

An SFC newsletter to help participants in Hong Kong's financial markets better understand the Codes on Takeovers and Mergers and Share Buy-backs

Feedback and comments:
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Confidentiality, talks announcements and minimum suspensions

In the June 2016 issue of the *Takeovers Bulletin*, we reminded parties, their advisers and other market practitioners that “talks” announcements should not be issued as a matter of convenience. As long as all parties keep matters confidential during the negotiation process, there should be no need to issue a “talks” announcement as the obligation to make an announcement under Rule 3 of the Takeovers Code should not arise. This applies when the board of an offeree company has been approached about, or informed of, a possible offer (including a possible privatisation proposal) which is being contemplated or negotiated, and whilst the proposals or negotiations are incomplete.

In the event that the obligation to make an announcement under Rule 3.7 arises, the announcement should be relatively short and disclose no more than the fact that talks are taking place. In cases where the board of the offeree company has been informed of an indicative offer price or the form of consideration, it is not normally acceptable for this information to be disclosed in a Rule 3.7 announcement because the transaction is still being negotiated and may or may not materialise.

At this stage, the parties are under a strict obligation to keep the relevant information confidential (see Rule 1.4) until a firm intention to make an offer is announced.

Parties should therefore take all necessary steps to maintain confidentiality and to ensure there is no leakage of information prior to the announcement of a firm intention to make an offer. In cases where leakage has occurred, we may conduct an investigation and take disciplinary action if appropriate.

Highlights

- Reminder about confidentiality, talks announcements and minimum suspensions
- Monthly update announcements
- Appointments and reappointments to the Takeovers and Mergers Panel and the Takeovers Appeal Committee
- Quarterly update on the activities of the Takeovers Team

We wish to remind issuers and their advisers that every effort should be made to avoid unnecessary trading suspensions. Trading suspensions to facilitate negotiations between parties are not acceptable. If trading in the shares of an offeree company has been suspended, an announcement should be made as soon as possible so that trading can resume without delay. In exceptional circumstances where it is necessary for trading to remain suspended for an extended period of time, a holding announcement should be issued to inform shareholders and the market of the reasons for the delay.

Monthly update announcements

To facilitate greater transparency and keep shareholders informed about the progress of transactions, from 1 April 2017 we will require monthly update announcements as explained below. General Principle 6 of the Takeovers Code provides that all persons concerned with offers should make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of a false market. Consistent with this, Rule 3.7 requires a monthly update announcement to be made following an announcement that talks are taking place. This obligation continues until the issuance of either an announcement of a firm intention to make an offer under Rule 3.5 or an announcement of a decision not to proceed with an offer.

As a matter of practice, we have only required the issuance of monthly update announcements when there is a possibility that a general offer will be made to shareholders. We have not required monthly updates in possible whitewash transactions when there is no possibility of a general offer. This is typically the case when the whitewash transaction is conditional on shareholders' approval and the Executive's consent and these conditions are not waivable.

However, we have noted that often in these cases many months pass without an announcement being issued about the progress of the matter. This is unsatisfactory as shareholders and the market are not able to assess how transactions are progressing. Similar to a general offer, a whitewash transaction involves a possible change or consolidation of control of a company and hence fundamental changes to its shareholding structure. At such a critical time it is important that shareholders and the market are kept up-to-date about the progress of the transaction on a timely basis.

With a view to improving transparency, the Executive will require monthly update announcements to be issued following announcements of **all new and existing** possible whitewash transactions under Rule 3.7. This requirement will continue until the issuance either of an announcement of a firm intention to proceed with the transaction under Rule 3.5 or of an announcement of a decision not to proceed. This is consistent with General Principle 6 and Rule 3.7. We will contact relevant issuers or their advisers to ensure they are aware of this requirement.

Consistent with the above, also from 1 April 2017 the Executive will require monthly update announcements in all cases when a relevant shareholder's document is not despatched within 21 days (or 35 days in the case of a securities exchange offer) of a firm intention announcement. In other words, in all cases where the Executive grants consent to a delay in the despatch of the relevant shareholder's document under Rule 8.2, a monthly announcement will be required to update shareholders and the market. The obligation to issue a monthly update announcement equally applies when a special deal circular cannot be despatched within one month of the announcement of the special deal. In relevant cases, the obligation to issue a monthly update announcement will continue until the despatch of the relevant shareholder's document.

Irrespective of the requirement to provide monthly updates, an offeror or the offeree company, as appropriate, should issue a prompt announcement about any material development relating to the offer or whitewash transaction such as the fulfilment of an important pre-condition or condition precedent. Again, we will contact relevant parties in existing cases individually to ensure that they are aware of these requirements.

