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

Consultation paper on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs

19 May 2023

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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 Buy-backs (**Codes**).

The Codes apply to takeovers, mergers and share buy-backs affecting companies with a primary listing of equity securities in Hong Kong, real estate investment trusts with a primary listing of their units in Hong Kong and public companies in Hong Kong. The current proposals result from a review conducted by the Executive[1] in consultation with the Takeovers Panel (**Panel**).

Proposals

In this consultation paper, the Executive proposes amendments to various provisions of the Codes together with the reasons for such changes. We invite the market to provide responses to our specific questions although general comments on any other matters discussed are welcome. This consultation paper is divided into seven parts:

Part 1 proposes to clarify certain matters regarding voting and acceptances by shareholders in a Codes related transaction as well as amending the definition of "close relatives".

Part 2 aims to provide guidance on the application of the chain principle.

Part 3 proposes enhancements to streamline and improve efficiency during an offer.

Part 4 proposes amendments that help to clarify the effects of statements made during an offer.

Part 5 aims to clarify certain procedural matters in partial offers and requirements for comparable offers.

Part 6 introduces a number of green initiatives to enhance efficiency and to reduce the environmental impact associated with Codes documents.

Part 7 proposes various miscellaneous amendments to the Codes to codify existing practice and to effect a number of housekeeping amendments.

The consolidated proposed amendments discussed in this consultation paper are marked up against the current version of the Codes in **Appendix 1**.

Consultation period

The consultation will last for five weeks until 23 June 2023. Any person wishing to submit comments on behalf of an organisation should provide details of the organisation whose views they represent. In addition, respondents who wish to suggest alternative approaches

[1] The Executive refers to the Executive Director of the Corporate Finance Division of the SFC or any delegate of the Executive Director.

are encouraged to submit the proposed text of possible amendments that would be necessary to incorporate their suggestions into the Codes.

Comments may be submitted as follows:

By mail to:	Corporate Finance Division The Securities and Futures Commission 54th Floor, One Island East 18 Westlands Road Quarry Bay Hong Kong Re: Consultation paper on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs
By online submission at:	http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/
By e-mail to:	takeoverscode_review@sfc.hk

All submissions received before expiry of the consultation period will be taken into account before the proposals are finalised and a consultation conclusions paper will be published in due course.

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.

Securities and Futures Commission
Hong Kong

19 May 2023

Personal information collection statement

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 Data[2] 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

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 provision[3] 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.

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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.

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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.

Retention

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.

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

[3] The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).

Enquiries

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
54th Floor, One Island East
18 Westlands Road
Quarry Bay
Hong Kong.

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

PART 1: VOTING, ACCEPTANCES AND CONCERT PARTY ISSUES

Definitions

Definition of "close relatives"

1. The term "close relatives" is defined under Note 8 to the definition of acting in concert and is principally relevant to Classes (2), (6) and (8) of the presumptions of acting in concert and Class (3) associate. "Close relatives" is also used in other parts of the Codes under: Note 1 to Rules 9.3 and 9.4, Note 6 to Rule 26.1, Rule 26.5 of the Code on Takeovers and Mergers (**Takeovers Code**) and Paragraph 2 of Schedule IX to the Codes.

2. The current definition of "close relatives" under the Codes is narrow and refers only to a person's spouse, de facto spouse, children, parents and siblings. In practice, the Executive has normally treated a person's grandparents, grandchildren, sibling's spouse, children of siblings, parents-in-law and spouse's siblings as persons presumed to be acting in concert. Therefore, we propose to codify our existing practice and expand the definition of "close relatives" to include such additional persons.

3. We recognise that the proposed expansion of the definition will also expand the scope of the waiver from a general offer obligation under Note 6 to Rule 26.1. We consider it fair that if such persons are acting in concert under the expanded definition of "close relatives", they should reciprocally be entitled to the benefits of a waiver under Note 6 to Rule 26.1.

4. We therefore propose deleting Note 8 to the definition of acting in concert and introduce a new definition of "close relatives" to the Codes as follows:

> "*Notes to the definition of acting in concert:*
>
> *…*
>
> *8.* ~~*Close relatives*~~ *Deleted.*
>
> ~~*For the purposes of classes (2), (6) and (8) "close relatives" shall mean a person's spouse, de facto spouse, children, parents and siblings."*~~
>
> New definition of close relatives:
>
> "**Close relatives**: A person's close relatives means:
>
> (1) the person's spouse or de facto spouse, parents, children, grandparents and grandchildren;
>
> (2) the person's siblings, their spouse or de facto spouse and their children; and
>
> (3) the parents and siblings of the person's spouse or de facto spouse.

Note to the definition of close relatives:

Reference to a child includes a person's natural child, adopted child and step-child."

5. The new definition of "close relatives" will result in a larger group of individuals presumed to be acting in concert with a person. Given that this is a codification of an existing practice, we expect this is unlikely to give rise to any immediate implication under the Codes.

6. We will continue to consider rebuttal applications rebutting concert party presumptions. In any rebuttal application, the burden of proof falls on the applicant. Submissions that parties are not in regular contact or have not seen each other for a period of time will unlikely, without other corroborative evidence (for example, litigation between family members evidencing a breakdown of relationship), be accepted by the Executive as grounds to rebut a presumption.

Question 1: Do you agree with the proposal to delete Note 8 and introduce a new definition of "close relatives"? Please give reasons.

Definition of "voting rights"

7. One of the core concepts of the Codes is the acquisition of control of a company. A person is deemed to have control if they hold 30% or more of the voting rights of a company. Voting rights is currently defined as "… voting rights *currently* exercisable at a general meeting of a company whether or not attributable to the share capital of the company" (emphasis added).

8. We have received enquiries from time to time on whether shares that are subject to voting restrictions and, hence their voting rights not *currently* exercisable, would be treated as voting rights for the purpose of the Codes. These restrictions could arise by agreements between parties, by operation of law and regulations or pursuant to a court order.

9. Voting restrictions, regardless of how they arise, are normally imposed on the holder of such voting rights and do not fundamentally amend the rights intrinsically attached to the shares themselves. Further, the voting right of a share is enshrined within a company's constitutional documents and the above-mentioned restrictions rarely (if ever) remove the voting rights attached to shares at a constitutional level. A narrow interpretation of voting rights as rights which are *currently* exercisable can also create undesirable situations where voting rights would disappear or re-appear due to the imposition or lifting of voting restrictions. Similarly, if a person acquires 30% of the voting rights of a company but is subject to an injunction on their ability to exercise such voting rights, the Executive will still consider that person to have triggered an obligation to make a mandatory general offer under Rule 26.1.

10. Accordingly, we propose to clarify the above by amending the definition of "voting rights":

> "**Voting rights**: Voting rights means all the voting rights ~~currently~~ exercisable at a general meeting of a company whether or not attributable to the share capital of the company.

Note to the definition of voting rights:

For the purposes of the Codes, voting rights that are subject to any restrictions to their exercise by agreement, by operation of law and regulations or pursuant to a court order will still be regarded as voting rights exercisable at a general meeting except for the voting rights attached to treasury shares (if any) which will not be treated as voting rights for the purpose of this definition."

Question 2: Do you agree with the proposed amendment to the definition of "voting rights"? Please give reasons.

Shareholders' approval and acceptance

Note to Rule 2.2(c) of the Takeovers Code

11. Under Rule 2.2(c), where a shareholders' meeting is held under the Rules Governing the Listing of Securities on the Stock Exchange (**Listing Rules**) to consider a delisting proposal as a result of an offer, the resolution must be subject to an offeror being entitled to exercise, and is exercising, compulsory acquisition rights.

12. For offeree companies incorporated in jurisdictions where compulsory acquisition is unavailable, the Executive will grant a waiver to Rule 2.2(c) if the three conditions under (i) to (iii) of the Note to Rule 2.2 are met. In particular, an offeror will be required, in addition to obtaining the requisite shareholders' approval, to receive valid acceptances of 90% of the disinterested shares. This condition is designed to bring such issuer at par to companies incorporated in other jurisdictions where compulsory acquisition is available, such as a Cayman Islands issuer, where Rule 2.11 requires an offeror and its concert parties to have acquired 90% of the disinterested shares prior to exercising compulsory acquisition rights.

13. Rule 2.11 expressly includes purchases made by an offeror and its concert parties in determining whether the threshold of acquiring 90% of the disinterested shares has been met. However, condition (iii) to the Note to Rule 2.2 is silent as to whether purchases will also be included when determining the equivalent threshold of acquiring 90% of the disinterested shares.

14. The Note to Rule 2.2 was added in July 2018 after our last review of the Codes to extend the protection under Rule 2.2 to minority shareholders of all companies irrespective of their place of incorporation where compulsory acquisition is or is not available and to create a level playing field for issuers incorporated in different jurisdictions. Therefore, as a matter of practice, the Executive has allowed purchases to be included in determining whether the threshold under condition (iii) to the Note to Rule 2.2 has been met.

15. Accordingly, we propose to make the following revision to condition (iii) to the Note to Rule 2.2 to align with Rule 2.11:

> "*(iii) the resolution to approve the delisting is subject to the offeror having received ~~valid~~ acceptances of the offer together with purchases (in each case of the disinterested shares) made by the offeror and persons acting in concert with it from the date of the announcement of*

a firm intention to make an offer amounting to 90% of the disinterested shares."

Question 3: Do you agree with the proposed revision to Note (iii) to Rule 2.2? Please give reasons.

Rule 2.11 of the Takeovers Code

16. Whether or not an acceptance condition is met is critical to any offer. As a matter of practice, the Executive has always included shares purchased by an offeror and its concert parties after the publication of a Rule 3.5 firm intention announcement, in addition to acceptances under an offer, towards the satisfaction of an acceptance condition in offers.

17. As discussed above, Rule 2.11 requires an offeror and its concert parties to have acquired 90% of the disinterested shares of an offeree company prior to the exercise of compulsory acquisition rights. Under the existing language of Rule 2.11, only purchases made by an offeror and its concert parties during the period of 4 months after the posting of the initial offer document, together with acceptances, would count towards the 90% threshold.

18. We consider it unnecessary to distinguish between an offer which does not involve a delisting (for example, a conditional voluntary general offer where an offeror does not intend to exercise compulsory acquisition rights) and an offer which involves a delisting (for example, a voluntary general offer seeking to privatise by way of compulsory acquisition) in deciding whether an acceptance condition has been met. We also consider the requirement of acquiring 90% of the disinterested shares under Rule 2.11 to be equivalent to an acceptance condition. For this purpose, the treatment of an acquisition pursuant to an acceptance of an offer or via an on-market acquisition should be the same.

19. Accordingly, we propose to amend Rule 2.11 as follows:

> "2.11 Exercise of rights of compulsory acquisition
>
> Except with the consent of the Executive, where any person seeks to acquire or privatise a company by means of an offer and the use of compulsory acquisition rights, such rights may only be exercised if, in addition to satisfying any requirements imposed by law, acceptances of the offer and purchases (in each case of the disinterested shares) made by the offeror and persons acting in concert with it during the period ~~of 4 months~~ from the date of the announcement of a firm intention to make an offer to the expiry of the 4-month period after posting the initial offer document total 90% of the disinterested shares."

Question 4: Do you agree with the proposed amendment to Rule 2.11? Please provide reasons.

Rules 2.2 and 2.10 of the Takeovers Code

20. Pursuant to Rule 2.10, a privatisation by way of a scheme of arrangement may only be implemented if the following requirements are met:

(a) the scheme is approved by at least 75% of the votes attached to the disinterested shares that are cast either in person or by proxy at a duly convened meeting of the holders of disinterested shares; and

(b) the number of votes cast against the resolution to approve the scheme at such meeting is not more than 10% of the votes attaching to all disinterested shares.

21. The Executive notes from recent judgments of the Hong Kong courts[4] that there are two schools of thought on Rule 2.10 with respect to the form of shareholders' meetings. Under the "non-prohibition view", an offeror and its concert parties will be allowed to vote at a shareholders' meeting held to consider the scheme of arrangement, however, their votes will not be counted for the purpose of satisfying Rule 2.10. In contrast, under the "prohibition view", the same group will not be allowed to vote at all. Both approaches share the same fundamental characteristic in that approval from truly independent, or disinterested, shareholders is relevant in approving a scheme of arrangement pursuant to Rule 2.10.

22. Prior to these recent court judgments, the Executive had always taken the view that the "non-prohibition view" was the correct approach in interpreting Rule 2.10. The rationale underlying this approach is the need for flexibility in order for the Codes to operate alongside the company law of different jurisdictions.

23. Pursuant to Section 4.1 of the Introduction to the Codes, the Codes apply to public companies in Hong Kong which are affected by takeovers, mergers and share buy-backs. The Codes are non-statutory in nature and designed to work alongside, and not to override, company legislation from different jurisdictions. Further, given the non-statutory nature of the Codes, the Codes cannot override specific legislative requirements (whether under Hong Kong statutes or in other jurisdictions). In fact, most "public companies" under Section 4.1 of the Introduction to the Codes are not incorporated in Hong Kong.

24. Therefore, the "non-prohibition view" provides the Executive with the flexibility needed in order to achieve the underlying purpose of Rule 2.10. That is, in calculating whether the requisite thresholds under Rule 2.10(a) and (b) are met, only votes cast by holders of "disinterested shares" should be counted. For example, if the law governing a scheme (or similar statutory reorganisation) of a company mandates that no shareholder (even if such shareholder is the offeror in a proposed privatisation) should be deprived of the opportunity to vote on such a scheme, Rule 2.10 is designed to work alongside such law and not override it. In practice, this means that the relevant offeror either votes or voluntarily abstains from voting at the relevant shareholders' meeting. Even if the relevant offeror had voted, Rule 2.10 would operate to ensure that, when calculating the requisite thresholds under Rule 2.10, those votes cast by the offeror would not be included for the sole purpose of determining whether the requirements under Rule 2.10 are satisfied.

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[4] See Re Cosmos Machinery Enterprises Ltd (HCMP 601/2021, [2021] HKCFI 2088) and Re Chong Hing Bank Limited (HCMP 968/2021, [2021] HKCFI 3091).

25. The different interpretations of Rule 2.10 among the Hong Kong courts may be due to the current language of Rule 2.10 as it may appear to prescribe the form of the meeting held to approve a scheme. The form of the meeting should, in fact, be governed by a company's constitutional documents and the company law regime of its place of incorporation. Although not considered by the recent judgments of the Hong Kong courts, the same issue exists in Rule 2.2 which similarly refers to approval by disinterested shareholders at a meeting. To remove any ambiguity in the interpretation of Rule 2.10 and Rule 2.2, we propose to make the following revisions to Rule 2.10 (a) and Rule 2.2(a):

Rule 2.10:

"(a) the scheme or the capital reorganisation is approved by at least 75% of the votes attaching to the disinterested shares that are cast either in person or by proxy at a duly convened meeting of ~~the holders of the disinterested shares~~ shareholders; and…"

Rule 2.2:

"(a) approval by at least 75% of the votes attaching to the disinterested shares that are cast either in person or by proxy at a duly convened meeting of ~~the holders of the disinterested shares~~ shareholders;…"

26. We also propose adding a new Note 8 to Rule 2 as follows:

"*Notes to Rule 2*:

…

8. Shareholders' meetings held for the purpose of Rules 2.2 and 2.10

Reference to "duly convened meeting of shareholders" under Rules 2.2 and 2.10 refers to shareholders' meetings which are duly convened in accordance with an offeree company's constitutional documents and the company law of its place of incorporation. Offeree companies and their advisers are encouraged to seek legal advice and, where applicable, guidance and directions from the relevant courts in respect of the meetings held for the purpose of considering a scheme of arrangement or a capital reorganisation."

Question 5: Do you agree with the proposed amendments to Rules 2.10(a) and 2.2(a) and the addition of a new note 8 to Rule 2? Please provide reasons.

Irrevocable commitments

27. It is not uncommon for an offeror to obtain irrevocable commitments from shareholders with regards to acceptance (or non-acceptance) of an offer or on voting on resolutions relating to an offer. We have no objection to the gathering of irrevocable commitments so long as the principles under Note 4 to Rules 3.1, 3.2 and 3.3 and Practice Note 12 (Gathering of irrevocable commitments) are followed. We believe deal certainty is beneficial not only to an offeror but also to minority shareholders.

28. The Executive has received market feedback and enquiries from time to time in relation to the gathering of irrevocable commitments and considers now to be an appropriate time for review. Our policy on the gathering of irrevocable undertakings was last reviewed in 2017 and we wish to further streamline the process for offerors to obtain irrevocable commitments, taking into account the increased sophistication of the market in Codes transactions and the common use of irrevocable commitments.

29. We propose revising the existing framework on the gathering of irrevocable commitments and adopt the following:

(a) Consultation with the Executive is not required where an offeror approaches a shareholder with a material interest in an offeree company. A shareholder has a material interest when he and his concert parties control(s) directly or indirectly 5% or more of the voting rights of an offeree company.

(b) The Executive must be consulted where an offeror intends to approach shareholders other than those with a material interest in an offeree company.

(c) The maximum number of shareholders an offeror can approach in an offer is six. This number includes approaches made to both: (a) shareholders who have a material interest; and (b) shareholders who do not have a material interest.

30. The above framework does not negate an offeror's (and its advisers') overarching obligation to make appropriate arrangements and take utmost care to minimise the possibility of a leak prior to a firm intention announcement by the offeror.

31. We therefore propose amending Note 4 to Rules 3.1, 3.2 and 3.3 as follows:

"*4. Gathering of irrevocable commitments*

An offeror may approach a very restricted number of ~~sophisticated investors who have a controlling shareholding~~ shareholders to obtain ~~an~~ irrevocable commitments in an offer. An offeror does not have to consult the Executive in advance before approaching a shareholder with a material interest in an offeree company. In all other cases the Executive must be consulted before any approach is made to a shareholder to obtain an irrevocable commitment in connection with an offer. In appropriate circumstances, the Executive may permit particular shareholders to be called and informed of details of a proposed offer which has not been publicly announced. The Executive will wish to be satisfied that the proposed arrangements will provide adequate information as to the nature of the commitment sought; and a realistic opportunity to consider whether or not that commitment should be given and to obtain independent advice if required. The financial adviser concerned will be responsible for ensuring compliance with all relevant legislation and regulations. In all cases attention is drawn to General Principles 3 and 5.

For the purpose of this note, a shareholder has a material interest in an offeree company if he and his concert parties control(s) directly or indirectly 5% or more of the voting rights of an offeree company."

32. We will make consequential amendments to Practice Note 12 to reflect our revised policy.

Question 6: Do you agree with the proposed amendments to Note 4 to Rules 3.1, 3.2 and 3.3? Please provide reasons.

PART 2: THE CHAIN PRINCIPLE

Background

33. The chain principle regulates the circumstances in which a mandatory general offer obligation may arise in respect of a second company where, as a result of acquiring statutory control of a company (**the first company**), a person or group of persons may in turn obtain or consolidate control over a second company because the first company holds 30% or more of the voting rights of the second company. Note 8 to Rule 26.1 sets out the factors that the Executive will consider in deciding whether such an offer is required.

34. Note 8 to Rule 26.1 states:

> "*Occasionally, a person or group of persons acting in concert acquiring statutory control of a company (which need not be a company to which the Takeovers Code applies) will thereby acquire or consolidate control, as defined in the Codes, of a second company because the first company itself holds, either directly or indirectly through intermediate companies, a controlling interest in the second company, or holds voting rights which, when aggregated with those already held by the person or group, secure or consolidate control of the second company. The Executive will not normally require an offer to be made under this Rule 26 in these circumstances unless either:–*
>
> *(a) the holding in the second company is significant in relation to the first company. In assessing this, the Executive will take into account a number of factors including, as appropriate, the assets and profits of the respective companies. Relative values of 60% or more will normally be regarded as significant; or*
>
> *(b) one of the main purposes of acquiring control of the first company was to secure control of the second company.*
>
> *The Executive should be consulted in all cases which may come within the scope of this Note to establish whether, in the circumstances, any obligation arises under this Rule 26.*
>
> *"Statutory control" in this Note means the degree of control which a company has over a subsidiary.*"

35. In assessing whether a "chain principle offer" is required, Note 8 to Rule 26.1 sets out two tests to be considered:

(a) **Substantiality Test** – The assets and profits of the respective companies would be compared in deciding whether the holding in the second company is significant in relation to the first company, and a relative value of 60% or more will normally be regarded as significant.

(b) **Purpose Test** – Whether one of the main purposes of acquiring the first company was to secure control of the second company.

If either the Substantiality Test or the Purpose Test is satisfied, the Executive will require a "chain principle offer" to be made by the relevant offeror.

The Substantiality Test

36. We note that practitioners from time to time face difficulties in the application of the Substantiality Test, particularly with regard to the following issues:

    (a) The appropriate assets and profits line items in a financial statement to be used for the Substantiality Test. In other words, whether net assets, total assets, gross profit or net profit should be used for comparison of relative values, and how are they appropriate for companies of different business natures.

    (b) The appropriate adjustments or modifications when either the first or second company has net liabilities and/or net losses.

    (c) The appropriate financial "look-back" period for the relevant companies.

    We will discuss each of these in turn.

Assets and profits

37. Note 8 to Rule 26.1 sets out clearly that when making an assessment under the Substantiality Test, assets and profits of the respective companies would be taken into account. However, it has not been clear which specific line items of similar nature, e.g. total assets or net assets, gross profit or net profits, should be used.

38. It has been our practice to take the comparison of all of these items into account when assessing the Substantiality Test and that no single figure would in itself be determinative. This way the inherent limitations of comparing companies of different business natures, such as one company being asset-heavy and the other asset-light, can be mitigated. Whenever an anomalous result is obtained, we would consider each case based on its own facts and circumstances to determine how the results of the Substantiality Test should be interpreted. We consider this approach to be appropriate and intend to continue with such practice.

39. In situations where both the first company and the second company are listed, as an additional analysis, we would almost always request a comparison of the market capitalisation of both companies when assessing the Substantiality Test. Market capitalisation is a widely accepted indicator of the relative size of a company, setting an objective benchmark for comparison.

40. There have been suggestions that the "Five Tests" approach used for Notifiable Transactions under the Listing Rules could be adopted for determining the Substantiality Test. One advantage is that this would align the two sets of regulatory rules to create a common basis for determining relative sizes. It would also provide a clear bright line test for the market to follow and ensure consistency.

41. While we agree that tests of a prescriptive nature could assist the market in their compliance with requirements under the Codes, this could also restrict the Executive's flexibility in applying relevant rules in different circumstances. Therefore,

the Executive does not consider that bright line approach of the "Five Tests" to be appropriate for the purposes of the chain principle.

42. Accordingly, we propose explicitly stating market capitalisation as one of the parameters for comparison when determining the Substantiality Test and will keep the existing language relating to assets and profits under the Substantiality Test. The existing flexible approach adopted by the Executive with respect to the Substantiality Test will continue.

Net losses and net liabilities

43. When either the first company or the second company is in a net liability position or has made a net loss, or breaks even, arithmetically a negative or infinite figure would be obtained when calculating the Substantiality Test.

44. As an illustration, suppose the second company is a non-wholly-owned subsidiary of the first company and the first company also holds interests in other subsidiaries. The first company broke even on a consolidated basis, whereas the second company made a nominal net profit. In this situation, the relevant ratio from comparing net profit would be "infinity" arithmetically, indicating that the second company is hugely significant for the first company. A similar argument can be made if the first company has made a loss on a consolidated basis as the resultant ratio would be a negative figure. In this scenario, we would also look into the assets ratios before reaching a view on whether a chain principle offer would be required.

45. Currently, we will not outright require a chain principle offer to be made if a single result obtained is higher than 60%, but will instead look into all the facts and circumstances of the case in order to make a determination. For example, whether a huge profit made by one subsidiary of the first company has been offset by a huge loss of another of its subsidiary, both of which are larger than the second company. We have not adopted any bright line or one-size-fits-all approach for this, and appreciate that this may create a certain level of uncertainty in unusual cases. This reiterates the important practice of consulting the Executive when implementing transactions under the Codes.

46. Accordingly, we will keep the Executive's existing flexible approach with respect to the Substantiality Test and will not add further language to deal with situations involving companies with net losses or net liabilities.

"Look-back" periods

47. Note 8 to Rule 26.1 does not specify the "look-back" periods of financial information for the purpose of determining the Substantiality Test. Typically we would accept calculations based on the latest set of audited financial statements, and request supplemental analysis using earlier financial information if there had been extraordinary items or events. When a party submits that the most recent set of audited financial statements produces an anomalous result for the purposes of the Substantiality Test, we will normally request further calculations by reference to audited financial information of the companies in question for at least the three most recent financial periods. Such further information will enable the Executive to make a more informed decision under the Substantiality Test. We intend to codify this practice into Note 8 to Rule 26.1.

The Purpose Test

48. Over the years, the application of the Purpose Test has been relatively straightforward and had not posed much difficulty for the Executive. It is a useful anti-avoidance test that protects the interests of the shareholders of a much smaller second company when the offeror sets out to purchase interest in the first company with an ultimate goal of securing control of the second company in mind.

49. We do not propose to make any amendments to the Purpose Test.

The UK Code

50. The equivalent provisions to the chain principle under The Takeover Code in the United Kingdom (**UK Code**) have been changed a number of times over the years. Most recently in June 2022, the relative value under the Substantiality Test under the UK Code has been reduced from 50% to 30%. This reduction was made largely to compensate for the removal of the Purpose Test for the chain principle under the UK Code.

51. The Purpose Test under the UK Code was removed due to the perceived uncertainty in the application of the Purpose Test in the UK. The Purpose Test was perceived as too subjective in its application and there was a preference to move towards a single and objective Substantiality Test.

52. It is important to note that the operative language of the previous Purpose Test under the UK Code differed from Note 8 to Rule 26.1 of the Takeovers Code. The Purpose Test under the UK Code was met if "*securing control of the second company might reasonably be considered to be a significant purpose of acquiring control of the first company*" while the Purpose Test in Hong Kong was met if "*one of the main purposes of acquiring control of the first company was to secure control of the second company*". The language of the Hong Kong "Purpose Test" implied a higher threshold in that the purpose of securing control of the second company must be one (but does not need to be the sole) of the main purposes of acquiring control of the first company. However, the UK Purpose Test merely required securing control of the second company to may be reasonably considered to be a significant purpose of acquiring control of the first company. This could potentially lead to difficulties in application where the purpose of acquiring control of the second company may not be a main purpose, it nonetheless has a significant secondary consequence for the offeror and cannot reasonably be ruled out to be a significant objective of the transaction.

53. Over the years, the takeovers markets in Hong Kong and the United Kingdom have diverged and developed in different ways. Therefore, what may be appropriate in the United Kingdom may not necessarily be appropriate for Hong Kong. In relation to the chain principle, we do not consider a need to reduce the relative value for the Substantiality Test in Hong Kong, especially since the Executive considers the current Purpose Test to be an important anti-avoidance provision under the Codes. Given the different operative language of the Purpose Test under the Codes and the UK Code, the Executive has not experienced the same difficulties in its application as that experienced in the United Kingdom. Accordingly, we are of the view that there is no need for the chain principle in Hong Kong to follow the approach adopted under the UK Code.

Proposals

54. In the light of the above, we propose the following:

(a) To add market capitalisation as one of the parameters for comparison when determining the Substantiality Test and amend Note 8(a) to Rule 26.1.

(b) To add further language to codify the Executive's practice to "look-back" at least the three most recent financial periods when calculations of the Substantiality Test produce an anomalous result; and

(c) To update Practice Note 19 to provide further guidance on the Executive's approach to the Substantiality Test as set out in this section.

55. The revised Note 8 to Rule 26.1 will be as follows:

"*8. The chain principle*

Occasionally, a person or group of persons acting in concert acquiring statutory control of a company (which need not be a company to which the Takeovers Code applies) will thereby acquire or consolidate control, as defined in the Codes, of a second company because the first company itself holds, either directly or indirectly through intermediate companies, a controlling interest in the second company, or holds voting rights which, when aggregated with those already held by the person or group, secure or consolidate control of the second company. The Executive will not normally require an offer to be made under this Rule 26 in these circumstances unless either:–

(a) the holding in the second company is significant in relation to the first company. In assessing this, the Executive will take into account a number of factors including, as appropriate, the assets, ~~and~~ profits and market capitalisation of the respective companies. Relative values of 60% or more will normally be regarded as significant; or

(b) one of the main purposes of acquiring control of the first company was to secure control of the second company.

The Executive should be consulted in all cases which may come within the scope of this Note to establish whether, in the circumstances, any obligation arises under this Rule 26.

Where any calculation of the relative values of assets and profits under paragraph (a) may produce an anomalous result or is otherwise inappropriate, the relevant parties should provide further calculations by reference to at least the three most recent audited financial periods for the relevant companies, and where applicable, alternative tests, together with justification.

"Statutory control" in this Note means the degree of control which a company has over a subsidiary."

Question 7: Do you agree with the proposed amendments to Note 8 to Rule 26.1? Please provide reasons.

PART 3: OFFER PERIOD AND TIMETABLE

Offer periods and offer timetable

Definition of "offer period"

56. Many requirements under the Codes start to apply as soon as an offer period commences. In particular, offeree companies are subject to additional compliance requirements during an offer period which may be burdensome or restrictive. Therefore, it is often in the best interest of an offeree company and its shareholders that the relevant offer period is kept as short as possible, so that the offeree company can return to its normal business operations once the offer period ends.

57. We have noted a number of occasions where an offeree company finds itself being subject to a prolonged offer period while having no control over the offer process. This creates unintended disruptions to its normal business operations. These situations frequently arise for offeree companies that are in financial difficulties or where the controlling stake of the company is under receivership, with no prospects of a change of control or offers being made in the foreseeable term. In such cases, compliance with the requirements under the Codes (e.g. publication of monthly updates, Rule 4 and Rule 7) by these companies may become unnecessarily burdensome. The market may also be misled to believe that there is the prospect of an offer because the offeree company continues to be subject to an offer period.

58. To address this issue, the Executive issued Practice Note 24 in November 2022 to provide guidance to the market on when an offer period should commence in the event receivers or liquidators are appointed.

59. Once an offer period has commenced, it will not end until one of the situations under the current definition of "offer period" is met. Without clear indication or action by an offeror or potential offeror, the Codes do not give any other party, including the Executive, the express power to end an offer period. The offeree company would therefore be subject to an unnecessarily prolonged offer period if the offeror or potential offeror is not proactive in relation to an offer or ending an offer. This is particularly problematic when third parties such as receivers or liquidators are involved.

60. Given the above, we propose to give the Executive the explicit power to end an offer period. While the Executive has the power under Section 2.1 of the Introduction to the Codes to modify or relax the Rules under the Codes in order to achieve their underlying purposes, we consider it appropriate that the Executive's power to end an offer period should be explicitly stated. We envisage that the Executive will only exercise this power in limited circumstances. When doing so, an Executive statement will be published on the SFC's website under the section headed "*Executive decisions and statements*", while the offer period table will be updated to set out the reasons for the close of the relevant offer period.

