SFC
證監會

TAKEOVERS BULLETIN

A periodic newsletter to help participants in the Hong Kong's financial markets better understand the Codes on Takeovers and Mergers and Share Repurchases

ISSUE NO. 4
March 2008

Highlights

- Practice Note 9 (PN9) - Exempt fund manager and exempt principal trader status
- Importance of compliance with Rule 3.6 and Rule 31.3
- Conclusions Paper on amendments relating to hearings under the Codes

Introduction

1. We have dedicated the majority of this Bulletin to a Practice Note that explains the exempt system for fund managers and principal traders under the Codes in response to requests from market practitioners for practical guidance on a number of issues.
2. Since the last issue the Executive has dealt with two disciplinary cases which resulted in the issue of statements of public criticism in relation to breaches of Rules 3.6 and 31.3 of the Takeovers Code. We take this opportunity to remind market practitioners of the importance of complying with these two rules.
3. Finally we are pleased to announce that on 5 March 2008 the Executive issued a Conclusions Paper on amendments to the Codes. In going forward disciplinary proceedings before the Takeovers Panel will be held in public and chaired by an experienced litigation counsel or solicitor or a retired judge. For the first time detailed procedures for disciplinary and non-disciplinary hearings under the Codes have also been introduced.

Practice Note 9 (PN9) – Exempt fund manager and exempt principal trader status

1 Outline of this Practice Note

1.1 This Practice Note provides an overview of the exempt system for connected fund managers and principal traders under the Codes[1] and sets out the implications of exempt status and disclosure requirements. This is a complex area under the Codes and early consultation with the Executive is encouraged. The disclosure requirements set out in this Note do not affect the operations of the disclosure of interests requirements under Part XV of the Securities and Futures Ordinance.

1.2 This Note covers the following areas:

- The exempt system
- What exempt status means

[1] The definition of "connected fund manager and connected principal trader" *provides that "a fund manager or principal trader will be connected with an offeror or the offeree company if the fund manager or principal trader controls, is controlled by or is under the same control as (i) an offeror (ii) the offeree company (iii) any bank or financial or other professional adviser (including a stockbroker) to an offeror or the offeree company or (iv) an investor in a consortium formed for the purpose of making an offer (e.g. through a special purpose company)".*

- Guidance on Code implications and disclosure requirements for exempt fund managers (**EFM**) and exempt principal traders (**EPT**)
- Treatment of Seed Capital
- Timing of disclosure
- How to apply for exempt status
- Dealings by connected non-exempt fund managers and principal traders (Rule 21.6)

2 The exempt system

2.1 The Codes impose certain prohibitions, restrictions and obligations on dealings by parties involved in an offer and by persons acting in concert with them.

2.2 Under class (5) of the definition of acting in concert financial and other professional advisers to corporate clients are presumed to be acting in concert with those clients. Class (5) provides as follows:

"a financial or other professional adviser (including a stockbroker) is presumed to be acting in concert with its client in respect of the shareholdings of the adviser and persons controlling, controlled by or under the same control as the adviser (except in the capacity of an exempt principal trader)".

2.3 Where an adviser is part of a larger financial group the presumption of acting in concert extends to all entities within that group including its fund managers and principal traders (connected fund managers and principal traders). Given this presumption dealings in securities of an offeree company during an offer period by connected fund managers and principal traders may have implications under the Codes. By way of example:

(a) any purchases by fund managers or principal traders connected to the offeror might result in an obligation on the offeror to make an offer in cash at the highest price paid or to revise any existing offer to that level (see Rules 23, 24 and 26.3 of the Takeovers Code);

(b) sales of offeree securities by such connected fund managers and principal traders would be restricted during an offer period under Rule 21.2; and

(c) if fund managers or principal traders are connected to the offeree company any purchase of offeree company shares or dealings in convertible securities, warrants, options or derivatives in respect of those shares would be restricted under Rule 21.5.

2.4 In 2001 the Executive introduced the exempt status regime into the Codes which provides the Executive with the power to grant exemptions in recognition that certain dealing activities are carried on separately from, and are not influenced by, corporate finance operations.

