 50% of the book value of its total assets or total group assets, as the case may be, a valuation of property assets held by its associated companies will not normally be required.

If the property assets or consolidated property assets, respectively, of a company or group of companies represent 50% or more of the book value of its total assets

or total group assets, as the case may be, a valuation of the property assets held by the associated companies over which it exercises a significant degree of control will be required. Significant degree of control means a direct or indirect interest of 30% or more of the voting rights of a company.”

5. Rule 11.1(f) is mandatory in nature and unique to Hong Kong. There are no equivalent provisions in other jurisdictions such as the UK, Australia, New Zealand, Singapore, South Africa and Malaysia where the takeover regulations are similar to Hong Kong.
6. Rule 11.1(f) has been in place since the first major revision of the Takeovers Code in 1992. At that time property companies accounted for almost a quarter of the sector weighting of the Hang Seng Index. Today, the profile of companies listed on the Exchange is different and the weighting of the property sector in the Hang Seng Index has dropped significantly.
7. In recent years some market practitioners have voiced concern that the obligations imposed by Rule 11.1(f) are unduly burdensome or inappropriate.
8. It has also been argued that the compulsory nature of Rule 11.1(f) may potentially cause practical difficulties during the course of an offer in particular with regards to the offer timetable. This is particularly the case in relation to unsolicited offers where an offeree company might encounter difficulties in completing valuations of all its properties before the despatch deadline due perhaps to the large number and geographical locations of its properties.
9. Finally it should be mentioned that the Executive has already relaxed its approach to the strict application of Rule 11.1(f) in certain circumstances in recognition of some practitioners' concerns that the Rule may at times be unduly burdensome. These practitioners suggested that certain assets (such as properties used by a mining company for smelting or storage purposes or infrastructure such as roads) should not be regarded as property assets for the purpose of calculating the 15% threshold even though they may be listed on a company's balance sheet as "buildings" or "plant and buildings". The Executive agrees that in some circumstances the strict application of Rule 11.1(f) may be unduly burdensome and currently decides such matters on a case-by-case basis. This approach is reflected in Practice Note 7 (which was issued in December 2007).

Proposed change and reasons for the proposal

10. The Executive proposes to amend Rule 11.1(f) so that it will only be applicable to:
 - (i) an offer (mandatory or voluntary, including a privatisation offer or proposal) where the offeror is a related party; (ii) a whitewash transaction where the whitewash waiver applicant is a related party; or (iii) an offer or a whitewash transaction which involves a special deal that requires shareholder approval pursuant to Rule 25 of the Takeovers Code. In this context a related party would refer to: (a) a party holding, or together with parties acting in concert with it holding, 30% or more of the voting rights of the offeree company; (b) a director of the offeree company; or (c) a party acting or presumed to be acting in concert with anyone falling within category (a) or (b).

11. This proposal recognises that in some circumstances the continued full application of Rule 11.1(f) may be unduly burdensome for the relevant company both in terms of cost and time. This proposed amendment should reduce the costs (and time) incurred by an offeree company in obtaining an independent valuation in cases when the need for such valuation arises from the action of an unrelated party. This proposal would retain the safeguards in Rule 11.1(f) both in transactions where the offeror is a related party and in transactions which involve a special deal that requires shareholder approval pursuant to Rule 25. The Executive believes that the more stringent requirements in Rule 11.1(f) should continue to apply to such transactions where greater safeguards are considered appropriate. Moreover, shareholders should be given sufficient information to enable them to make an informed decision in respect of special deals that require their approval.
12. Rule 11 reflects one of the fundamental principles of the Codes (General Principle 5) that shareholders should be given sufficient information to enable them to reach an informed decision on an offer and that no relevant information should be withheld (see also Rule 8.1). Notwithstanding the proposed amendments to Rule 11.1(f) a valuation of property interests or assets would still be required under General Principle 5 in cases where the valuation constituted relevant information to enable shareholders to reach a properly informed decision on an offer.