61. Accordingly, we propose the following amendments to the definition of "offer period":

> "**Offer period:** Offer period means the period:–
>
> **from:** the time when an announcement is made of a proposed or possible offer (with or without terms)

until: whichever is the latest of:–

(1) the date when the offer closes for acceptances;

(2) the date when the offer lapses;

(3) the time when a possible offeror announces that the possible offer will not proceed;

(4) the date when an announcement is made of the withdrawal of a proposed offer; and

(5) where the offer contains a possibility to elect for alternative forms of consideration, the latest date for making such election~~.~~, or

if earlier, such other date determined by the Executive, having considered all relevant circumstances, on which the relevant offer period shall end.

Notes to the definition of offer period:

1. In the case of a scheme of arrangement, the offer will normally be considered to be unconditional in all respects only when the scheme becomes effective.

2. References to the offer period throughout the Codes are to the time during which the offeree company is in an offer period, irrespective of whether a particular offeror or potential offeror was contemplating an offer when the offer period commenced.

3. Where there are two or more offers or possible offers outstanding the closure of an offer period in respect of one offer or possible offer does not affect the termination of any other offer or possible offer."

Question 8: Do you agree with the proposed amendments to the definition of "offer period"? Please provide reasons.

Last possible day for Day 60 in privatisations and take-private transactions

62. Rule 15.5(ii) allows the extension of the last day on which an offer must be declared unconditional as to acceptances beyond the 60th day after the posting of the composite document (Day 60) if the offeree board consents.

63. In privatisations by a board-controlling controlling shareholder, the operation of the rule would effectively allow the offeror to single-handedly decide whether and how long Day 60 can be extended if the offer has not been declared unconditional as to acceptances by the original deadline. This would in turn mean those shareholders who have accepted the offer early (that is, before the acceptance condition is met) would be subject to an extended lock-up of their shares, without certainty when the offer would become unconditional, or when the shares tendered may be returned to them in an unsuccessful offer (unless and until they exercise withdrawal rights under Rule 17, when available to them).

64. In recent years, the Executive has on a few occasions been requested to give its consent to extend Day 60. With the protection of accepting shareholders in mind, the Executive has given such consent provided that any extension of Day 60 would not exceed four months after the despatch of the offer document, which is in line with the spirit of Rule 2.11.

65. We believe this is a proportionate approach in balancing an offeror's desire to extend an offer period to meet the acceptance condition and the interest of shareholders of an offeree company. This will also ensure an offeree company will not be subject to an unnecessarily prolonged offer period.

66. As such, we propose to codify this practice and amend Rule 15.5 as follows:

> "15.5 Final day rule
>
> Except with the consent of the Executive, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after 7.00 p.m. on the 60th day after the ~~day~~ date of the initial offer document ~~was posted~~. The Executive's consent will normally be granted only:–
>
> (i) in a competitive situation (see Note 2 below);
>
> (ii) if the board of the offeree company consents to an extension;
>
> (iii) as provided for in Rule 15.4; or
>
> (iv) if the offeror's receiving agent requests an extension for the purpose of complying with Note 2 to Rule 30.2.
>
> In the event of an extension with the consent of the Executive in circumstances other than those set out in paragraphs (i) to (iii) above, acceptances or purchases in respect of which relevant documents are received after 4.00 p.m. on the relevant closing date may only be taken into account with the consent of the Executive, which will only be given in exceptional circumstances. In any event, "Day 60" shall not be extended beyond a date that is 4 months after the date of the offer document."

Question 9: Do you agree with the proposed amendments to Rule 15.5? Please provide reasons.

Put up or shut up

67. Over the years, the Executive has, upon application by an offeree company, issued "Put up or shut up" (**PUSU**) orders. A PUSU order essentially requires a potential offeror to announce its firm intention to make an offer within a set time period (put up), or to announce that it will no longer proceed with an offer (shut up). The purpose of a PUSU order is to prevent the offeree company from being under siege for an indefinite period, which may have a negative impact on the offeree company's normal business operations. The framework will effectively require an offeror to put out his best offer as soon as possible, or walk away from the offer.

68. Currently, there is no express provision under the Codes for the Executive to issue a PUSU order. We have historically relied on the spirit of Rule 31.1(b) and Note 2 to Rules 31.1 and 31.2 as a basis of issuing a PUSU order. We believe that it would be beneficial to the market to codify the existing practice with respect to PUSU orders as well as to expressly empower the Executive to impose PUSU orders in exceptional circumstances.

69. In deciding whether or not to impose a PUSU order, the Executive will consider factors including: (1) the current duration of the offer period; (2) the reason(s) for the delay in issuing a firm intention announcement by the offeror; (3) the proposed offer timetable (if any); (4) any adverse effects that the offer period has had on the offeree company; and (5) the conduct of the parties to the offer.

70. Once the new Rule 3.9 becomes effective, any failure to comply with a PUSU order will amount to a clear breach of the Codes, which may lead to disciplinary action being taken against the relevant parties.

71. When a PUSU order is issued by the Executive, in addition to any announcements made by the offeree company or the offeror, the Executive will publish the statement on the SFC's website, setting out the deadline by which the offeror must make its intention known.

72. To give effect to the above, we propose to add the following new Rule 3.9:

> "3.9 At any time during an offer period following the announcement of a possible offer, but before the announcement of a firm intention to make an offer, the offeree company may request the Executive to impose a time limit for the potential offeror to clarify its intention with regard to the offeree company. The Executive may, in exceptional circumstances, impose such a time limit on the potential offeror if it considers appropriate to do so, irrespective of whether a request has been made by the offeree company. If a time limit for clarification is imposed by the Executive, the potential offeror must, before the expiry of the time limit, announce either a firm intention to make an offer for the offeree company in accordance with Rule 3.5, or that it does not intend to make an offer for the offeree company, in which case the announcement will be treated as a statement to which Rule 31.1(c) applies.
>
> *Note to Rule 3.9:*
>
> *The Executive will take all relevant factors into account in deciding whether and how long a time limit should be imposed on the potential offeror to clarify its intention under this Rule 3.9, including (without limitation):-*
>
> *(a) the current duration of the offer period;*
>
> *(b) the reason(s) for the offeror's delay in issuing a firm intention announcement;*
>
> *(c) the proposed offer timetable (if any);*

(d) any adverse effects that the offer period has had on the offeree company; and

(e) the conduct of the parties to the offer."

73. The new Rule 3.9 would be an applicable rule under the Takeovers Code during share buy-back, and therefore will be included in the list set out in Rule 5.1(c) of the Code on Share Buy-backs (**Share Buy-backs Code**).

Question 10: Do you agree with the addition of the new Rule 3.9? Please provide reasons.

Settlement of consideration and return of share certificates

74. Under Rule 20.1, the settlement of consideration for an offer must be made within seven business days following the later of: (i) the date the offer becomes, or is declared, unconditional; and (ii) the date of receipt of a duly completed acceptance. On the other hand, Rule 20.2 only requires the return of share certificates in a lapsed offer within 10 days of the withdrawal or lapse of an offer. Rule 17 is silent on the timing on the return of shares certificates upon a withdrawal of acceptance of offer, and there are no rules that set out the timing expected for new share certificates that are required to be issued to accepting shareholders following a successful offer (for example, if the original share certificate included shares that were not to be tendered for acceptance and must be returned to the shareholder).

75. We believe the timing requirement for consideration settlement and return of share certificates should be similarly aligned. Going forward, there will be further changes to the securities trading settlement system once Hong Kong moves to implement an uncertificated securities market regime, and we will monitor and make appropriate adjustments to the requirements under the Codes.

76. Accordingly, we propose to clarify that, in successful offers, share certificates for untaken[5] or untendered[6] shares in an offer (including partial offers) or share buy-back by way of general offer must be posted to or be made ready for collection by the accepting shareholder at the same time as the payment of consideration, and in any event no later than 7 business days after the later of: (i) the date the offer becomes, or is declared, unconditional; and (ii) the date of receipt of a duly completed acceptance. The relevant deadline for partial offers would be 7 business days after the close of the partial offer.

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[5] Untaken shares refer to shares that have been tendered for acceptance by a shareholder but not taken up by the offeror. For example, in a partial offer a shareholder may tender all of his shares for acceptance, but depending on the total number of shares tendered for acceptance, a portion of his shares may not be taken up by the offeror and must be returned to the shareholder.

[6] Untendered shares refer to situations where a shareholder has tendered for acceptance only a portion of his shares represented in a share certificate. The shares that have not been tendered for acceptance represented in that share certificate are untendered shares which must be returned to the shareholder.

77. For unsuccessful offers, share certificates must be returned to accepting shareholders no later than 7 business days after the withdrawal or lapse of offer. The same timing should apply when an accepting shareholder withdraws his acceptance after 21 days from the first closing date of the offer, if the offer has not by then become unconditional as to acceptances.

78. Accordingly, we propose to amend Rules 17 and 20.2 as follows:

> "**17. Acceptor's right to withdraw**
>
> An acceptor shall be entitled to withdraw his acceptance after 21 days from the first closing date of the offer, if the offer has not by then become unconditional as to acceptances. This entitlement to withdraw shall be exercisable until such time as the offer becomes or is declared unconditional as to acceptances~~:~~. ~~however~~ However, on the 60th day (or any date beyond which the offeror has stated that its offer will not be extended) the final time for the withdrawal must coincide with the final time for the lodgement of acceptances set out in Rule 15.5, and this time must not be later than 4.00 p.m.
>
> The offeror must, as soon as possible but in any event no later than 7 business days after receipt of the notice of withdrawal, despatch the share certificates lodged with acceptance forms to, or make such share certificates available for collection by, those offeree company shareholders who have exercised their right to withdraw."
>
> **"20. Settlement of consideration and return of share certificates**
>
> …
>
> 20.2 ~~Withdrawn or lapsed offers~~ Share certificates
>
> (a) Withdrawn or lapsed offers
>
> If an offer is withdrawn or lapses, the offeror must, as soon as possible but in any event ~~within 10~~ no later than 7 business days ~~thereof~~ after the offer is withdrawn or lapses, post the share certificates lodged with acceptance forms to, or make such share certificates available for collection by, those offeree company shareholders who accepted the offer.
>
> (b) Close of offer
>
> The offeror must, as soon as possible but in any event no later than when the consideration is paid for by the offeror, despatch the share certificates representing the untaken or untendered shares to, or make such share certificates available for collection by, those offeree shareholders who accepted the offer."

Question 11: Do you agree with the proposed amendments to Rules 17 and 20.2? Please provide reasons.

Other amendments

Timing requirements

79. We have taken the opportunity to review all timing requirements under the Codes, and noted that different variations have been used throughout the Codes. For example, Rule 8.2 uses "*within 21 days of the date of the announcement*", whereas Rule 20.1 uses "*within 7 business days following the later of …*". At times this may create confusion as to which day should be counted as day 1 for the purpose of that rule, i.e. whether the counting should start from the day the event occurred, or the day after the event.

80. In the past, the date of an offer document is fixed when all information is confirmed and ready for bulk printing. Typically, it would take another 3 days for bulk printing before despatch to shareholders. Therefore, despatch usually takes place 2 to 3 days after the date of an offer document. This is evident in the current wording of Rule 8.2 in that "*[t]he offer document, which must not be dated more than 3 days prior to despatch…*".

81. Over time and with technological advancement, this practice has changed. The latest practice is that the offer document will be dated the same day as the despatch date, with the inclusion of a latest practicable date arrangement to ascertain certain information to be included in the offer document.

82. Except for some specified matters (such as the latest practicable date for an offer document as mentioned above), we commonly exclude the day of the event from the counting. To clarify our position, we propose to make housekeeping amendments (where required) to provisions where time periods are relevant. The changes are extracted in **Appendix 2**. It should be noted that some corresponding translation changes are not necessary for the Chinese version of the Codes.

83. Another related timing issue relates to Rule 7 which specifies the earliest time that directors of offeree company could resign. There had been some confusion in the market as to the exact permitted time as to when directors' resignations may take effect. In general, the existing directors of an offeree company should take responsibility under the Codes, including all offer-related documents, until after publication of the first closing announcement or the announcement in which the offer has become or declared unconditional, whichever is later. Similarly, for whitewash transactions, the existing directors must take responsibility of the announcement relating to the results of the relevant shareholders' meeting before their resignations may take effect. Accordingly, we propose to clarify Rule 7 as follows:-

> "**7. Resignation of directors of offeree company**
>
> Once a bona fide offer has been communicated to the board of the offeree company or the board of the offeree company has reason to believe that a bona fide offer is imminent, except with the consent of the Executive, the ~~directors~~ resignation of any directors of an offeree company should not ~~resign~~ take effect until after the publication of the closing announcement on the first closing date of the offer, or the ~~date when~~ publication of the announcement that the offer ~~becomes~~ has become or ~~is~~ been declared unconditional, ~~or shareholders have voted on~~ whichever is later. In the case of a transaction involving a

whitewash waiver, the resignation of any director of an offeree company should not take effect until after the publication of the results announcement relating to the shareholders' meeting to approve the waiver ~~of a general offer obligation~~ under Note 1 on dispensations from Rule 26~~, whichever is the later~~."

Question 12: Do you agree with the proposed amendments for timing requirements set out in Appendix 2 and the amendments to Rule 7? Please provide reasons.

Rule 15.7 of the Takeovers Code

84. Rule 15.7 provides that all conditions must be fulfilled or the offer must lapse within 21 days of the later of the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, unless the Executive consents otherwise.

85. In the context of a privatisation by way of a scheme of arrangement, this would mean that the time-period between the date of the court meeting (akin to the date when an offer is unconditional as to acceptances) and the effective date of the scheme should not exceed 21 days except with the Executive's consent.

86. Over the years, the Executive has granted non-fee attracting technical waivers to privatisation cases involving schemes when this timing cannot be met due to the court's timetable, which is beyond the control of the offeree company.

87. We propose to add a note to Rule 15.7 to the effect that no consent from the Executive will be required in cases where the time delay between the court meeting and the effective date of a scheme is due to the court's timetable. In other words, applications for consent will no longer be required. The amendment will also streamline the vetting and approval process for a privatisation by way of a scheme of arrangement.

"*Note to Rule 15.7:*

Schemes of arrangement

In cases involving schemes of arrangement, no consent from the Executive is required if the timing cannot be met due to the Court's timetable which is beyond the control of the offeror."

Question 13: Do you agree with the proposed introduction of a new Note to Rule 15.7? Please provide reasons.

PART 4: OFFER REQUIREMENTS

Disclosure of offer price in talks announcement

88. In Issue 37 (June 2016) of the Takeovers Bulletin, the Executive advised parties to maintain confidentiality and take all necessary steps to ensure there is no leakage of information prior to the announcement of a firm intention to make an offer. Once the board of an offeree company has been approached or informed of a possible offer, it is vital that confidentiality is maintained. As confidentiality is preserved, there is no need for the offeree company to issue any "talks announcement" under Rule 3.7. The Executive has always taken a strict approach on the issue of "talks announcement". The reason for this strict approach is to prevent the use of a talks announcement to condition the market as well as to minimise the possibility of the trading price of the offeree company shares being affected by the announcement of incomplete negotiations, which may or may not materialise into an offer.

89. In the event that the obligation to make a talks announcement arises under Rule 3.7, the announcement is expected to be relatively short and disclose no more than the fact that talks are taking place.

90. This message was reiterated and elaborated on in Issues 40 (March 2017) and 53 (June 2020) of the Takeovers Bulletin. In cases where the offeree company board 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.

91. In recent years, due to overseas regulatory requirements, certain overseas listed offerors or dual-listed offeree companies are required to disclose the offer price before any firm intention announcement can be made. In practice, we have required the disclosure of such offer price (whether indicative or otherwise) be accompanied by a statement that the price disclosed would form the floor price for any offer subsequently made. In general, the market has followed this approach with little difficulty. This approach is also consistent with General Principles 5 and 6 and the spirit of Rule 18.

92. Some market practitioners have contended that the Executive's current approach may be too restrictive. It has been argued that the parties should be given the flexibility to disclose a price in a Rule 3.7 announcement and there could be situations where this would be desirable, for example where there was a market rumour that an offer would be made at a much higher price than the price being negotiated by the parties. An announcement in this context would correct any misconception in the market and prevent trading under a false market. Further, any potential market abuses could be remedied by the existing offence against the disclosure of false and misleading information under the Securities and Future Ordinance.

93. We wish to clarify that notwithstanding the Executive's approach to the disclosure of an offer price in a Rule 3.7 announcement, we have been flexible in our supervision having regard to the specific circumstances of the case. There had been recent cases where we allowed the offeror to announce the intended offer price in view of the significant increase in the offeree company's share price to mitigate possible false market concerns due to market rumours.

94. Some practitioners also questioned the Executive's rationale in requiring the indicative offer price to form the floor price once it is announced. They queried whether the interest of shareholders would be harmed instead if an offer was withdrawn altogether as a result of the offeror not being allowed to make any lower adjustment to the offer price. However, we do not consider this argument to be convincing given that the potential offeror had put itself into such position in the first place by voluntarily disclosing an indicative offer price (and the market reacting to such disclosure). An announcement under Rule 3.7 containing an offer price (whether indicative or otherwise) should not be used as a tool to "test the market" prior to an announcement of a firm intention to make an offer.

95. We note from Rule 2.5(a) of the UK Code, if a potential offeror makes any statement in relation to the terms on which an offer might be made for the offeree company prior a firm intention announcement being made, if the statement is not withdrawn immediately if incorrect, the potential offeror will be bound by the statement if an offer is subsequently made. The potential offeror would not be bound if the right not to be so bound in certain circumstances was specifically reserved at the time the statement was made, and such circumstances have arisen or there are wholly exceptional circumstances. More specifically, if the statement made relates to the potential offer price, any subsequent offer will be required to be made on the same or better terms. The position is therefore similar to the Executive's current approach in Hong Kong.

96. As the above has demonstrated, the issue regarding disclosure of an offer price (whether indicative or otherwise) prior to an announcement of a firm intention to make an offer requires a balancing between two competing interests. The first being the flexibility for offerors to reduce its offer price after an offer price (whether indicative or otherwise) has been disclosed. The second being the need to maintain market integrity and minimise potential abuse by offerors attempting to condition or influence the market via disclosures relating to an indicative offer price. Having considered the above, we believe our current approach is appropriate. We therefore propose to codify this practice by introducing a new note to give effect that the disclosure of an indicative offer price is not normally permitted before an announcement of a firm intention to make an offer unless there are exceptional circumstances. Such exceptional circumstances may include, for example, the need to clarify an incorrect market rumour or incorrect statement in the media which may be creating a false market in the shares of the offeree company, or where an offeror or an offeree company is required by overseas regulatory requirements to disclose an offer price prior to the announcement of a firm intention to make an offer. Accordingly, advisers and potential parties to an offer must understand that when such disclosure relating to an offer price is made, it will be treated as a price floor for any offer that materialises.

97. In the light of the above, we propose to add a new Note 3 and Note 4 to Rule 3.7 as follows:

"*Notes to Rule 3.7:*

…

3. Offeror to be bound by statements made

Subject to Note 4 to Rule 3.7, in the event that a potential offeror makes a statement in relation to the terms of the possible offer prior to

an announcement of a firm intention to make an offer is being made, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made. The potential offeror would not be so bound by the statement where the right not to be so bound in certain circumstances was specifically reserved at the time the statement was made, and those circumstances subsequently arise or there are wholly exceptional circumstances.

4. Statements relating to offer price

The disclosure of an indicative offer price is not normally permitted prior to an announcement of a firm intention to make an offer being made save in exceptional circumstances. Where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in case of a possible securities exchange offer), the offer subsequently (if any) made by the potential offeror must be made on the same or better terms."

Question 14: Do you agree with the proposed addition of the new Notes 3 and 4 to Rule 3.7? Please give reasons.

Deduction of dividends from offer price

98. In the decision relating to Dalian Port (PDA) Company Limited (**Dalian Port**) (2019)[7], the Panel ruled that the offeror will not be allowed to deduct the final dividend approved by the shareholders of Dalian Port from its offer price in a possible mandatory general offer.

99. Following the Dalian Port decision, we believe that it would be beneficial to market practitioners to codify the effect of dividends and withholding tax on an offer price. In the Dalian Port decision, members of the Panel also agreed that if an offeror is silent on the treatment of dividends, no deduction of dividends from the offer price would be allowed. If an offeror reserves its rights, the final decision will be at the offeror's discretion. In cases where the payment of dividends is subject to a withholding tax, the Executive will only allow a reduction to the offer price based on the gross dividends received by shareholders.

100. We propose to amend Note 11 to Rule 23.1 and Note 3 to Rule 26.3 as follows:

Note 11 to Rule 23.1

"*11. ~~Cum dividend~~ Dividends*

~~When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, the offeror, in establishing the level of the cash offer, may deduct from the highest price paid the net dividend to which offeree company~~

[7] See: https://www.sfc.hk/-/media/EN/files/CF/pdf/Takeovers-and-Mergers-Panel---Panel-Decision/Dalian-Port---Decision-paper---2-Oct-2019-FINAL.pdf?rev=9219e0fc281f4c5fa165929faa3a05b1&hash=DBAC0C67D460CF6E3DF48C398B66434C .

~~shareholders are entitled.~~ An offeror will not be permitted to reduce from the offer consideration any amount equivalent to a dividend (or other distribution) which is subsequently paid or becomes payable by the offeree company to offeree company shareholders, unless it has specifically reserved in an announcement the right to do so. Where a dividend (or other distribution) is subject to withholding or other deductions, the offer consideration should be reduced by the gross amount received or receivable by the offeree company shareholders."

Note 3 to Rule 26.3

"*3. Dividends*

~~When accepting shareholders are entitled under the offer to retain a dividend declared by the offeree company but not yet paid, the offeror, in establishing the level of the cash offer, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled.~~ See Note 11 to Rule 23.1."

Question 15: Do you agree with the proposed changes to Note 11 to Rule 23.1 and Note 3 to Rule 26.3? Please give reasons.

PART 5: PARTIAL OFFERS

Offer periods relating to partial offers

101. Pursuant to General Principle 2, the Codes normally require an offeror to provide a full exit to shareholders when the control of a company changes, is acquired or is consolidated. There are only very limited circumstances in which full exit is not provided to shareholders even though there has been a change, acquisition or consolidation of control, such as obtaining the approval of shareholders for a whitewash waiver.

102. In the context of partial offers, shareholders are accepting a concessionary offer for part of their holdings rather than a full offer. This is the case even if the offer will result in a change, acquisition or consolidation of control in the manner described under Rule 26.1 where an offeror will normally be required to make a mandatory general offer for all and not part of a shareholder's interest.

103. The rules to partial offers under Rule 28 are designed on this premise and are intentionally more stringent than other rules under the Codes. For example, under Rule 28.2, the Executive will not normally consent to a partial offer that may result in a consolidation of control if an offeror has acquired shares of an offeree company in the 6-month period before the commencement of an offer period. This amounts to a prohibition on dealings in the last six months which is more onerous than the requirement of a minimum offer consideration under Rules 23, 24 and 26.3 applicable to general offers. Rule 28.5 also imposes a "tick-box" approval condition requiring a partial offer to be conditional on majority approval from independent shareholders if an offer may result in an offeror holding 30% or more of a company. This is similar to a whitewash transaction where shareholders are asked to vote on whitewash waivers except Rule 28.5 can be more onerous as it requires approval of 50% of all independent shareholders as compared to independent shareholders present and voting at general meetings (in the case of whitewash waivers). Further, Rule 28.5 applies whenever a partial offer could result in the offeror holding 30% or more of the voting rights of an offeree company, which is more stringent that the "creeper" provisions under Rule 26.1.

104. The timetable for a partial offer is also tighter than general offers. This is reflected in Rule 28.4 which restricts the extension of the closing date when an acceptance condition has been met. Under the rule, an offeror has the option to declare an offer unconditional as to acceptance prior to the first closing day (Scenario A), or on the first closing day if on such day, acceptances received exceed the number of offer shares (Scenario B).

105. Under both scenarios, an offeror could only extend the final closing day to a date not beyond the 14th day after the first closing day. An offeror in Scenario A may have the added flexibility of not extending the closing day at all provided that the offer has remained open for at least 14 days following the satisfaction of the acceptance condition. If a partial offer is also subject to the approval condition under Rule 28.5, the approval must be obtained on or prior to the final closing day and there will be no further extension of the offer period even after the approval condition has been met.

106. Rule 28.4 was introduced following the conclusion of our consultation in November 2004. As explained in the 2004 consultation paper, any further extension beyond the 14-day period after the first closing date when the acceptance condition has been met

is unfair to accepting shareholders as it would: (i) dilute the number of shares accepted from an accepting shareholder; and (ii) delay the receipt of consideration which would only be settled after the close of offer.

107. We note that the current wording of Rule 28.4, which cross-refers to Rule 15.3 and Rule 28.5, could be confusing. Some market practitioners have interpreted the rule to mean that an offer must be unconditional on both acceptances and approval before the restriction on extension of offer periods under Rule 28.4 kicks in. This interpretation treats the acceptance and approval conditions as one condition when they are in fact two separate conditions[8].

108. We do not consider it appropriate to allow an offer period in a partial offer to remain open for a prolonged period of time when an acceptance condition has already been met in order to facilitate the satisfaction of the approval condition under Rule 28.5. While it is true that Rule 15.7 would impose a deadline by which all conditions to an offer must be met (i.e. within 21 days of the later of the first closing date or the date when an offer becomes unconditional as to acceptance), the effect of treating the approval and acceptance condition as one condition, and hence delaying the operation of Rule 28.4 until both are met, would result in a prolonged offer period contrary to the rationale behind Rule 28.4 and the tighter rules applicable to partial offers generally.

109. Rule 28.4 is silent on the scenario where the acceptance condition is met after the first closing day. By extension of the spirit of Rule 28.4, the offer period in such case would not be allowed to extend beyond the 14th day after the day the acceptance condition has been met. The approval under Rule 28.5, if applicable, must be obtained on or before the final closing day and there would no further extensions to the offer period.

110. We therefore propose to clarify the application of Rule 28.4 by making amendments to the rule as follows:

> "28.4 No extension of closing date
>
> Subject to the remaining provisions of this Rule 28.4, Rule 15 normally applies to partial offers. If on a closing day acceptances received equal or exceed the precise number of shares stated in the offer document under Rule 28.7, ~~subject to the application of Rule 28.5,~~ the offeror must declare the partial offer unconditional as to acceptances and ~~comply with Rule 15.3 by extending~~ extend the final closing day to the 14th day thereafter. The offeror cannot further extend the final closing day.
>
> If the acceptance condition is fulfilled before the first closing day, an offeror ~~may also~~ must declare a partial offer unconditional as to acceptances ~~prior to the first closing day~~ on the day the acceptance condition is met, provided that ~~he fully complies with~~

[8] All partial offers made since 2011 which were conditional on the tick-box approval had treated the acceptance condition and the approval condition under Rule 28.5 as two separate conditions.

~~Rule 15.3~~ the offer would remain open for acceptance for not less than 14 days thereafter. The offeror cannot extend the final closing day to a day beyond the 14th day after the first closing day stated in the offer document.

If the acceptance condition is satisfied after the first closing day during an extended offer period, an offeror must declare a partial offer unconditional as to acceptances on the day the acceptance condition is met and the final closing date cannot be extended beyond the 14th day thereafter.

Rule 28.4 applies irrespective of whether the approval under Rule 28.5 (if required) has been obtained. The offer document must contain specific and prominent reference to the requirements in this Rule 28.4.

Note to Rule 28.4:

Approval under Rule 28.5

A partial offer must stay open for a minimum of 21 days. Where an offer is subject to a condition that the approval required under Rule 28.5 is obtained, the Executive will not consider such condition as part of the acceptance condition for the offer. For example, where an offeror has received sufficient acceptances to meet the acceptance condition under an offer but insufficient approval from shareholders under Rule 28.5 on the first closing day, the offer can only be extended for a further 14 days which shall be the final closing day. There shall be no further extensions and the offer must close on the final closing day. If the offeror is unable to obtain the required approval under Rule 28.5 by the final closing day, the offer will lapse."

Question 16: Do you agree with the proposed amendment to Rule 28.4? Please give reasons.

Comparable offer for convertible securities, warrants, etc.

111. Currently, there is no explicit requirement to make appropriate Rule 13 offers for convertible, options, warrants etc. during a partial offer. This is in contrast to the requirement to make Rule 14 comparable offers during a partial offer which is expressly provided for under Rule 28.9.

112. One reason for this is that partial offers will never result in the privatisation or delisting of an offeree company, unlike a general offer. As such, it is not necessary to give holders of other types of convertible securities a proportionate opportunity to exit the offeree company. On the other hand, some practitioners have expressed that, given Rule 13 refers to "an offer being made" without distinguishing between a general offer and a partial offer, they consider Rule 13 comparable offers are required in partial offers.

113. Upon review, we note that all partial offers made since 2011 have included comparable offers for options or convertible securities, typically offering the same percentage as that under the partial offer for shares.

114. Given that the market has accepted that appropriate Rule 13 offers apply to partial offers for more than a decade, we propose to add a new Rule 28.10 to make this requirement explicit. The new Rule 28.10 will largely follow the language used in Rule 28.9 in relation to comparable offers:

> "28.10 Appropriate offers for convertibles securities, warrants, etc.
>
> When an offer is made for a company which could result in the offeror holding shares carrying 30% or more of the voting rights, and the offeree company has convertible securities, warrants, options or subscription rights outstanding, the offeror must make an appropriate offer or proposal to the holders of such securities. The requirements under Rule 13 will apply as appropriate."

Question 17: Do you agree with the proposed addition of the new Rule 28.10? Please give reasons.

Tick-box approval

115. As discussed in paragraph 103 above, Rule 28.5 imposes a "tick-box" approval condition requiring a partial offer to be conditional on, in addition to acceptances, majority approval from independent shareholders if an offer may result in an offeror holding 30% or more of a company. Under the rule, the tick-box requirement may be waived if one independent shareholder holding over 50% of the independent voting rights has indicated approval of the partial offer. We have received enquiries from time to time whether the tick-box approval would also apply to an offeror who together with its concert parties are already holding more than 50% of the voting rights of the offeree company. In such situation, the partial offer would naturally result in an offeror holding 30% of more of the voting rights of a company and a strict interpretation of Rule 28.5 suggests that the "tick-box" approval will apply.

116. We wish to clarify that the tick-box approval does not apply to partial offers which fall under Rule 28.1 (a) or (b). We therefore propose to clarify this in Rule 28.5 by making the following amendments:

> "28.5 Offer for 30% or more requires independent approval
>
> Any offer which could result in the offeror holding 30% or more of the voting rights of a company, and which do not fall under Rule 28.1(b), must normally be conditional, not only on the specified number of acceptances being received, but also on approval of the offer, signified by means of a separate box on the form of acceptance specifying the number of shares in respect of which the offer is approved, being given by shareholders holding over 50% of the voting rights not held by the offeror and persons acting in concert with it. This requirement may be waived if over 50% of the voting rights of the offeree company are held by one

independent shareholder who has indicated his approval under this Rule 28.5."

Question 18: Do you agree with the proposed change to Rule 28.5? Please give reasons.