3 What exempt status means

3.1 Once exempt, an EFM or EPT is not normally regarded as acting in concert with the client of the group's corporate finance department that is involved in the offer and hence the implications of concert party status under class (5) of the definition of acting in concert in the Codes do not apply. A similar regime operates in London.

3.2 It is important to note that the benefits of exempt status only apply where the **sole** reason for the connection with the offeror or offeree is that the EFM or EPT is in the same group as the corporate finance team that is advising the offeror or offeree (see Note 2 to the definitions of EFM and EPT). In other words an EFM or EPT may not benefit from its exempt status if:

(a) it belongs to the same group as the offeror or offeree company; or

(b) it is a concert party of the offeror or offeree other than being presumed to be acting in concert under class (5).

3.3 In the case of an EFM, exempt status applies to **all** discretionary dealings in client funds managed by the EFM.

3.4 In the case of an EPT, exempt status is more limited in that it is restricted to the trading activities conducted by the EPT trading as a principal in securities 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[2] or other similar activities assented to by the Executive during an offer period. Proprietary dealings and activities creating new derivative products would not be permitted unless they form part of a pre-existing continuous trading program (see definition of EPT).

4 Practical guidance on Code implications and disclosure requirements for EFMs

4.1 Although an EFM who is connected to an offer is not regarded as acting in concert with the corporate finance client of its group it is nevertheless required to make disclosures of dealings of relevant securities during an offer period.

4.2 Is an EFM required to make public or private disclosure?
The question of whether or not an EFM is required to make public or private disclosures of its dealings during an offer period is determined by whether or not the EFM is an "associate" under class (6) of the definition of "associate" under the Codes as described below.

(a) Normally an EFM (who is not a class (6) associate) must make private disclosures to the Executive under Rule 22.1(b)(ii). This assists the Executive to monitor dealings during an offer period and to ensure compliance with the Codes.

(b) However, if an EFM holds 5% or more of any class of relevant securities, it would be regarded as an "associate" (by virtue of class (6) of the definition of associate in the Codes) and would therefore need to make public disclosure of its dealings in relevant securities (see Rule 22.1(b)(ii)). The reason for such public disclosure is that these dealings are considered to provide relevant information to shareholders and the market during an offer period.

4.3 Why should an EFM aggregate its holdings?
An EFM should aggregate its dealings for various purposes under the Codes including:

(a) To determine whether it would be regarded as a class (6) associate and hence should publicly disclose its dealings;

(b) If the EFM is not a class (6) associate - to aggregate **its** holdings in relevant securities for private disclosure purposes;

(c) If the EFM is a class (6) associate - to determine the aggregate holdings in relevant securities held by **all** discretionary fund managers within the group (see Rule 22.3 and Note 10 to Rule 22); and

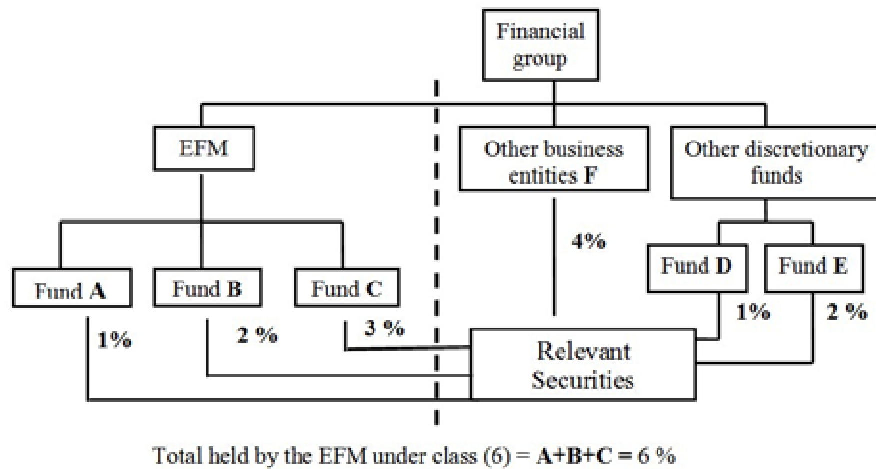
(d) In any event to determine whether any general offer implication arises under Rule 26.

