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

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

21 September 2023

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Introduction

On 19 May 2023 the Securities and Futures Commission (**SFC**) issued a consultation paper inviting market participants and interested parties to submit comments on a number of proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs (**Codes**). The proposals resulted from a review conducted by the Executive[1] in consultation with the Takeovers and Mergers Panel (**Panel**)

The consultation paper was divided into seven parts.

Part 1 proposed 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 aimed to provide guidance on the application of the chain principle.

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

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

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

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

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

Market consultation

The consultation ended on 23 June 2023. The SFC received 12 responses. A list of respondents (other than those who requested anonymity) is set out in Appendix 1. The SFC welcomes these responses and is grateful to those who participated.

The proposals contained in the consultation paper and the responses received involve technical and complex issues. In arriving at the conclusions set out in this paper, the SFC has carefully considered all respondents' comments. The SFC has adopted all of the proposed amendments discussed in the consultation paper, some with slight modifications, as set out in this paper. The modifications to the original proposals are indicated in blue and bold in the main sections of this paper and also in the consolidated amendments in Appendix 2.

The marked-up text of the amendments to the Codes is set out in Appendix 2. All the amendments will become effective on 29 September 2023. Where this timeline may lead to

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

difficulties, for example, in the case of transactions in progress that have already been announced, the Executive should be consulted and will endeavour to reach a solution which is fair to all parties.

Several respondents raised comments which are beyond the scope of the consultation. The SFC will consider these in due course.

The consultation paper, the responses and this conclusions paper are available on the SFC website at www.sfc.hk.

The terms used in this conclusions paper have the same meanings as those in the consultation paper unless otherwise defined.

Securities and Futures Commission
Hong Kong

21 September 2023

PART 1: VOTING, ACCEPTANCES AND CONCERT PARTY ISSUES

1. Part 1 of the consultation paper proposed to (i) amend the definition of "close relatives" and "voting rights", (ii) clarify certain matters relating to acceptances and general meetings and (iii) revise the existing framework on the gathering of irrevocable commitments.

Definition of "close relatives"

2. We proposed to amend the definition of "close relatives" to codify the Executive's existing practice of treating certain family members, such as a person's grandparents and grandchildren, as concert parties.

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

   Public comments

3. The majority of the respondents agreed to our proposal.

4. Two respondents expressed concerns that the expanded definition of "close relatives" may pose challenges in executing transactions and may increase the risk of leakage prior to the publication of a Rule 3.5 announcement when an offeror must reach out to an expanded group of people to explain Code provisions and ascertain information for disclosure purposes.

5. One of these respondents suggested limiting the definition of "close relatives" to those with actual knowledge of the transaction and requested guidance on rebuttals of the presumption and the steps an offeror should take in relation to "close relatives" before and after a Rule 3.5 announcement.

6. The other respondent proposed modifying our proposal to allow the Executive to deem certain family members as "close relatives" in appropriate circumstances in line with the approach of the Stock Exchange of Hong Kong (**Stock Exchange**) in deeming certain relatives as connected persons under Rule 14A.21 of the Listing Rules. This respondent was also concerned that our proposal would set a high bar for concert party rebuttals.

   SFC's responses

7. As set out in the consultation paper and noted by certain respondents, our proposal represents a codification of the existing practice. Expanding the definition of "close relatives" would not make it more difficult to execute transactions taking into account the increasingly sophisticated market and the experience accumulated by advisers over the years.

8. We also note that the regulatory purpose of the Listing Rules governing connected transactions is fundamentally different from that of the Codes, which mandates the disclosure of timely and adequate information to provide an orderly framework for takeovers and share buy-backs.

9. The proposal to amend the definition of "close relatives" does not seek to raise the bar for concert party rebuttals but to reflect the common understanding that certain family members are, more likely than not, acting in concert in respect of listed companies in Hong Kong. The presumption of "close relatives" is rebuttable like other concert party presumptions under the Codes. As with all applications, the Executive will consider each application in a fair and reasonable manner taking into account the facts and circumstances unique to the case. As each case is decided based on its merits, any detailed or prescriptive guidance beyond what was already mentioned in the consultation paper will not be appropriate.