Acceptance and approval of partial offer by exempt principal traders

117. Rule 35.4 provides that shares held by exempt principal traders connected with an offeror or an offeree company must not be voted in the context of an offer. We have received enquiries on whether Rule 35.4 applies to partial offers, as the rule does not specify whether an exempt principal trader can approve a partial offer under Rule 28.5.

118. We believe there is no reason that the discipline under Rule 35.4 that applies to general offers should not apply equally to partial offers, which as explained above are subject to more stringent rules than general offers. Accordingly, an exempt principal trader connected with an offeror or the offeree company should not be allowed to approve a partial offer which is akin to voting in the context of general offers. Similarly, Rule 35.3 provides that shares held by an exempt principal trader connected to an offeror must not be assented to the offer until the offer becomes or is declared unconditional as to acceptances should apply to partial offers as well.

119. Therefore, we propose to clarify the application of Rules 35.3 and 35.4 to partial offers by adding a new note 3 to Rule 28 as follows:

"*Notes to Rule 28:*

…

3. Connected exempt principal traders

The restrictions on exempt principal traders under Rules 35.3 and 35.4 apply in the context of a partial offer such that:

(a) securities owned by an exempt principal trader connected with an offeror must not be assented to the offer until such offer becomes or is declared unconditional as to acceptances; and

(b) securities owned by an exempt principal trader connected with an offeror or the offeree company must not be voted in the context of an offer. This includes the approval of an offer until Rule 28.5."

Question 19: Do you agree with the introduction of a new Note 3 to Rule 28? Please give reasons.

PART 6: GOING GREEN

120. We propose to introduce the following green initiatives to enhance efficiency and to reduce the environmental impact associated with printing and despatching physical copies of documents under the Codes:

(a) We will allow dissemination of documents under the Codes by electronic means to the extent permissible under a publisher's constitutional documents and applicable laws and regulations, including the Listing Rules in effect from time to time.

(b) We will allow the despatch of printed documents in either English or Chinese provided arrangements are in place to ascertain the language preference of a recipient.

(c) Announcements in respect of unlisted offeree companies will no longer be required to be published in newspapers.

(d) Submissions to the Executive should normally be sent by email unless otherwise directed by the Executive.

(e) We will no longer offer annual subscription services for printed copies of the Codes after this revision of the Codes.

Electronic dissemination of documents

121. Under the Listing Rules [9], a listed issuer has the option to send corporate communications to its securities holders electronically provided certain conditions are met. The proposal to make it mandatory for all listed issuers to disseminate corporate communications electronically is also underway[10].

122. To facilitate electronic dissemination of documents, we propose to add a new Rule 8.7 to give an offeror and an offeree company the option to despatch Codes documents by electronic means:

"8.7 Method of publication of documents

Any document required by any rule in the Codes to be posted, sent or despatched to a security holder or a shareholder will be treated as having been posted, sent or despatched if it is, to the extent permitted under all applicable laws and regulations and the relevant constitutional documents (where applicable):

(a) sent to the recipient in a hard copy form;

[9] Please refer to Rule 2.07A of the Main Board Listing Rules and Rule 16.04A of the GEM Listing Rules.

[10] Please refer to Chapter 2 of the Consultation Paper on Proposals to Expand the Paperless Listing Regime and Other Rule Amendments published by the Stock Exchange on 16 December 2022.

(b) sent to the recipient in an electronic format; or

(c) published on an issuer's or the offeree company's website and the website of the Stock Exchange in accordance with the requirements of the Listing Rules.

Note to Rule 8.7

Issuers of documents are reminded to check and ensure compliance with all applicable laws and regulations, including the Listing Rules, and the relevant constitutional documents, prior to disseminating documents electronically. Any document sent in breach of applicable laws and regulations and constitutional documents may not be treated as having been sent or despatched under Rule 8.7. The Executive may take appropriate actions, which may include extending an offer period, until the document is sent in compliance with all applicable laws and regulations and constitutional documents (where applicable)."

123. We also propose to amend Note 4 to Rule 8 to reflect the various methods to disseminate a Codes document:

"*4. Date of despatch*

Evidence of the date of despatch, e.g. a copy of the posting certificate or a confirmation confirming the despatch of the document electronically, must be provided to the Executive in relation to an offer document, revised offer document or offeree board circular."

124. We will also make consequential amendments to Practice Note 20 (Guidance note on announcements and documents under the Codes on Takeovers and Mergers and Share Buy-backs) to remove the requirement to submit hard copies of documents to the Executive.

Question 20: Do you agree with the proposal to introduce electronic dissemination under the Codes and the relating Code amendments? Please give reasons.

Language preference

125. Documents under the Codes are required under Rule 8.6 to be printed and despatched in both English and Chinese. We will continue to require all Codes documents to be published in both English and Chinese. However, we propose to allow issuers of documents to send physical copies of documents in either English or Chinese provided arrangements are in place to ascertain the language preference of the recipient.

126. We therefore propose to introduce a new Note 2 to Rule 8.6 as follows:

"*Notes to Rule 8.6:*

1. Confirmation of translation

See Note 5 to Rule 12 regarding the confirmation of translation to be given to the Executive following the publication of any document.

2. Language preference

Issuers of documents are permitted to send copies of documents in English or Chinese or in both English and Chinese provided arrangements are in place to ascertain the language preference of the recipient. Any arrangements made must comply with all applicable laws and regulations, including the Listing Rules in effect from time to time, and relevant constitutional documents."

Question 21: Do you agree with the proposal to allow an issuer to send documents to shareholders in either Chinese or English? Please give reasons.

Publication of announcements in respect of unlisted offerees

127. While the Codes apply predominantly to companies with a primary listing in Hong Kong, there are occasions where it is applied towards unlisted offeree companies if they are public companies in Hong Kong under Section 4.2 of the Introduction to the Codes. In cases involving such unlisted offeree companies where publication on the Stock Exchange's website is unavailable, we currently require the publication of all announcements in a leading English newspaper and a leading Chinese newspaper. All announcements so published will also be uploaded on the SFC's website under "Home – Regulatory functions – Corporates – Takeovers and mergers - Transaction announcements and documents".

128. Noting the wide-spread usage of the internet in Hong Kong and the investing public's general acceptance of electronic dissemination of information, we believe that it is no longer necessary to publish such announcements in newspapers. Publishing announcements in newspapers also requires lead time, causing delays in the dissemination of information. Therefore, we propose amending Rule 12.2 as follows:

"12.2 Publication of documents

All ~~announcements~~ documents in respect of listed companies must be made in accordance with the requirements of the Listing Rules. ~~All announcements in respect of unlisted offeree companies must be published as a paid announcement in at least one leading English language newspaper and one leading Chinese language newspaper published daily and circulating generally in Hong Kong.~~ All documents published in respect of unlisted offeree companies must be delivered to the Executive in electronic form for publication on the SFC's website."

Question 22: Do you agree with the proposal to simplify the publication of announcements relating to unlisted offeree companies by removing the requirement to publish in newspapers? Please give reasons.

Submissions to the Executive

129. Going forward, we will require all submissions to be made through electronic means by email to cfmailbox@sfc.hk unless otherwise directed. This will include draft documents, ruling applications, financial resources confirmations, no material change confirmations and other reports and letters or confirmations required under the Codes and Practice Note 20. We will continue to accept fees for document vetting and ruling applications in the form of cheques or telegraphic transfers.

130. We are exploring the feasibility of establishing an online platform for submissions to the Executive and payment of fees due under the Codes, and will inform the market accordingly.

131. We will continue to monitor submissions made by fax for a transitional period of three months after the conclusion of this consultation, after which any submissions by fax may risk delays in the vetting process.

132. We propose to make the following revisions to Sections 8.1 and 8.2 of the Introduction to the Codes and Rule 12.1 to require electronic submission. Consequential changes will also be made to Practice Note 20.

Introduction to the Codes

"8.1 Any application for a ruling under either of the Codes should take the form of a written submission addressed to the Executive Director, Corporate Finance Division of the SFC and should be submitted electronically unless otherwise directed by the Executive. The submission should be comprehensive and contain all relevant information which the Executive will require to render a fully informed decision. Such information should normally include the following…

8.2 A crossed cheque payable to the SFC in the amount of the fee, if any, payable pursuant to the Securities and Futures (Fees) Rules should be ~~enclosed with the submission~~ submitted for each ruling application and, where applicable, the submission should include a brief description of the way in which the fee was calculated. A copy of extracts from Parts 3 and 5 and Schedule 2 of the Securities and Futures (Fees) Rules is attached as Schedule IV of the Codes."

Rule 12.1 of the Takeovers Code

"12.1 Filing of documents for comments

All documents (other than those referred to in the Note to Rule 12.1 below) must be ~~filed with~~ submitted to the Executive for comment ~~prior to release or~~ before publication and must not be released or published until the Executive has confirmed that it has no further comments thereon. ~~2 final copies of the document must~~

~~be filed with the Executive.~~ Documents should be submitted electronically unless otherwise directed by the Executive."

Question 23: Do you agree with the proposal requiring submissions to the Executive to be made electronically by email? Please give reasons.

Printed copies of the Codes

133. After this revision of the Codes, we will no longer make available hard copies of the Codes for purchase. The revised Codes and future editions of our Codes will be available online for free. Current subscribers to our annual subscription service of Codes amendments will receive hard copies of the revised Codes following the conclusion of this consultation. We will suspend our annual subscription service from the publication of this consultation paper.

PART 7: MISCELLANEOUS AMENDMENTS

Definition of derivative

134. The Codes do not, and do not intend to, restrict dealings in or require disclosures of derivatives which have "no connection with an offer or potential offer".

135. There is a typographical error in the latter part of the note to the definition of derivative, and we therefore propose that the note be amended to ensure alignment and consistency. We have also removed duplicate language in the note:

> "**Derivative**: Derivative includes any financial product whose value in whole or in part is determined directly or indirectly by reference to the price of an underlying security or securities and which does not include the possibility of delivery of such underlying security or securities.
>
> *Note to the definition of derivative:*
>
> *The term "derivative" is intentionally widely defined to encompass all types of derivative transactions. However, it is not the intention of the Codes to restrict dealings in, or require disclosure of, derivatives which have no connection with an offer or potential offer. ~~Offerors, offeree companies and their financial advisers should consult the Executive at the earliest time to determine whether a dealing in a derivative is to be regarded as having a connection with the offer or potential offer.~~ The Executive will not normally regard a derivative which is referenced to a basket or index including relevant securities as connected with an ~~offeror~~ offer or potential ~~offeror~~ offer if at the time of dealing the relevant securities in the basket or index represent less than 1% of the class in issue and less than 20% of the value of the securities in the basket or index. In cases of doubt the Executive should be consulted."*

Question 24: Do you agree with the amendment to the definition of derivative? Please give reasons.

Definition of on-market share buy-backs

136. Generally, on-market share buy-backs are not subject to any Codes requirement so long as they do not carry any general offer implications. However, the Codes impose strict requirements on off-market share-buy backs by requiring approval from at least 75% of the independent shareholders. This stricter requirement is imposed in recognition of the fact that only selected shareholders are provided an exit opportunity by the offeror (i.e. the offeree company), in contrast to all shareholders being offered an equal opportunity to sell his shares to the offeror if the buy-back was conducted on-market.

137. We wish to clarify that "on-market share buy-backs" as defined under the Codes are not identical to share purchases "on the Exchange" as commonly used under the Listing Rules.

138. Under the Codes, generally for shares listed on the Stock Exchange, an "on-market share buy-back" means a share buy-back made on the Stock Exchange through its facilities in accordance with the applicable Listing Rules. While this means that trades

should be carried out and crossed using the Stock Exchange's facilities, this in itself would not be sufficient to fall within the meaning of an "on-market share buy-back". The spirit of an "on-market share buy-back" means that all shareholders would be offered an equal opportunity to sell his shares to the offeror in the open market. Therefore, the selling shareholders in an "on-market share buy-back" must not be pre-selected or pre-identified. In other words, "on-market share buy-backs" should refer only to those buy-backs which the offeror and its board has no involvement in the solicitation, selection or identification of the selling shareholders. As such, the fact that a share buy-back was conducted "on the Exchange" as commonly used under the Listing Rules, does not automatically mean that such share buy-back is an "on-market share buy-back" under the Codes. We will look into the substance over the form of a transaction to determine whether the buy-back should be categorised as an "on-market share buy-back" or an "off-market share buy-back". Please also refer to the Executive Statements relating to Wonderful Sky Financial Group Holdings Limited[11] and Beijing Enterprises Holdings Limited[12].

139. Accordingly, we propose to amend the definition of "on-market share buy-back" to clarify that such share buy-back must be made pursuant to the Stock Exchange's automatic order matching system where buy-orders and sell-orders are matched through an automated system. In addition, the company buying back its shares and its directors should not have any involvement in the solicitation, selection or identification of the seller of the shares, whether directly or indirectly. Our proposed amendments are as follows:

> "**On-market share buy-back**: On-market share buy-back means a share buy-back made by a company having a listing on the Stock Exchange through: (i) the automatic order matching system of the Stock Exchange and made in accordance with the Listing Rules, or (ii) the equivalent automatic order matching system of a recognised exchange and made in accordance with the rules of such recognised exchange. The company buying back its shares and its directors must not have any involvement in the solicitation, selection or identification of the seller of the securities, whether directly or indirectly.~~:~~
>
> ~~(1) a company having a listing on the Stock Exchange through the facilities of the Stock Exchange in accordance with the Listing Rules;~~
>
> ~~(2) a company having a primary listing on the Stock Exchange through the facilities of a recognised exchange, provided such share buy-back is made in accordance with the rules of such recognised exchange;~~
>
> ~~(3) a company having a primary listing on the Stock Exchange through the facilities of another exchange in accordance with the Listing Rules applied with references to "the Exchange" in Rules 10.06(1), (2) and~~

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[11] https://www.sfc.hk/-/media/EN/files/CF/pdf/Public_censure/Executive-statement-ENG-20220317.pdf?rev=419ab40fd00046f5bb39e28d5fe41726&hash=066D62968508EDFBCD724A473664C161.

[12] https://www.sfc.hk/-/media/EN/files/CF/pdf/Public_censure/Executive-statement-E_FINAL-20191230.pdf?rev=6ab18817fd724e01804924d4fb165dee&hash=8B3BBE4E7EFDC97C94837865F0180A48.

~~(6) of the Listing Rules being construed as references to "on another exchange" or "on the other exchange", as appropriate;~~

~~(4) a company having a secondary listing on the Stock Exchange through the facilities of the Stock Exchange in accordance with rules of a recognised exchange; or~~

~~(5) a company having a secondary listing on the Stock Exchange through the facilities of a recognised exchange in accordance with rules of such recognised exchange.~~

Question 25: Do you agree with the proposed amendment to the definition of on-market share buy-back? Please give reasons.

Disclosure of special deals in firm intention announcements

140. Since the publication of Issue 48 (March 2019) of the Takeovers Bulletin in March 2019, the Executive has routinely required all vendors, offerors and offeree companies to disclose details of special deals in a firm intention announcement and shareholders' document, or provide a negative statement. The purpose of this practice is to assist listed companies and market practitioners in their compliance with the requirements of Rule 25. We believe this practice has helped parties to focus on the issue and the market has complied with little difficulty.

141. We therefore propose to codify this practice and to include this as a prescribed disclosure under Rule 3.5, Schedule I and Schedule II as follows:

"3.5 Announcement of firm intention to make an offer

The announcement of a firm intention to make an offer should be made only when an offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.

When a firm intention to make an offer is announced, the announcement must contain:–

(a) the terms of the offer;

(b) the identity of the offeror and, where the offeror is a company, the identity of its ultimate controlling shareholder and the identity of its ultimate parent company or, where there is a listed company in the chain between such company and its ultimate parent company, the identity of such listed company;

(c) details of any existing holding of voting rights and rights over shares in the offeree company:–

(i) which the offeror owns or over which it has control or direction;

(ii) which is owned or controlled or directed by any person acting in concert with the offeror;

(iii) in respect of which the offeror or any person acting in concert with it has received an irrevocable commitment to accept the offer; and

(iv) in respect of which the offeror or any person acting in concert with it holds convertible securities, warrants or options;

(d) details of any outstanding derivative in respect of securities in the offeree company entered into by the offeror or any person acting in concert with it;

(e) all conditions (including normal conditions relating to acceptance, listing and increase of capital) to which the offer is subject;

(f) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree company and which might be material to the offer (see Note 8 to Rule 22);

(g) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of doing so, including details of any break fees payable as a result; ~~and~~

(h) details of any relevant securities (as defined in Note 4 to Rule 22) in the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold;

(i) where an offer involves or otherwise relates to a sale (directly or indirectly) by a vendor of shares in the offeree company:-

(i) details of any consideration, compensation or benefit in whatever form paid or to be paid by the offeror or any party acting in concert with it to the vendor of such sale shares or any party acting in concert with such vendor in connection with the sale and purchase of such sale shares; and

(ii) details of any understanding, arrangement, agreement or special deal between the offeror or any party acting in concert with it on the one hand, and the vendor of such shares and any party acting in concert with it on the other hand; and

(j) details of any understanding, arrangement or agreement or special deal between: (1) any shareholder of the offeree company; and (2)(a) the offeror and any party acting in concert with it, or (b) the offeree company, its subsidiaries or associated companies.

In the event that any of paragraphs (c) to ~~(h)~~(j) above is not applicable because no such matter or arrangement exists, a negative statement to this effect must be made.

The announcement of an offer should include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer."

Schedule I

"14B. Where an offer involves or otherwise relates to a sale (directly or indirectly) by a vendor of shares in the offeree company:-

(i) details of any consideration, compensation or benefit in whatever form paid or to be paid by the offeror or any party acting in concert with it to the vendor of such sale shares or any party acting in concert with such vendor in connection with the sale and purchase of such sale shares; and

(ii) details of any understanding, arrangement, agreement or special deal between the offeror or any party acting in concert with it on the one hand, and the vendor of such shares and any party acting in concert with it on the other hand.

14C. Details of any understanding, arrangement or agreement or special deal between any shareholder of the offeree company on the one hand, and the offeror and any party acting in concert with it on the other hand."

Schedule II

"15. Details of any understanding, arrangement or agreement or special deal between any shareholder of the offeree company on the one hand, and the offeree company, its subsidiaries or associated companies on the other hand."

142. We will update Practice Note 17 to provide guidance on whether certain arrangements would constitute special deals, as discussed in Issue No. 51 (December 2019) of the Takeovers Bulletin.

Question 26: Do you agree with the amendments to Rule 3.5, Schedule I and Schedule II relating to special deal disclosure? Please give reasons.

Disclosure of relevant securities of an offeror and an offeree company when an offer period commences

143. Rule 22 requires disclosures of dealings in relevant securities by an offeror, or the offeree company, and by associates of either of them, during an offer period.

144. Relevant securities is defined under Note 4 to Rule 22, and include (among others): (i) securities of the offeree company which are being offered for or which carry voting rights; and (ii) equity share capital of the offeree company. In the case of a securities

exchange offer, relevant securities include the securities or equity share capital of an offeror, or of a company the securities of which are to be offered as consideration for the offer.

145. The relevance of disclosure by an offeror's class (6) associates of its dealings in relevant securities of the offeree company in the context of a cash offer has been called into question for a number of years. Following review, we do not consider such information to be material, and therefore it should not be necessary for offeror's class (6) associates to disclose their dealings in relevant securities of the offeree company in a cash offer. Dealings by the offeror's class (6) associates in the offeree company's relevant securities should be no different from dealings by any other securities holder of the offeree company. However, the position would be different in a securities exchange offer in that dealings by a class (6) associate of an offeror in the relevant securities of the offeree company would be material and relevant information for the market.

146. Given this, we propose to remove the requirement to require class (6) associate of the offeror to disclose its dealings in the offeree company's relevant securities during a cash offer. The wording of Rule 3.8 would be amended and a new Note 14 to Rule 22 would be added as follows. Practice Note 20 will also be amended where appropriate:

> "3.8 Announcement of numbers of relevant securities in issue
>
> When an offer period begins, the offeree company must announce, as soon as possible, details of all classes of relevant securities issued by the offeree company, together with the numbers of such securities in issue. ~~An~~ Unless it is stated that an offer is, or is likely to be, solely in cash, an offeror or potential named offeror must also announce the same details relating to its relevant securities (and if relevant, the relevant securities of the company the securities of which are to be offered as consideration for the offer) following any announcement identifying it as an offeror or potential offeror.
>
> …"
>
> New Note 14 to Rule 22
>
> "*14. Disclosure of dealings by class (6) associates of an offeror*
>
> *Disclosure of dealings in the relevant securities of the offeree company by a person who is an associate of the offeror by virtue only of class (6) of the definition of associate is not required if the offer is, or is likely to be, solely in cash.*"

Question 27: Do you agree with the amendment to Rule 3.8 and the proposed addition of new Note 14 to Rule 22? Please give reasons.

Frustrating actions

147. Rule 4 provides that the board of the offeree company must not, without the approval of the offeree company's shareholders, take any action which might frustrate an offer or result in shareholders of the offeree company being denied an opportunity to

decide on the merits of an offer. This rule applies not only after an offer period commences, but also before the commencement of an offer period if a bona fide offer has been communicated to the board or the board has reason to believe that a bona fide offer may be imminent.

148. Rule 4 imposes an important discipline that facilitates a level playing field for all parties to an offer. While an offer may not be welcomed by the board of the offeree company, shareholders of an offeree company should not be denied the chance to receive an offer as a result of corporate actions taken by the offeree company's board. If the board proceeds with the corporate action regardless, the offeror may be allowed to withdraw its offer if shareholders approve the corporate action in a general meeting. The practical effect of the rule is that it allows shareholders to choose between receiving an offer or proceeding with the corporate action.

149. Note 1 to Rule 4 provides that if the offeror consents to a corporate action, the Executive may waive the requirement of a shareholders' meeting for that corporate action. This gives the offeror an opportunity to consider the merits of the corporate action and allow it to proceed while continuing with the offer.

150. We frequently receive enquiries on whether a corporate action constitutes a frustrating action requiring compliance with the requirements under Rule 4. On the other hand, we also note that some offeree companies failed[13] to appreciate that certain transactions, in particular those that are classified as discloseable transactions under the Listing Rules, carry Rule 4 implications. We believe clarification on the Executive's approach in relation to Rule 4 will assist the market in ensuring compliance during an offer period.

Non-exhaustive list

151. Some practitioners have interpreted Rule 4 narrowly in that the list set out in Rule 4 is an exhaustive list of matters that may constitute frustrating actions under the Codes. This is an incorrect approach - the Codes should not be restricted in their interpretation, and the spirit as well as the letter should be observed. The list of corporate actions under Rule 4(a) to (e) sets out examples of what might constitute frustrating action for the purpose of Rule 4, and is not intended to be definitive or exhaustive. The over-arching principle for consideration is whether an action has the effect of frustrating an offer made or to be made by an offeror, for example where the action results in the offeree company's position being materially different from when the offeror announced its intention to make an offer (or when the offeror approached the offeree company with an offer).

Prior contractual obligations

152. While Rule 4 states that the Executive must be consulted at the earliest opportunity when the offeree company is under a prior contractual obligation to take an action, such action should not *normally* be caught as frustrating actions, particularly those

[13] See public criticism of Gao Yunhong and Feng Xuelian for breaches of Rules 4 in the offer for Steering Holdings Limited (April 2022) (https://www.sfc.hk/-/media/EN/files/CF/pdf/Public_censure/Executive-statement_ENG-20220407.pdf?rev=74a6486679f44e39ae9d4fe564fc1566&hash=859E3CD1638F574DBA6B9A3656285E17)

that have been announced by the offeree company before the board has reason to believe that a bona fide offer may be imminent. However, special circumstances should be brought to the attention of the Executive as soon as possible to confirm whether Rule 4 applies. An example of such special circumstance would be where obligations are put in place but are not otherwise enforceable or triggered unless and until a takeover offer is made for the offeree company, such as a poison pill. In such circumstances, while these are prior contractual obligations, the Executive is likely to consider such obligations as frustrating actions under Rule 4.

Offeror's consent

153. Note 1 to Rule 4 provides that shareholders' approval is not required if the offeror consents to the corporate action to be taken. To streamline the operation of Note 1, once the offeror has given its consent, it should not require a further waiver from the Executive. We consider that it would be sufficient to disclose in an announcement that the offeror's consent has been obtained, or if no announcement will be made (for example, the relevant corporate action is not a notifiable transaction under the Listing Rules), that the consent be lodged with the Executive.

154. In the event of competing bids, consents from all named offerors or potential offerors should be obtained before the shareholders' approval requirement may be dispensed with.

Proposed amendments

155. Accordingly, we propose to amend Rule 4 to clarify the matters discussed above as follows:

> "**4. No frustrating action**
>
> Once a bona fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bona fide offer may be imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in general meeting. In particular the offeree company's board must not, without such approval, ~~do~~ carry out or agree to ~~do~~ carry out such frustrating actions. Examples of frustrating action include the following:–
>
> (a) issue ~~any~~ of shares;
>
> (b) create, issue or grant, or permit the creation, issue or grant of, any convertible securities, options or warrants in respect of shares of the offeree company;
>
> (c) sell, dispose of or acquire assets of a material amount;
>
> (d) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or

(e) cause the offeree company or any subsidiary or associated company to buy back, purchase or redeem any shares in the offeree company or provide financial assistance for any such buy-back, purchase or redemption.

Where the offeree company is under a prior contractual obligation to take any such action, the requirements of this Rule 4 do not normally apply. ~~or where~~ Where there are ~~other~~ special circumstances, the Executive must be consulted at the earliest opportunity. In appropriate circumstances the Executive may grant a waiver from the general requirement to obtain shareholders' approval.

Notes to Rule 4:

1. Consent by the offeror

~~The requirement of a~~A shareholders' meeting ~~may be waived by the Executive~~ is not required if the offeror (or, in the case of more than one offeror, all offerors) agrees to the action to be taken by the offeree company.

In the event of competing bids, consent from all named offerors and potential offerors would be required to waive the requirement of shareholders' meeting.

…

4. ~~Executive waiver~~Deleted.

~~The Executive, when deciding whether to grant a waiver of the requirement to obtain shareholders' approval, will take particular account of what details, if any, the offeree company's board of directors has disclosed to its shareholders of any contractual obligation, duty or right, the fulfilment or enforcement of which may result in the offer being frustrated or the shareholders of the offeree company being denied the opportunity to decide on the merits of the offer.~~"

Question 28: Do you agree with the proposed clarification to Rule 4 and Note 1 to Rule 4? Please give reasons.

Renumbering of subparagraphs in Note 6 to Rule 26.1

156. We note that the paragraph numbering within Note 6 to Rule 26.1 has caused some inconvenience to market practitioners when referring to a specific part of the note. We wish to take this opportunity to renumber the subparagraphs as follows:

"*6. Acquisition of voting rights by members of a group acting in concert*

While the Executive accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the holdings of members and the membership of such groups may change at any time. This being the case, there will be circumstances

when the acquisition of voting rights by one member of a group acting in concert from another member of the concert group or from a non-member, will result in the acquirer of the voting rights having an obligation to make an offer.

(a) Acquisitions from another member

Whenever the holdings of a group acting in concert total 30% or more of the voting rights of a company and as a result of an acquisition of voting rights from another member of the group a single member comes to hold 30% or more or, if already holding between 30% and 50%, has acquired more than 2% of the voting rights in any 12 month period, an obligation to make an offer will normally arise.

In addition to the factors set out in Note 7 to this Rule 26.1, the factors which the Executive will take into account in considering whether to waive the obligation to make an offer include:–

(~~i~~1) whether the leader of the group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;

(~~ii~~2) the price paid for the shares acquired; and

(~~iii~~3) the relationship between the persons acting in concert and how long they have been acting in concert.

The Executive would normally grant the acquirer of such voting rights a waiver from such general offer obligation if:–

(i) the acquirer is a member of a group of companies comprising a company and its subsidiaries and the acquirer has acquired the voting rights from another member of such group of companies; or

(ii) the acquirer is a member of a group of persons comprising an individual, his close relatives and related trusts, and companies controlled by him, his close relatives or related trusts, and the acquirer has acquired the voting rights from another member of such group of persons."

Question 29: Do you agree with the amendment to Note 6 to Rule 26.1? Please give reasons.

Disclosure of market prices of offeree company's and offeror's securities

157. Paragraph 10 of Schedule I sets out certain disclosure requirements relating to the closing price of the securities of the offeree company and the securities of the offeror (if the consideration for the offer involve such securities of the offeror). Where the trading of shares is halted during a trading day, we normally require disclosure of,

and comparison with: (a) the closing price for the full trading day before such halt; and (b) the last trading price immediately before the trading halt.

158. We propose to codify the above practice by adding a new note to paragraph 10 of Schedule I as follows:

> "*Note:*
>
> *Where trading of securities is suspended during a trading day, the closing price on the last full trading day and the trading price immediately before the suspension should be disclosed.*"

Question 30: Do you agree with the proposed addition of a new note to paragraph 10 of Schedule I? Please provide reasons.

Application of Rule 31.1 in whitewash transactions

159. The rationale behind Rule 31.1 is to prevent an offeree company from being subject to repeated sieges, and to ensure the offeror puts its best price forward in the first instance.

160. Note 4 to Rule 31.1 and 31.2 extends this discipline further. Where a person announces a transaction that is conditional on no general offer being required, and such person does not reserve the right to waive the condition or does reserve the right to waive but does not waive it, the restrictions under Rule 31.1(c) will apply to that person.

161. We believe the discipline under Rule 31.1 should similarly apply to whitewash transactions. That is to say, a transaction that is conditional on a whitewash waiver being granted should not be treated differently from a transaction that is conditional upon no mandatory general offer being required.

162. For the avoidance of doubt, Note 4 would allow a person from entering into non-waivable whitewashes transactions repeatedly as no subsequent offers are made in the event the whitewash condition is voted down by shareholders, i.e. back-to-back non-waivable whitewash transactions are not restricted by the rule.

163. In the light of the above, Rule 31.1 should be included in the list of Takeovers Code requirements applicable to whitewash transactions in paragraph 2(d) of Schedule VI:

> "**2. Specific grant of waiver required**
>
> In each case, specific grant of a waiver from the Rule 26 obligation is required. Such grant will be subject to:–
>
> …
>
> (d) compliance by the person or group seeking the waiver with the following Rules of the Takeovers Code, where relevant:–
>
> (i) Rule 2.1 and Note 2 to Rule 2 (appointment of independent financial adviser and its competence);

(ii) Rule 2.8 (establishment of independent board committee);

(iii) Rule 3 (when an announcement is required and contents of an announcement);

(iv) Rules 7 and 26.4 (timing of resignation of offeree company directors and appointment of offeror nominees to the board of the offeree company);

(v) Rule 8 (timing and content of documents);

(vi) Rule 9 (standard of care and responsibility);

(vii) Rule 10 (profit forecasts and other financial information);

(viii) Rule 12 (filing and publication of documents);

(ix) Rule 18 (statements during course of offer);

(x) Rule 25 (special deals); ~~and~~

(xi) Rule 31.1 (restrictions following offers and possible offers); and

(xii) Rule 34 (shareholder solicitations)."

Question 31: Do you agree that Rule 31.1 should apply to whitewash transactions? Please give reasons.