4.4 In all cases an EFM should count the relevant securities held by the investment accounts it manages on a discretionary basis as controlled by the EFM itself and not by the person on whose behalf the relevant securities are managed (see Rule 22.3 and Note 10 to Rule 22).

[2] Note 4 to Rule 22 provides that *"relevant securities for the purpose of Rule 22 include (a) securities of the offeree company which are being offered for or which carry voting rights; (b) equity share capital of the offeree company and an offeror; (c) securities of an offeror which carry the same or substantially the same rights as any to be issued as consideration for the offer; (d) securities carrying conversion or subscription rights into any of the foregoing; and (e) options and derivatives in respect of any of the foregoing"*.

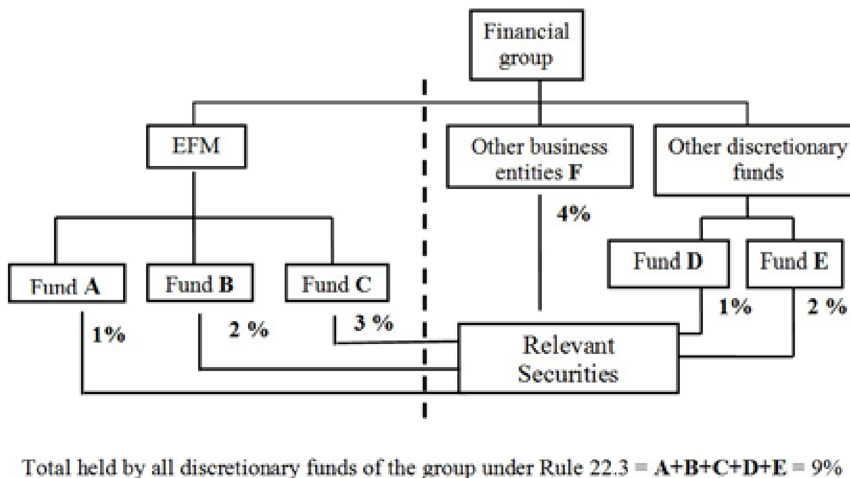
4.5 Determining whether an EFM is a class (6) associate

An EFM should count relevant securities held by the investment accounts it manages on a discretionary basis (including **all** relevant securities held in Seed Capital accounts - see "Treatment of Seed Capital" below) but will not normally be required to include any principal (or proprietary) or discretionary client's holdings of relevant securities held elsewhere in the group.



4.6 Determining the aggregate holdings of all discretionary fund managers within the group

(a) When an EFM makes a public disclosure because it is a class (6) associate, unless the Executive consents otherwise, it is required to disclose the aggregate holdings of relevant securities held by **all** discretionary fund managers within the same group (whether exempt or non-exempt). This is consistent with the view that relevant securities controlled by all such operations are regarded as those of a single person (Rule 22.3 and Note 10 to Rule 22).

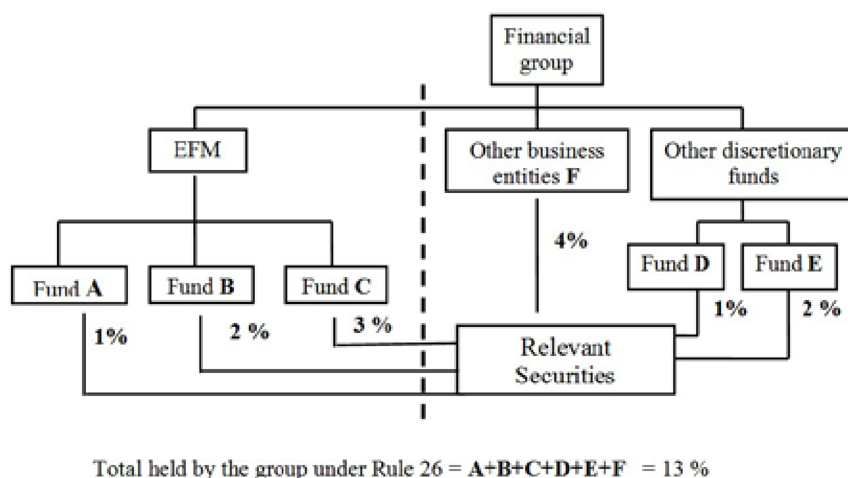


(b) In practice, if there are appropriate reasons such as sufficient Chinese Walls procedures, the Executive may be prepared to waive the requirement for an EFM to aggregate and disclose relevant securities held by other discretionary fund managers within the group (see Rule 22.3). In such cases the Executive should be consulted at the earliest opportunity.