Proposed Code amendments and related matters

13. The Executive proposes to amend Rule 11.1(f) as set out below.

“(f) Companies with significant property interests in related party transactions or offers which involve a special deal

Except with the consent of the Executive, a valuation of properties will be required in the case of an offer for a company with significant property interests and, in the case of a securities exchange offer, where the offeror company has significant property interests, if the offeror is a related party or the offer involves a special deal which requires shareholder approval pursuant to Rule 25.

For the purpose of Rule 11.1(f) a related party refers to a party holding, or together with parties acting in concert with it holding, 30% or more of the voting rights of the offeree company; a director of the offeree company; or a party acting or presumed to be acting in concert with any of the foregoing.

As a general guide, “significant property interests” this should be taken to refer to a company or group of companies, the book value of whose property assets or consolidated property assets, respectively, exceeds 15% of the book value of total assets or total group assets, as the case may be.

When the company or group of companies has significant property interests but the respective property assets or consolidated property assets represent less than 50% of the book value of its total assets or total group assets, as the case may be, a valuation of property assets held by its associated companies will not normally be required.

If the property assets or consolidated property assets, respectively, of a company or group of companies represent 50% or more of the book value of its total assets or total group assets, as the case may be, a valuation of the property assets held by the associated companies over which it exercises a significant degree of control will be required. Significant degree of control means a direct or indirect interest of 30% or more of the voting rights of a company.”

Question 1: Do you agree that Rule 11.1(f) should be amended? If not, please give reasons.

Question 2: If your answer to Question 1 is yes, do you agree with the proposal that Rule 11.1(f) should only apply if the offeror is a related party or if the transaction involves a special deal that requires shareholder approval pursuant to Rule 25? If not, please give reasons.

Question 3: Do you agree with the proposed amendments to Rule 11.1(f)? If not, please give reasons.

Part 2

Proposed amendment relating to confirmations of independence in placing and top-up transactions

14. Note 6 on dispensations from Rule 26 of the Takeovers Code provides that “[a] waiver from the obligation to make a general offer under this Rule 26 will normally be granted where a shareholder, who together with persons acting in concert with him holds 50% or less of the voting rights of a company, places part of his holding with one or more independent persons (see Note 7 on dispensations from Rule 26) and then, as soon as practicable, subscribes for new shares up to the number of shares placed at a price substantially equivalent to the placing price after taking account of expenses incurred in the transaction.”
15. Note 7 on dispensations from Rule 26 of the Takeovers Code provides that “[w]hen compliance with a Rule or a waiver is dependent upon a disposition or placement of voting rights to independent persons the Executive will normally require the financial adviser, placement agent or acquirer of the voting rights to verify and/or confirm that the purchaser is independent of, and does not act in concert with, the vendor of the voting rights, and such verification or confirmation shall be provided in such manner as the Executive may reasonably require to satisfy itself of the acquirer’s independence. In the case of a single placee the Executive will be particularly concerned with verifying the independence of the placee.”
16. Note 6 specifically provides that the placing shareholder may only subscribe for new shares up to the number of shares placed in order to ensure all shareholders are diluted equally and therefore treated equally. The verification of independence required by Note 7 is intended to ensure that the placing shareholder does not use the placing to consolidate control.
17. In December 2009 the Executive issued a reminder in the Takeovers Bulletin to financial advisers and placing agents about their duty to verify and confirm placees’ independence in placing and top-up transactions. The reminder explains that the Executive expects the relevant financial adviser and/or placing agent to:
 - (a) take all appropriate and reasonable steps to ascertain and verify whether the placees procured by them are independent of, and not acting in concert with, the vendor of the voting rights; and
 - (b) provide appropriate confirmations to the Executive.
18. The reminder also states that normally where the placing agents have procured their existing clients as placees, the placing agents should be in the best position to provide the confirmation of independence. This is consistent with the “know-your-client” rule in paragraph 6.1 of the Corporate Finance Adviser Code of Conduct and paragraph 5.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission. Placees may also be introduced by other means. In both cases, a key question is whether the vendor of the voting rights was involved in the selection or identification of the placees. Depending on the actual process of how placees are procured or introduced,

financial advisers and/or placing agents should exercise their professional judgment in considering what steps are sufficient to ensure the independence of the placees including for instance obtaining direct confirmations of independence from the placees concerned.