Application of Rule 3.8 to Share buy-backs by way of general offer

164. In a share buy-back by way of general offer, the most up-to-date position of the offeree company's relevant securities should be made known to assist investors in compliance with Codes requirements, particularly to determine whether they are class (6) associates requiring compliance with Rule 22. Therefore the obligation imposed on offerors and offeree companies under Rule 3.8 to announce details of relevant securities should apply equally in share buy-backs by way of general offer.

165. We therefore propose to amend Rule 5.1(c) of the Share Buy-backs Code to include Rule 3.8 as being one of the applicable Takeovers Code rules during share buy-backs. The amendments will also include the new proposed Rule 3.9 (see paragraphs 67 to 73 of this consultation paper) in Rule 5.1(c) of the Share Buy-backs Code.

"5.1 Application of Takeovers Code

…

In all other share buy-backs by general offer, and where applicable, in the case of off-market share buy-backs, the following Rules of the Takeovers Code will normally apply:–

(a) Rule 1.4;

(b) Rules 2.1 and 2.6-2.9;

(c) Rules 3.2 and 3.4~~-3.7~~ 3.9;

…"

Question 32: Do you agree that Rules 3.8 and 3.9 should be added to Rule 5.1(c) of Share Buy-backs Code? Please give reasons.

Housekeeping amendments

166. Paragraph 2(a) of Schedule VI states there should be no disqualifying transactions from 6 months prior to the announcement of the whitewash proposals and up to the date of shareholders meeting. This is inconsistent with paragraph 3 which states no disqualifying transactions from 6 months prior to the announcement of the proposals and up to the completion of the subscription.

167. The current operating rules regarding disqualifying transaction have been applied since its last amendment in 2005 and therefore paragraph 2(a) is a typographical error which will be amended and aligned with paragraph (3) as follows:

"**2. Specific grant of waiver required**

In each case, specific grant of a waiver from the Rule 26 obligation is required. Such grant will be subject to:–

(a) there having been no disqualifying transactions (as set out in paragraph 3 of this Schedule VI) by the person or group seeking the waiver~~ in the period from the date 6 months prior to the announcement of the proposals and up to and including the date of the shareholders' meeting~~;

…"

168. We also propose to take this opportunity to correct typographical errors and make a number of general housekeeping amendments.

(a) Rule 14 – the word "considered" was misspelt as "csonsidered" and should be amended accordingly.

(b) Rule 11.2(a) – the reference to "Notes to Rule 10.2" at the last part of the provision should be "Notes to Rules 10.1 and 10.2"

(c) Schedule II – the top left corner of the 1st page of Schedule II should read Schedule II" instead of "Schedule I"

(d) Schedule VI paragraph 2(d) – Rule 11 should be included in the list of Takeovers Code rules to be complied with in a whitewash transaction set out in paragraph 2(d) of Schedule VI, to ensure consistency with paragraph 4(i) of Schedule VI.

(e) Rules of Procedures for Panel hearings - The address stated for service of Panel related documents is outdated and should be updated. Generic description (e.g. the latest address of the SFC's office) would be used.

APPENDIX 1: CONSOLIDATED PROPOSED AMENDMENTS

Paragraph 1.6 of the Introduction to the Codes

1.6 In addition, any other persons who issue circulars or advertisements to shareholders in connection with takeovers, mergers or share buy-backs must observe the highest standards of care and consult with the Executive ~~prior to the release thereof~~ before despatch.

Paragraph 8.1(c)(ix) of the Introduction to the Codes

(ix) where known after reasonable inquiry, details of any dealings in securities of the offeree company by the relevant offeror, the directors and substantial shareholders of the relevant offeror and the offeree company, and all persons acting in concert with any of them, ~~for the~~ within 6 ~~month~~ months ~~period immediately preceding~~ before the date of the application; and

Sections 8.1 and 8.2 to the Introduction to the Codes

8.1 Any application for a ruling under either of the Codes should take the form of a written submission addressed to the Executive Director, Corporate Finance Division of the SFC and should be submitted electronically unless otherwise directed by the Executive. The submission should be comprehensive and contain all relevant information which the Executive will require to render a fully informed decision. Such information should normally include the following:-

…

8.2 A crossed cheque payable to the SFC in the amount of the fee, if any, payable pursuant to the Securities and Futures (Fees) Rules should be ~~enclosed with the submission~~ submitted for each ruling application and, where applicable, the submission should include a brief description of the way in which the fee was calculated. A copy of extracts from Parts 3 and 5 and Schedule 2 of the Securities and Futures (Fees) Rules is attached as Schedule IV of the Codes.

Paragraph 9.1 of the Introduction to the Codes

9.1 If a party wishes to contest a ruling of the Executive, he may ask for the matter to be reviewed by the Panel, which will normally be convened at short notice. The Executive will arrange with the Panel and the relevant party a practical time for a Panel meeting taking into account the timetable of the transaction. The party and the Executive must supply succinct statements of their respective cases in advance of the meeting and copies of such statements will be provided to the Executive and the party respectively. The Panel has discretion to entertain a request for review by an aggrieved shareholder, if it is satisfied that such request is not frivolous. When the Executive considers that it is necessary to resolve an issue urgently, the Executive may stipulate a reasonable time within which a request for review must be made; in any other case, the Executive must be notified at the latest ~~within~~ no later than 14

days ~~of~~ after the event giving rise to the request for the review. Any request for a review shall contain the grounds on which the review is requested.

Paragraph 11.17 of the Introduction to the Codes

11.17 The substance of the Legal Adviser's advice on issues of law or mixed fact and law which may impact on the Panel or its Chairman's substantive decision, will be disclosed to the parties in order that they may comment upon it ~~prior to~~ before a decision ~~being~~ is made. The Legal Adviser's advice on procedural matters need not be disclosed to the respondents.

Paragraph 13.13 of the Introduction to the Codes

13.13 Where any person has breached the requirements of Rules 13, 14, 16, 23, 24, 25, 26, 28, 30 or 31.3 of the Takeovers Code, the Panel may make a ruling requiring the person to pay, within such period as is specified, to the holders, or former holders, of securities of the offeree company such amount as the Panel thinks just and reasonable so as to ensure that such holders receive what they would have been entitled to receive if the relevant Rule had been complied with. In addition, the Panel may make a ruling requiring simple or compound interest to be paid at a rate and for a period (including in respect of any period ~~prior to~~ before the date of the ruling and until payment) to be determined. The Panel's power to make a ruling under this section may be exercised irrespective of whether any sanction referred to in section 12.2 of this Introduction is imposed.

Paragraph 14.5 of the Introduction to the Codes

14.5 An application for appeal must be made in writing to the Takeovers Appeal Committee ~~not~~ no later than 5 business days after the ruling in question. The application must state the full grounds of appeal together with reasons.

Definition of acting in concert

Notes to the definition of acting in concert:

…

8. ~~*Close relatives*~~ *Deleted.*

~~*For the purposes of classes (2), (6) and (8) "close relatives" shall mean a person's spouse, de facto spouse, children, parents and siblings.*~~

New definition of close relatives

Close relatives: A person's close relatives means:

(1) the person's spouse or de facto spouse, parents, children, grandparents and grandchildren;

(2) the person's siblings, their spouse or de facto spouse and their children; and

(3) the parents and siblings of the person's spouse or de facto spouse.

Note to the definition of close relatives:

Reference to a child includes a person's natural child, adopted child and step-child.

Definition of derivative

Derivative: Derivative includes any financial product whose value in whole or in part is determined directly or indirectly by reference to the price of an underlying security or securities and which does not include the possibility of delivery of such underlying security or securities.

Note to the definition of derivative:

The term "derivative" is intentionally widely defined to encompass all types of derivative transactions. However, it is not the intention of the Codes to restrict dealings in, or require disclosure of, derivatives which have no connection with an offer or potential offer. ~~Offerors, offeree companies and their financial advisers should consult the Executive at the earliest time to determine whether a dealing in a derivative is to be regarded as having a connection with the offer or potential offer.~~ The Executive will not normally regard a derivative which is referenced to a basket or index including relevant securities as connected with an ~~offeror~~ offer or potential ~~offeror~~ offer if at the time of dealing the relevant securities in the basket or index represent less than 1% of the class in issue and less than 20% of the value of the securities in the basket or index. In cases of doubt the Executive should be consulted.

Note to definition of offer

Note to definition of offer:

A voluntary offer may not normally be made at a price that for the purpose of this Note is substantially below the market price of the shares in the offeree company. A voluntary offer at more than a 50% discount to the lesser of the closing price of the relevant shares of the offeree company on the trading day before the date of the Rule 3.5 announcement and the 5 day average closing price ~~prior to~~ before such day will normally be considered as being "substantially below the market price of the shares in the offeree company". The Executive will only grant a waiver from the application of this Note in exceptional circumstances. In all cases which fall within this Note, the Executive should be consulted.

Definition of offer period

Offer period: Offer period means the period:–

from: the time when an announcement is made of a proposed or possible offer (with or without terms)

until: whichever is the latest of:–

(1) the date when the offer closes for acceptances;

(2) the date when the offer lapses;

(3) the time when a possible offeror announces that the possible offer will not proceed;

(4) the date when an announcement is made of the withdrawal of a proposed offer; and

(5) where the offer contains a possibility to elect for alternative forms of consideration, the latest date for making such election~~.~~, or

if earlier, such other date determined by the Executive, having considered all relevant circumstances, on which the relevant offer period shall end.

Notes to the definition of offer period:

1. *In the case of a scheme of arrangement, the offer will normally be considered to be unconditional in all respects only when the scheme becomes effective.*

2. *References to the offer period throughout the Codes are to the time during which the offeree company is in an offer period, irrespective of whether a particular offeror or potential offeror was contemplating an offer when the offer period commenced.*

3. *Where there are two or more offers or possible offers outstanding the closure of an offer period in respect of one offer or possible offer does not affect the termination of any other offer or possible offer."*

Definition of on-market share buy-back

On-market share buy-back: On-market share buy-back means a share buy-back made by a company having a listing on the Stock Exchange through: (i) the automatic order matching system of the Stock Exchange and made in accordance with the Listing Rules, or (ii) the equivalent automatic order matching system of a recognised exchange and made in accordance with the rules of such recognised exchange. The company buying back its shares and its directors must not have any involvement in the solicitation, selection or identification of the seller of the securities, whether directly or indirectly.~~:~~

~~(1) a company having a listing on the Stock Exchange through the facilities of the Stock Exchange in accordance with the Listing Rules;~~

~~(2) a company having a primary listing on the Stock Exchange through the facilities of a recognised exchange, provided such share buy-back is made in accordance with the rules of such recognised exchange;~~

~~(3) a company having a primary listing on the Stock Exchange through the facilities of another exchange in accordance with the Listing Rules applied with references to "the Exchange" in Rules 10.06(1), (2) and (6) of the Listing Rules being construed as references to "on another exchange" or "on the other exchange", as appropriate;~~

~~(4) a company having a secondary listing on the Stock Exchange through the facilities of the Stock Exchange in accordance with rules of a recognised exchange; or~~

~~(5) a company having a secondary listing on the Stock Exchange through the facilities of a recognised exchange in accordance with rules of such recognised exchange.~~

Definition of voting rights

Voting rights: Voting rights means all the voting rights ~~currently~~ exercisable at a general meeting of a company whether or not attributable to the share capital of the company.

Note to the definition of voting rights:

For the purposes of the Codes, voting rights that are subject to any restrictions to their exercise by agreement, by operation of law and regulations or pursuant to a court order will still be regarded as voting rights exercisable at a general meeting except for the voting rights attached to treasury shares (if any) which will not be treated as voting rights for the purpose of this definition.

Rule 2.2 of the Takeovers Code

2.2 Approval of delistings by independent shareholders

If after a proposed offer the shares of an offeree company are to be delisted from the Stock Exchange, neither the offeror nor any persons acting in concert with the offeror may vote at the meeting, if any, of the offeree company's shareholders convened in accordance with the Listing Rules. The resolution to approve the delisting must be subject to:-

(a) approval by at least 75% of the votes attaching to the disinterested shares that are cast either in person or by proxy at a duly convened meeting of ~~the holders of the disinterested shares~~ shareholders;".

(b) the number of votes cast against the resolution being not more than 10% of the votes attaching to all disinterested shares; and

(c) the offeror being entitled to exercise, and exercising, its rights of compulsory acquisition.

Note to Rule 2.2:-

In cases where the offeree company is incorporated in a jurisdiction that does not afford compulsory acquisition rights to an offeror, the Executive may be prepared to waive the requirement of Rule 2.2(c). In considering whether to grant such a waiver, the Executive will normally require, among other things, the offeror to put in place arrangements such that:-

(i) where the offer becomes or is declared unconditional in all respects, the offer will remain open for acceptance for a longer period than normally required by Rule 15.3;

(ii) shareholders who have not yet accepted the offer will be notified in writing of the extended closing date and the implications if they choose not to accept the offer; and

(iii) *the resolution to approve the delisting is subject to the offeror having received ~~valid~~ acceptances of the offer together with purchases (in each case of the disinterested shares) made by the offeror and persons acting in concert with it from the date of the announcement of a firm intention to make an offer amounting to 90% of the disinterested shares.*

Note 1 to Rule 2.4 of the Takeovers Code

1. General

When the board of an offeror is required to obtain independent advice under this Rule 2.4, it should do so before announcing an offer or any revised offer. Such advice should be as to whether or not the offer is in the interests of the offeror's shareholders. The board of the offeror may seek oral advice ~~prior to~~ before the announcement of the offer with the full advice to be obtained as soon as possible thereafter. In any event the offer announcement must contain a summary of the salient points of the advice received. The full advice must be sent to the offeror's shareholders as soon as practicable and if there is a general meeting of the offeror company to approve the proposed offer at least 14 days in advance. Any documents or advertisements issued by the board of the offeror in such cases must include a responsibility statement by the directors as set out in Rule 9.3.

Note to Rule 2.6 of the Takeovers Code

Note to Rule 2.6:

Significant connection within 2 years

The Executive would normally regard any significant connection within ~~the~~ 2 years ~~prior to the commencement of~~ before an offer period as reasonably likely to create such a conflict of interest or reasonably likely to affect the objectivity of an adviser's advice.

Rule 2.10 of the Takeovers Code

2.10 Takeover and privatisation by scheme of arrangement or capital reorganisation

Except with the consent of the Executive, where any person seeks to use a scheme of arrangement or capital reorganisation to acquire or privatise a company, the scheme or capital reorganisation may only be implemented if, in addition to satisfying any voting requirements imposed by law:–

(a) the scheme or the capital reorganisation is approved by at least 75% of the votes attaching to the disinterested shares that are cast either in person or by proxy at a duly convened meeting of ~~the holders of the disinterested shares~~ shareholders; and

(b) the number of votes cast against the resolution to approve the scheme or the capital reorganisation at such meeting is not more than 10% of the votes attaching to all disinterested shares.

…

Rule 2.11 of the Takeovers Code

2.11 Exercise of rights of compulsory acquisition

Except with the consent of the Executive, where any person seeks to acquire or privatise a company by means of an offer and the use of compulsory acquisition rights, such rights may only be exercised if, in addition to satisfying any requirements imposed by law, acceptances of the offer and purchases (in each case of the disinterested shares) made by the offeror and persons acting in concert with it during the period ~~of 4 months~~ from the date of the announcement of a firm intention to make an offer to the expiry of the 4-month period after ~~posting~~ the date of the initial offer document total 90% of the disinterested shares.

Notes to Rule 2 of the Takeovers Code

Notes to Rule 2:

…

8. Shareholders' meetings held for the purpose of Rules 2.2 and 2.10

Reference to "duly convened meeting of shareholders" under Rules 2.2 and 2.10 refers to shareholders' meetings which are duly convened in accordance with an offeree company's constitutional documents and the company law of its place of incorporation. Offeree companies and their advisers are encouraged to seek legal advice and, where applicable, guidance and directions from the relevant courts in respect of the meetings held for the purpose of considering a scheme of arrangement or a capital reorganisation.

Note 4 to Rules 3.1, 3.2 and 3.3

4. Gathering of irrevocable commitments

An offeror may approach a very restricted number of ~~sophisticated investors who have a controlling shareholding~~ shareholders to obtain ~~an~~ irrevocable commitments in an offer. An offeror does not have to consult the Executive in advance before approaching a shareholder with a material interest in an offeree company. In all other cases the Executive must be consulted before any approach is made to a shareholder to obtain an irrevocable commitment in connection with an offer. In appropriate circumstances, the Executive may permit particular shareholders to be called and informed of details of a proposed offer which has not been publicly announced. The Executive will wish to be satisfied that the proposed arrangements will provide adequate information as to the nature

of the commitment sought; and a realistic opportunity to consider whether or not that commitment should be given and to obtain independent advice if required. The financial adviser concerned will be responsible for ensuring compliance with all relevant legislation and regulations. In all cases attention is drawn to General Principles 3 and 5.

For the purpose of this note, a shareholder has a material interest in an offeree company if he and his concert parties control(s) directly or indirectly 5% or more of the voting rights of an offeree company.

Rule 3.4 of the Takeovers Code

3.4 Suspension of trading

When an announcement is required under this Rule 3 the offeror or the offeree company, as the case may be, should notify the Executive and the Stock Exchange immediately that an announcement is imminent and if there is any possibility that an uninformed market for shares of the offeror or the offeree company could develop ~~prior to~~ before publication of the announcement, serious consideration should be given to requesting a suspension of trading in such shares pending publication of the announcement. A potential offeror must not attempt to prevent the board of the offeree company from making an announcement or requesting the Stock Exchange to grant a temporary suspension of trading at any time the board thinks appropriate.

Rule 3.5 of the Takeovers Code

3.5 Announcement of firm intention to make an offer

The announcement of a firm intention to make an offer should be made only when an offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.

When a firm intention to make an offer is announced, the announcement must contain:–

(a) the terms of the offer;

(b) the identity of the offeror and, where the offeror is a company, the identity of its ultimate controlling shareholder and the identity of its ultimate parent company or, where there is a listed company in the chain between such company and its ultimate parent company, the identity of such listed company;

(c) details of any existing holding of voting rights and rights over shares in the offeree company:–

(i) which the offeror owns or over which it has control or direction;

(ii) which is owned or controlled or directed by any person acting in concert with the offeror;

(iii) in respect of which the offeror or any person acting in concert with it has received an irrevocable commitment to accept the offer; and

(iv) in respect of which the offeror or any person acting in concert with it holds convertible securities, warrants or options;

(d) details of any outstanding derivative in respect of securities in the offeree company entered into by the offeror or any person acting in concert with it;

(e) all conditions (including normal conditions relating to acceptance, listing and increase of capital) to which the offer is subject;

(f) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree company and which might be material to the offer (see Note 8 to Rule 22);

(g) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of doing so, including details of any break fees payable as a result; ~~and~~

(h) details of any relevant securities (as defined in Note 4 to Rule 22) in the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold~~.~~;

(i) where an offer involves or otherwise relates to a sale (directly or indirectly) by a vendor of shares in the offeree company:-

(i) details of any consideration, compensation or benefit in whatever form paid or to be paid by the offeror or any party acting in concert with it to the vendor of such sale shares or any party acting in concert with such vendor in connection with the sale and purchase of such sale shares; and

(ii) details of any understanding, arrangement, agreement or special deal between the offeror or any party acting in concert with it on the one hand, and the vendor of such shares and any party acting in concert with it on the other hand; and

(j) details of any understanding, arrangement or agreement or special deal between: (1) any shareholder of the offeree company; and (2)(a) the offeror and any party acting in concert with it, or (b) the offeree company, its subsidiaries or associated companies.

In the event that any of paragraphs (c) to ~~(h)~~(j) above is not applicable because no such matter or arrangement exists, a negative statement to this effect must be made.

The announcement of an offer should include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.

Note 4 to Rule 3.5 of the Takeovers Code

4. Subjective conditions

Companies and their advisers should consult the Executive ~~prior to~~ before the issue of any announcement containing conditions which are not entirely objective (see Rule 30.1).

New notes to Rule 3.7 of the Takeovers Code

Notes to Rule 3.7:

…

3. Offeror to be bound by statements made

Subject to Note 4 to Rule 3.7, in the event that a potential offeror makes a statement in relation to the terms of the possible offer prior to an announcement of a firm intention to make an offer is being made, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made. The potential offeror would not be so bound by the statement where the right not to be so bound in certain circumstances was specifically reserved at the time the statement was made, and those circumstances subsequently arise or there are wholly exceptional circumstances.

4. Statements relating to offer price

The disclosure of an indicative offer price is not normally permitted prior to an announcement of a firm intention to make an offer being made save in exceptional circumstances. Where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in case of a possible securities exchange offer), the offer subsequently (if any) made by the potential offeror must be made on the same or better terms.

Rule 3.8 of the Takeovers Code

3.8 Announcement of numbers of relevant securities in issue

When an offer period begins, the offeree company must announce, as soon as possible, details of all classes of relevant securities issued by the offeree company, together with the numbers of such securities in issue. ~~An~~ Unless it is stated that an offer is, or is likely to be, solely in cash, an offeror or potential named offeror must also announce the same details relating to its relevant securities (and if relevant, the relevant securities of the company the securities of which are to be offered as consideration for the offer) following any announcement identifying it as an offeror or potential offeror.

…

New Rule 3.9 of the Takeovers Code

3.9 At any time during an offer period following the announcement of a possible offer, but before the announcement of a firm intention to make an offer, the offeree company may request the Executive to impose a time limit for the potential offeror to clarify its intention with regard to the offeree company. The Executive may, in exceptional circumstances, impose such a time limit on the potential offeror if it considers appropriate to do so, irrespective of whether a request has been made by the offeree company. If a time limit for clarification is imposed by the Executive, the potential offeror must, before the expiry of the time limit, announce either a firm intention to make an offer for the offeree company in accordance with Rule 3.5, or that it does not intend to make an offer for the offeree company, in which case the announcement will be treated as a statement to which Rule 31.1(c) applies.

Note to Rule 3.9:

The Executive will take all relevant factors into account in deciding whether and how long a time limit should be imposed on the potential offeror to clarify its intention under this Rule 3.9, including (without limitation):-

(a) the current duration of the offer period;

(b) the reason(s) for the offeror's delay in issuing a firm intention announcement;

(c) the proposed offer timetable (if any);

(d) any adverse effects that the offer period has had on the offeree company; and

(e) the conduct of the parties to the offer.

Rule 4 of the Takeovers Code

4. No frustrating action

Once a bona fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bona fide offer may be imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in general meeting. In particular the offeree company's board must not, without such approval, ~~do~~ carry out or agree to ~~do~~ carry out such frustrating actions. Examples of frustrating action include the following:–

(a) issue ~~any~~ of shares;

(b) create, issue or grant, or permit the creation, issue or grant of, any convertible securities, options or warrants in respect of shares of the offeree company;

(c) sell, dispose of or acquire assets of a material amount;

(d) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or

(e) cause the offeree company or any subsidiary or associated company to buy back, purchase or redeem any shares in the offeree company or provide financial assistance for any such buy-back, purchase or redemption.

Where the offeree company is under a prior contractual obligation to take any such action, the requirements of this Rule 4 do not normally apply. ~~or where~~ Where there are ~~other~~ special circumstances, the Executive must be consulted at the earliest opportunity. In appropriate circumstances the Executive may grant a waiver from the general requirement to obtain shareholders' approval.

Notes to Rule 4:

1. Consent by the offeror

~~The requirement of a~~ A shareholders' meeting ~~may be waived by the Executive~~ is not required if the offeror (or, in the case of more than one offeror, all offerors) agrees to the action to be taken by the offeree company.

In the event of competing bids, consent from all named offerors and potential offerors would be required to waive the requirement of shareholders' meeting.

…

4. ~~Executive waiver~~ Deleted

~~The Executive, when deciding whether to grant a waiver of the requirement to obtain shareholders' approval, will take particular account of what details, if any, the offeree company's board of directors has disclosed to its shareholders of any contractual obligation, duty or right, the fulfilment or enforcement of which may result in the offer being frustrated or the shareholders of the offeree company being denied the opportunity to decide on the merits of the offer.~~

…

7. When there is no need to proceed with an offer

The Executive may allow an offeror not to proceed with its offer if, ~~prior to~~ before the posting of the offer document, the offeree company:–

(a) passes a resolution in general meeting as envisaged by this Rule 4; or

(b) announces a transaction which would require such a resolution but for the fact that it is pursuant to a contract entered into earlier or that the Executive has ruled that an obligation or other special circumstance exists.

Note 1 to Rule 6 of the Takeovers Code

1. *Offeree company's obligation following offeror's announcement*

Following the announcement of a firm intention to make an offer, the offeree company must, as soon as possible but in any event ~~within~~ no later than 48 hours of a request, provide the offeror with all relevant details of its outstanding voting rights, the issued shares and, to the extent not issued, the allotted shares and details of any conversion or subscription rights or any other rights pursuant to the exercise of which shares may be unconditionally allotted or issued during the offer period. In the case of conditionally allotted shares, the details should include the conditions and the date on which such conditions may be satisfied. In the case of rights, the details should include the number of shares which may be unconditionally allotted or issued during the offer period as a result of the exercise of such rights, identifying separately those attributable to rights which commence or expire on different dates, and the various prices at which these rights could be exercised.

Rule 7 of the Takeovers Code

7. Resignation of directors of offeree company

Once a bona fide offer has been communicated to the board of the offeree company or the board of the offeree company has reason to believe that a bona fide offer is imminent, except with the consent of the Executive, the ~~directors~~ resignation of any directors of an offeree company should not ~~resign~~ take effect until after the publication of the closing announcement on the first closing date of the offer, or the ~~date when~~ publication of the announcement that the offer ~~becomes~~ has become or ~~is~~ been declared unconditional, ~~or shareholders have voted on~~ whichever is later. In the case of a transaction involving a whitewash waiver, the resignation of any director of an offeree company should not take effect until after the publication of the results announcement relating to the shareholders' meeting to approve the waiver ~~of a general offer obligation~~ under Note 1 on dispensations from Rule 26~~, whichever is the later~~.

Notes to Rule 7:

1. *Restrictions on control by offeror*

Reference is made to Rule 26.4 which restricts the offeror's ability to control the offeree company ~~prior to~~ before posting of the offer document.

2. *Executive's consent*

The Executive will normally consent to the resignation of a director if the offeror is a controlling shareholder before ~~commencement of~~ the offer period except when such director is eligible to serve on the independent board committee established under Rule 2.1. In such circumstances the Executive will not normally consent to such director's resignation unless the Executive has also granted consent for the exclusion of that director from the independent board committee under Rule 2.8.

Notes 3 and 4 to Rule 8.1 of the Takeovers Code

3. *Meetings*

Subject always to Rule 34, meetings of representatives of the offeror or the offeree company or their respective advisers with any shareholder in, or holder of other relevant securities (as defined in Note 4 to Rule 22) of, either an offeror or the offeree company, investment analyst, stockbroker or others engaged in investment management or advice may take place during the offer period, so long as no material new information is provided, and no significant new opinions are expressed, by the relevant representative or adviser and the following provisions are observed. Except with the consent of the Executive, an appropriate representative of the financial adviser to the offeror or the offeree company must be present. That representative will be responsible for confirming in writing to the Executive, ~~not~~ no later than 12.00 noon on the business day ~~following~~ after the date of the meeting, that no material new information was provided, and no significant new opinions were expressed, by the relevant representative or adviser at the meeting.

Materials such as press releases or printouts of slides which highlight the salient facts of the offer may be distributed at the meeting and should be fairly presented. Whilst the Executive would not normally regard these printed materials as documents for the purpose of Rule 12.1 and they need not be submitted to the Executive for comment ~~prior to~~ before distribution, an appropriate representative of the financial adviser must confirm to the Executive in the manner set out above that these printed materials do not contain any material new information or significant new opinion.

The relevant financial adviser will be expected to satisfy the Executive that the provisions of this Note have been complied with in case of doubt. Financial advisers may, therefore, find it useful to record the proceedings of meetings, although this is not a requirement. The offeror or the offeree company and their respective financial advisers must ensure that no meetings are arranged without the relevant financial adviser's knowledge.

The above provisions apply to all such meetings held during an offer period wherever they take place, whether they are held in person or by telephone or other electronic means and even if with only one person or firm. Meetings with employees in their capacity as such (rather than in their capacity as shareholders) are not normally covered by this Note, although the Executive should be consulted if any employees hold a significant number of shares.

4. *Information issued by associates (e.g. financial advisers or stockbrokers)*

Rule 8.1 does not prevent the issue of circulars during the offer period to their own investment clients by brokers or advisers to any party to the transaction provided such issue has previously been approved by the Executive.

In giving to their own clients material on the companies involved in an offer, associates of an offeror or the offeree company must bear in mind the essential point that new information must not be restricted to a small group. Accordingly, such material must not include any statements of fact or opinion derived from information not generally available.

The associate's status must be clearly disclosed.

Attention is drawn to class (5) of the definition of acting in concert and class (2) of the definition of associate, as a result of which, for example, this Note will be relevant to stockbrokers who, although not directly involved with the offer, are associates of an offeror or the offeree company because the stockbroker is in the same group as the financial adviser to an offeror or the offeree company.

In this connection, all entities within the same group as any financial advisers to an offeror or the offeree company should, after the commencement of an offer period, stop issuing research reports on the offeree company and, in the case of a securities exchange offer, the offeror company, except with the Executive's prior consent. The concern is that these reports may contain profit forecast statements which require full compliance with Rule 10. The financial adviser is not required to retrieve (or procure its group entities to retrieve) research reports already distributed ~~prior to~~ before the offer period but all entities within the financial adviser's group should stop distributing these old reports and they should be removed from the websites. The Executive should be consulted and it would normally regard any research reports issued within 6 months ~~prior to~~ before the offer period as being "live".

Rule 8.2 of the Takeovers Code

8.2 Offer document time limit

The offer document~~, which must not be dated more than 3 days prior to despatch, should normally be posted~~ should be despatched by or on behalf of the offeror ~~within~~ no later than 21 days (or, in the case of a securities exchange offer, 35 days) ~~of~~ after the date of the announcement of the terms of the offer. In an agreed offer the offeror and offeree company are encouraged to combine the offer document and the offeree board circular in a composite document to be posted within this period. The Executive's consent is required if the offer document or composite document may not be posted within this period. (See also Rules 8.4 and 15.1.)

Note 2 to Rule 8.2 of the Takeovers Code

2. Pre-conditions

The Executive's consent is required if the making of an offer is subject to the prior fulfilment of a pre-condition and the pre-condition cannot be fulfilled within the time period contemplated by this Rule 8.2. Under such circumstances, the Executive will normally require that the offer document be posted ~~within~~ no later than 7 days ~~of~~ after the fulfilment of ~~the pre-condition~~ all pre-conditions.

Rule 8.4 of the Takeovers Code

8.4 Timing and contents of offeree board circular

The offeree company should send to its shareholders ~~within~~ no later than 14 days ~~of~~ after the ~~posting~~ date of the offer document a circular containing the information set out in Schedule II, together with any other information it considers to be relevant to enable its shareholders to reach a properly informed decision on the offer. The Executive's consent is required if the offeree board circular may not be posted within this period. Such consent will only be given if the offeror agrees to an extension of the first closing date (see Rule 15.1) by the number of days in respect of which the delay in the posting of the offeree board circular is agreed.