4.7 Determining whether a general offer obligation arises under Rule 26

(a) All group holdings are relevant. An EFM must therefore aggregate **all** holdings of relevant securities of the group, irrespective of exempt status, including but not limited to the EFM's discretionary client holdings, and any principal (or proprietary) or discretionary client's holdings held elsewhere in the group. For this purpose, holdings of non-discretionary clients and of the offeror client need not be included.

(b) An EFM must consult the Executive at the earliest opportunity in any case where an issue may arise under Rule 26 so that a ruling may be given in light of all the circumstances of the particular case. Therefore, to avoid problems under Rule 26, all relevant holdings should be monitored from a central point within the group.



Total held by the group under Rule 26 = **A+B+C+D+E+F** = 13 %

4.8 How should an EFM aggregate its holdings for disclosure purposes?

(a) Private disclosures – dealings by a connected EFM under Rule 22.1(b)(ii) should be made in writing and sent only to the Executive either by e-mail to cfmailbox@sfc.hk or by fax on 2810 5385 in the format set out in the specimen disclosure forms and should include the following information (see Note 7(b) to Rule 22):

(i) the total of the relevant securities purchased or sold;

(ii) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed); and

(iii) the identity of the associate dealing.

(b) Public disclosures – dealings should be made in writing and sent to the Executive either by e-mail to cfmailbox@sfc.hk or by fax on 2810 5385 in the format set out in the specimen disclosure forms. In addition to the information set out in paragraph 4.8(a) above, further information as listed in Note 7(a) to Rule 22 should also be disclosed. The Executive will arrange for these disclosures to be posted on the SFC website. These disclosures should at the same time also be made to the offeror and the offeree company or their respective financial advisers (see Note 6 to Rule 22).

4.9 The specimen disclosure forms can be found under "Takeovers and Mergers" – "Forms" of the SFC website at http://www.sfc.hk.

5 Treatment of Seed Capital

5.1 Previous approach

An EFM may sometimes invest its own money as start-up money in a new fund at the time the fund is launched (**Seed Capital**). The Executive regards Seed Capital as proprietary funds and therefore any transaction carried out in respect of funds which have Seed Capital would not be covered by EFM status. Notwithstanding this view, the Executive has in the past adopted a pragmatic approach and extended EFM status to such funds so long as Seed Capital comprises less than 10% of the value of the fund. This means that if the Seed Capital in a particular EFM's fund represents 10% or more of

the value of the fund the whole of that fund alone would lose its EFM status. The EFM status of other funds managed by that EFM would not be affected.

5.2 Revised approach

The Executive has recently relaxed its approach towards Seed Capital following a number of enquiries from market participants and in view of the fiduciary duties that an EFM owes to its discretionary clients. The revised approach operates as follows:

(a) where Seed Capital represents less than 10% of the value of the fund, the whole of that fund would be covered by EFM status (i.e. no change);

(b) where Seed Capital represents 10% or more (but less than 90%) of the value of the fund:

(i) the Seed Capital portion of the fund would be regarded as proprietary funds and therefore dealings conducted in respect of the **whole** of that fund would be treated as if they were dealings by an EPT and would be subject to the dealing restrictions set out in the definition of EPT;

(ii) the connected EFM would be subject to Rules 35.1 and 35.2 in respect of the **whole** of the fund and the restrictions in Rules 35.3 and 35.4 would apply to the **Seed Capital portion** of the fund (further details of the application of Rule 35 to an EPT are set out in paragraph 6.7 below). In particular:

- the connected EFM must not carry out any dealing with the purpose of assisting the offeror or the offeree company in respect of the **whole** of the fund (see Rule 35.1);
- the connected EFM must not deal with the offeror or its concert parties in relevant securities in respect of the **whole** of the fund during the offer period (see Rule 35.2);
- subject always to Rule 35.1, where the EFM is connected with the offeror relevant securities may not be assented to the offer in respect of the **Seed Capital portion** of the fund until the offer becomes or is declared unconditional as to acceptances (see Rule 35.3); and
- the connected EFM must not vote in respect of the **Seed Capital portion** of the fund (see Rule 35.4).