10. We will therefore delete Note 8 to the definition of acting in concert and introduce a new definition of "close relatives" to the Codes as proposed:

"*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 will be added as follows:

"**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 "voting rights"

11. Part 1 of the consultation paper also proposed to amend the definition of "voting rights" to clarify that the Codes would apply to all voting rights exercisable at a general meeting without regards to voting restrictions which are normally imposed on a holder and do not affect the rights attached to a share.

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

Public comments and SFC's response

12. All respondents agreed to the proposal. The definition of "voting rights" will be amended as proposed:

"**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."

Shareholders' approval and acceptance

Note to Rule 2.2 and Rule 2.11 of the Takeovers Code

13. We proposed to align Rules 2.2 and 2.11 and allow shares acquired by an offeror and its concert parties from the date of the Rule 3.5 announcement be counted towards the 90% disinterested shares threshold under Note (iii) to Rule 2.2 and Rule 2.11.

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

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

Public comments and SFC's response

14. All respondents responded favourably to the proposal. One respondent, in particular, considered that our proposal would enhance deal certainty which is beneficial to the market. We will therefore amend Note (iii) to Rule 2.2 and Rule 2.11 as proposed:

Notes 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."

Rule 2.11:

"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 the date of the initial offer document total 90% of the disinterested shares."

Rules 2.2 and 2.10 of the Takeovers Code

15. Part 1 of the consultation paper also proposed to remove the ambiguity in the form of shareholders' meeting in the light of recent court decisions and reinforce the non-prohibition view which has always been adopted by the Executive for meetings held under Rules 2.2 and 2.10. The proposal will allow an offeror and its concert parties to attend and vote at meetings held to consider a scheme, capital reorganisation or a delisting proposal as long as their votes are not included in determining whether the requirements under Rules 2.2 and 2.10 are met.

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.

Public comments and SFC's response

16. All respondents supported our proposal. They recognised the importance of the Codes remaining flexible so as to work alongside the company law in various jurisdictions. Two respondents also observed that the proposal would address any procedural uncertainties created by recent court cases and avoid undesirable situations where shareholders' meetings held for the purpose of the Codes might be held invalid under the laws of incorporation or constitutional documents of an offeree company. We will therefore amend Rules 2.10(a) and 2.2(a) and add a new Note 8 to Rule 2 as proposed:

Rule 2.10:

"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 2.2:

"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."

New Note 8 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."

Irrevocable commitments

17. The last section of Part 1 proposed to streamline the process for offerors to gather irrevocable commitments. Under the proposal, an offeror will be permitted to approach a maximum of six shareholders to gather irrevocable commitments and no prior consultation is required for approaching shareholders with a material interest. A

shareholder is taken to have a material interest if it and its concert parties control(s) directly or indirectly 5% or more of the voting rights of an offeree company.

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

Public comments

18. All but one respondent welcomed our proposal and believed that it would facilitate deal certainty. One respondent noted that the existing framework has led to offerors invariably consulting the Executive prior to approaching any shareholders which may not have been necessary. Another respondent remarked that the proposal would reduce the workload of parties involved in a transaction. A few respondents asked the Executive to confirm whether a shareholder and its concert parties would be counted as one shareholder.

19. One respondent suggested further relaxing the threshold for "material interest" to include shareholders who hold 5% or more of any class of voting rights of an offeree company. This respondent took reference to the disclosure of interest regime under Part XV of the Securities and Futures Ordinance (**SFO**) where a person owning 5% or more of one class of shares is required to make disclosure of interest filings.

20. Another respondent was concerned that our streamlined approach could lead to information leakage and lack of regulatory oversight and suggested maintaining a registry of shareholders approached by an offeror. This respondent also noted that "a very restricted number of shareholders" is not defined in Note 4 to Rules 3.1, 3.2 and 3.3 which could lead to confusion.

SFC's response

21. The proposed approach for gathering irrevocable commitments demonstrates our commitment to enhance takeovers regulation in Hong Kong taking into account the increased sophistication of parties involved in Codes transactions. The revised policy serves to strike a balance between deal certainty and the risk of information leakage before the publication of an offer announcement. Under the proposal, the maximum number of shareholders an offeror can approach is restricted to six which is the same as the existing policy and the SFC will continue to exercise regulatory oversight on this process.