If such consent is granted, the time restrictions under Rules 15.4, 15.5 and 16 will be extended by the same number of days. In that case the offer should be kept open for at least 14 days after ~~despatch~~ the date of the delayed offeree board circular to allow shareholders sufficient time to consider the offeree board circular.

The offeree board circular must include the views of the offeree company's board or its independent committee on the offer and the written advice of its financial adviser as to whether the offer is, or is not, fair and reasonable and the reasons therefor. Reference is made in this regard to Rule 2. If the offeree company's financial adviser is unable to advise whether the offer is, or is not, fair and reasonable the Executive should be consulted.

Note to Rule 8.6 of the Takeovers Code

Notes to Rule 8.6:

1. Confirmation of translation

See Note 5 to Rule 12 regarding the confirmation of translation to be given to the Executive following the publication of any document.

2. Language preference

Issuers of documents are permitted to send copies of documents in English or Chinese or in both English and Chinese provided arrangements are in place to ascertain the language preference of the recipient. Any arrangements made must comply with all applicable laws and regulations, including the Listing Rules in effect from time to time, and relevant constitutional documents.

New Rule 8.7 of the Takeovers Code

8.7 Method of publication of documents

Any document required by any rule in the Codes to be posted, sent or despatched to a security holder or a shareholder will be treated as having been posted, sent or despatched if it is, to the extent permitted under all applicable laws and regulations and the relevant constitutional documents (where applicable):

(a) sent to the recipient in a hard copy form;

(b) sent to the recipient in an electronic format; or

(c) published on an issuer's or the offeree company's website and the website of the Stock Exchange in accordance with the requirements of the Listing Rules.

Note to Rule 8.7:

Issuers of documents are reminded to check and ensure compliance with all applicable laws and regulations, including the Listing Rules, and the relevant constitutional documents, prior to disseminating documents electronically. Any document sent in breach of applicable laws and regulations and constitutional documents may not be treated as having been sent or despatched under Rule 8.7. The Executive may take appropriate actions, which may include extending an offer period, until the document is sent in compliance with all applicable laws and regulations and constitutional documents (where applicable).

Note 4 to Rule 8 of the Takeovers Code

Notes to Rule 8:

…

4. Date of despatch

Evidence of the date of despatch, e.g. a copy of the posting certificate or a confirmation confirming the despatch of the document electronically, must be provided to the Executive in relation to an offer document, revised offer document or offeree board circular."

Note 2 to Rules 9.3 and 9.4 of the Takeovers Code

2. Joint announcement and composite document

When a joint announcement is ~~released~~ published or the offer document and the offeree board circular are combined in a composite document, all directors of the offeror should take responsibility for the joint announcement or the composite document, other than for the information in the announcement or document relating to the offeree company. The directors of the offeree company should take responsibility for the information in the announcement or document relating to the offeree company.

Rule 10.3(d) of the Takeovers Code

10.3 Reports required in connection with profit forecasts

…

(d) Except with the consent of the Executive, any profit forecast which has been made before ~~the commencement of~~ the offer period must be examined, repeated and reported on in the document sent to shareholders.

Rule 11.2 of the Takeovers Code

11.2 Basis of valuation

(a) In any valuation of an asset or business the basis of valuation must be clearly stated. Only in exceptional circumstances should it be qualified and in that event the valuer must explain the meaning of the words used. The material assumptions made in a valuation must be stated in the valuation. These assumptions should be made taking into account the principles set out in the Notes to Rules 10.1 and 10.2.

Rule 12.1 of the Takeovers Code

12.1 Filing of documents for comments

All documents (other than those referred to in the Note to Rule 12.1 below) must be ~~filed with~~ submitted to the Executive for comment ~~prior to release or~~ before publication and must not be released or published until the Executive has confirmed that it has no further comments thereon. ~~2 final copies of the document must be filed with the Executive.~~ Documents should be submitted electronically unless otherwise directed by the Executive.

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~~ before 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~~ before publication if considered necessary or appropriate.

Rule 12.2 of the Takeovers Code

12.2 Publication of documents

All ~~announcements~~ documents in respect of listed companies must be made in accordance with the requirements of the Listing Rules. ~~All announcements in respect of unlisted offeree companies must be published as a paid announcement in at least one leading English language newspaper and one leading Chinese language~~

~~newspaper published daily and circulating generally in Hong Kong.~~ All documents published in respect of unlisted offeree companies must be delivered to the Executive in electronic form for publication on the SFC's website.

Note 5 to Rule 12 of the Takeovers Code

5. Confirmation of translation

Following the publication of any document, the directors of the issuer of that document must confirm that the Chinese version of the document is a true and accurate translation of the English version and that it is consistent with the English version (or vice versa). Such confirmation should be in the form prescribed by the Executive from time to time and should be provided to the Executive as soon as possible and in any event no later than 5:00 p.m. on the business day after the ~~publication~~ date of the document. The confirmation should be signed by a director (on behalf of the board of directors) of the issuer of the document. If the document is jointly issued, a confirmation should be provided by each of the parties issuing that document.

Under Rules 8.6 and 9.3, the responsibility to ensure that the Chinese version of the document is a true and accurate translation of the English version (or vice versa) lies with the directors of the issuing party. The provision of the confirmation of translation to the Executive does not absolve the responsibility of the directors of the issuing party in this regard.

Rule 14 and Note 1 to Rule 14 of the Takeovers Code

14. Offers for more than one class of equity shares

Where a company has more than one class of equity share capital, a comparable offer must be made for each class whether such capital carries voting rights or not. The Executive must be consulted in all such cases. The comparable offer or proposal for each class of share capital required by this Rule 14 should normally be subject to similar conditions. It may, however, be put by way of a scheme to be ~~csonsidered~~ considered at meetings separately in respect of each class of the equity share capital.

1. Comparable offers

In order to achieve comparability, this Rule 14 may involve an offeror paying a higher price for a particular class of shares than the highest price paid by him ~~in the preceding~~ within 6 months before the offer period for shares of that class. A comparable offer need not be an identical offer but the difference must be capable of being justified to the Executive, who will have regard to all relevant circumstances including the rights attaching to each class of shares and may also consider the historical record of their market prices.

Rule 15.1 of the Takeovers Code

15.1 Closing dates

Where an offer document and the offeree board circular are posted on the same day or are combined in a composite document, the offer must initially be open for acceptance for at least 21 days ~~following~~ after the date ~~on which~~ of the offer document ~~is posted~~. Where the offeree board circular is posted after the date ~~on which~~ of the offer document ~~is posted~~, the offer must be open for acceptance for at least 28 days ~~following~~ after the date ~~on which~~ of the offer document ~~is posted~~. The latest time for acceptance is 4.00 p.m. on the closing day unless the offer is extended in accordance with Rule 19.1.

In any announcement of an extension of an offer, either the next closing date must be stated or, if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice. In the latter case, at least 14 days' notice in writing must be given, before the offer is closed, to those shareholders who have not accepted the offer and an announcement must be published.

Where an offer closes without having become unconditional it shall be deemed to have lapsed.

Rule 15.4 of the Takeovers Code

15.4 Offeree company announcements after "Day 39"

Except with the consent of the Executive (who should be consulted at the earliest opportunity), the board of the offeree company should not announce any material new information (including trading results, profit or dividend forecasts, asset valuations or proposals for dividend payments or for any material acquisition or disposal or major transactions) after the 39th day ~~following~~ after the ~~posting~~ date of the initial offer document. Where a matter which might give rise to such announcement being made after the 39th day is known to the offeree company, every effort should be made to bring forward the date of the announcement, but, where this is not practicable, or where the matter arises after that date, the Executive will normally give its consent to a later announcement. If an announcement of the kind referred to in this Rule 15.4 is made after the 39th day, the Executive will normally be prepared to grant an extension of "Day 46" (Rule 16.1) and/or "Day 60" (Rule 15.5) as appropriate.

Rule 15.5 of the Takeovers Code

15.5 Final day rule

Except with the consent of the Executive, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after 7.00 p.m. on the 60th day after the ~~day~~ date of the initial offer document ~~was posted~~. The Executive's consent will normally be granted only:–

(i) in a competitive situation (see Note 2 below);

(ii) if the board of the offeree company consents to an extension;

(iii) as provided for in Rule 15.4; or

(iv) if the offeror's receiving agent requests an extension for the purpose of complying with Note 2 to Rule 30.2.

In the event of an extension with the consent of the Executive in circumstances other than those set out in paragraphs (i) to (iii) above, acceptances or purchases in respect of which relevant documents are received after 4.00 p.m. on the relevant closing date may only be taken into account with the consent of the Executive, which will only be given in exceptional circumstances. In any event, "Day 60" shall not be extended beyond a date that is 4 months after the date of the offer document.

Notes 2 and 3 to Rule 15.5 of the Takeovers Code

2. Competitive situations

If a competing offer has been announced, both offerors will normally be bound by the timetable established by the posting of the competing offer document. In addition, the Executive will extend "Day 60" for the purposes of any procedure established by the Executive in accordance with Rule 16.5. The Executive will not normally grant its consent under Rule 15.5(ii) in a competitive situation unless its consent is sought before the 46th day ~~following~~ after the ~~posting~~ date of the competing offer document. The Executive should be consulted at the earliest opportunity if there is any doubt as to the application of this Note.

3. Regulatory approvals

If an offer requires approval from a regulatory body (in relation to merger control or otherwise) the expected timetable for the relevant regulatory approval process should be set out in the offer document. Where there is a delay in the relevant approval process after ~~publication~~ the date of the offer document, the Executive should be consulted at the earliest opportunity. In appropriate cases, the Executive may extend "Day 39" (see Rule 15.4) to the second day ~~following~~ after the announcement of such approval with consequent changes to "Day 46" (see Rule 16.1) and "Day 60".

Rule 15.6 of the Takeovers Code

15.6 Compulsory acquisition

Where an offeror has stated in the offer document its intention to avail itself of any powers of compulsory acquisition, the offer may not remain open for acceptance for more than 4 months ~~from~~ after the ~~posting~~ date of the offer document, unless the offeror has by that time become entitled to exercise such powers of compulsory acquisition, in which event it must do so without delay.

Rule 15.7 of the Takeovers Code

15.7 Time for fulfilment of all other conditions

Except with the consent of the Executive, all conditions must be fulfilled or the offer must lapse ~~within~~ no later than 21 days ~~of~~ after the first closing date or ~~of~~ after the date the offer becomes or is declared unconditional as to acceptances, whichever is the later.

Note to Rule 15.7:

Schemes of arrangement

In cases involving schemes of arrangement, no consent from the Executive is required if the timing cannot be met due to the Court's timetable which is beyond the control of the offeror.

Rule 16.1 of the Takeovers Code

16.1 Offer open for 14 days after revision

If, in the course of an offer, the offeror revises its terms, all offeree company shareholders, whether or not they have already accepted the offer, will be entitled to the revised terms. A revised offer must be kept open for at least 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~. Therefore, no revised offer document may be posted in the 14 days ending on the last day the offer is able to become unconditional as to acceptances. (See Rules 23, 24 and 26.)

Note 1 to Rule 16.1 of the Takeovers Code

1. Announcements which may increase the value of an offer

Where an offer involves an exchange of equity or potential equity, the announcement by an offeror of any material new information (including trading results, profit or dividend forecasts, asset valuations, merger benefits statements, proposals for dividend payments, for a capital reorganisation or for any material acquisition or disposal) may have the effect of increasing the value of the offer. An offeror will not, therefore, normally be permitted to make such announcements after it is precluded from revising its offer. If an announcement of the kind referred to in this Note 1 might fall to be made during the offer period, the Executive must be consulted at the earliest opportunity and an offeror will not be permitted to make a no increase statement as defined in Rule 18.3 ~~prior to~~ before the ~~release~~ publication of the announcement.

For the purpose of determining whether a transaction is a "material acquisition or disposal" the Executive will, in general, apply the same tests as those set out in the Listing Rules to determine whether a transaction is a "major transaction".

For the purpose of this Note 1, "capital reorganisation" includes rights issues, capital distributions or special dividends, dividends in specie other than scrip dividends of the same class and does not include stock splits,

stock consolidations, bonus issues of the same class, ordinary dividends not exceeding the earnings per share for the period in respect of which the dividend is declared, and nominal share capital and share premium reductions not involving any distribution to shareholders.

It is recognised that it may not always be possible for an offeror to avoid the need for an announcement to be made (e.g. due to obligations under the Listing Rules). Where the offeror is aware beforehand of a matter which might give rise to such an announcement obligation, the offeror should make every effort to bring forward the date of the announcement so that the restrictions under this Note 1 would not arise. Where this is not possible or where the matter arises after the offeror is restricted from revising its offer, the Executive should be consulted in advance of any proposed announcement and will normally seek the views of the Stock Exchange or any other regulator in order to satisfy itself that the announcement is in fact required.

Note 3 to Rule 16.1 of the Takeovers Code

3. When revision is not permitted

Since an offer must remain open for acceptance for 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~, an offeror will generally not be able to revise its offer, and must not place itself in a position where it would be required to revise its offer, in the 14 days ending on the last day its offer is able to become unconditional. Nor must an offeror place itself in a position where it would be required to revise its offer if it has made a no increase statement as defined in Rule 18.3.

Note 4 to Rule 16.1 of the Takeovers Code

4. Triggering a mandatory offer under Rule 26

When an offeror, which is making a voluntary offer either in cash or with a cash alternative, makes an acquisition which causes it to have to extend a mandatory offer under Rule 26 at no higher price than the existing cash offer, the change in the nature of the offer will not be viewed as a revision (and will thus not be precluded by an earlier no increase statement), even if the offeror is obliged to waive any outstanding condition. However, such an acquisition can only be made if the offer can remain open for acceptance for a further 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~.

Note 2 to Rule 16.3 of the Takeovers Code

2. Shutting off

Normally, if an offer has become or is declared unconditional as to acceptances, all alternative offers which have not been closed ~~prior to~~ before that date must remain open in accordance with Rule 15.3. In accordance with Rule 15.2, if on a closing date an offer is not unconditional as to acceptances, an alternative offer (except a cash alternative provided to satisfy the requirements of Rule 26) may be closed without prior notice. However, if, on the first closing date on which an offer is capable of being declared unconditional as to acceptances, the offer is not so declared and is extended, all alternative offers must remain open for 14 days thereafter but may then be closed without prior notice.

Rule 16.5 of the Takeovers Code

16.5 Competitive situations

If a competitive situation continues to exist in the later stages of the offer period, the Executive will normally require revised offers to be published in accordance with an auction procedure, the terms of which will be determined by the Executive. That procedure will normally require final revisions to competing offers to be announced by the 46th day ~~following~~ after the ~~posting~~ date of the competing offer document but enable an offeror to revise its offer within a set period in response to any revision announced by a competing offeror on or after the 46th day. The procedure will not normally require any revised offer to be posted before the expiry of a set period after the last revision to either offer is announced. The Executive will consider applying any alternative procedure which is agreed between competing offerors and the board of the offeree company.

Rule 17 of the Takeovers Code

17. Acceptor's right to withdraw

An acceptor shall be entitled to withdraw his acceptance after 21 days from the first closing date of the offer, if the offer has not by then become unconditional as to acceptances. This entitlement to withdraw shall be exercisable until such time as the offer becomes or is declared unconditional as to acceptances~~:~~. ~~however~~ However, on the 60th day (or any date beyond which the offeror has stated that its offer will not be extended) the final time for the withdrawal must coincide with the final time for the lodgement of acceptances set out in Rule 15.5, and this time must not be later than 4.00 p.m.

The offeror must, as soon as possible but in any event no later than 7 business days after receipt of the notice of withdrawal, despatch the share certificates lodged with acceptance forms to, or make such share certificates available for collection by, those offeree company shareholders who have exercised their right to withdraw.

Note 2 to Rule 18 of the Takeovers Code

2. Competitive situations

Subject to Note 4 to this Rule 18 below, if a competitive situation arises after a no extension or no increase statement has been made, the offeror can choose not to be bound by it and to be free to extend or increase its offer provided that:–

(a) an announcement to this effect is given as soon as possible (and in any event ~~within~~ no later than 4 business days after the ~~day~~ date of the announcement of the competing offer) and a circular is sent to shareholders at the earliest opportunity; and

(b) any shareholders of the offeree company who accepted the offer after the date of the no extension or no increase statement are given a right of withdrawal for a period of 8 days ~~following~~ after the date ~~on which~~ of the circular ~~is sent~~.

Note 5 to Rule 18 of the Takeovers Code

5. Rule 15.4 announcements

Subject to Note 4 above, if the offeree company makes an announcement of the kind referred to in Rule 15.4 after the 39th day and after a no increase statement has been made, the offeror can choose not to be bound by that statement and to be free to revise its offer if permitted by the Executive under Rule 15.4, provided that notice to this effect is given as soon as possible (and in any event ~~within~~ no later than 4 business days after the date of the offeree company announcement) and shareholders are informed in writing at the earliest opportunity.

Rule 20 of the Takeovers Code

20. Settlement of consideration and return of share certificates

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~~ must be paid for by the offeror as soon as possible but in any event ~~within~~ no later than 7 business days ~~following~~ after 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~~ no later than 7 business days ~~following~~ after 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~~ no later than 7 business days ~~following~~ after the close of the partial offer.

20.2 ~~Withdrawn or lapsed offers~~ Share certificates

(a) Withdrawn or lapsed offers

If an offer is withdrawn or lapses, the offeror must, as soon as possible but in any event ~~within 10~~ no later than 7 business days ~~thereof~~ after the offer is withdrawn or lapses, post the share certificates lodged with acceptance forms to, or make such share certificates available for collection by, those offeree company shareholders who accepted the offer.

(b) Close of offer

The offeror must, as soon as possible but in any event no later than when the consideration is paid for by the offeror, despatch the share certificates representing the untaken or untendered shares to, or make such share certificates available for collection by, those offeree shareholders who accepted the offer.

Rule 21.2 of the Takeovers Code

21.2 Restrictions on dealings during the offer

During an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the Executive and ~~following~~ after 24 hours public notice that such sales might be made. Save as provided below, the Executive will not give consent for sales particularly where a mandatory offer under Rule 26 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it may make further purchases and only in exceptional circumstances will the Executive permit the offer to be revised.

The consent of the Executive is not required for placing or underwriting arrangements made during an offer in order to achieve the minimum public shareholding to maintain the listing of the offeree company's shares provided that such arrangements are not effective ~~prior to~~ before the date when the offer becomes or is declared unconditional. If an offeror wishes to make such arrangements in order to hold less than 75% (or such percentage as may be relevant in the event that the Stock Exchange has accepted that a percentage other than 25% of the offeree company's shares needs to be in public hands to maintain the listing of the offeree company's shares) of the offeree company's shares, the consent of the Executive is required.

Rule 21.4 of the Takeovers Code

21.4 Dealings after termination of discussions

If discussions are terminated or the offeror decides not to proceed with an offer after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, no dealings in securities (including convertible securities, warrants, options and derivatives, in respect of such securities) of the offeree company by the offeror, persons acting in concert with it or any person privy to this information may take place ~~prior to~~ before an announcement of the position.

Rule 21.6(a) and (b) of the Takeovers Code

21.6 Dealings by connected discretionary fund managers and principal traders

NB Rule 21.6 and the Notes thereto address the position of connected fund managers and connected principal traders who either do not have exempt status or whose exempt status is not relevant by virtue of the operation of Note 2 to the definitions of exempt fund manager and exempt principal trader. They also address the position of exempt principal traders in respect of dealing activities which are not covered by their exempt status.

(a) Discretionary fund managers and principal traders who, in either case, are connected with an offeror or potential offeror, will not normally be presumed to be acting in concert with that person until its identity as an offeror or potential offeror is publicly announced or, if ~~prior to~~ before that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected. Rules 23, 24, 25, 26 and 28 will then be relevant to purchases of offeree company securities and Rule 21.2 to sales of offeree company securities by such persons. Rule 21.7 will be relevant to securities borrowing and lending transactions. (See also the definitions of connected fund manager and connected principal trader.)

(b) Similarly, discretionary fund managers and principal traders who, in either case, are connected with the offeree company, will not normally be presumed to be acting in concert with the offeree company until the commencement of the offer period or, if ~~prior to~~ before that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company and that it was connected with the offeree company. Rules 21.5 and 26 may then be relevant to purchases of offeree company securities. Rule 21.7 will be relevant to securities borrowing and lending transactions. (See also the definitions of connected fund manager and connected principal trader.)

Note 1(a) and (b) to Rule 21.6 of the Takeovers Code

1. Dealings ~~prior to~~ before a concert party relationship arising

(a) As a result of Rule 21.6(a) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with an offeror or potential offeror will not normally be relevant for the purposes of

Rules 21.2, 21.7, 23, 24, 25, 26 and 28 before the identity of the offeror or potential offeror has been publicly announced or, if ~~prior to~~ before that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected.

(b) *Similarly, as a result of Rule 21.6(b) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with the offeree company will not normally be relevant for the purposes of Rule 26 before the commencement of the offer period or, if ~~prior to~~ before that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company.*

Note 3 to Rule 21.6 of the Takeovers Code

3. *Dealings by exempt principal traders not covered by their exempt status*

An exempt principal trader who is connected with an offeror or potential offeror may stand down from its dealing activities after the identity of the offeror or potential offeror is publicly announced or, if ~~prior to~~ before that, the time at which the exempt principal trader had actual knowledge of the possibility of an offer being made by the offeror or potential offeror with whom it is connected. In such circumstances, with the prior consent of the Executive, the exempt principal trader may reduce its interest in offeree company securities or offeror securities, or may acquire interests in such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 21.2, 21.5, 23, 24, 25, 26 and 28. The Executive will not normally require such dealings to be disclosed under Rule 22.4. Any such dealings must take place within a time period agreed in advance by the Executive.

The above will also apply to an exempt principal trader (in respect of dealing activities not covered by their exempt status) who is connected with the offeree company after the commencement of the offer period or, if ~~prior to~~ before that, the time at which the exempt principal trader had actual knowledge of the possibility of an offer being made for the offeree company.

Rule 22.4 of the Takeovers Code

22.4 Connected exempt principal traders

Dealings in relevant securities by an exempt principal trader connected with an offeror or the offeree company should be aggregated and disclosed, in accordance with Note 6(a) to this Rule 22, ~~not~~ no later than 12.00 noon on the business day ~~following~~ after the date of the transactions, stating the following details:-

(i) 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 company.

In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 7 to this Rule 22).

Note 5 to Rule 22 of the Takeovers Code

5. Timing of disclosure

Disclosure must be made no later than 12.00 noon on the business day ~~following~~ after the date of the transaction or, where dealings have taken place in the time zones of the United States no later than 12.00 noon on the second business day ~~following~~ after the date of the transaction. The Executive should be consulted at the earliest opportunity if there is difficulty in meeting the deadlines set.

New Note 14 to Rule 22

14. Disclosure of dealings by class (6) associates of an offeror

Disclosure of dealings in the relevant securities of the offeree company by a person who is an associate of the offeror by virtue only of class (6) of the definition of associate is not required if the offer is, or is likely to be, solely in cash.

Rule 23.1(a) of the Takeovers Code

23.1 When cash offer is required

Except with the consent of the Executive in cases falling under paragraph (a) or (b) below, a cash offer is required where:–

(a) the shares of any class under offer in the offeree company purchased for cash (but see Note 5 to this Rule 23.1) by an offeror, and any person acting in concert with the offeror, during the offer period and within 6 months ~~prior to~~ before its commencement carry 10% or more of the voting rights currently exercisable at a class meeting of that class in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class during the offer period and within 6 months ~~prior to~~ before its commencement;

Notes to Rule 23.1 of the Takeovers Code

Notes to Rule 23.1:

…

2. Gross purchases

The Executive will normally regard Rule 23.1(a) as applying to gross purchases of shares over the relevant period and will not allow the deduction of any shares sold over that period. However, in exceptional circumstances and with the consent of the Executive, shares sold some considerable time before ~~the~~ ~~beginning of~~ the offer period may be deducted.

…

4. Equality of treatment

The discretion given to the Executive in Rule 23.1(c) to require cash to be made available in certain cases where less than 10% has been purchased in the 6 months ~~prior to the commencement of~~ before the offer period will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company. In such cases, relatively small purchases could be relevant.

Rule 23.1(c) may also be relevant when 10% or more has been acquired in the previous 6 months for a mixture of securities and cash.

5. Acquisitions for securities

For the purpose of this Rule 23.1, shares acquired by an offeror and any person acting in concert with it in exchange for securities, either during or ~~in the~~ within 6 months ~~preceding the commencement of~~ before the offer period, will normally be deemed to be purchases for cash on the basis of the value of the securities at the time of the purchase. However, if the vendor of the offeree company shares is required to hold the securities received in exchange until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, no obligation under Rule 23.1 will be incurred.

6. No revision during final 14 days of offer period

Since an offer must remain open for acceptance for 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~, an offeror will generally not be able to revise its offer, and an offeror should not place itself in a position where it would be required to revise its offer under this Rule 23.1 in the 14 day period ending on the last day its offer is able to become unconditional as to acceptances. If an obligation under this Rule 23.1 arises during the course of an offer period and a revision of the offer is necessary an immediate announcement must be made. (See Rule 16.)

…

11. ~~Cum dividend~~ Dividends

~~*When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, the offeror, in establishing the level of the cash offer, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled.*~~*An offeror will not be permitted to reduce from the offer consideration any amount equivalent to a dividend (or other distribution) which is subsequently paid or becomes payable by the offeree company to offeree company shareholders, unless it has specifically reserved in an announcement the right to do so. Where a dividend (or other distribution) is subject to withholding or other deductions, the offer consideration should be reduced by the gross amount received or receivable by the offeree company shareholders.*

Rule 23.2 of the Takeovers Code

23.2 When a securities offer is required

Where purchases of any class of the offeree company shares carrying 10% or more of the voting rights currently exercisable at a class meeting of that class have been made by an offeror and any person acting in concert with it in exchange for securities ~~in the~~ within 3 months ~~prior to~~ before the commencement of and during the offer period, such securities will normally be required to be offered to all other holders of shares of that class.

Unless the vendor is required to hold the securities received until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, an obligation to make an offer in cash or to provide a cash alternative will also arise under Rule 23.

Notes 2, 5 and 6 to Rule 23.2 of the Takeovers Code

2. Equality of treatment

The Executive may require securities to be offered on the same basis to all other holders of shares of that class even though the amount purchased is less than 10% or the purchase took place more than 3 months ~~prior to the commencement of~~ before the offer period. However, this discretion will not normally be exercised unless the vendors of the relevant shares are directors of, or other persons closely connected with, the offeror or the offeree company.

5. Acquisition for a mixture of cash and securities

The Executive should be consulted where 10% or more has been acquired during the offer period and within 6 months ~~prior to~~ before its commencement for a mixture of securities and cash.

6. Purchases in exchange for securities to which selling restrictions are attached

Where an offeror and any person acting in concert with it has purchased 10% or more of the voting rights of any class of shares in the offeree company during the offer period and within 6 months ~~prior to~~ before its commencement and the consideration received by the vendor includes shares to which selling restrictions of the kind set out in the second sentence of Rule 23.2 are attached, the Executive should be consulted.

Rule 24.1(a) of the Takeovers Code

24.1 (a) Purchases before a Rule 3.5 announcement

Except with the consent of the Executive in cases falling under paragraph (i) or (ii) below, when an offeror or any person acting in concert with it has purchased shares in the offeree company:–

(i) within ~~the~~ 3 ~~month period prior to the commencement of~~ months before the offer period;

(ii) during the period, if any, between the commencement of the offer period and an announcement made by the purchaser in accordance with Rule 3.5; or

(iii) ~~prior to~~ before the 3 month period referred to in (i), if in the view of the Executive there are circumstances which render such a course necessary in order to give effect to General Principle 1,

the offer to the shareholders of the same class shall not be on less favourable terms.

Notes 1 and 5 to Rule 24 of the Takeovers Code

1. No increase during final 14 days of offer period

Since an offer must remain open for acceptance for 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~, an offeror will generally not be able to revise its offer, and an offeror should not place itself in a position where it would be required to increase its offer under this Rule 24 in the 14 day period ending on the last day its offer is capable of becoming unconditional as to acceptances (see also Rule 16).

5. Purchases ~~prior to~~ before the 3 month period

The discretion given to the Executive in Rule 24.1(a)(iii) will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company.

Notes to Rule 26.1 of the Takeovers Code

…

6. *Acquisition of voting rights by members of a group acting in concert*

While the Executive accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the holdings of members and the membership of such groups may change at any time. This being the case, there will be circumstances when the acquisition of voting rights by one member of a group acting in concert from another member of the concert group or from a non-member, will result in the acquirer of the voting rights having an obligation to make an offer.

(a) Acquisitions from another member

Whenever the holdings of a group acting in concert total 30% or more of the voting rights of a company and as a result of an acquisition of voting rights from another member of the group a single member comes to hold 30% or more or, if already holding between 30% and 50%, has acquired more than 2% of the voting rights in any 12 month period, an obligation to make an offer will normally arise.

In addition to the factors set out in Note 7 to this Rule 26.1, the factors which the Executive will take into account in considering whether to waive the obligation to make an offer include:–

(~~i~~1) whether the leader of the group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;

(~~ii~~2) the price paid for the shares acquired; and

(~~iii~~3) the relationship between the persons acting in concert and how long they have been acting in concert.

The Executive would normally grant the acquirer of such voting rights a waiver from such general offer obligation if:–

(i) the acquirer is a member of a group of companies comprising a company and its subsidiaries and the acquirer has acquired the voting rights from another member of such group of companies; or

(ii) the acquirer is a member of a group of persons comprising an individual, his close relatives and related trusts, and companies controlled by him, his close relatives or related trusts, and the acquirer has acquired the voting rights from another member of such group of persons.

…

8. *The chain principle*

Occasionally, a person or group of persons acting in concert acquiring statutory control of a company (which need not be a company to which the Takeovers Code applies) will thereby acquire or consolidate control, as defined in the Codes, of a second company because the first company itself holds, either directly or indirectly through intermediate companies, a controlling interest in the second company, or holds voting rights which, when aggregated with those already held by the person or group, secure or consolidate control of the second company. The Executive will not normally require an offer to be made under this Rule 26 in these circumstances unless either:–

(a) the holding in the second company is significant in relation to the first company. In assessing this, the Executive will take into account a number of factors including, as appropriate, the assets, ~~and~~ profits and market capitalisation of the respective companies. Relative values of 60% or more will normally be regarded as significant; or

(b) one of the main purposes of acquiring control of the first company was to secure control of the second company.

The Executive should be consulted in all cases which may come within the scope of this Note to establish whether, in the circumstances, any obligation arises under this Rule 26.

Where any calculation of the relative values of assets and profits under paragraph (a) may produce an anomalous result or is otherwise inappropriate, the relevant parties should provide further calculations by reference to at least the three most recent audited financial periods for the relevant companies, and where applicable, alternative tests, together with justification.

"Statutory control" in this Note means the degree of control which a company has over a subsidiary.