19. The Executive notes that in practice financial advisers and/or placing agents invariably confirm that the placees procured by them are independent of, and not acting in concert with, the vendor of the voting rights, and the vendor of the voting rights was not involved in the selection or identification of the placees.
20. With a view to facilitating the vendor of voting rights to top-up as soon as practicable, the Executive endeavours to process placing and top-up waiver applications promptly. However certain circumstances may demand evidence to be produced to substantiate the confirmations made. As explained above, in such cases the relevant financial advisers and/or placing agents ought to be able to explain all relevant matters to the Executive including providing details of each step taken by them to ensure the independence of the placees. Whilst the Executive may provide guidance if consulted, it is the ultimate responsibility of the relevant financial advisers and placing agents to verify the independence of the placees.
21. In recognition of the fact that it is clearly the responsibility of the financial advisor or placing agent to confirm the independence of placees the Executive does not believe that it is appropriate for the Executive to be required “*to satisfy itself of the acquirer’s independence*” as required by Note 7. At times the current wording of Note 7 causes practical difficulties since enquiries concerning the independence of placees may be lengthy and time-consuming. These difficulties are magnified by the fact that the Executive is normally requested to confirm the independence of placees within a short timeframe (typically within 14 days to enable the company to comply with the relevant Listing Rules). As a result, in granting such waivers the Executive often places heavy reliance on the confirmations of independence provided by the relevant financial advisers or placing agents.
22. The Executive proposes to amend Note 7 (as set out below) to clarify that responsibility for ensuring and confirming that placees procured under a placing and top-up transaction are independent of, and not acting in concert with, the vendor of the voting rights rests with the financial advisers, placing agents and acquirers of the voting rights, and not the Executive. The Executive further proposes to clarify that the Executive may make enquiries about the independence of the acquirer of the voting rights after the completion of the placing and top-up transaction. In the event that the acquirer of the voting rights is found to have acted in concert with the vendor of such voting rights any waiver which has been granted would be invalidated and the Executive would take appropriate action including possibly requiring a general offer to be made in accordance with the requirements of Rule 26.

23. The Executive therefore proposes to amend Note 7 on dispensations to Rule 26 as follows:

“Verification of independence of placees

~~*When compliance with a Rule or a waiver is dependent upon a disposition or placement of voting rights to independent persons the Executive will normally require the financial adviser, placement agent or acquirer of the voting rights to verify and/or confirm that the purchaser is independent of, and does not act in concert with, the vendor of the voting rights, and such verification or confirmation shall be provided in such manner as the Executive may reasonably require to satisfy itself of the acquirer’s independence. In the case of a single placee the Executive will be particularly concerned with verifying the independence of the placee.*~~

When compliance with a Rule or granting of a waiver is dependent upon a disposition or placement of voting rights to independent persons, the vendor of the voting rights must not make arrangements to dispose of or place the voting rights with persons acting in concert with him. It is the responsibility of the relevant financial adviser, placing agent and acquirer of the voting rights to ensure and confirm that the acquirer is independent of, and not acting in concert with, the vendor of the voting rights. The Executive would expect the relevant financial adviser, placing agent and acquirer of the voting rights to take all appropriate and reasonable steps to ascertain and verify whether the acquirer is independent of, and not acting in concert with, the vendor of the voting rights and then to provide appropriate confirmations to the Executive. The relevant placee list setting out the identities of the placees should also be provided to the Executive.