Practice Note 20 has been revised to reflect the above requirements. It can be found in the "Regulatory functions – Listings & takeovers – Takeovers & Mergers – Practice Notes" section of the SFC website, along with a marked-up version showing the revisions.

Appointments and reappointments of members to the Takeovers and Mergers Panel and the Takeovers Appeal Committee

We welcome the following new appointments and reappointments to the Takeovers and Mergers Panel (Panel) and the Takeovers Appeal Committee (Appeal Committee) with effect from 1 April 2017:

Panel and Appeal Committee

New appointments – Mr Asit Shah, Mr Wong Wai Ming and Mr Frank Yuen

Reappointments – Mr Stephen Clark (Chairman of the Panel and Appeal Committee), Mr Freeman Chan and Mr David Webb (Deputy Chairmen of the Panel and members of the Appeal Committee), Ms Melissa Brown, Mr David Fu, Mr Ernest Ip, Mr Bonn Liu, Ms Park Yoo Kyung and Mrs Judy Vas

Full list of members of takeovers-related committees

Members are appointed for a term of two years until 31 March 2019 unless otherwise stated. The membership lists for the Panel, the Appeal Committee, the Disciplinary Chair Committee and the Nominations Committee are set out below.

Panel

The Panel hears disciplinary matters in the first instance, reviews rulings by the Executive at the request of any party dissatisfied with such a ruling and considers novel, important or difficult cases referred to it by the Executive. It also reviews, upon request by the SFC, the provisions of the Codes and the Rules of Procedure for hearings under the Codes and recommends appropriate amendments to the Codes and Rules to the SFC.

Chairman

Mr Clark Stephen Edward

Deputy Chairmen

Mr Chan Yuk Sing, Freeman

Ms Ko, Teresa Yuk Yin, JP*

Mr Liu Chee Ming*

Mr Maguire John Martin*

Mr Webb David Michael

Members

Ms Brown Melissa

Mr Chan Che Chung (Alias: Mr Conrad Chan)*

Ms Charlton Julia Frances*

Mr Fu Yat Hung, David

Mr Ip Koon Wing, Ernest

Mr Lee Kam Hung, Lawrence, JP*

Mrs Lee Pui Ling, Angelina, SBS, JP*

Mr Liu Che Ning*

Mr Liu Yun Bonn

Mr Norman David Michael*

Mr Norris Nicholas Andrew*

Ms Park Yoo Kyung

Mr Sabine Martin Nevil*
Mr Schwille Mark Andrew*
Mr Shah Asit Sudhir
Mr Soutar James Alexander*
Mrs Vas Chau Lai Kun Judy
Mr Winter Richard David*
Mr Wong Wai Ming
Ms Yu Ka Po, Benita*
Mr Yuen Ka Fai (Alias: Mr Frank Yuen)

Appeal Committee

The Appeal Committee reviews disciplinary rulings of the Panel for the sole purpose of determining whether any sanction imposed by the Panel is unfair or excessive. It comprises a Chairman who is a member of the Disciplinary Chair Committee and other members of the Panel who are selected on a case-by-case basis.

Disciplinary Chair Committee

Members are nominated by the Nominations Committee on the basis that they are duly experienced Senior Counsel. Their role is to act as Chairman of the Panel in disciplinary proceedings under the Codes or of the Appeal Committee on a case-by-case basis.

Members

Mr Chan King Sang, Edward, SC*
Mr Jat Sew Tong, SC, JP*
Ms Li Gladys Veronica, SC*
Mr Shieh Wing Tai, Paul, SC*
Mr Wong Yuk Lun, Horace, SC, JP*

Nominations Committee

The Nominations Committee nominates members of the Panel, the Appeal Committee and Disciplinary Chair Committee.

Ex officio Members

Mr Alder Ashley Ian, JP (Chairman)
Mr Clark Stephen Edward
Mr Ho Yin Tung, Brian

Members

Mr Tong Carlson, SBS, JP*
Dr Wong Ming-fung William, SC*

Alternate members to CLARK Stephen Edward

Mr Chan Yuk Sing, Freeman

Ms Ko, Teresa Yuk Yin, JP

Mr Liu Chee Ming

Mr Maguire John Martin

Mr Webb David Michael

* Reappointed on 1 April 2016 for a term of two years until 31 March 2018

A full list of members of the Panel, the Appeal Committee, the Disciplinary Chair Committee and the Nominations Committee can be found in the “Regulatory functions” – “Listings & takeovers” – “Takeovers & Mergers” – “Takeovers Panel & related committees” section of the SFC website.

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 December 2016, we received 30 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), 10 whitewashes and 95 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*

All issues of the *Takeovers Bulletin* are available under ‘Published resources – Industry-related publications – *Takeovers Bulletin*’ on the SFC website at www.sfc.hk.

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

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