9. Triggering a mandatory offer during a voluntary offer

If it is proposed to incur an obligation under this Rule 26 during the course of a voluntary offer by the acquisition of voting rights, the Executive must be consulted in advance. Once such an obligation is incurred, an offer in compliance with this Rule 26 must be announced immediately.

If no change in the consideration is involved it will be sufficient, following the announcement, simply to notify offeree company shareholders in writing of the new total holding of the offeror, of the fact that the acceptance condition in the form required by Rule 26.2 is the only condition remaining, and of the period for which the offer will remain open ~~following posting~~ after the date of the document.

An offer made in compliance with this Rule 26 must remain open for not less than 14 days following the date on which the document is posted to offeree company shareholders.

Notes 3 and 4 to Rule 16.1 set out certain restrictions on the incurring of an obligation under this Rule 26 during the offer period.

…

14. The 2% creeper – placing and top-up transactions

For purposes of the creeper a placing shareholder who conducts a placing and top-up transaction pursuant to Note 6 on dispensations from Rule 26 shall be deemed to have a lowest percentage holding equal to the lower of the lowest percentage holding which the placing shareholder had in the 12 month period ~~prior to~~ before or immediately after the placing and top-up transaction. A placing shareholder will be treated similarly if the top-up transaction does not give rise to an offer under this Rule 26 but the transaction complies with the requirements of Notes 6 or 7 on dispensations from Rule 26.

Where a placing shareholder has completed a whitewashed transaction within the 12 months immediately before the placing and top-up transaction, Note 15 to this Rule 26.1 should be read together with this Note for the purpose of determining the lowest percentage holding which the placing shareholder had in that 12 month period.

Rule 26.3(a) of the Takeovers Code

26.3 Consideration

(a) Offers made under this Rule 26 must, in respect of each class of equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class of the offeree company during the offer period and within 6 months ~~prior to~~ before its commencement. The cash offer or the cash alternative must remain open after the offer has become or is declared unconditional for not less than 14 days thereafter. The Executive should be consulted where there is more than one class of equity share capital involved.

Note to Rule 26.3 of the Takeovers Code

Notes to Rule 26.3

…

3. Dividends

~~When accepting shareholders are entitled under the offer to retain a dividend declared by the offeree company but not yet paid, the offeror, in establishing the level of the cash offer, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled.~~ See Note 11 to Rule 23.1.

Note to Rule 26.4 of the Takeovers Code

Cross reference to Rule 7

Reference is made to Rule 7 which restricts the ability of the directors of an offeree company to resign ~~prior to~~ before the first closing date of the offer, or the date when the offer becomes or is declared unconditional, whichever is the later.

Notes 1 and 6 on dispensations from Rule 26 of the Takeovers Code

1. *Vote of independent shareholders on the issue of new securities ("Whitewash")*

   (See Schedule VI – Whitewash Guidance Note for the detailed requirements of the Takeovers Code under this Note.)

   When the issue of new securities as consideration for an acquisition, or a cash subscription, or the taking of a scrip dividend, would otherwise result in an obligation to make a mandatory offer under this Rule 26, the Executive will normally waive the obligation if the whitewash waiver and the underlying transaction(s) are separately approved by at least 75% and more than 50% respectively of the independent vote that are cast either in person or by proxy at a shareholders' meeting. For this purpose "independent vote" means a vote by shareholders who are not involved in, or interested in, the transaction in question. The requirement for a mandatory offer will also normally be waived, provided there has been an independent vote of shareholders, in cases involving the underwriting of an issue of shares. If an underwriter incurs an obligation under this Rule 26 unexpectedly, for example as a result of failure by a sub-underwriter in respect of all or part of his liability, the Executive should be consulted.

   The appropriate provisions of the Code apply to whitewash proposals. Full details of the potential holding of voting rights must be disclosed in the document sent to shareholders relating to the issue of the new securities, which must also include competent independent advice on the proposals the shareholders are being asked to approve, together with a statement that the Executive has agreed to waive any consequent obligation under this Rule 26 to make a mandatory offer.

   Reference should be made to Note 15 to Rule 26.1 which provides that when a person, or group of persons acting in concert, would otherwise be obliged to make a mandatory offer pursuant to this Rule 26, but the obligation is waived pursuant to a vote of independent shareholders in accordance with the terms of this Note, such person, or group of persons, shall be deemed to have a lowest percentage holding equal to the percentage holding of such person, or group of persons, immediately following the whitewashed transaction. Any acquisition of additional voting rights by such person, or group of persons, subsequent to the whitewashed transaction shall be subject to the 2% creeper under Rule 26.1 by reference to the lowest percentage holding in the 12 month period ending on the date of the completion of the relevant acquisition.

Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval by independent vote of a majority of the shareholders at a general meeting of the company:–

(i) the Executive will not normally waive an obligation under this Rule 26 if the person to whom the new securities are to be issued or any person acting in concert with him has acquired voting rights in the company (save for subscriptions for new shares which have been fully disclosed in the whitewash circular) in the 6 months ~~prior to~~ before the announcement of the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company (which would include informal discussions) in relation to the proposed issue of new securities; and

(ii) a waiver will not be granted or if granted will be invalidated if, without the prior consent of the Executive, any acquisitions or disposals of voting rights are made by such persons in the period between the announcement of the proposals and the completion of the subscription.

Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of voting rights attaching to the shares to which the potential controlling shareholders have become entitled as a result.

Where the final controlling shareholding is dependent on the results of underwriting, the offeree company must make an announcement following the issue of new securities stating the number of shares and percentage of voting rights held by the controlling shareholders at that time.

6. Placing and top-up transactions

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 is 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. Such a waiver is required even if the placing and top-up are to be effected simultaneously whether by way of placing and subscription agreements that are inter-conditional or otherwise. For purposes of the 2% creeper the placing shareholder shall be deemed to have a lowest percentage holding equal to the lower of the lowest percentage holding which he had in the 12 month period ~~prior to~~ before or immediately after the placing and top-up transaction. Reference is made in this regard to Note 14 to Rule 26.1. A waiver under this Note will not be required where a shareholder, together with persons acting in concert with him has continuously held more than 50% of the voting rights of a company for at least 12 months immediately preceding the relevant placing and top-up transaction.

Rule 28.2 of the Takeovers Code

28.2 Acquisitions ~~prior to~~ before the offer

If a partial offer may result in the offeror obtaining or consolidating control in the manner described under Rule 26.1, the Executive's consent under Rule 28.1 will not normally be granted if the offeror or persons acting in concert with it have acquired voting rights in the offeree company during the 6 months ~~prior to the commencement of~~ before the offer period.

Rule 28.3 of the Takeovers Code

28.3 Acquisitions during and after the offer

In all partial offers, the offeror and persons acting in concert with it may not acquire voting rights in the offeree company during the offer period. In cases of successful partial offers where the offeror obtains or consolidates control in the manner described under Rule 26.1, neither the offeror, nor any person who acted in concert with the offeror in the course of the partial offer, nor any person who is subsequently acting in concert with any of them, may, except with the consent of the Executive, acquire voting rights of the offeree company during the 12 month period ~~immediately following~~ after the end of the offer period. Rule 31.3 does not apply to partial offers. See also Rule 31.2.

Rule 28.4 of the Takeovers Code

28.4 No extension of closing date

Subject to the remaining provisions of this Rule 28.4, Rule 15 normally applies to partial offers. If on a closing day acceptances received equal or exceed the precise number of shares stated in the offer document under Rule 28.7, ~~subject to the application of Rule 28.5,~~ the offeror must declare the partial offer unconditional as to acceptances and ~~comply with Rule 15.3 by extending~~ extend the final closing day to the 14th day thereafter. The offeror cannot further extend the final closing day.

If the acceptance condition is fulfilled before the first closing day, an offeror ~~may also~~ must declare a partial offer unconditional as to acceptances ~~prior to the first closing day~~ on the day the acceptance condition is met, provided that ~~he fully complies with Rule 15.3~~ the offer would remain open for acceptance for not less than 14 days thereafter. The offeror cannot extend the final closing day to a day beyond the 14th day after the first closing day stated in the offer document.

If the acceptance condition is satisfied after the first closing day during an extended offer period, an offeror must declare a partial offer unconditional as to acceptances on the day the acceptance condition is met and the final closing date cannot be extended beyond the 14th day thereafter.

Rule 28.4 applies irrespective of whether the approval under Rule 28.5 (if required) has been obtained. The offer document must contain specific and prominent reference to the requirements in this Rule 28.4.

Note to Rule 28.4:

Approval under Rule 28.5

A partial offer must stay open for a minimum of 21 days. Where an offer is subject to a condition that the approval required under Rule 28.5 is obtained, the Executive will not consider such condition as part of the acceptance condition for the offer. For example, where an offeror has received sufficient acceptances to meet the acceptance condition under an offer but insufficient approval from shareholders under Rule 28.5 on the first closing day, the offer can only be extended for a further 14 days which shall be the final closing day. There shall be no further extensions and the offer must close on the final closing day. If the offeror is unable to obtain the required approval under Rule 28.5 by the final closing day, the offer will lapse.

Rule 28.5 of the Takeovers Code

28.5 Offer for 30% or more requires independent approval

Any offer which could result in the offeror holding 30% or more of the voting rights of a company, and which do not fall under Rule 28.1(b), must normally be conditional, not only on the specified number of acceptances being received, but also on approval of the offer, signified by means of a separate box on the form of acceptance specifying the number of shares in respect of which the offer is approved, being given by shareholders holding over 50% of the voting rights not held by the offeror and persons acting in concert with it. This requirement may be waived if over 50% of the voting rights of the offeree company are held by one independent shareholder who has indicated his approval under this Rule 28.5.

New Rule 28.10 of the Takeovers Code

28.10 Appropriate offers for convertibles securities, warrants, etc.

When an offer is made for a company which could result in the offeror holding shares carrying 30% or more of the voting rights, and the offeree company has convertible securities, warrants, options or subscription rights outstanding, the offeror must make an appropriate offer or proposal to the holders of such securities. The requirements under Rule 13 will apply as appropriate.

New Note to Rule 28 of the Takeovers Code

Notes to Rule 28:

…

3. Connected exempt principal traders

The restrictions on exempt principal traders under Rules 35.3 and 35.4 apply in the context of a partial offer such that:

(a) securities owned by an exempt principal trader connected with an offeror must not be assented to the offer until such offer becomes or is declared unconditional as to acceptances; and

(b) securities owned by an exempt principal trader connected with an offeror or the offeree company must not be voted in the context of an offer. This includes the approval of an offer until Rule 28.5.

Rule 32.2 of the Takeovers Code

32.2 Redemption or buy-back of securities by the offeree company

(a) Shareholders' approval

During the course of an offer, or even before ~~the date of~~ the commencement of the offer period if the board of the offeree company has reason to believe that a bona fide offer might be imminent, no redemption or buy-back by the offeree company of its own securities may, except in pursuance of a contract entered into earlier, be effected without the approval of the shareholders at a general meeting. The notice convening the meeting must include information about the offer or anticipated offer. Where an obligation or other special circumstance exists without a formal contract, the Executive must be consulted and its consent to proceed without a shareholders' meeting obtained (Rule 4 may be relevant).

…

(c) Disclosure in the offeree board circular

The offeree board circular must state the amount of relevant securities of the offeree company which the offeree company has redeemed or bought back during the period commencing 6 months ~~prior to~~ before the offer period and ending ~~with~~ on the latest practicable date ~~prior to~~ ~~the posting~~ of the document, and the details of any such redemptions and buy-backs, including dates and prices.

Rule 32.3 of the Takeovers Code

32.3 Redemption or buy-back of securities by the offeror company

The offer document must state (in the case of a securities exchange offer only) the amount of relevant securities of the offeror which the offeror has redeemed or bought back ~~during the period commencing~~ within 6 months ~~prior to~~ before the offer period and the details of any such redemptions and buy-backs, including dates and prices.

(See also Rule 21.3.)

Note 1 to Rule 34 of the Takeovers Code

1. *Consent to use other staff*

If it is impossible to use staff of the financial adviser to the soliciting person, the Executive may consent to the use of other people subject to:–

(a) an appropriate script for staff being approved by the Executive;

(b) the financial adviser carefully briefing the staff ~~prior to~~ before the start of the operation and, in particular, stressing:–

(i) that staff must not depart from the script;

(ii) that staff must decline to answer questions the answers to which fall outside the information given in the script; and

(iii) the staff's responsibilities under General Principle 3; and

(c) the operation being supervised by the financial adviser.

Rule 2(c) of the Share Buy-backs Code

2. Off-market share buy-backs

…

(c) a certified copy of the resolution contemplated by Rule 2(a) being filed with the Executive ~~within~~ no later than 3 days ~~of~~ after the general meeting of shareholders at which such resolution is passed; and

…

Rule 3.1 of the Share Buy-backs Code

3.1 General meeting to approve a share buy-back by general offer

A share buy-back by general offer must be approved by a majority of the votes cast by shareholders in attendance in person or by proxy at a general meeting of the shareholders duly convened and held to consider the proposed share buy-back. Such general meeting shall be convened by a notice of meeting which is accompanied by the offer document (see also Rule 2.9). If shareholders do not approve the share buy-back, the offer must lapse.

A certified copy of the ordinary resolution contemplated by this Rule 3.1 must be filed with the Executive ~~within~~ no later than 3 days ~~of~~ after the general meeting of shareholders at which such resolution is passed.

Note to Rule 3.1 of the Share Buy-backs Code

Note to Rule 3.1:

Exemption from Companies Ordinance (Cap. 622)

The offeror must apply to the Executive for exemption from the requirements of section 238(2) so as to allow the notice of general meeting to be accompanied by the offer document and for the offer document to be despatched ~~within~~ no later than 21 days ~~of~~ from the date of the announcement. No fee will be charged for such application for exemption. (See Rule 5.1(c) and also paragraph 5.0 of Schedule V.)

Rule 5.1 of the Share Buy-backs Code

5.1 Application of Takeovers Code

…

In all other share buy-backs by general offer, and where applicable, in the case of off-market share buy-backs, the following Rules of the Takeovers Code will normally apply:–

(a) Rule 1.4;

(b) Rules 2.1 and 2.6-2.9;

(c) Rules 3.2 and 3.4-~~3.7~~3.9;

…"

Rule 5.4 of the Share Buy-backs Code

5.4 On-market share buy-backs

An offeror shall not engage in an on-market share buy-back ~~following~~ after the date of the announcement of a share buy-back by general offer up to and including the date share buy-back by general offer closes, lapses or is withdrawn, as the case may be.

Rule 7 of the Share Buy-backs Code

7. Prohibition on distributions

A company shall not announce or engage in a distribution of shares following the announcement of a share buy-back for the period beginning on the date of such announcement and ending on the 31st day immediately ~~following~~ after completion or withdrawal of the share buy-back.

This Rule 7 will not normally apply to share distributions which do not involve the raising of capital such as bonus issues and dividends in specie. Any person proposing to engage in a share distribution during the period contemplated by this Rule 7 should consult the Executive in advance of such distribution and any announcement thereof.

Paragraph 4(iv) of Schedule I to the Codes

Shareholdings and dealings

4. (i) The shareholdings of the offeror in the offeree company;

(ii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company in which directors of the offeror are interested;

(iii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which any persons acting in concert with the offeror own, ~~or~~ control, or direct (with the names of such persons acting in concert);

(iv) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any persons who, ~~prior to~~ before the ~~posting~~ latest practicable date of the offer document, have irrevocably committed themselves to accept or reject the offer, together with the names of such persons;

(v) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by a person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 8 to Rule 22 of the Takeovers Code; and

(vi) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which the offeror or any persons acting in concert with the offeror has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

If in any of the above categories there are no shareholdings, this fact should be stated. This will not apply to categories (iv) or (v) if there are no such irrevocable commitments or arrangements.

If any party whose shareholdings are required by this paragraph 4 to be disclosed, including a party who has no shareholdings, has dealt for value in the shares in question during the period beginning 6 months ~~prior to~~ before the offer period and ending ~~with~~ on the latest practicable date ~~prior to the posting~~ of the offer document,

the details, including dates and prices, must be stated. If no such dealings have taken place, this fact should be stated.

Note 4 to Paragraph 4 of Schedule I to the Codes

4. Aggregation

There may be cases where no useful purpose would be served by listing a large number of transactions. In such cases the Executive will accept in documents some measure of aggregation of dealings by a person provided that no significant dealings are thereby concealed. The following approach is normally acceptable:–

(i) for dealings during the offer period and the month ~~prior to~~ before its commencement there should be no aggregation;

(ii) for dealings in the 2 months ~~prior to~~ before that period, purchases and sales in that period can be aggregated on a daily basis; and

(iii) for dealings in the 3 months ~~prior to~~ before that period, purchases and sales can be aggregated on a weekly basis.

Purchases and sales should not be netted off and the highest and lowest prices should be stated. A full list of all dealings should be sent to the Executive and should be made available for inspection.

Paragraph 10 of Schedule I to the Codes

10. (a) The closing price on the Stock Exchange (or on a stock exchange where they are listed) of the securities of the offeree company which are the subject of the offer:–

(i) on the latest practicable date ~~prior to publication~~ of the offer document;

(ii) on the last business day ~~immediately preceding~~ before the date of the initial announcement, if any, and on the last business day ~~immediately preceding~~ before the date of the offer announcement under Rule 3.5 of the Takeovers Code; and

(iii) at the end of each of the calendar months during the period commencing 6 months ~~preceding the commencement of~~ before the offer period and ending on the latest practicable date ~~prior to the posting~~ of the offer document.

…

If any of the securities are not so listed, any information available as to the number and price of transactions which have taken place during the period stipulated in (iii) above should be stated together with the source, or an appropriate negative statement.

(b) The highest and lowest closing market prices with the relevant dates during the period commencing 6 months ~~preceding the commencement of~~ before the offer period and ending on the latest practicable date ~~prior to the posting~~ of the offer document.

(c) If any document issued by the offeror contains a comparison of the value of the offer with previous prices of the offeree company's securities, a comparison between the current value of the offer and the price of the offeree company's securities on the last business day ~~prior to the commencement of~~ before the offer period must be prominently included, no matter what other comparisons are made.

Such information should also be provided for securities of the offeror if the consideration for the offer involves such securities.

Note:

Where trading of securities is suspended during a trading day, the closing price on the last full trading day and the trading price immediately before the suspension should be disclosed.

New Paragraph 14B and 14C of Schedule I to the Codes

14B. Where an offer involves or otherwise relates to a sale (directly or indirectly) by a vendor of shares in the offeree company:-

(i) details of any consideration, compensation or benefit in whatever form paid or to be paid by the offeror or any party acting in concert with it to the vendor of such sale shares or any party acting in concert with such vendor in connection with the sale and purchase of such sale shares; and

(ii) details of any understanding, arrangement, agreement or special deal between the offeror or any party acting in concert with it on the one hand, and the vendor of such shares and any party acting in concert with it on the other hand.

14C. Details of any understanding, arrangement or agreement or special deal between any shareholder of the offeree company on the one hand, and the offeror and any party acting in concert with it on the other hand.

Paragraph 24 of Schedule I to the Codes

24. Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Such details should be as of a date which is not more than 3 months ~~preceding~~ before the latest practicable date ~~prior to the posting~~ of the document.

Paragraph 2 of Schedule II to the Codes

2. (i) The shareholdings of the offeree company in the offeror;

(ii) the shareholdings in the offeree company and in the offeror in which directors of the offeree company are interested;

(iii) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a subsidiary of the offeree company, by a pension fund of the offeree company or of a subsidiary of the offeree company, or by a person who is presumed to be acting in concert with the offeree company by virtue of class (5) of the definition of acting in concert or who is an associate of the offeree company by virtue of class (2) of the definition of associate but excluding exempt principal traders and exempt fund managers;

(iv) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a person who has an arrangement of the kind referred to in Note 8 to Rule 22 of the Takeovers Code with the offeree company or with any person who is presumed to be acting in concert with the offeree company by virtue of classes (1), (2), (3) and (5) of the definition of acting in concert or who is an associate of the offeree company by virtue of classes (2), (3) and (4) of the definition of associate;

(v) except with the consent of the Executive, the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror which are managed on a discretionary basis by fund managers (other than exempt fund managers) connected with the offeree company (the beneficial owner need not be named);

(vi) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or reject the offer; and

(vii) the shareholdings in the offeree company and (in the case of a securities exchange offer only) the offeror which the offeree company or any directors of the offeree company has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

If in any of the above categories, other than category (v), there are no shareholdings, then this fact should be stated. This will not apply to category (iv) above if there are no such arrangements.

If any person whose shareholdings are required by categories (i) or (ii) above to be disclosed (whether there is an existing holding or not) has dealt for value in the shares in question during the period beginning 6 months ~~prior to~~ before the offer period and ending ~~with~~ on the latest practicable date ~~prior to the posting~~ of the offeree board circular, the details, including dates and prices, must be stated.

If any person whose shareholdings are required by categories (iii), (iv) or (v) above to be disclosed (whether there is an existing holding or not) has dealt for value in the shares in question during the offer period and ending ~~with~~ on the latest practicable date ~~prior to the posting~~ of the offeree board circular, the details, including dates and prices, must be stated.

In all cases, if no such dealings have taken place this fact should be stated.

Paragraph 7 of Schedule II to the Codes

7 Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeree company and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Such details should be as of a date which is not more than 3 months ~~preceding~~ before the latest practicable date ~~prior to the posting~~ of the document.

Paragraph 9 of Schedule II to the Codes

9. Details of every material contract entered into ~~after the date~~ within 2 years before ~~the commencement of~~ the offer period, not being a contract entered into in the ordinary course of business carried on or intended to be carried on by the offeree company or any of its subsidiaries, including particulars of dates, parties, principal terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries.

Paragraph 13 of Schedule II to the Codes

13. Details of any service contracts with the offeree company or any of its subsidiaries or associated companies in force for directors of the offeree company:

(i) which (including both continuous and fixed term contracts) have been entered into or amended within 6 months before ~~the commencement of~~ the offer period;

(ii) which are continuous contracts with a notice period of 12 months or more; or

(iii) which are fixed term contracts with more than 12 months to run irrespective of the notice period.

For disclosures made under paragraph (i), particulars must be given of the earlier contracts (if any) which have been replaced or amended as well as the current contracts.

If no disclosures are required to be made under this paragraph, this should be stated.

Note 2 to Paragraph 13 of Schedule II to the Codes

2. Recent increases in remuneration

The Executive will regard as an amendment to a service contract any case where the remuneration of an offeree company director (with a service contract with more than 12 months to run) is increased materially within 6 months ~~of~~ before the date of the offeree board circular. Therefore, any

such material increase must be disclosed in the offeree board circular and the current and previous levels of remuneration stated.

New Paragraph 15 of Schedule II to the Codes

15. Details of any understanding, arrangement or agreement or special deal between any shareholder of the offeree company on the one hand, and the offeree company, its subsidiaries or associated companies on the other hand.

Paragraph 5 of Schedule III to the Codes

5. (i) The shareholdings in the offeror in which directors of the offeror are interested;

(ii) the shareholdings in the offeror in which any persons acting in concert with the directors of the offeror are interested (with the names of such persons acting in concert);

(iii) the shareholdings in the offeror in which any persons who, ~~prior to~~ before the ~~posting~~ latest practicable date of the offer document, have irrevocably committed themselves to accept or reject the offer are interested, together with the names of such persons;

(iv) the shareholdings of each shareholder of the offeror which holds 10% or more of the voting rights of the offeror; and

(v) the shareholdings in the offeror which the directors of the offeror or any persons acting in concert with them have borrowed or lent, save for any borrowed shares which have been either on-lent or sold;

and the percentage which such numbers represent of the offeror's outstanding share capital and the identity of each such person.

If in any of the above categories there are no shareholdings, this fact should be stated. This will not apply to categories (iii) or (iv) if there are no such irrevocable commitments or shareholders.

If any party whose shareholdings are required by this paragraph 5 to be disclosed, including a party who has no shareholdings, has dealt for value in the shares in question during the period beginning 6 months ~~prior to~~ before the offer period and ending ~~with~~ on the latest practicable date ~~prior to the posting~~ of the offer document, the details, including dates and prices, must be stated. If no such dealings have taken place, this fact should be stated. This will not apply to category (iv) above.

Paragraph 13 of Schedule III to the Codes

13. (a) The closing price on the Stock Exchange (or on a stock exchange where they are listed) of the shares which are the subject of the offer:–

(i) on the latest practicable date ~~prior to publication~~ of the offer document;

(ii) on the last business day ~~immediately preceding~~ before the date of the initial announcement, if any, and on the last business day ~~immediately preceding~~ before the date of the offer announcement under Rule 3.5 of the Takeovers Code;

(iii) at the end of each of the calendar months during the period commencing 6 months ~~preceding the commencement of~~ before the offer period and ending on the latest practicable date ~~prior to the~~ ~~posting~~ of the offer document; and

(iv) if any of the shares are not so listed, any information available as to the number and price of transactions which have taken place during the period stipulated in (iii) above should be stated together with the source, or an appropriate negative statement.

(b) The highest and lowest closing market prices with the relevant dates during the period commencing 6 months ~~preceding the~~ ~~commencement of~~ before the offer period and ending on the latest practicable date ~~prior to the posting~~ of the offer document.

(c) If any document issued by the offeror contains a comparison of the value of the offer with previous prices of the offeree company's shares, a comparison between the current value of the offer and the price of the offeree company's shares on the last business day ~~prior to the commencement of~~ before the offer period must be prominently included, no matter what other comparisons are made.

Paragraph 18 of Schedule III to the Codes

18. Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Such details should be as of a date which is not more than 3 months ~~preceding~~ before the latest practicable date ~~prior to the posting~~ of the document.

Paragraph 24 of Schedule III to the Codes

24. Details of any re-organisation of capital during the 2 financial years ~~preceding the commencement of~~ before the offer period.

Paragraph 26 of Schedule III to the Codes

26. If any shares of the class of shares to be bought back were issued during the 2 year period ~~immediately preceding the date of~~ before the offer period, the date of such distribution, the issue price per share and the aggregate proceeds received by the offeror.

Paragraph 5.4 of Schedule V to the Codes

5.4 The third type of specific exemption would relieve an applicant from the requirements of section 238(2) and thereby allow companies to comply with the requirements under Rule 3 of the Code to send to shareholders the offer document ~~within~~ no later than 21 days from the date of the announcement of the proposed buy-back and to send the offer document with the notice of general meeting. Such an exemption would be granted in all cases and would attract no fee.

Paragraph 2 of Schedule VI to the Codes

2. Specific grant of waiver required

In each case, specific grant of a waiver from the Rule 26 obligation is required. Such grant will be subject to:–

(a) there having been no disqualifying transactions (as set out in paragraph 3 of this Schedule VI) by the person or group seeking the waiver ~~in the period from the date 6 months prior to the announcement of the proposals and up to and including the date of the shareholders' meeting~~;

…

(d) compliance by the person or group seeking the waiver with the following Rules of the Takeovers Code, where relevant:–

(i) Rule 2.1 and Note 2 to Rule 2 (appointment of independent financial adviser and its competence);

(ii) Rule 2.8 (establishment of independent board committee);

(iii) Rule 3 (when an announcement is required and contents of an announcement);

(iv) Rules 7 and 26.4 (timing of resignation of offeree company directors and appointment of offeror nominees to the board of the offeree company);

(v) Rule 8 (timing and content of documents);

(vi) Rule 9 (standard of care and responsibility);

(vii) Rule 10 (profit forecasts and other financial information);

(viii) Rule 11 (asset valuations);

(ix) Rule 12 (filing and publication of documents);

(~~i~~x) Rule 18 (statements during course of offer);

(xi) Rule 25 (special deals); ~~and~~

(xii) Rule 31.1 (restrictions following offers and possible offers); and

(~~xi~~xiii) Rule 34 (shareholder solicitations).

Paragraphs 3(a) and 3(b) of Schedule VI to the Codes

3. Disqualifying transactions

(a) the Executive will not normally waive an obligation under Rule 26 of the Takeovers Code if the person to whom the new securities are to be issued or any person acting in concert with him has acquired voting rights in the company (save for subscriptions for new shares which have been fully disclosed in the whitewash circular) in the 6 months ~~prior to~~ before the date of the announcement of the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company (which would include informal discussions) in relation to the proposed issue of new securities; and

(b) a waiver will not be granted or if granted will be invalidated if, without the prior consent of the Executive, any acquisitions or disposals of voting rights are made by such persons in the period between the date of the announcement of the proposals and the completion of the subscription.

Paragraph 4(k) of Schedule VI to the Codes

4. Circular to shareholders

(k) paragraph 4 of Schedule I and paragraph 2 of Schedule II (disclosure of shareholdings and dealings). Dealings should be covered for the 6 months ~~prior to~~ before the date of the announcement of the proposals until the latest practicable date ~~prior to the posting~~ of the circular but dealings by persons in categories 2(iii), (iv) or (v) of paragraph 2 of Schedule II need not be disclosed. Paragraph 2(vi) is applicable and directors' voting intention must be disclosed;

Paragraph 9 of Schedule VI to the Codes

9. Share buy-backs

If ~~following~~ after the approval by shareholders in a company under Note 1 on dispensations from Rule 26 of the Takeovers Code of the issue of convertible securities, or the issue of warrants or the grant of options, and ~~prior to~~ before conversion or subscription the company buys back shares, the percentage shareholding of the potential controlling shareholders may increase and Rule 32.1 of the Takeovers Code may apply. Where Rule 32.1 of the Takeovers Code does not apply because the potential controlling shareholders are not directors or acting in concert with any directors, the waiver will apply to conversion into, or subscription for, such number of voting rights as originally approved by shareholders. Where the potential controlling shareholders are directors or acting in concert with any directors, they must seek further approval of shareholders for the conversion into, or subscription for, such number of voting rights as originally approved by shareholders.

Paragraphs 6(a) and 6(c) of Schedule VIII to the Codes

6. (a) When a firm intention to make an offer is announced, the offeree company should instruct its registrar to respond ~~within~~ no later than two business days to a request from the offeror for the provision of the register which should be updated to reflect the position as at the close of business on the date of the request.

…

(c) The registrar must provide updates, on a daily basis, to the register ~~within~~ no later than two business days after notification of the transfer and, in addition, copies of all documents which would lead to a change in the last copy register provided to the offeror must be provided as rapidly. On the final register day* any such information received by the offeree company's registrar but not yet provided to the offeror's receiving agent must be made available for collection by the offeror's receiving agent, at the latest, by noon on the day preceding the final closing date § of the offer.

From the final register day* until the time that the offer becomes or is declared unconditional as to acceptances or lapses, the offeree company's registrar should continue to update the register on a daily basis so that all transfers and other documents which have been received by the offeree company's registrar by 1.00 p.m. on the final closing date of the offer are processed by 5.00 p.m. that day at the latest. In addition, copies of these documents should be relayed immediately to the offeror's receiving agent insofar as not previously notified.

Definitions in Schedule VIII to the Codes

** final register day – the day two days ~~prior to~~ before the final closing date§ of an offer.*

Amendments to the Rules of Procedure

Rules of procedures for disciplinary hearings

2. Point of contact

2.1 The Secretary will be the point of contact for all parties in respect of any procedural matter. Unless the Secretary specifies an alternative means of communication, such as e-mail or facsimile, all communications should be addressed to the Secretary to the Takeovers Panel, Securities and Futures Commission~~, 35/F, Cheung Kong Center, 2 Queen's Road Central, Hong Kong~~ at the offices of the Securities and Future Commission from time to time, and copied to all parties.