22. A shareholder with a 5% interest in the voting rights of a company is more likely sophisticated and better positioned than others to look after his or her own interest. The SFC does not consider it appropriate to lower the threshold of "material interest" to 5% or more of any class of shares to align with the requirements under Part XV of the SFO as the regulatory objective of our rule is different from the disclosure of interest regime under the SFO.

23. As set out in the consultation paper, the SFC will update Practice Note 12 to reflect these amendments. The revised practice note will provide guidance on the operation of the rule of six, in particular whether a shareholder and its concert parties will be counted as one shareholder, and related administrative matters including the submission of a list of shareholders approached by an offeror.

24. In view of the above, we will amend 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."

PART 2: THE CHAIN PRINCIPLE

25. In Part 2 of the consultation paper we proposed to expand Note 8 to Rule 26.1 to give better guidance on the factors to be considered by the Executive in deciding whether a mandatory general offer for the second company is required when statutory control of the first company that holds 30% or more of the voting rights of the second company is obtained or consolidated by a person or group of persons.

26. We proposed to:

(a) add market capitalisation as a parameter for comparison when determining the Substantiality Test; and

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

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

Public comments

27. The proposed addition was generally well received by the respondents. They believed the amendments would help provide clarity and guidance on assessing whether a chain principle offer is required.

28. The use of market capitalisation as one of the comparison parameters was welcomed in light of its objectivity and that it is a widely accepted indicator of company size. One respondent commented that it would be helpful to clarify in the drafting that the market capitalisation test is only relevant where both companies are listed.

29. Two respondents raised concerns about how the market capitalisation comparison should be calculated and how the reference dates for such calculations should be chosen. The dates on which trading prices are taken for comparison could be heavily influenced by external factors like market sentiment and transient shifts which may not correspond to a company's book value. To alleviate this concern and counteract the influence of short-term market fluctuations, the "look-back" period approach could apply when anomalous results are obtained.

30. One respondent suggested that, given the increasing number of pre-revenue companies being listed in Hong Kong, the Executive could consider specifying that comparing the profits of these companies would not be appropriate and would be disregarded by the Executive.

31. There were other requests to the Executive to provide further clarity and guidance on the detailed operation of the amended Note 8 to Rule 26.1. It was also suggested that "revenue" be added as a parameter as the revenue test is well established under the Listing Rules and in the market.

SFC's responses

32. Market capitalisation is a measure of a company's total value by reference to the trading price of its securities in a stock market. We have clarified the language of Note 8 in this respect.

33. The principle-based approach adopted in supervising takeovers activities in Hong Kong provides the Executive with flexibility in applying the Codes in complex situations while ensuring that the General Principles are consistently adhered to. While we are providing additional clarity and guidance to assist market practitioners in the application of the chain principle, we do not consider it appropriate to be overly prescriptive as the Substantiality Test is not intended to be a bright-line test. Similarly, we do not propose adding further explicit parameters to the Substantiality Test.

34. For the same reason, the Executive is hesitant to provide specific non-binding examples of acceptable alternative tests when there are anomalous results in the calculations under the Substantiality Test. Where applicable, practitioners should provide alternative comparison tests (in lieu of the typical ones) that they believe are suitable and appropriate having regard to the facts and circumstances of each case.

35. As mentioned in the consultation paper, we proposed to update Practice Note 19 to provide further guidance on the Executive's approach to the Substantiality Test. This will include guidance on (i) specific line items for assets and profits to be taken into account and (ii) market capitalisation reference dates as well as clarification that one factor in excess of 60% may not by itself trigger a mandatory general offer under the chain principle.

36. In the light of the above, Note 8 to Rule 26.1 will be amended as proposed:

> "*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 of the respective companies* ***and, where both companies are listed, their respective market capitalisation****. 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."

PART 3: OFFER PERIOD AND TIMETABLE

Offer periods and offer timetable

Definition of "offer period"

37. To address practical concerns on protracted offer periods, we proposed to amend the definition of "offer period" to give the Executive the explicit power to end an offer period.