In placing and top-up transactions where the Executive is often requested to process a waiver application promptly in order to facilitate the vendor of the voting rights to top-up as soon as practicable, the Executive will normally place significant reliance on the confirmations provided by the financial adviser, placing agent and acquirer of the voting rights when granting such a waiver. However, despite having granted the waiver, the Executive may make enquiries about the independence of the acquirer of the voting rights after the completion of the placing and top-up transaction. In the event that the acquirer of the voting rights is found to have acted in concert with the vendor of such voting rights, any waiver which has been granted would be invalidated and the Executive would take appropriate action including possibly requiring a general offer to be made in accordance with the requirements of Rule 26.”

Question 4: Do you agree with the proposed amendment to Note 7 on dispensations from Rule 26? If not, please give reasons.
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Part 3

Timing of payment for acceptances

24. The Executive has recently received a suggestion from the Federation of Share Registrars Limited concerning the 10-day payment period set out in Rule 20.1. Rule 20.1 provides that:

“20.1 Timing of acquisition and payment

(a) General

Shares represented by acceptances in any offer other than a partial offer shall not be acquired by the offeror until the offer has become, or has been declared, unconditional. Such shares shall be paid for by the offeror as soon as possible but in any event within 10 days of the later of the date on which the offer becomes, or is declared, unconditional and the date of receipt of a duly completed acceptance. In the case of an offer which is unconditional from the start (see Rule 30.2), the consideration must be posted or delivered within 10 days from the receipt of duly completed acceptances.

(b) Partial offer

Shares represented by acceptances in a partial offer shall not be acquired by the offeror before the close of the partial offer. Such shares must be paid for by the offeror as soon as possible but in any event within 10 days following the close of the partial offer.”

25. Rule 20.1 requires that acceptances of an offer which has become unconditional, must be paid for by the offeror as soon as possible but in any event within 10 days. Under current practice the 10-day payment period is calculated in calendar days.
26. Share registrars or receiving agents have no control over when an offer may become unconditional and when acceptances may be received. Processing of acceptances typically involves stamp duty assessment and payment, transfers of share ownership to the offeror and release of funding by the offeror’s banker. Where non-cash consideration is payable, such as the issue of new shares by the offeror, additional working parties will need to be involved. The Federation of Share Registrars Limited has raised a concern that when any part of the 10-day payment period coincides with Hong Kong Public Holidays (particularly, Chinese New Year, Easter and Christmas), the available processing time before payment cheques must be despatched will be significantly shortened causing practical difficulties. Specifying the payment period in business days should afford share registrars and receiving agents a more manageable timeframe to process payments without compromising the interests of accepting shareholders. “*Business day*” is defined in the Codes as “... a day on which the Stock Exchange is open for the transaction of business.”

27. In view of the above the Executive proposes to amend the prescribed time period in Rule 20.1 from “10 days” to “7 business days” as follows:

“20.1 Timing of acquisition and payment

(a) General

Shares represented by acceptances in any offer other than a partial offer shall not be acquired by the offeror until the offer has become, or has been declared, unconditional. Such shares shall be paid for by the offeror as soon as possible but in any event within ~~10~~ 7 business days of the later of the date on which the offer becomes, or is declared, unconditional and the date of receipt of a duly completed acceptance. In the case of an offer which is unconditional from the start (see Rule 30.2), the consideration must be posted or delivered within ~~10~~ 7 business days from the receipt of duly completed acceptances.

(b) Partial offer

Shares represented by acceptances in a partial offer shall not be acquired by the offeror before the close of the partial offer. Such shares must be paid for by the offeror as soon as possible but in any event within ~~10~~ 7 business days following the close of the partial offer.”

The Executive will keep other references to “days” in the Codes under review and take into account market feedback in considering whether other amendments are appropriate.

Question 5: Do you agree with the proposed amendment to Rule 20.1? If not, please give reasons.

Proposed amendments to the Codes

Rule 11.1(f) of the Takeovers Code

11.1 Disclosure of valuations

...

- (f) Companies with significant property interests in related party transactions or offers which involve a special deal

Except with the consent of the Executive, a valuation of properties will be required in the case of an offer for a company with significant property interests and, in the case of a securities exchange offer, where the offeror company has significant property interests, if the offeror is a related party or the offer involves a special deal which requires shareholder approval pursuant to Rule 25.