Rules of procedures for non-disciplinary hearings

2. Point of contact

2.1 The Secretary will be the point of contact for all parties in respect of any procedural matter. Unless the Secretary specifies an alternative means of communication, such as e-mail or facsimile, all communications should be addressed to the Secretary to the Takeovers Panel, Securities and Futures Commission~~, 35/F, Cheung Kong Center, 2 Queen's Road Central, Hong Kong~~ at the offices of the Securities and Future Commission from time to time, and copied to all parties.

Rules of procedures for Takeovers Appeal Committee hearings

2. Point of contact

2.1 The Secretary will be the point of contact for all parties in respect of any procedural matter. Unless the Secretary specifies an alternative means of communication, such as e-mail or facsimile, all communications should be addressed to the Secretary to the Takeovers Panel, Securities and Futures Commission~~, 35/F, Cheung Kong Center, 2 Queen's Road Central, Hong Kong~~ at the offices of the Securities and Future Commission from time to time, and copied to all parties.

APPENDIX 2: PROPOSED AMENDMENTS RELATING TO TIMING REQUIREMENTS

Paragraph 1.6 of the Introduction to the Codes

1.6 In addition, any other persons who issue circulars or advertisements to shareholders in connection with takeovers, mergers or share buy-backs must observe the highest standards of care and consult with the Executive ~~prior to the release thereof~~ before despatch.

Paragraph 8.1(c)(ix) of the Introduction to the Codes

(ix) where known after reasonable inquiry, details of any dealings in securities of the offeree company by the relevant offeror, the directors and substantial shareholders of the relevant offeror and the offeree company, and all persons acting in concert with any of them, ~~for the~~ within 6 ~~month~~ months ~~period immediately preceding~~ before the date of the application; and

Paragraph 9.1 of the Introduction to the Codes

9.1 If a party wishes to contest a ruling of the Executive, he may ask for the matter to be reviewed by the Panel, which will normally be convened at short notice. The Executive will arrange with the Panel and the relevant party a practical time for a Panel meeting taking into account the timetable of the transaction. The party and the Executive must supply succinct statements of their respective cases in advance of the meeting and copies of such statements will be provided to the Executive and the party respectively. The Panel has discretion to entertain a request for review by an aggrieved shareholder, if it is satisfied that such request is not frivolous. When the Executive considers that it is necessary to resolve an issue urgently, the Executive may stipulate a reasonable time within which a request for review must be made; in any other case, the Executive must be notified ~~at the latest~~ ~~within~~ no later than 14 days ~~of~~ after the event giving rise to the request for the review. Any request for a review shall contain the grounds on which the review is requested.

Paragraph 11.17 of the Introduction to the Codes

11.17 The substance of the Legal Adviser's advice on issues of law or mixed fact and law which may impact on the Panel or its Chairman's substantive decision, will be disclosed to the parties in order that they may comment upon it ~~prior to~~ before a decision ~~being~~ is made. The Legal Adviser's advice on procedural matters need not be disclosed to the respondents.

Paragraph 13.13 of the Introduction to the Codes

13.13 Where any person has breached the requirements of Rules 13, 14, 16, 23, 24, 25, 26, 28, 30 or 31.3 of the Takeovers Code, the Panel may make a ruling requiring the person to pay, within such period as is specified, to the holders, or former holders, of securities of the offeree company such amount as the Panel thinks just and reasonable so as to ensure that such holders receive what they would have been

entitled to receive if the relevant Rule had been complied with. In addition, the Panel may make a ruling requiring simple or compound interest to be paid at a rate and for a period (including in respect of any period ~~prior to~~ before the date of the ruling and until payment) to be determined. The Panel's power to make a ruling under this section may be exercised irrespective of whether any sanction referred to in section 12.2 of this Introduction is imposed.

Paragraph 14.5 of the Introduction to the Codes

14.5 An application for appeal must be made in writing to the Takeovers Appeal Committee ~~not~~ no later than 5 business days after the ruling in question. The application must state the full grounds of appeal together with reasons.

Note to definition of offer

Note to definition of offer:

A voluntary offer may not normally be made at a price that for the purpose of this Note is substantially below the market price of the shares in the offeree company. A voluntary offer at more than a 50% discount to the lesser of the closing price of the relevant shares of the offeree company on the trading day before the date of the Rule 3.5 announcement and the 5 day average closing price ~~prior to~~ before such day will normally be considered as being "substantially below the market price of the shares in the offeree company". The Executive will only grant a waiver from the application of this Note in exceptional circumstances. In all cases which fall within this Note, the Executive should be consulted.

Note 1 to Rule 2.4 of the Takeovers Code

1. General

When the board of an offeror is required to obtain independent advice under this Rule 2.4, it should do so before announcing an offer or any revised offer. Such advice should be as to whether or not the offer is in the interests of the offeror's shareholders. The board of the offeror may seek oral advice ~~prior to~~ before the announcement of the offer with the full advice to be obtained as soon as possible thereafter. In any event the offer announcement must contain a summary of the salient points of the advice received. The full advice must be sent to the offeror's shareholders as soon as practicable and if there is a general meeting of the offeror company to approve the proposed offer at least 14 days in advance. Any documents or advertisements issued by the board of the offeror in such cases must include a responsibility statement by the directors as set out in Rule 9.3.

Note to Rule 2.6 of the Takeovers Code

Note to Rule 2.6:

Significant connection within 2 years

The Executive would normally regard any significant connection within ~~the~~ 2 years ~~prior to the commencement of~~ before an offer period as reasonably likely to create such a conflict of interest or reasonably likely to affect the objectivity of an adviser's advice.

Rule 2.11 of the Takeovers Code

2.11 Except with the consent of the Executive, where any person seeks to acquire or privatise a company by means of an offer and the use of compulsory acquisition rights, such rights may only be exercised if, in addition to satisfying any requirements imposed by law, acceptances of the offer and purchases (in each case of the disinterested shares) made by the offeror and persons acting in concert with it during the period of 4 months after ~~posting~~ the date of the initial offer document total 90% of the disinterested shares.

Rule 3.4 of the Takeovers Code

3.4 Suspension of trading

When an announcement is required under this Rule 3 the offeror or the offeree company, as the case may be, should notify the Executive and the Stock Exchange immediately that an announcement is imminent and if there is any possibility that an uninformed market for shares of the offeror or the offeree company could develop ~~prior to~~ before publication of the announcement, serious consideration should be given to requesting a suspension of trading in such shares pending publication of the announcement. A potential offeror must not attempt to prevent the board of the offeree company from making an announcement or requesting the Stock Exchange to grant a temporary suspension of trading at any time the board thinks appropriate.

Note 4 to Rule 3.5 of the Takeovers Code

4. Subjective conditions

Companies and their advisers should consult the Executive ~~prior to~~ before the issue of any announcement containing conditions which are not entirely objective (see Rule 30.1).

Note 7 to Rule 4 of the Takeovers Code

7. *When there is no need to proceed with an offer*

The Executive may allow an offeror not to proceed with its offer if, ~~prior to~~ before the posting of the offer document, the offeree company:–

(a) *passes a resolution in general meeting as envisaged by this Rule 4; or*

(b) *announces a transaction which would require such a resolution but for the fact that it is pursuant to a contract entered into earlier or that the Executive has ruled that an obligation or other special circumstance exists.*

Note 1 to Rule 6 of the Takeovers Code

1. *Offeree company's obligation following offeror's announcement*

Following the announcement of a firm intention to make an offer, the offeree company must, as soon as possible but in any event ~~within~~ no later than 48 hours of a request, provide the offeror with all relevant details of its outstanding voting rights, the issued shares and, to the extent not issued, the allotted shares and details of any conversion or subscription rights or any other rights pursuant to the exercise of which shares may be unconditionally allotted or issued during the offer period. In the case of conditionally allotted shares, the details should include the conditions and the date on which such conditions may be satisfied. In the case of rights, the details should include the number of shares which may be unconditionally allotted or issued during the offer period as a result of the exercise of such rights, identifying separately those attributable to rights which commence or expire on different dates, and the various prices at which these rights could be exercised.

Note 1 to Rule 7 of the Takeovers Code

1. *Restrictions on control by offeror*

Reference is made to Rule 26.4 which restricts the offeror's ability to control the offeree company ~~prior to~~ before posting of the offer document.

2. *Executive's consent*

The Executive will normally consent to the resignation of a director if the offeror is a controlling shareholder before ~~commencement of~~ the offer period except when such director is eligible to serve on the independent board committee established under Rule 2.1. In such circumstances the Executive will not normally consent to such director's resignation unless the Executive has also granted consent for the exclusion of that director from the independent board committee under Rule 2.8.

Note 3 to Rule 8 of the Takeovers Code

3. Meetings

Subject always to Rule 34, meetings of representatives of the offeror or the offeree company or their respective advisers with any shareholder in, or holder of other relevant securities (as defined in Note 4 to Rule 22) of, either an offeror or the offeree company, investment analyst, stockbroker or others engaged in investment management or advice may take place during the offer period, so long as no material new information is provided, and no significant new opinions are expressed, by the relevant representative or adviser and the following provisions are observed. Except with the consent of the Executive, an appropriate representative of the financial adviser to the offeror or the offeree company must be present. That representative will be responsible for confirming in writing to the Executive, ~~not~~ no later than 12.00 noon on the business day ~~following~~ after the date of the meeting, that no material new information was provided, and no significant new opinions were expressed, by the relevant representative or adviser at the meeting.

Materials such as press releases or printouts of slides which highlight the salient facts of the offer may be distributed at the meeting and should be fairly presented. Whilst the Executive would not normally regard these printed materials as documents for the purpose of Rule 12.1 and they need not be submitted to the Executive for comment ~~prior to~~ before distribution, an appropriate representative of the financial adviser must confirm to the Executive in the manner set out above that these printed materials do not contain any material new information or significant new opinion.

The relevant financial adviser will be expected to satisfy the Executive that the provisions of this Note have been complied with in case of doubt. Financial advisers may, therefore, find it useful to record the proceedings of meetings, although this is not a requirement. The offeror or the offeree company and their respective financial advisers must ensure that no meetings are arranged without the relevant financial adviser's knowledge.

The above provisions apply to all such meetings held during an offer period wherever they take place, whether they are held in person or by telephone or other electronic means and even if with only one person or firm. Meetings with employees in their capacity as such (rather than in their capacity as shareholders) are not normally covered by this Note, although the Executive should be consulted if any employees hold a significant number of shares.

Note 4 to Rule 8.1 of the Takeovers Code

4. *Information issued by associates (e.g. financial advisers or stockbrokers)*

Rule 8.1 does not prevent the issue of circulars during the offer period to their own investment clients by brokers or advisers to any party to the transaction provided such issue has previously been approved by the Executive.

In giving to their own clients material on the companies involved in an offer, associates of an offeror or the offeree company must bear in mind the essential point that new information must not be restricted to a small group. Accordingly, such material must not include any statements of fact or opinion derived from information not generally available.

The associate's status must be clearly disclosed.

Attention is drawn to class (5) of the definition of acting in concert and class (2) of the definition of associate, as a result of which, for example, this Note will be relevant to stockbrokers who, although not directly involved with the offer, are associates of an offeror or the offeree company because the stockbroker is in the same group as the financial adviser to an offeror or the offeree company.

In this connection, all entities within the same group as any financial advisers to an offeror or the offeree company should, after the commencement of an offer period, stop issuing research reports on the offeree company and, in the case of a securities exchange offer, the offeror company, except with the Executive's prior consent. The concern is that these reports may contain profit forecast statements which require full compliance with Rule 10. The financial adviser is not required to retrieve (or procure its group entities to retrieve) research reports already distributed ~~prior to~~ before the offer period but all entities within the financial adviser's group should stop distributing these old reports and they should be removed from the websites. The Executive should be consulted and it would normally regard any research reports issued within 6 months ~~prior to~~ before the offer period as being "live".

Rule 8.2 of the Takeovers Code

8.2 Offer document time limit

The offer document~~, which must not be dated more than 3 days prior to despatch, should normally be posted~~ should be despatched by or on behalf of the offeror ~~within~~ no later than 21 days (or, in the case of a securities exchange offer, 35 days) ~~of~~ after the date of the announcement of the terms of the offer. In an agreed offer the offeror and offeree company are encouraged to combine the offer document and the offeree board circular in a composite document to be posted within this period. The Executive's consent is required if the offer document or composite document may not be posted within this period. (See also Rules 8.4 and 15.1.)

Note 2 to Rule 8.2 of the Takeovers Code

2. *Pre-conditions*

The Executive's consent is required if the making of an offer is subject to the prior fulfilment of a pre-condition and the pre-condition cannot be fulfilled within the time period contemplated by this Rule 8.2. Under such circumstances, the Executive will normally require that the offer document be posted ~~within~~ no later than 7 days ~~of~~ after the fulfilment of ~~the pre-condition~~ all pre-conditions.

Rule 8.4 of the Takeovers Code

8.4 Timing and contents of offeree board circular

The offeree company should send to its shareholders ~~within~~ no later than 14 days ~~of~~ after the ~~posting~~ date of the offer document a circular containing the information set out in Schedule II, together with any other information it considers to be relevant to enable its shareholders to reach a properly informed decision on the offer. The Executive's consent is required if the offeree board circular may not be posted within this period. Such consent will only be given if the offeror agrees to an extension of the first closing date (see Rule 15.1) by the number of days in respect of which the delay in the posting of the offeree board circular is agreed. If such consent is granted, the time restrictions under Rules 15.4, 15.5 and 16 will be extended by the same number of days. In that case the offer should be kept open for at least 14 days after ~~despatch~~ the date of the delayed offeree board circular to allow shareholders sufficient time to consider the offeree board circular.

The offeree board circular must include the views of the offeree company's board or its independent committee on the offer and the written advice of its financial adviser as to whether the offer is, or is not, fair and reasonable and the reasons therefor. Reference is made in this regard to Rule 2. If the offeree company's financial adviser is unable to advise whether the offer is, or is not, fair and reasonable the Executive should be consulted.

Rule 10.3(d) of the Takeovers Code

10.3 Reports required in connection with profit forecasts

…

(d) Except with the consent of the Executive, any profit forecast which has been made before ~~the commencement of~~ the offer period must be examined, repeated and reported on in the document sent to shareholders.

Rule 12.1 of the Takeovers Code

12.1 Filing of documents for comments

All documents (other than those referred to in the Note to Rule 12.1 below) must be filed with the Executive for comment ~~prior to~~ before ~~release or~~ publication and must not be released or published until the Executive has confirmed that it has no further comments thereon…

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~~ before 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~~ before publication if considered necessary or appropriate.

Note 5 to Rule 12 of the Takeovers Code

5. Confirmation of translation

Following the publication of any document, the directors of the issuer of that document must confirm that the Chinese version of the document is a true and accurate translation of the English version and that it is consistent with the English version (or vice versa). Such confirmation should be in the form prescribed by the Executive from time to time and should be provided to the Executive as soon as possible and in any event no later than 5:00 p.m. on the business day after the ~~publication~~ date of the document. The confirmation should be signed by a director (on behalf of the board of directors) of the issuer of the document. If the document is jointly issued, a confirmation should be provided by each of the parties issuing that document.

Under Rules 8.6 and 9.3, the responsibility to ensure that the Chinese version of the document is a true and accurate translation of the English version (or vice versa) lies with the directors of the issuing party. The provision of the confirmation of translation to the Executive does not absolve the responsibility of the directors of the issuing party in this regard.

Note 1 to Rule 14 of the Takeovers Code

1. Comparable offers

In order to achieve comparability, this Rule 14 may involve an offeror paying a higher price for a particular class of shares than the highest price paid by him ~~in the preceding~~ within 6 months before the offer period for shares of that class. A comparable offer need not be an identical offer but

the difference must be capable of being justified to the Executive, who will have regard to all relevant circumstances including the rights attaching to each class of shares and may also consider the historical record of their market prices.

Rule 15.1 of the Takeovers Code

15.1 Closing dates

Where an offer document and the offeree board circular are posted on the same day or are combined in a composite document, the offer must initially be open for acceptance for at least 21 days ~~following~~ after the date ~~on which~~ of the offer document ~~is posted~~. Where the offeree board circular is posted after the date ~~on which~~ of the offer document ~~is posted~~, the offer must be open for acceptance for at least 28 days ~~following~~ after the date ~~on which~~ of the offer document ~~is posted~~. The latest time for acceptance is 4.00 p.m. on the closing day unless the offer is extended in accordance with Rule 19.1.

In any announcement of an extension of an offer, either the next closing date must be stated or, if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice. In the latter case, at least 14 days' notice in writing must be given, before the offer is closed, to those shareholders who have not accepted the offer and an announcement must be published.

Where an offer closes without having become unconditional it shall be deemed to have lapsed.

Rule 15.4 of the Takeovers Code

15.4 Offeree company announcements after "Day 39"

Except with the consent of the Executive (who should be consulted at the earliest opportunity), the board of the offeree company should not announce any material new information (including trading results, profit or dividend forecasts, asset valuations or proposals for dividend payments or for any material acquisition or disposal or major transactions) after the 39th day ~~following~~ after the ~~posting~~ date of the initial offer document. Where a matter which might give rise to such announcement being made after the 39th day is known to the offeree company, every effort should be made to bring forward the date of the announcement, but, where this is not practicable, or where the matter arises after that date, the Executive will normally give its consent to a later announcement. If an announcement of the kind referred to in this Rule 15.4 is made after the 39th day, the Executive will normally be prepared to grant an extension of "Day 46" (Rule 16.1) and/or "Day 60" (Rule 15.5) as appropriate.

Rule 15.5 of the Takeovers Code

15.5 Final day rule

Except with the consent of the Executive, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after 7.00 p.m. on the 60th day after the ~~day~~ date of the initial offer document ~~was posted~~. The Executive's consent will normally be granted only:–

(i) in a competitive situation (see Note 2 below);

(ii) if the board of the offeree company consents to an extension;

(iii) as provided for in Rule 15.4; or

(iv) if the offeror's receiving agent requests an extension for the purpose of complying with Note 2 to Rule 30.2.

In the event of an extension with the consent of the Executive in circumstances other than those set out in paragraphs (i) to (iii) above, acceptances or purchases in respect of which relevant documents are received after 4.00 p.m. on the relevant closing date may only be taken into account with the consent of the Executive, which will only be given in exceptional circumstances.

Notes 2 and 3 to Rule 15.5 of the Takeovers Code

2. *Competitive situations*

If a competing offer has been announced, both offerors will normally be bound by the timetable established by the posting of the competing offer document. In addition, the Executive will extend "Day 60" for the purposes of any procedure established by the Executive in accordance with Rule 16.5. The Executive will not normally grant its consent under Rule 15.5(ii) in a competitive situation unless its consent is sought before the 46th day ~~following~~ after the ~~posting~~ date of the competing offer document. The Executive should be consulted at the earliest opportunity if there is any doubt as to the application of this Note.

3. *Regulatory approvals*

If an offer requires approval from a regulatory body (in relation to merger control or otherwise) the expected timetable for the relevant regulatory approval process should be set out in the offer document. Where there is a delay in the relevant approval process after ~~publication~~ the date of the offer document, the Executive should be consulted at the earliest opportunity. In appropriate cases, the Executive may extend "Day 39" (see Rule 15.4) to the second day ~~following~~ after the announcement of such approval with consequent changes to "Day 46" (see Rule 16.1) and "Day 60".

Rule 15.6 of the Takeovers Code

15.6 Compulsory acquisition

Where an offeror has stated in the offer document its intention to avail itself of any powers of compulsory acquisition, the offer may not remain open for acceptance for more than 4 months ~~from~~ after the ~~posting~~ date of the offer document, unless the offeror has by that time become entitled to exercise such powers of compulsory acquisition, in which event it must do so without delay.

Rule 15.7 of the Takeovers Code

15.7 Time for fulfilment of all other conditions

Except with the consent of the Executive, all conditions must be fulfilled or the offer must lapse ~~within~~ no later than 21 days ~~of~~ after the first closing date or ~~of~~ after the date the offer becomes or is declared unconditional as to acceptances, whichever is the later.

Rule 16.1 of the Takeovers Code

16.1 Offer open for 14 days after revision

If, in the course of an offer, the offeror revises its terms, all offeree company shareholders, whether or not they have already accepted the offer, will be entitled to the revised terms. A revised offer must be kept open for at least 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~. Therefore, no revised offer document may be posted in the 14 days ending on the last day the offer is able to become unconditional as to acceptances. (See Rules 23, 24 and 26.)

Note 1 to Rule 16.1 of the Takeovers Code

1. Announcements which may increase the value of an offer

Where an offer involves an exchange of equity or potential equity, the announcement by an offeror of any material new information (including trading results, profit or dividend forecasts, asset valuations, merger benefits statements, proposals for dividend payments, for a capital reorganisation or for any material acquisition or disposal) may have the effect of increasing the value of the offer. An offeror will not, therefore, normally be permitted to make such announcements after it is precluded from revising its offer. If an announcement of the kind referred to in this Note 1 might fall to be made during the offer period, the Executive must be consulted at the earliest opportunity and an offeror will not be permitted to make a no increase statement as defined in Rule 18.3 ~~prior to~~ before the ~~release~~ publication of the announcement.

For the purpose of determining whether a transaction is a "material acquisition or disposal" the Executive will, in general, apply the same tests

as those set out in the Listing Rules to determine whether a transaction is a "major transaction".

For the purpose of this Note 1, "capital reorganisation" includes rights issues, capital distributions or special dividends, dividends in specie other than scrip dividends of the same class and does not include stock splits, stock consolidations, bonus issues of the same class, ordinary dividends not exceeding the earnings per share for the period in respect of which the dividend is declared, and nominal share capital and share premium reductions not involving any distribution to shareholders.

It is recognised that it may not always be possible for an offeror to avoid the need for an announcement to be made (e.g. due to obligations under the Listing Rules). Where the offeror is aware beforehand of a matter which might give rise to such an announcement obligation, the offeror should make every effort to bring forward the date of the announcement so that the restrictions under this Note 1 would not arise. Where this is not possible or where the matter arises after the offeror is restricted from revising its offer, the Executive should be consulted in advance of any proposed announcement and will normally seek the views of the Stock Exchange or any other regulator in order to satisfy itself that the announcement is in fact required.

Note 3 to Rule 16.1 of the Takeovers Code

3. *When revision is not permitted*

Since an offer must remain open for acceptance for 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~, an offeror will generally not be able to revise its offer, and must not place itself in a position where it would be required to revise its offer, in the 14 days ending on the last day its offer is able to become unconditional. Nor must an offeror place itself in a position where it would be required to revise its offer if it has made a no increase statement as defined in Rule 18.3.

Note 4 to Rule 16.1 of the Takeovers Code

4. *Triggering a mandatory offer under Rule 26*

When an offeror, which is making a voluntary offer either in cash or with a cash alternative, makes an acquisition which causes it to have to extend a mandatory offer under Rule 26 at no higher price than the existing cash offer, the change in the nature of the offer will not be viewed as a revision (and will thus not be precluded by an earlier no increase statement), even if the offeror is obliged to waive any outstanding condition. However, such an acquisition can only be made if the offer can remain open for acceptance for a further 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~.

Note 2 to Rule 16.3 of the Takeovers Code

2. *Shutting off*

Normally, if an offer has become or is declared unconditional as to acceptances, all alternative offers which have not been closed ~~prior to~~ before that date must remain open in accordance with Rule 15.3. In accordance with Rule 15.2, if on a closing date an offer is not unconditional as to acceptances, an alternative offer (except a cash alternative provided to satisfy the requirements of Rule 26) may be closed without prior notice. However, if, on the first closing date on which an offer is capable of being declared unconditional as to acceptances, the offer is not so declared and is extended, all alternative offers must remain open for 14 days thereafter but may then be closed without prior notice.

Rule 16.5 of the Takeovers Code

16.5 Competitive situations

If a competitive situation continues to exist in the later stages of the offer period, the Executive will normally require revised offers to be published in accordance with an auction procedure, the terms of which will be determined by the Executive. That procedure will normally require final revisions to competing offers to be announced by the 46th day ~~following~~ after the ~~posting~~ date of the competing offer document but enable an offeror to revise its offer within a set period in response to any revision announced by a competing offeror on or after the 46th day. The procedure will not normally require any revised offer to be posted before the expiry of a set period after the last revision to either offer is announced. The Executive will consider applying any alternative procedure which is agreed between competing offerors and the board of the offeree company.

Note 2 to Rule 18 of the Takeovers Code

2. *Competitive situations*

Subject to Note 4 to this Rule 18 below, if a competitive situation arises after a no extension or no increase statement has been made, the offeror can choose not to be bound by it and to be free to extend or increase its offer provided that:–

(a) an announcement to this effect is given as soon as possible (and in any event ~~within~~ no later than 4 business days after the ~~day~~ date of the announcement of the competing offer) and a circular is sent to shareholders at the earliest opportunity; and

(b) any shareholders of the offeree company who accepted the offer after the date of the no extension or no increase statement are given a right of withdrawal for a period of 8 days ~~following~~ after the date ~~on which~~ of the circular ~~is sent~~.

Note 5 to Rule 18 of the Takeovers Code

5. Rule 15.4 announcements

Subject to Note 4 above, if the offeree company makes an announcement of the kind referred to in Rule 15.4 after the 39th day and after a no increase statement has been made, the offeror can choose not to be bound by that statement and to be free to revise its offer if permitted by the Executive under Rule 15.4, provided that notice to this effect is given as soon as possible (and in any event ~~within~~ no later than 4 business days after the date of the offeree company announcement) and shareholders are informed in writing at the earliest opportunity.

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~~ must be paid for by the offeror as soon as possible but in any event ~~within~~ no later than 7 business days ~~following~~ after 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~~ no later than 7 business days ~~following~~ after 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~~ no later than 7 business days ~~following~~ after the close of the partial offer.

Rule 20.2 of the Takeovers Code

20.2 Withdrawn or lapsed offers

If an offer is withdrawn or lapses, the offeror must, as soon as possible but in any event ~~within~~ no later than 10 days ~~thereof~~ after the offer is withdrawn or lapses, post the share certificates lodged with acceptance forms to, or make such share certificates available for collection by, those offeree company shareholders who accepted the offer.

Rule 21.2 of the Takeovers Code

21.2 Restrictions on dealings during the offer

During an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the Executive and ~~following~~ after 24 hours public notice that such sales might be made. Save as provided below, the Executive will not give consent for sales particularly where a mandatory offer under Rule 26 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it may make further purchases and only in exceptional circumstances will the Executive permit the offer to be revised.

The consent of the Executive is not required for placing or underwriting arrangements made during an offer in order to achieve the minimum public shareholding to maintain the listing of the offeree company's shares provided that such arrangements are not effective ~~prior to~~ before the date when the offer becomes or is declared unconditional. If an offeror wishes to make such arrangements in order to hold less than 75% (or such percentage as may be relevant in the event that the Stock Exchange has accepted that a percentage other than 25% of the offeree company's shares needs to be in public hands to maintain the listing of the offeree company's shares) of the offeree company's shares, the consent of the Executive is required.

Rule 21.4 of the Takeovers Code

21.4 Dealings after termination of discussions

If discussions are terminated or the offeror decides not to proceed with an offer after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, no dealings in securities (including convertible securities, warrants, options and derivatives, in respect of such securities) of the offeree company by the offeror, persons acting in concert with it or any person privy to this information may take place ~~prior to~~ before an announcement of the position.

Rule 21.6(a) and (b) of the Takeovers Code

21.6 Dealings by connected discretionary fund managers and principal traders

NB Rule 21.6 and the Notes thereto address the position of connected fund managers and connected principal traders who either do not have exempt status or whose exempt status is not relevant by virtue of the operation of Note 2 to the definitions of exempt fund manager and exempt principal trader. They also address the position of exempt principal traders in respect of dealing activities which are not covered by their exempt status.

(a) Discretionary fund managers and principal traders who, in either case, are connected with an offeror or potential offeror, will not normally be presumed to be acting in concert with that person until its identity as an offeror or potential offeror is publicly announced or, if ~~prior to~~ before that, the time at which the connected party had actual knowledge of the possibility of an offer being

made by a person with whom it is connected. Rules 23, 24, 25, 26 and 28 will then be relevant to purchases of offeree company securities and Rule 21.2 to sales of offeree company securities by such persons. Rule 21.7 will be relevant to securities borrowing and lending transactions. (See also the definitions of connected fund manager and connected principal trader.)

(b) Similarly, discretionary fund managers and principal traders who, in either case, are connected with the offeree company, will not normally be presumed to be acting in concert with the offeree company until the commencement of the offer period or, if ~~prior to~~ before that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company and that it was connected with the offeree company. Rules 21.5 and 26 may then be relevant to purchases of offeree company securities. Rule 21.7 will be relevant to securities borrowing and lending transactions. (See also the definitions of connected fund manager and connected principal trader.)

Note 1(a) and (b) to Rule 21.6 of the Takeovers Code

1. Dealings ~~prior to~~ before a concert party relationship arising

(a) As a result of Rule 21.6(a) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with an offeror or potential offeror will not normally be relevant for the purposes of Rules 21.2, 21.7, 23, 24, 25, 26 and 28 before the identity of the offeror or potential offeror has been publicly announced or, if ~~prior to~~ before that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected.

(b) Similarly, as a result of Rule 21.6(b) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with the offeree company will not normally be relevant for the purposes of Rule 26 before the commencement of the offer period or, if ~~prior to~~ before that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company.

Note 3 to Rule 21.6 of the Takeovers Code

3. Dealings by exempt principal traders not covered by their exempt status

An exempt principal trader who is connected with an offeror or potential offeror may stand down from its dealing activities after the identity of the offeror or potential offeror is publicly announced or, if ~~prior to~~ before that, the time at which the exempt principal trader had actual knowledge of the possibility of an offer being made by the offeror or potential offeror with whom it is connected. In such circumstances, with the prior consent of the

Executive, the exempt principal trader may reduce its interest in offeree company securities or offeror securities, or may acquire interests in such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 21.2, 21.5, 23, 24, 25, 26 and 28. The Executive will not normally require such dealings to be disclosed under Rule 22.4. Any such dealings must take place within a time period agreed in advance by the Executive.

The above will also apply to an exempt principal trader (in respect of dealing activities not covered by their exempt status) who is connected with the offeree company after the commencement of the offer period or, if ~~prior to~~ before that, the time at which the exempt principal trader had actual knowledge of the possibility of an offer being made for the offeree company.

Rule 22.4 of the Takeovers Code

22.4 Connected exempt principal traders

Dealings in relevant securities by an exempt principal trader connected with an offeror or the offeree company should be aggregated and disclosed, in accordance with Note 6(a) to this Rule 22, ~~not~~ no later than 12.00 noon on the business day ~~following~~ after the date of the transactions, stating the following details:-

(i) 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 company.

In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 7 to this Rule 22).