By way of example, if an EFM has 30% Seed Capital in one of its funds (Fund A) and Fund A holds 1 million relevant securities X, the treatment of dealings in relevant securities X by the EFM in respect of Fund A during the offer period would be as follows:

- EPT restrictions will apply to any dealing in relevant securities X;
- the EFM must not carry out any dealing in relevant securities X with the purpose of assisting the offeror or the offeree company (Rule 35.1);
- the EFM must not deal with the offeror or its concert parties in relevant securities X (Rule 35.2);
- if the EFM is connected with the offeror, it must not assent to the offer in respect of 300,000 relevant securities X held by Fund A until the offer becomes or is declared unconditional as to acceptances (Rule 35.3); and
- the EFM must not vote in respect of 300,000 relevant securities X held by Fund A (see Rule 35.4).

(c) where Seed Capital represents 90% or more of the value of the fund, the **whole** of that fund would lose its EFM status and, until such time as the Seed Capital portion reduces to less than 90%, would be treated as an EPT and be subject to the dealing restrictions set out in the definition of EPT and to Rule 35.

5.3 The Executive intends to write to entities which have EFM status in due course regarding these revisions.

6 Practical guidance on Code implications and disclosure requirements for EPTs

6.1 As in the case of an EFM, an EPT connected to an offer is also required to make disclosures of dealings of relevant securities during an offer period.

6.2 Is an EPT required to make public or private disclosure?

(a) A connected EPT should make public disclosure of its dealings in relevant securities by providing the Executive with the

relevant details under Rule 22.4. The information may be sent either by e-mail to cfmailbox@sfc.hk or by fax on 2810 5385 to the Executive who will arrange for these disclosures to be posted on the SFC website.

(b) Dealings in relevant securities on behalf of non-discretionary investment clients (agency trades) should be privately disclosed (see Rule 22.2).

6.3 Why should an EPT aggregate its holdings?

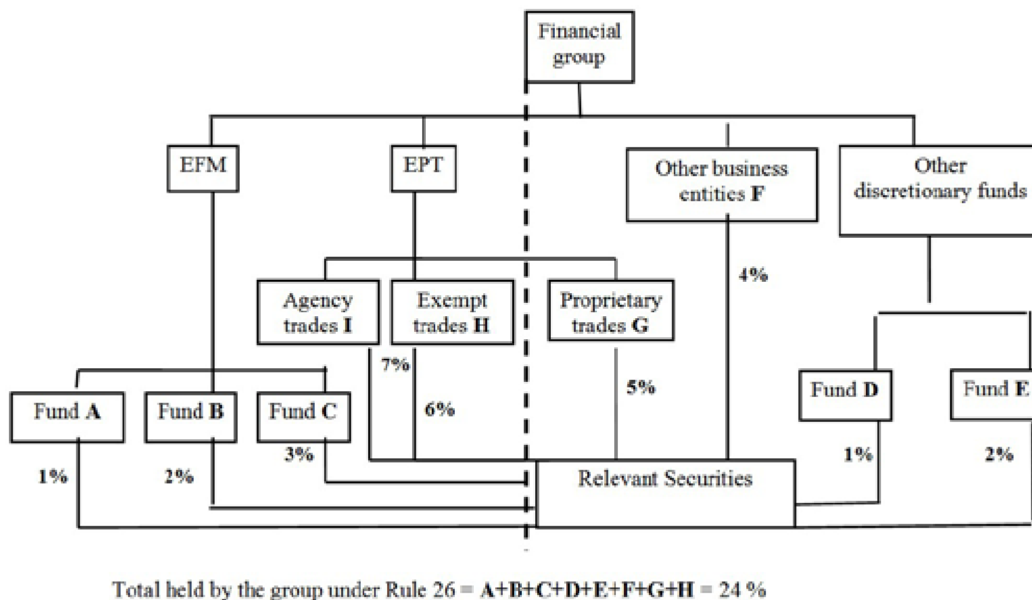
(a) An EPT should aggregate its holdings in relevant securities for public disclosure purposes (see Rule 22.4); and

(b) To determine whether any general offer implication arises under Rule 26.