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

Public comments

38. All respondents were generally supportive of the proposal to avoid undesirable consequences for the offeree company, in particular when matters are beyond the control of the offeree company.

39. A few respondents expressed concerns about the scope of the Executive's power to end an offer period. They believe that the Executive should only exercise such power in limited and restricted circumstances. The respondents also suggested that the relevant considerations and factors that the Executive would take into account when exercising, and the situations where such power may be exercised, be clearly set out and defined in the Codes. This would include giving examples of the circumstances that the Executive would make such determination.

SFC's response

40. A protracted offer period coupled with the offeree company having no control over the offer process often creates unintended and undesirable disruptions to the offeree company's normal business operations. Further, the market may also be misled to believe that there is a genuine prospect of an offer because the offeree company continues to be subject to an offer period. The Executive already has the inherent power under Section 2.1 of the Introduction to the Codes to modify or relax any rule under the Codes, which includes an implied power to end an offer period at the Executive's discretion. Our proposal to provide the Executive with an explicit power to end offer periods provides clarity to the market in this regard.

41. We note the respondents' concerns and desire to have the Executive's powers clarified. As mentioned in the consultation paper, we envisage the Executive will only exercise such power in limited circumstances, especially when it is clear to the Executive that there is no real prospect of a change of control of the offeree company or offers being made in the foreseeable future. The Executive will adopt a pragmatic approach in the exercise of this power. Therefore, we do not consider it necessary to specify the circumstances in which the Executive could exercise this power, as each case should be decided on its own merits.

42. Accordingly, the definition of "offer period" will be amended as proposed, with a slight drafting modification:

> "**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, **as the date** 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.*"

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

43. We proposed to amend Rule 15.5 to codify our practice that any consents to extend Day 60 (the last day on which an offer must be declared unconditional as to acceptances) would not exceed four months after the despatch of the offer document, which is in line with the spirit of Rule 2.11.

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

Public comments

44. All respondents agreed that the Executive's current practice should be codified. One respondent commented that the term "Day 60" should be renamed as it will no longer be Day 60 after an extension, and requested the Executive to clarify whether the reference to "4 months after the date of the offer document" in the new addition should start from the initial offer document or the date of any revised offer document.

SFC's response

45. "Day 60" is commonly understood by the market to refer to the last day on which an offer can be declared unconditional as to acceptance. We believe keeping the use of such term has its merits.

46. We also clarify that the 4-month period under Rule 15.5 should start from the date of the initial offer document, consistent with the spirit of Rule 2.11.

47. The proposal will therefore be codified and Rule 15.5 will be amended as proposed with slight clarification:

> "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 **initial** offer document."

Put up or shut up

48. As mentioned in the consultation paper, over the years the Executive has, upon application by an offeree company, issued "Put up or shup up" (**PUSU**) orders requiring 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). We proposed that the Executive be given express powers to issue PUSU orders by introducing a new Rule 3.9.

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

Public comments

49. All respondents were supportive of the introduction of the PUSU order regime. A couple of respondents invited the Executive to give further guidance or examples on the exceptional circumstances that the Executive could impose PUSU orders when not requested by an offeree company, and the relevant considerations and factors that the Executive will take into account when exercising the power.

SFC's responses

50. In the past, where an offeree company has already been subjected to an extended offer period but the offeror has yet to announce its firm intention to make an offer, we invited offeree companies to consider applying for PUSU orders to be imposed on the potential offerors. However, the relevant offeree company may not do so, especially if the potential offeror is the controlling shareholder of the offeree company. In such circumstances, and taking into account the factors set out in the proposed Rule 3.9, we consider it appropriate to allow the Executive to impose a PUSU order on the potential offeror. As with all cases, the Executive will exercise its powers under the Codes after due consideration having regard to the facts and circumstances of the particular case. To give examples or guidance on what might be considered exceptional circumstances would not be helpful to the market. In any event, a party may apply to the Takeovers Panel for a review of the Executive's decision if it is aggrieved by that decision.