Note 5 to Rule 22 of the Takeovers Code

5. Timing of disclosure

Disclosure must be made no later than 12.00 noon on the business day ~~following~~ after the date of the transaction or, where dealings have taken place in the time zones of the United States no later than 12.00 noon on the second business day ~~following~~ after the date of the transaction. The Executive should be consulted at the earliest opportunity if there is difficulty in meeting the deadlines set.

Rule 23.1(a) of the Takeovers Code

23.1 When cash offer is required

Except with the consent of the Executive in cases falling under paragraph (a) or (b) below, a cash offer is required where:–

(a) the shares of any class under offer in the offeree company purchased for cash (but see Note 5 to this Rule 23.1) by an offeror, and any person acting in concert with the offeror, during the offer period and within 6 months ~~prior to~~ before its commencement carry 10% or more of the voting rights currently exercisable at a class meeting of that class in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class during the offer period and within 6 months ~~prior to~~ before its commencement;

Note 2 and Notes 4 to 6 to Rule 23.1 of the Takeovers Code

2. Gross purchases

The Executive will normally regard Rule 23.1(a) as applying to gross purchases of shares over the relevant period and will not allow the deduction of any shares sold over that period. However, in exceptional circumstances and with the consent of the Executive, shares sold some considerable time before ~~the~~ ~~beginning of~~ the offer period may be deducted.

4. Equality of treatment

The discretion given to the Executive in Rule 23.1(c) to require cash to be made available in certain cases where less than 10% has been purchased in the 6 months ~~prior to the commencement of~~ before the offer period will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company. In such cases, relatively small purchases could be relevant.

Rule 23.1(c) may also be relevant when 10% or more has been acquired in the previous 6 months for a mixture of securities and cash.

5. Acquisitions for securities

For the purpose of this Rule 23.1, shares acquired by an offeror and any person acting in concert with it in exchange for securities, either during or ~~in the~~ within 6 months ~~preceding the commencement of~~ before the offer period, will normally be deemed to be purchases for cash on the basis of the value of the securities at the time of the purchase. However, if the vendor of the offeree company shares is required to hold the securities received in exchange until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, no obligation under Rule 23.1 will be incurred.

6. *No revision during final 14 days of offer period*

Since an offer must remain open for acceptance for 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~, an offeror will generally not be able to revise its offer, and an offeror should not place itself in a position where it would be required to revise its offer under this Rule 23.1 in the 14 day period ending on the last day its offer is able to become unconditional as to acceptances. If an obligation under this Rule 23.1 arises during the course of an offer period and a revision of the offer is necessary an immediate announcement must be made. (See Rule 16.)

Rule 23.2 of the Takeovers Code

23.2 When a securities offer is required

Where purchases of any class of the offeree company shares carrying 10% or more of the voting rights currently exercisable at a class meeting of that class have been made by an offeror and any person acting in concert with it in exchange for securities ~~in the~~ within 3 months ~~prior to~~ before the commencement of and during the offer period, such securities will normally be required to be offered to all other holders of shares of that class.

Unless the vendor is required to hold the securities received until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, an obligation to make an offer in cash or to provide a cash alternative will also arise under Rule 23.

Notes 2, 5 and 6 to Rule 23.2 of the Takeovers Code

2. *Equality of treatment*

The Executive may require securities to be offered on the same basis to all other holders of shares of that class even though the amount purchased is less than 10% or the purchase took place more than 3 months ~~prior to the commencement of~~ before the offer period. However, this discretion will not normally be exercised unless the vendors of the relevant shares are directors of, or other persons closely connected with, the offeror or the offeree company.

5. *Acquisition for a mixture of cash and securities*

The Executive should be consulted where 10% or more has been acquired during the offer period and within 6 months ~~prior to~~ before its commencement for a mixture of securities and cash.

6. *Purchases in exchange for securities to which selling restrictions are attached*

Where an offeror and any person acting in concert with it has purchased 10% or more of the voting rights of any class of shares in the offeree company during the offer period and within 6 months ~~prior to~~ before its

commencement and the consideration received by the vendor includes shares to which selling restrictions of the kind set out in the second sentence of Rule 23.2 are attached, the Executive should be consulted.

Rule 24.1(a) of the Takeovers Code

24.1 (a) Purchases before a Rule 3.5 announcement

Except with the consent of the Executive in cases falling under paragraph (i) or (ii) below, when an offeror or any person acting in concert with it has purchased shares in the offeree company:–

(i) within ~~the~~ 3 ~~month period prior to the commencement of~~ months before the offer period;

(ii) during the period, if any, between the commencement of the offer period and an announcement made by the purchaser in accordance with Rule 3.5; or

(iii) ~~prior to~~ before the 3 month period referred to in (i), if in the view of the Executive there are circumstances which render such a course necessary in order to give effect to General Principle 1,

the offer to the shareholders of the same class shall not be on less favourable terms.

Notes 1 and 5 to Rule 24 of the Takeovers Code

1. No increase during final 14 days of offer period

Since an offer must remain open for acceptance for 14 days ~~following~~ after the date ~~on which~~ of the revised offer document ~~is posted~~, an offeror will generally not be able to revise its offer, and an offeror should not place itself in a position where it would be required to increase its offer under this Rule 24 in the 14 day period ending on the last day its offer is capable of becoming unconditional as to acceptances (see also Rule 16).

5. Purchases ~~prior to~~ before the 3 month period

The discretion given to the Executive in Rule 24.1(a)(iii) will not normally be exercised unless the vendors are directors or other persons closely connected with the offeror or the offeree company.

Notes 9 and 14 to Rule 26.1 of the Takeovers Code

9. Triggering a mandatory offer during a voluntary offer

If it is proposed to incur an obligation under this Rule 26 during the course of a voluntary offer by the acquisition of voting rights, the Executive must

be consulted in advance. Once such an obligation is incurred, an offer in compliance with this Rule 26 must be announced immediately.

If no change in the consideration is involved it will be sufficient, following the announcement, simply to notify offeree company shareholders in writing of the new total holding of the offeror, of the fact that the acceptance condition in the form required by Rule 26.2 is the only condition remaining, and of the period for which the offer will remain open ~~following posting~~ after the date of the document.

An offer made in compliance with this Rule 26 must remain open for not less than 14 days following the date on which the document is posted to offeree company shareholders.

Notes 3 and 4 to Rule 16.1 set out certain restrictions on the incurring of an obligation under this Rule 26 during the offer period.

…

14. The 2% creeper – placing and top-up transactions

For purposes of the creeper a placing shareholder who conducts a placing and top-up transaction pursuant to Note 6 on dispensations from Rule 26 shall be deemed to have a lowest percentage holding equal to the lower of the lowest percentage holding which the placing shareholder had in the 12 month period ~~prior to~~ before or immediately after the placing and top-up transaction. A placing shareholder will be treated similarly if the top-up transaction does not give rise to an offer under this Rule 26 but the transaction complies with the requirements of Notes 6 or 7 on dispensations from Rule 26.

Where a placing shareholder has completed a whitewashed transaction within the 12 months immediately before the placing and top-up transaction, Note 15 to this Rule 26.1 should be read together with this Note for the purpose of determining the lowest percentage holding which the placing shareholder had in that 12 month period.

Rule 26.3(a) of the Takeovers Code

26.3 Consideration

(a) Offers made under this Rule 26 must, in respect of each class of equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class of the offeree company during the offer period and within 6 months ~~prior to~~ before its commencement. The cash offer or the cash alternative must remain open after the offer has become or is declared unconditional for not less than 14 days thereafter. The Executive should be consulted where there is more than one class of equity share capital involved.

Note to Rule 26.4 of the Takeovers Code

Cross reference to Rule 7

Reference is made to Rule 7 which restricts the ability of the directors of an offeree company to resign ~~prior to~~ before the first closing date of the offer, or the date when the offer becomes or is declared unconditional, whichever is the later.

Notes 1 and 6 on dispensations from Rule 26 of the Takeovers Code

1. *Vote of independent shareholders on the issue of new securities ("Whitewash")*

   (See Schedule VI – Whitewash Guidance Note for the detailed requirements of the Takeovers Code under this Note.)

   When the issue of new securities as consideration for an acquisition, or a cash subscription, or the taking of a scrip dividend, would otherwise result in an obligation to make a mandatory offer under this Rule 26, the Executive will normally waive the obligation if the whitewash waiver and the underlying transaction(s) are separately approved by at least 75% and more than 50% respectively of the independent vote that are cast either in person or by proxy at a shareholders' meeting. For this purpose "independent vote" means a vote by shareholders who are not involved in, or interested in, the transaction in question. The requirement for a mandatory offer will also normally be waived, provided there has been an independent vote of shareholders, in cases involving the underwriting of an issue of shares. If an underwriter incurs an obligation under this Rule 26 unexpectedly, for example as a result of failure by a sub-underwriter in respect of all or part of his liability, the Executive should be consulted.

   The appropriate provisions of the Code apply to whitewash proposals. Full details of the potential holding of voting rights must be disclosed in the document sent to shareholders relating to the issue of the new securities, which must also include competent independent advice on the proposals the shareholders are being asked to approve, together with a statement that the Executive has agreed to waive any consequent obligation under this Rule 26 to make a mandatory offer.

   Reference should be made to Note 15 to Rule 26.1 which provides that when a person, or group of persons acting in concert, would otherwise be obliged to make a mandatory offer pursuant to this Rule 26, but the obligation is waived pursuant to a vote of independent shareholders in accordance with the terms of this Note, such person, or group of persons, shall be deemed to have a lowest percentage holding equal to the percentage holding of such person, or group of persons, immediately following the whitewashed transaction. Any acquisition of additional voting rights by such person, or group of persons, subsequent to the whitewashed transaction shall be subject to the 2% creeper under Rule 26.1 by reference to the lowest percentage holding in the 12 month period ending on the date of the completion of the relevant acquisition.

Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval by independent vote of a majority of the shareholders at a general meeting of the company:–

(i) the Executive will not normally waive an obligation under this Rule 26 if the person to whom the new securities are to be issued or any person acting in concert with him has acquired voting rights in the company (save for subscriptions for new shares which have been fully disclosed in the whitewash circular) in the 6 months ~~prior to~~ before the announcement of the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company (which would include informal discussions) in relation to the proposed issue of new securities; and

(ii) a waiver will not be granted or if granted will be invalidated if, without the prior consent of the Executive, any acquisitions or disposals of voting rights are made by such persons in the period between the announcement of the proposals and the completion of the subscription.

Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of voting rights attaching to the shares to which the potential controlling shareholders have become entitled as a result.

Where the final controlling shareholding is dependent on the results of underwriting, the offeree company must make an announcement following the issue of new securities stating the number of shares and percentage of voting rights held by the controlling shareholders at that time.

6. Placing and top-up transactions

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 is 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. Such a waiver is required even if the placing and top-up are to be effected simultaneously whether by way of placing and subscription agreements that are inter-conditional or otherwise. For purposes of the 2% creeper the placing shareholder shall be deemed to have a lowest percentage holding equal to the lower of the lowest percentage holding which he had in the 12 month period ~~prior to~~ before or immediately after the placing and top-up transaction. Reference is made in this regard to Note 14 to Rule 26.1. A waiver under this Note will not be required where a shareholder, together with persons acting in concert with him has continuously held more than 50% of the voting rights of a company for at least 12 months immediately preceding the relevant placing and top-up transaction.

Rule 28.2 of the Takeovers Code

28.2 Acquisitions ~~prior to~~ before the offer

If a partial offer may result in the offeror obtaining or consolidating control in the manner described under Rule 26.1, the Executive's consent under Rule 28.1 will not normally be granted if the offeror or persons acting in concert with it have acquired voting rights in the offeree company during the 6 months ~~prior to~~ before ~~the commencement of~~ the offer period.

Rule 28.3 of the Takeovers Code

28.3 Acquisitions during and after the offer

In all partial offers, the offeror and persons acting in concert with it may not acquire voting rights in the offeree company during the offer period. In cases of successful partial offers where the offeror obtains or consolidates control in the manner described under Rule 26.1, neither the offeror, nor any person who acted in concert with the offeror in the course of the partial offer, nor any person who is subsequently acting in concert with any of them, may, except with the consent of the Executive, acquire voting rights of the offeree company during the 12 month period ~~immediately following~~ after the end of the offer period. Rule 31.3 does not apply to partial offers. See also Rule 31.2.

Rule 28.4 of the Takeovers Code

28.4 No extension of closing date

Rule 15 normally applies to partial offers. If on a closing day acceptances received exceed the precise number of shares stated in the offer document under Rule 28.7, subject to the application of Rule 28.5, the offeror must declare the partial offer unconditional as to acceptances and comply with Rule 15.3 by extending the final closing day to the 14th day thereafter. The offeror cannot further extend the final closing day. If the acceptance condition is fulfilled an offeror may also declare a partial offer unconditional as to acceptances ~~prior to~~ before the first closing day, provided that he fully complies with Rule 15.3. The offeror cannot extend the final closing day to a day beyond the 14th day after the first closing day. The offer document must contain specific and prominent reference to the requirements in this Rule 28.4.

Rule 32.2 of the Takeovers Code

32.2 Redemption or buy-back of securities by the offeree company

(a) Shareholders' approval

During the course of an offer, or even before ~~the date of~~ the commencement of the offer period if the board of the offeree company has reason to believe that a bona fide offer might be imminent, no redemption or buy-back by the

offeree company of its own securities may, except in pursuance of a contract entered into earlier, be effected without the approval of the shareholders at a general meeting. The notice convening the meeting must include information about the offer or anticipated offer. Where an obligation or other special circumstance exists without a formal contract, the Executive must be consulted and its consent to proceed without a shareholders' meeting obtained (Rule 4 may be relevant).

…

(c) Disclosure in the offeree board circular

The offeree board circular must state the amount of relevant securities of the offeree company which the offeree company has redeemed or bought back during the period commencing 6 months ~~prior to~~ before the offer period and ending ~~with~~ on the latest practicable date ~~prior to~~ ~~the posting~~ of the document, and the details of any such redemptions and buy-backs, including dates and prices.

Rule 32.3 of the Takeovers Code

32.3 Redemption or buy-back of securities by the offeror company

The offer document must state (in the case of a securities exchange offer only) the amount of relevant securities of the offeror which the offeror has redeemed or bought back ~~during the period commencing~~ within 6 months ~~prior to~~ before the offer period and the details of any such redemptions and buy-backs, including dates and prices.

(See also Rule 21.3.)

Note 1 to Rule 34 of the Takeovers Code

1. Consent to use other staff

If it is impossible to use staff of the financial adviser to the soliciting person, the Executive may consent to the use of other people subject to:–

(a) an appropriate script for staff being approved by the Executive;

(b) the financial adviser carefully briefing the staff ~~prior to~~ before the start of the operation and, in particular, stressing:–

(i) that staff must not depart from the script;

(ii) that staff must decline to answer questions the answers to which fall outside the information given in the script; and

(iii) the staff's responsibilities under General Principle 3; and

(c) the operation being supervised by the financial adviser.

Rule 2(c) of the Share Buy-backs Code

2. Off-market share buy-backs

…

(c) a certified copy of the resolution contemplated by Rule 2(a) being filed with the Executive ~~within~~ no later than 3 days ~~of~~ after the general meeting of shareholders at which such resolution is passed; and

…

Rule 3.1 of the Share Buy-backs Code

3.1 General meeting to approve a share buy-back by general offer

A share buy-back by general offer must be approved by a majority of the votes cast by shareholders in attendance in person or by proxy at a general meeting of the shareholders duly convened and held to consider the proposed share buy-back. Such general meeting shall be convened by a notice of meeting which is accompanied by the offer document (see also Rule 2.9). If shareholders do not approve the share buy-back, the offer must lapse.

A certified copy of the ordinary resolution contemplated by this Rule 3.1 must be filed with the Executive ~~within~~ no later than 3 days ~~of~~ after the general meeting of shareholders at which such resolution is passed.

Note to Rule 3.1 of the Share Buy-backs Code

Note to Rule 3.1:

Exemption from Companies Ordinance (Cap. 622)

The offeror must apply to the Executive for exemption from the requirements of section 238(2) so as to allow the notice of general meeting to be accompanied by the offer document and for the offer document to be despatched ~~within~~ no later than 21 days ~~of~~ from the date of the announcement. No fee will be charged for such application for exemption. (See Rule 5.1(c) and also paragraph 5.0 of Schedule V.)

Rule 5.4 of the Share Buy-backs Code

5.4 On-market share buy-backs

An offeror shall not engage in an on-market share buy-back ~~following~~ after the date of the announcement of a share buy-back by general offer up to and including the date share buy-back by general offer closes, lapses or is withdrawn, as the case may be.

Rule 7 of the Share Buy-backs Code

7. Prohibition on distributions

A company shall not announce or engage in a distribution of shares following the announcement of a share buy-back for the period beginning on the date of such announcement and ending on the 31st day ~~immediately following~~ after completion or withdrawal of the share buy-back.

This Rule 7 will not normally apply to share distributions which do not involve the raising of capital such as bonus issues and dividends in specie. Any person proposing to engage in a share distribution during the period contemplated by this Rule 7 should consult the Executive in advance of such distribution and any announcement thereof.

Paragraph 4(iv) of Schedule I to the Codes

Shareholdings and dealings

4. (i) The shareholdings of the offeror in the offeree company;

(ii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company in which directors of the offeror are interested;

(iii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which any persons acting in concert with the offeror own or control (with the names of such persons acting in concert);

(iv) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any persons who, ~~prior to~~ before the ~~posting~~ latest practicable date of the offer document, have irrevocably committed themselves to accept or reject the offer, together with the names of such persons;

(v) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by a person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 8 to Rule 22 of the Takeovers Code; and

(vi) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which the offeror or any persons acting in concert with the offeror has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

If in any of the above categories there are no shareholdings, this fact should be stated. This will not apply to categories (iv) or (v) if there are no such irrevocable commitments or arrangements.

If any party whose shareholdings are required by this paragraph 4 to be disclosed, including a party who has no shareholdings, has dealt for value in the shares in

question during the period beginning 6 months ~~prior to~~ before the offer period and ending ~~with~~ on the latest practicable date ~~prior to the posting~~ of the offer document, the details, including dates and prices, must be stated. If no such dealings have taken place, this fact should be stated.

Note 4 to Paragraph 4 of Schedule I to the Codes

4. Aggregation

There may be cases where no useful purpose would be served by listing a large number of transactions. In such cases the Executive will accept in documents some measure of aggregation of dealings by a person provided that no significant dealings are thereby concealed. The following approach is normally acceptable:–

(i) for dealings during the offer period and the month ~~prior to~~ before its commencement there should be no aggregation;

(ii) for dealings in the 2 months ~~prior to~~ before that period, purchases and sales in that period can be aggregated on a daily basis; and

(iii) for dealings in the 3 months ~~prior to~~ before that period, purchases and sales can be aggregated on a weekly basis.

Purchases and sales should not be netted off and the highest and lowest prices should be stated. A full list of all dealings should be sent to the Executive and should be made available for inspection.

Paragraph 10 of Schedule I to the Codes

10. (a) The closing price on the Stock Exchange (or on a stock exchange where they are listed) of the securities of the offeree company which are the subject of the offer:–

(i) on the latest practicable date ~~prior to publication~~ of the offer document;

(ii) on the last business day ~~immediately preceding~~ before the date of the initial announcement, if any, and on the last business day ~~immediately preceding~~ before the date of the offer announcement under Rule 3.5 of the Takeovers Code; and

(iii) at the end of each of the calendar months during the period commencing 6 months ~~preceding the commencement of~~ before the offer period and ending on the latest practicable date ~~prior to the posting~~ of the offer document.

If any of the securities are not so listed, any information available as to the number and price of transactions which have taken place during the period stipulated in (iii) above should be stated together with the source, or an appropriate negative statement.

(b) The highest and lowest closing market prices with the relevant dates during the period commencing 6 months ~~preceding the commencement of~~ before the offer period and ending on the latest practicable date ~~prior to the posting~~ of the offer document.

(c) If any document issued by the offeror contains a comparison of the value of the offer with previous prices of the offeree company's securities, a comparison between the current value of the offer and the price of the offeree company's securities on the last business day ~~prior to the commencement of~~ before the offer period must be prominently included, no matter what other comparisons are made.

Such information should also be provided for securities of the offeror if the consideration for the offer involves such securities.

Paragraph 24 of Schedule I to the Codes

24. Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Such details should be as of a date which is not more than 3 months ~~preceding~~ before the latest practicable date ~~prior to the posting~~ of the document.

Paragraph 2 of Schedule II to the Codes

2. (i) The shareholdings of the offeree company in the offeror;

(ii) the shareholdings in the offeree company and in the offeror in which directors of the offeree company are interested;

(iii) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a subsidiary of the offeree company, by a pension fund of the offeree company or of a subsidiary of the offeree company, or by a person who is presumed to be acting in concert with the offeree company by virtue of class (5) of the definition of acting in concert or who is an associate of the offeree company by virtue of class (2) of the definition of associate but excluding exempt principal traders and exempt fund managers;

(iv) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a person who has an arrangement of the kind referred to in Note 8 to Rule 22 of the Takeovers Code with the offeree company or with any person who is presumed to be acting in concert with the offeree company by virtue of classes (1), (2), (3) and (5) of the definition of acting in concert or who is an associate of the offeree company by virtue of classes (2), (3) and (4) of the definition of associate;

(v) except with the consent of the Executive, the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror which are managed on a discretionary basis by fund managers (other than

exempt fund managers) connected with the offeree company (the beneficial owner need not be named);

(vi) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or reject the offer; and

(vii) the shareholdings in the offeree company and (in the case of a securities exchange offer only) the offeror which the offeree company or any directors of the offeree company has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

If in any of the above categories, other than category (v), there are no shareholdings, then this fact should be stated. This will not apply to category (iv) above if there are no such arrangements.

If any person whose shareholdings are required by categories (i) or (ii) above to be disclosed (whether there is an existing holding or not) has dealt for value in the shares in question during the period beginning 6 months ~~prior to~~ before the offer period and ending with on the latest practicable date ~~prior to the posting~~ of the offeree board circular, the details, including dates and prices, must be stated.

If any person whose shareholdings are required by categories (iii), (iv) or (v) above to be disclosed (whether there is an existing holding or not) has dealt for value in the shares in question during the offer period and ending with on the latest practicable date ~~prior to the posting~~ of the offeree board circular, the details, including dates and prices, must be stated.

In all cases, if no such dealings have taken place this fact should be stated.

Paragraph 7 of Schedule II to the Codes

7 Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeree company and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Such details should be as of a date which is not more than 3 months ~~preceding~~ before the latest practicable date ~~prior to the posting~~ of the document.

Paragraph 9 of Schedule II to the Codes

9. Details of every material contract entered into ~~after the date~~ within 2 years before ~~the commencement of~~ the offer period, not being a contract entered into in the ordinary course of business carried on or intended to be carried on by the offeree company or any of its subsidiaries, including particulars of dates, parties, principal terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries.

Paragraph 13 of Schedule II to the Codes

13. Details of any service contracts with the offeree company or any of its subsidiaries or associated companies in force for directors of the offeree company:

(i) which (including both continuous and fixed term contracts) have been entered into or amended within 6 months before ~~the commencement of~~ the offer period;

(ii) which are continuous contracts with a notice period of 12 months or more; or

(iii) which are fixed term contracts with more than 12 months to run irrespective of the notice period.

For disclosures made under paragraph (i), particulars must be given of the earlier contracts (if any) which have been replaced or amended as well as the current contracts.

If no disclosures are required to be made under this paragraph, this should be stated.

Note 2 to Paragraph 13 of Schedule II to the Codes

2. Recent increases in remuneration

The Executive will regard as an amendment to a service contract any case where the remuneration of an offeree company director (with a service contract with more than 12 months to run) is increased materially within 6 months ~~of~~ before the date of the offeree board circular. Therefore, any such material increase must be disclosed in the offeree board circular and the current and previous levels of remuneration stated.

Paragraph 5 of Schedule III to the Codes

4. (i) The shareholdings in the offeror in which directors of the offeror are interested;

(ii) the shareholdings in the offeror in which any persons acting in concert with the directors of the offeror are interested (with the names of such persons acting in concert);

(iii) the shareholdings in the offeror in which any persons who, ~~prior to~~ before the ~~posting~~ latest practicable date of the offer document, have irrevocably committed themselves to accept or reject the offer are interested, together with the names of such persons;

(iv) the shareholdings of each shareholder of the offeror which holds 10% or more of the voting rights of the offeror; and

(v) the shareholdings in the offeror which the directors of the offeror or any persons acting in concert with them have borrowed or lent, save for any borrowed shares which have been either on-lent or sold;

and the percentage which such numbers represent of the offeror's outstanding share capital and the identity of each such person.

If in any of the above categories there are no shareholdings, this fact should be stated. This will not apply to categories (iii) or (iv) if there are no such irrevocable commitments or shareholders.

If any party whose shareholdings are required by this paragraph 5 to be disclosed, including a party who has no shareholdings, has dealt for value in the shares in question during the period beginning 6 months ~~prior to~~ before the offer period and ending ~~with~~ on the latest practicable date ~~prior to the posting~~ of the offer document, the details, including dates and prices, must be stated. If no such dealings have taken place, this fact should be stated. This will not apply to category (iv) above.

Paragraph 13 of Schedule III to the Codes

13. (a) The closing price on the Stock Exchange (or on a stock exchange where they are listed) of the shares which are the subject of the offer:–

(i) on the latest practicable date ~~prior to publication~~ of the offer document;

(ii) on the last business day ~~immediately preceding~~ before the date of the initial announcement, if any, and on the last business day ~~immediately preceding~~ before the date of the offer announcement under Rule 3.5 of the Takeovers Code;

(iii) at the end of each of the calendar months during the period commencing 6 months ~~preceding the commencement of~~ before the offer period and ending on the latest practicable date ~~prior to the posting~~ of the offer document; and

(iv) if any of the shares are not so listed, any information available as to the number and price of transactions which have taken place during the period stipulated in (iii) above should be stated together with the source, or an appropriate negative statement.

(b) The highest and lowest closing market prices with the relevant dates during the period commencing 6 months ~~preceding the commencement of~~ before the offer period and ending on the latest practicable date ~~prior to the posting~~ of the offer document.

(c) If any document issued by the offeror contains a comparison of the value of the offer with previous prices of the offeree company's shares, a comparison between the current value of the offer and the price of the offeree company's shares on the last business day ~~prior to the commencement of~~ before the offer period must be prominently included, no matter what other comparisons are made.

Paragraph 18 of Schedule III to the Codes

18. Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Such

details should be as of a date which is not more than 3 months ~~preceding~~ before the latest practicable date ~~prior to the posting~~ of the document.

Paragraph 24 of Schedule III to the Codes

24. Details of any re-organisation of capital during the 2 financial years ~~preceding the commencement of~~ before the offer period.

Paragraph 26 of Schedule III to the Codes

26. If any shares of the class of shares to be bought back were issued during the 2 year ~~period immediately preceding the date of~~ before the offer period, the date of such distribution, the issue price per share and the aggregate proceeds received by the offeror.

Paragraph 5.4 of Schedule V to the Codes

5.4 The third type of specific exemption would relieve an applicant from the requirements of section 238(2) and thereby allow companies to comply with the requirements under Rule 3 of the Code to send to shareholders the offer document ~~within~~ no later than 21 days from the date of the announcement of the proposed buy-back and to send the offer document with the notice of general meeting. Such an exemption would be granted in all cases and would attract no fee.

Paragraph 2 of Schedule VI to the Codes

2. Specific grant of waiver required

In each case, specific grant of a waiver from the Rule 26 obligation is required. Such grant will be subject to:–

(a) there having been no disqualifying transactions (as set out in paragraph 3 of this Schedule VI) by the person or group seeking the waiver in the period from the date 6 months ~~prior to~~ before the date of the announcement of the proposals and up to and including the date of the shareholders' meeting;

Paragraphs 3(a) and 3(b) of Schedule VI to the Codes

3. Disqualifying transactions

(a) the Executive will not normally waive an obligation under Rule 26 of the Takeovers Code if the person to whom the new securities are to be issued or any person acting in concert with him has acquired voting rights in the company (save for subscriptions for new shares which have been fully disclosed in the whitewash circular) in the 6 months ~~prior to~~ before the date of the announcement of the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company (which would include informal discussions) in relation to the proposed issue of new securities; and

(b) a waiver will not be granted or if granted will be invalidated if, without the prior consent of the Executive, any acquisitions or disposals of voting rights are made by such persons in the period between the date of the announcement of the proposals and the completion of the subscription.

Paragraph 4(k) of Schedule VI to the Codes

4. Circular to shareholders

…

(k) paragraph 4 of Schedule I and paragraph 2 of Schedule II (disclosure of shareholdings and dealings). Dealings should be covered for the 6 months ~~prior to~~ between the date of the announcement of the proposals until the latest practicable date ~~prior to the posting~~ of the circular but dealings by persons in categories 2(iii), (iv) or (v) of paragraph 2 of Schedule II need not be disclosed. Paragraph 2(vi) is applicable and directors' voting intention must be disclosed;

Paragraph 9 of Schedule VI to the Codes

9. Share buy-backs

If following the approval by shareholders in a company under Note 1 on dispensations from Rule 26 of the Takeovers Code of the issue of convertible securities, or the issue of warrants or the grant of options, and ~~prior to~~ before conversion or subscription the company buys back shares, the percentage shareholding of the potential controlling shareholders may increase and Rule 32.1 of the Takeovers Code may apply. Where Rule 32.1 of the Takeovers Code does not apply because the potential controlling shareholders are not directors or acting in concert with any directors, the waiver will apply to conversion into, or subscription for, such number of voting rights as originally approved by shareholders. Where the potential controlling shareholders are directors or acting in concert with any directors, they must seek further approval of shareholders for the conversion into, or subscription for, such number of voting rights as originally approved by shareholders.

Paragraphs 6(a) and 6(c) of Schedule VIII to the Codes

6. (a) When a firm intention to make an offer is announced, the offeree company should instruct its registrar to respond ~~within~~ no later than two business days to a request from the offeror for the provision of the register which should be updated to reflect the position as at the close of business on the date of the request.

…

(c) The registrar must provide updates, on a daily basis, to the register ~~within~~ no later than two business days after notification of the transfer and, in addition, copies of all documents which would lead to a change in the last copy register provided to the offeror must be provided as rapidly. On the final register day* any such information received by the offeree company's registrar but not yet

provided to the offeror's receiving agent must be made available for collection by the offeror's receiving agent, at the latest, by noon on the day preceding the final closing date § of the offer.

From the final register day* until the time that the offer becomes or is declared unconditional as to acceptances or lapses, the offeree company's registrar should continue to update the register on a daily basis so that all transfers and other documents which have been received by the offeree company's registrar by 1.00 p.m. on the final closing date of the offer are processed by 5.00 p.m. that day at the latest. In addition, copies of these documents should be relayed immediately to the offeror's receiving agent insofar as not previously notified.

Definitions in Schedule VIII to the Codes

** final register day – the day two days ~~prior to~~ before the final closing date§ of an offer.*

54/F, One Island East, 18 Westlands Road, Quarry Bay, Hong Kong
香港鰂魚涌華蘭路 18 號港島東中心 54 樓