6.4 Determining whether a general offer obligation arises under Rule 26

(a) An EPT must aggregate **all** holdings of relevant securities of the group, irrespective of exempt status, including but not limited to the EPT's own holdings, and any principal (or proprietary), EFM's or discretionary client's holdings held elsewhere in group. For this purpose, holdings of non-discretionary clients and of the offeror client need not be included.

(b) An EPT should consult the Executive at the earliest opportunity in any case where an issue under Rule 26 arises so that a ruling may be given in light of all the circumstances of the particular case. Therefore, to avoid problems under Rule 26, all relevant holdings should be monitored from a central point within the group.



Total held by the group under Rule 26 = **A+B+C+D+E+F+G+H** = 24 %

6.5 How should an EPT aggregate its holdings for disclosure purposes?

(a) A connected EPT should aggregate and disclose dealings in relevant securities in writing to the Executive stating the following (see Rule 22.4):

(i) the total purchases and sales;

(ii) the highest and lowest prices paid and received; and

(iii) whether the connection is with an offeror or the offeree.

(b) These disclosures should at the same time also be made to the offeror and the offeree company or their respective financial advisers (see Note 6 to Rule 22).

6.6 The specimen disclosure forms can be found under "Takeovers and Mergers" – "Forms" of the SFC website at http://www.sfc.hk.

6.7 Dealing activities conducted by an EPT

(a) As a general rule any dealings or creation of a new hedge or arbitrage (unless they form part of a pre-existing continuous trading program) by an EPT for its own account would not be covered by exempt status (see definition of EPT). The types of dealing activities which would be exempt include:

(i) Dealings in relevant securities conducted in response to unsolicited requests by clients and on a non-discretionary/agency basis such as:
- non-discretionary program trades in relation to a basket of stocks;
- non-discretionary client-initiated convertible bond trades; or
- non-discretionary Exchange Traded Fund or index transactions.

(ii) Index related product or tracker fund arbitrage in the relevant securities.

(iii) Hedging of pre-existing derivatives and previously issued warrants and the closing-out of derivative positions (provided the derivatives, warrants and positions existed before the commencement of the relevant offer period).

(iv) Market-making in stock options and in listed warrants both of which are created prior to the commencement of the offer period (provided that the EPT/its group is the liquidity provider in the relevant securities).

(b) For the avoidance of doubt, dealings in relevant securities for non-discretionary investment clients by an EPT or non-exempt connected principal trader (agency trades) are permitted and must be disclosed privately under Rule 22.2.

6.8 Restrictions on an EPT

Rule 35 imposes certain restrictions on connected EPTs to address the potential of a principal trader abusing its exempt status. The overriding principle is that a connected EPT must not carry out any dealings with the purpose of assisting the offeror or the offeree (see Rule 35.1). Failure to comply may lead to revocation of exempt status and/or other appropriate action being taken by the Executive. In ensuring compliance with Rule 35.1:

(a) if the EPT is connected with an offeror it must not deal in relevant securities of the offeree company with the offeror or its concert parties during the offer period (see Rule 35.2);

(b) if the EPT is connected with an offeror securities owned by it must not be assented to the offer until the offer becomes or is declared unconditional as to acceptances (see Rule 35.3); and

(c) securities owned by an EPT connected with an offeror or offeree must not be voted in the context of an offer (see Rule 35.4).

6.9 Other obligations of an EPT

In addition to its own disclosure obligations an EPT who deals in relevant securities on behalf of clients should ensure that its clients are aware of and comply with the disclosure obligations under Rule 22 if they are associates of the offeror or offeree company (see Note 11 to Rule 22).