51. When the proposal was initially raised for discussion between the Executive and the Panel, we also considered whether the UK regime could be applied to Hong Kong. Under the current Takeover Code in the UK (**UK Code**), a potential offeror is required to either announce a firm intention to make an offer, or announce that it does not intend to make an offer, no later than 28 days after the date of the announcement in which the potential offeror is first identified. Although the Codes and the UK Code share common roots, the takeovers markets in Hong Kong and the UK have diverged and developed in different ways. Therefore, we do not consider the approach with respect to the offer period timetable under the UK Code to be appropriate for the Hong Kong market.

52. In the light of the responses, we will introduce new Rule 3.9 as proposed:

> "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."

53. The new Rule 3.9 would also be added as an applicable rule under the Takeovers Code during share buy-back in the list set out in Rule 5.1(c) of the Code on Share Buy-backs (**Share Buy-backs Code**).

Settlement of consideration and return of share certificates

54. In Part 3 of the consultation paper, we proposed to amend Rule 17 and Rule 20.2 to align the timing for the return of share certificates with the timing for settlement of consideration for an offer to within seven business days after the relevant event.

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

SFC's responses

55. All respondents agreed with the proposal. We will amend Rules 17 and 20.2 as proposed:

Rule 17:

"**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."

Rule 20.2:

"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."

Other amendments

Timing requirements

56. We proposed to make housekeeping amendments (where required) to provisions where time periods are relevant. The aim was to remove any confusion that different wording might create, as Codes transactions are often time critical in nature. The proposed amendments would also reflect the latest market practice with regards to the printing and issuance of shareholders' documents. The proposed amendments were set out in Appendix 2 of the consultation paper. We also proposed to amend Rule 7 to clarify the exact permitted time as to when directors' resignations may take effect.

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.

Public comments

57. All respondents welcomed the proposal to align the wording for timing requirements, especially with regards to the return of share certificates. They also agreed that the

time when directors' resignations may take effect after the offer closes be clarified. This helps provide clarity and ensure consistency.

SFC's responses

58. In view of the above, we will amend the relevant timing requirements stated in the Codes as set out in Appendix 2 of the consultation paper with some minor amendments.

59. Rule 7 will be amended as proposed:

> "**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~~."

60. Some corresponding changes are not necessary for the Chinese version of the Codes.

Rule 15.7 of the Takeovers Code

61. We proposed to add a note to Rule 15.7 to provide that no consent will be required if the 21-day requirement cannot be met in cases of privatisation by way of schemes of arrangement, i.e. when the effective date of a scheme falls more than 21 days from the date of the court meeting due to the court's timetable which is beyond the control of the offeree company. The amendment will also streamline the vetting and approval process for privatisation by way of a scheme of arrangement.

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

62. All respondents welcomed the change which would help streamline the vetting process for privatisations by way of scheme of arrangement. The note to Rule 15.7 will be added as proposed:

> "*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.*"

PART 4: OFFER REQUIREMENTS

Disclosure of offer prices in talks announcements

63. In Part 4 of the consultation paper, we explained the Executive's stance and approach to the disclosure of an indicative offer price in talks announcements. We proposed to codify the practice by introducing new Notes 3 and 4 to Rule 3.7 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.

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

Public comments

64. The respondents welcomed the proposal.

65. One respondent sought clarification of whether the potential offeror would be bound by the indicative offer price as the floor price if the right not to be so bound is specifically reserved at the time the statement was made, as is proposed in the new Note 3 to Rule 3.7. Another respondent sought clarification for Note 3 on what might constitute exceptional circumstances that would allow an offeror to subsequently depart from the offer terms announced if the right had not been specifically reserved earlier, and the scope of the circumstances where the rights can be specifically reserved.

SFC's responses

66. The Executive has consistently advised parties to maintain confidentiality and take all necessary steps to ensure no leakage of information prior to the announcement of a firm intention to make an offer, and has taken a strict approach on the issue of a "talks announcement". This was made clear by the Executive in past issues of the Takeovers Bulletin. It has always been our view that, where confidentiality is preserved, there is no need for the offeree company to issue any talks announcement under Rule 3.7. This would prevent the use of a talks announcement to condition or test the market. This approach also minimised 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.