For the purpose of Rule 11.1(f) a related party refers to a party holding, or together with parties acting in concert with it holding, 30% or more of the voting rights of the offeree company; a director of the offeree company; or a party acting or presumed to be acting in concert with any of the foregoing.

As a general guide, “significant property interests” ~~this~~ should be taken to refer to a company or group of companies, the book value of whose property assets or consolidated property assets, respectively, exceeds 15% of the book value of total assets or total group assets, as the case may be.

When the company or group of companies has significant property interests but the respective property assets or consolidated property assets represent less than 50% of the book value of its total assets or total group assets, as the case may be, a valuation of property assets held by its associated companies will not normally be required.

If the property assets or consolidated property assets, respectively, of a company or group of companies represent 50% or more of the book value of its total assets or total group assets, as the case may be, a valuation of the property assets held by the associated companies over which it exercises a significant degree of control will be required. Significant degree of control means a direct or indirect interest of 30% or more of the voting rights of a company.

...

Note 7 on dispensations from Rule 26 of the Takeovers Code

Notes on dispensations from Rule 26:

...

7. Verification of independence of placees

~~When compliance with a Rule or a waiver is dependent upon a disposition or placement of voting rights to independent persons the Executive will normally require the financial adviser, placing agent or acquirer of the voting rights to verify and/or confirm that the purchaser is independent of, and does not act in concert with, the vendor of the voting rights, and such verification or confirmation shall be provided in such manner as the Executive may reasonably require to satisfy itself of the acquirer's independence. In the case of a single placee the Executive will be particularly concerned with verifying the independence of the placee.~~

When compliance with a Rule or granting of a waiver is dependent upon a disposition or placement of voting rights to independent persons, the vendor of the voting rights must not make arrangements to dispose or place the voting rights with persons acting in concert with him. It is the responsibility of the relevant financial adviser, placing agent and acquirer of the voting rights to ensure and confirm that the acquirer is independent of, and not acting in concert with, the vendor of the voting rights. The Executive would expect the relevant financial adviser, placing agent and acquirer of the voting rights to take all appropriate and reasonable steps to ascertain and verify whether the acquirer is independent of, and not acting in concert with, the vendor of the voting rights and then to provide appropriate confirmations to the Executive. The relevant placee list setting out the identities of the placees should also be provided to the Executive.

In placing and top-up transactions where the Executive is often requested to process a waiver application promptly in order to facilitate the vendor of the voting rights to top-up as soon as practicable, the Executive will normally place significant reliance on the confirmations provided by the financial adviser, placing agent and acquirer of the voting rights when granting such a waiver. However, despite having granted the waiver, the Executive may make enquiries about the independence of the acquirer of the voting rights after the completion of the placing and top-up transaction. In the event that the acquirer of the voting rights is found to have acted in concert with the vendor of such voting rights, any waiver which has been granted would be invalidated and the Executive would take appropriate action including possibly requiring a general offer to be made in accordance with the requirements of Rule 26.

Rule 20.1 of the Takeovers Code

20.1 Timing of acquisition and payment

(a) General

Shares represented by acceptances in any offer other than a partial offer shall not be acquired by the offeror until the offer has become, or has been declared, unconditional. Such shares shall be paid for by the offeror as soon as possible but in any event within ~~40~~ 7 business days of the later of the date on which the offer becomes, or is declared, unconditional and the date of receipt of a duly completed acceptance. In the case of an offer which is unconditional from the start (see Rule 30.2), the consideration must be posted or delivered within ~~40~~ 7 business days from the receipt of duly completed acceptances.

(b) Partial offer

Shares represented by acceptances in a partial offer shall not be acquired by the offeror before the close of the partial offer. Such shares must be paid for by the offeror as soon as possible but in any event within ~~40~~ 7 business days following the close of the partial offer.