7 Timing of disclosure

7.1 All disclosures must be made no later than 10.00 a.m. on the business day following the date of the transaction (see Note 5 to Rule 22).

7.2 Where dealings have taken place on stock exchanges in the time zones of the United States and there may be difficulty in disclosing dealings by 10.00 a.m. the Executive should be consulted. In such cases, the Executive may allow disclosures to be made no later than 10.00 a.m. on the second business day following the date of the transaction.

7.3 To assist the Executive in ensuring compliance with the Codes, where a client of the group's corporate finance department is involved in an offer, the Executive requires the group to submit details of all the group's holdings of relevant securities of the offeree company and, in the case of a securities exchange offer, the offeror, as at the close of business on the day the offer period commences. The submission should be made by 5.00 p.m. on the day after the offer period commences.

In cases of difficulty please consult the Executive.

8 How to apply for exempt status

8.1 Applicants may apply for exempt status under one of two methods - the "fast-track" method or under the Guidelines on Exempt Fund Managers and Exempt Principal Traders (April 2001) (**Guidelines**). Since the introduction of the fast-track application method in August 2005 all applicants have opted to apply for exempt status under this method. As at the time of writing this note, there are nine firms with 137 entities with EFM status and seven firms with 19 entities with EPT status. The guidelines for applications under both methods and details of firms with exempt status can be found under "Takeovers and Mergers" – "Exempt Status (EFM/EPT)" on the SFC website at http://www.sfc.hk.

8.2 Fast-track application procedures

(a) Fund managers or principal traders that form part of a large multi-service financial group who are regularly involved in corporate finance activities may apply for exempt status under the "fast-track" procedures.

(b) Under this method the Executive would be prepared to grant exempt status (without first conducting a comprehensive review of the information as required under the Guidelines) if the applicant provides a signed confirmation from the group's senior compliance officer, confirming among other things, that:

- (i) the applicant entity and the fund managers/principal traders employed by it are independent from the group's Hong Kong corporate finance operation;
- (ii) there are sufficient Chinese Walls and compliance procedures in place to maintain the independence of the relevant business operations; and
- (iii) the individual fund managers or principal traders of the applicant are properly trained in the relevant rules of the Codes and in particular that they understand the meaning and significance of "acting in concert" and the situations in which EFM/EPT status will fall away.

8.3 In order to maintain its exempt status the EFM/EPT must provide an updated signed confirmation to the Executive on an annual basis. Failure to do so may result in the revocation of its exempt status. It will then have to make a fresh application in order to reinstate its exempt status.

8.4 Applications under the Guidelines

Applications from firms that are not considered to be large multi-service organisations would be dealt with in accordance with the Guidelines which set out the information that should be provided by an applicant to satisfy the Executive as to its suitability for EFM/EPT status.

9 Dealings by connected non-exempt fund managers and principal traders (Rule 21.6)

9.1 The Executive recognises that not all relevant fund managers or principal traders have exempt status and, in any event, exempt status may fall away in certain circumstances. Furthermore only certain dealing activities by an EPT are covered by exempt status.

9.2 To address concerns of Code consequences arising from dealings under such circumstances, guidance is given in Rule 21.6 which provides broadly that a non-exempt fund manager connected to an offeror will be presumed to be acting in concert with an offeror once the identity of the offeror is known or an announcement containing such information is issued. Rule 21.6 does not address the position of connected principal traders.

9.3 In September 2007 the Executive consulted the market about its proposal to amend Rule 21.6 to provide further guidance on dealings by connected discretionary fund managers and principal traders before and during an offer period.

In particular it is proposed that the new Rule 21.6 would clarify the following:

(a) that a connected discretionary fund manager or principal trader would only be presumed to be acting in concert with an **offeror** or **potential offeror** once the identity of the person with which it is connected is made public or if prior to that, the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected;

(b) that a connected discretionary fund manager or principal trader would only be presumed to be acting in concert with an **offeree company** once the offer period has commenced or if prior to that, the connected party had actual knowledge of the possibility of an offer being made for the offeree company and it is connected with the offeree company;

(c) the treatment and significance of dealings, in respect of Rule 26 and other relevant rules of the Takeovers Code, by connected discretionary fund managers and principal traders **prior to** and **after** a concert party relationship arises; and

(d) the treatment of securities borrowing and lending transactions entered into by non-exempt discretionary fund managers and principal traders connected to an offeror or the offeree **prior to** and **after** a concert party relationship arises.