67. If the obligation to make a talks announcement arises under Rule 3.7, the announcement is expected to be relatively short and to disclose no more than the fact that talks are taking place. Where overseas regulatory requirements demand disclosure of the offer price by overseas listed offerors or dual-listed companies before any firm intention announcements are made, disclosure of such offer price (whether indicative or otherwise) will be permitted on the condition that the price disclosed would form the floor price for any offer subsequently made. We have also been flexible in our supervision having regard to the specific circumstances of a case, such as allowing the offeror to announce the intended offer price in view of the significant increase in the offeree company's share price to mitigate possible market concerns due to false market rumours.

68. The current proposal reflects the Executive's regulatory objective to ensure any inclusion of an indicative offer price in a talks announcement would not be abused or used as a tool to condition or test the market prior to an offer being formally made. Under the proposed Notes 3 and 4 to Rule 3.7, while a potential offeror would be allowed to depart from the originally announced terms if it has specifically reserved that right and the circumstances that the right can be set aside have arisen, it would not be allowed to adopt this approach in respect of an indicative offer price. In other words, the potential offeror would be bound by its announced indicative offer price in all circumstances.

69. We have again carefully considered how best to balance two competing interests. The first being the flexibility for an offeror to reduce its offer price after that 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 test the market via disclosures relating to an indicative offer price. Having considered the responses received and market support, we will codify the existing practice by introducing the new notes to Rule 3.7 without modification. The notes provide 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.

70. As for what might constitute wholly exceptional circumstances that an offeror would not be bound by a statement made by it without reserving its right under the new Note 3, this would depend on the prevailing facts and circumstances of that particular case before a decision can be made.

71. Having considered the above, the new Note 3 and Note 4 to Rule 3.7 will be introduced without modification 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."

Deduction of dividends from offer price

72. We proposed to amend Note 11 to Rule 23.1 and Note 3 to Rule 26.3 to clarify that no deductions of dividends or other distributions from the offer price would be allowed unless the right is specifically reserved. 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 amount.

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.

Public comments

73. All respondents supported the proposal. One respondent queried the consequential implication of this note when a no increase statement about the offer consideration has been made by an offeror.

SFC's responses

74. There are generally two situations in which a dividend may be distributed during the course of an offer. First, a special dividend which is paid when the offer becomes unconditional or upon the effective date of a scheme of arrangement. Such special dividend can be considered part of the total consideration to be received by shareholders, for example, where an offer is conditional on the completion of a disposal by the offeree company and the proceeds of such disposal would be distributed to shareholders in the form of a special dividend. Second, a regular distribution by the offeree company which is not linked with the offer. In the first scenario, the headline offer price would not be affected by the payment of the special dividend even if a no increase statement was made by the offeror. In the second scenario, the offer price should be reduced by the same amount of dividends paid to give effect to any no increase statement made by the offeror. We will clarify this in Note 11 to Rule 23.1.

75. In view of the above, Note 11 to Rule 23.1 and Note 3 to Rule 26.3 will be adopted with further clarification 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 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.*

Where an offeror has made a no increase statement to which Rule 18.3 applies and a dividend (or other distribution) is subsequently paid or becomes payable by the offeree company to offeree company shareholders, the offeror must reduce the offer consideration by an amount equal to that dividend (or other distribution) so that the overall value receivable by the offeree company shareholders remains the same, unless, and to the extent that, the offeror has stated that offeree company shareholders will be entitled to receive all or part of a specified dividend (or other distribution) in addition to the offer consideration."

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.*"

PART 5: PARTIAL OFFERS

76. Part 5 of the consultation paper proposed to clarify certain rules governing partial offers under Rule 28 to reflect the tighter regulations of partial offers.

Offer periods relating to partial offers

77. We proposed to clarify the rule restricting the extension of offer period in a partial offer on the premise that a prolonged offer period is unfair to accepting shareholders.

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

Public comments

78. All but one respondents agreed to our clarification. One respondent who in principle agreed with our proposal pointed out that there might be situations where an extension of the offer period is warranted to preserve an offer and asked the Executive to allow some flexibility in an offer timetable.

79. The respondent who disagreed with our proposal argued that shareholders are adequately protected by Rule 15.5. This respondent also noted that certain brokers might not have the resources to record all the approvals and acceptances from clients and would need more time to gather client instructions.