9.4 The proposals are expected to be finalised later this year.

9.5 The Consultation Paper can be found under “Speeches, Publications & Consultations” - Consultation Papers & Conclusions” of the SFC website at http://www.sfc.hk.

Importance of compliance with Rule 3.6 and Rule 31.3

1. The Executive has recently dealt with two disciplinary cases relating to breaches of Rule 3.6 and Rule 31.3 of the Takeovers Code which resulted in the issue of statements of criticism of the parties involved. The Executive would like to clarify the importance of these two rules.

2. Rule 3.6 of the Takeovers Code provides that *“acquisitions of voting rights of the offeree company by an offeror or by any person acting in concert with the offeror may give rise to an obligation to make a cash offer or securities offer (Rule 23), to increase an offer (Rule 24) or to make a mandatory offer (Rule 26). Immediately after any acquisition giving rise to any such obligation, an announcement must be made, stating the number of voting rights acquired and the price paid, together with the information required by Rule 3.5 (to the extent that it has not previously been announced)”*.

3. Rule 3.6 requires the potential offeror or its concert parties to make an announcement **immediately after** any acquisition of voting rights of the offeree company that gives rise to an obligation to make a mandatory offer. This is in line with the requirement to make full and prompt disclosure to avoid the creation of a false market under General Principle 6 of the Codes. Prompt disclosure is not only particularly important where the offer obligation is dependent on the fulfilment of pre-conditions but will help avoid the risk of the relevant shares being traded in an uninformed market.

4. Rule 31.3 states that *“Except with the consent of the Executive, if a person, together with any person acting in concert with him, holds more than 50% of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months after the end of the offer period of any previous offer made by him to the shareholders of that company which became or was declared unconditional, make a second offer to, or acquire any shares from, any shareholder in that company at a higher price than that made available under the previous offer. For this purpose the value of a securities exchange offer shall be calculated as at the day the offer became, or was declared, unconditional”*.

5. Rule 31.3 ensures equality of treatment of shareholders in an offer in accordance with General Principle 1 by prohibiting the offeror and its concert parties from paying a price higher than the offer price for shares in the offeree company in the 6-month period after the close of the offer. The fact that the Executive normally sends a letter after the close of an offer to the parties reminding them of their obligation under Rule 31.3 reflects the importance of the rule.

6. The two Executive Statements can be found under “Takeovers and Mergers” – “Panel and Executive Decisions / Statements” of the SFC website at http://www.sfc.hk.

Conclusions Paper on amendments relating to hearings under the Codes

1. On 2 November 2007 the Executive issued a Consultation Paper on amendments to the Codes and procedures relating to hearings under the Codes. The consultation period ended on 14 December 2007. On 5 March 2008 the Executive issued a Conclusions Paper containing its response to public comments received.

2. Effective on 1 April 2008:
(a) Disciplinary proceedings before the Panel and the Takeovers Appeal Committee will be held in public.
(b) The Chairman of a disciplinary hearing before the Panel and of the Takeovers Appeal Committee will be selected, on a case-by-case basis, from a body of suitably experienced litigation counsel or solicitors or retired judges to be called the Disciplinary Chair Committee.
(c) A Nominations Committee will be formed to nominate members of the Panel, the Takeovers Appeal Committee and the Disciplinary Chair Committee.

3. For the first time the Executive introduced detailed procedures for disciplinary and non-disciplinary hearings under the Codes to facilitate fair, efficient and timely decision-making.

4. The Consultation Paper and the Conclusions Paper can be found under “Speeches, Publications & Consultations”- “Consultation Papers & Conclusions” of the SFC website at http://www.sfc.hk.

The Takeovers Bulletin is available under ‘Speeches, Publications & Consultations’ – ‘Publications’ of the SFC website at http://www.sfc.hk.

Feedback and comments are welcome and can be sent to takeoversbulletin@sfc.hk

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