SFC's response

80. As stated in the consultation paper, a partial offer is a concessionary offer and represents a deviation from the principle that a full exit should be provided to shareholders when there is a change, acquisition or consolidation of control of a company. The rules governing a partial offer are intentionally more onerous than those applicable to a general offer and this includes the rules on offer periods. As such, we do not consider it necessary to modify our proposal or to adopt the rules governing offer period extensions applicable to general offers under Rule 15. Also, Rule 15.5 governs the last day an offer can become unconditional as to acceptance and extension of offer periods where the acceptance condition has not been met, whereas Rule 28.4 concerns the last day an offer period can remain open after the acceptance condition has been met.

81. All in all, parties are free to structure an offer within the confines of the Codes. Should they consider it difficult to obtain the tick-box approval in a partial offer, they can consider adopting other deal structures or revising the terms of the offer to entice support from shareholders.

82. We will therefore amend Rule 28.4 as proposed with a slight drafting modification:

> "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 **day must be extended to** 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."

Comparable offer for convertible securities, warrants, etc.

83. Part 5 of the consultation paper also proposed to require Rule 13 comparable offers for convertibles, warrants options and subscription rights in a partial offer to incorporate the market practice of making such offers in a partial offer.

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

Public comments

84. A majority of respondents agreed with our proposal. One respondent noted that it might not be necessary to require Rule 13 comparable offers since a partial offer would not result in a privatisation or delisting while other respondents considered that holders of convertible securities or other similar instruments should be given a proportionate opportunity to exit a company. One respondent suggested that Rule 13 offers should only be required where the resulting interest of an offeror in a company would be over 50%.

SFC's response

85. We do not consider it appropriate to introduce a higher conditionality threshold for comparable offers and agree that all securities holders should be given an equal opportunity to exit a company. Given the proposal is a codification of market practice and is supported by a majority of respondents, we will introduce a new rule requiring comparable offers for convertible securities, warrants, options or subscription rights in a partial offer. The proposed wording of the new rule has been modified and now refers to "comparable" offers rather than "appropriate" offers to clarify that an offer for convertibles only have to be made for the same percentage as the partial offer for shares.

86. A new Rule 28.10 will be added as follows:

> "28.10 **Comparable** offers for **convertible** 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 **a comparable** offer or proposal to the holders of such securities. The requirements under Rule 13 will apply as appropriate."

Tick-box approval

87. The current wording of Rule 28.5 suggests that a tick-box approval is required even if an offeror concert group is already holding more than 50% of a company. We proposed to clarify this by amending Rule 28.5.

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

Public comments and SFC's response

88. All respondents agreed to our clarification and Rule 28.5 will be amended as follows:

> "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."

Acceptance and approval of partial offer by exempt principal traders

89. The last proposal under Part 5 of the consultation paper proposed to extend the rules governing acceptances and voting by exempt principal traders under Rules 35.3 and 35.4 to partial offers.

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

Public comments and SFC's response

90. All respondents agreed to our proposal and we will adopt the amendment as proposed. One respondent asked whether the new note would apply to exempt fund managers.

91. We would like to clarify that exempt fund managers are already bound by Rule 35 in certain scenarios described under section 5 of Practice Note 9, for example where its seed capital represents over 10% of the value of a fund. The new note 3 to Rule 28 is essentially a clarification that Rule 35 also applies to partial offers and the provisions under Practice Note 9 will continue to apply.

92. A new note 3 to Rule 28 will be introduced as proposed:

"*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 ***under*** *Rule 28.5.*"

PART 6: GOING GREEN

93. Part 6 of the consultation paper proposed a list of environmentally friendly initiatives to enhance efficiency and reduce the impact associated with printing, despatching and submitting Codes documents.

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

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.

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.

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

Public comments and SFC's response

94. All respondents welcomed our green initiatives and we will amend the Codes to reflect our proposals with minor revisions to adopt wordings suggested by a few respondents.

Electronic dissemination of documents

95. A new Rule 8.7 in support of electronic dissemination of documents will be introduced, and Note 4 to Rule 8 will be amended, as follows:

Rule 8.7:

"8.7 Method of **dissemination** 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:

"*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."

Language preference

96. Note 2 to Rule 8.6 will be revised to accommodate the language preference of a recipient of a document:

"*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."

Publication of announcements in respect of unlisted offerees

97. We proposed to amend Rule 12.2 to remove the requirement to publish announcements relating to unlisted offeree companies in newspapers.

98. One respondent suggested the Executive clarify the method of publication by unlisted offerors in circumstances where an offeror is required to make an announcement prior to the commencement of an offer period. Announcements published by unlisted offerors would invariably relate to either unlisted offeree companies to which Rule 12.2 would apply or listed offeree companies. The Executive has in the past facilitated the publication of announcements by potential offerors or offerors in respect of listed offeree companies on the Stock Exchange's e-submission system and will continue to do so where applicable. We do not consider it necessary to clarify this further in the rules.

99. Accordingly, Rule 12.2 will be amended as follows:

"12.2 Publication of documents

All ~~announcements~~ documents in respect of listed companies must be made **published** 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.

~~**The requirement of Rule 12.2 that apply to unlisted offeree companies apply equally to unlisted offerors in the event that they are not able to publish documents on the Stock Exchange's website in accordance with the requirements of the Listing Rules.**~~"

Submissions to the Executive

100. The Codes will be amended to mandate the electronic submission of documents as follows:

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:

"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."

PART 7: MISCELLANEOUS AMENDMENTS

101. Part 7 of the consultation paper proposed a number of miscellaneous amendments to the Codes to codify existing practices and for housekeeping purposes.

Definition of derivative

102. We proposed to fix a typographical error and remove duplicate language to the note to the definition of derivative.

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

103. All respondents supported the proposal, and the definition will be amended as proposed:

> "**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.*"

Definition of on-market share buy-back

104. We proposed to revamp the definition of on-market share buy-back and clarify that such share buy-backs are only limited to those 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.

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

Public comments

105. All respondents were generally supportive of the proposed amendment. One respondent commented that it may not be necessary to restrict trades to the

automatic order matching system to give effect to the spirit of on-market share buy-backs under the Codes. There is also a request for a clarification that the appointment of a broker to effect a share buy-back is not by itself considered as direct or indirect involvement by the company or its directors in soliciting, selecting or identifying sellers.

SFC's responses

106. We believe the use of the automatic order matching system to effect trades is a good prima facie indicator that the company and its directors are not involved in the solicitation, selection or identification of sellers, as this is carried out by a neutral trading system. This also mitigates the risk of over-the-counter trades using the facilities of the Stock Exchange being disguised as on-market share buy-backs which are not subject to the jurisdiction of the Codes.

107. We agree that a clarification about the appointment of brokers would be helpful to the market. The definition will be amended with modification 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.~~:~~
>
> ***Note to the definition of on-market share buy-back:***
>
> ***The appointment of a broker to effect buying-back of shares would not in itself be treated as the company or its directors being involved in the solicitation, selection or identification of sellers of shares.***
>
> ~~(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.~~"

Disclosure of special deals in firm intention announcements

108. We proposed to codify our routine requirement for 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, in Rule 3.5, Schedule I and Schedule II.

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.

109. All respondents agreed that the routine requirement should be codified, and the relevant provisions will be amended as proposed:

Rule 3.5:

"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."

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

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

111. 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. We proposed to remove the requirement to require class (6) associates of an offeror to disclose their dealings in the offeree company's relevant securities during a cash offer by amending the wording of Rule 3.8 and introducing a new Note 14 to Rule 22.

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.

112. All respondents agreed to the amendment. We will amend Rule 3.8 and add new Note 14 to Rule 22 as proposed. Practice Note 20 will be amended where appropriate:

Rule 3.8:

"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."

Frustrating actions

113. We proposed to amend Rule 4 to clarify a number of matters relating to the Executive's approach to frustrating actions. These include the following: (i) when a corporate action constitutes a frustrating action; (ii) the list set out in Rule 4 is non-exhaustive in nature; (iii) treatment of prior contractual obligations; and (iv) a waiver from the shareholder's approval requirement when offeror's consent is obtained.

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

Public comments

114. All respondents were supportive of our proposal to clarify a number of matters relating to frustrating actions. One respondent asked the Executive to consider setting out the factors it will take into account in assessing whether a corporate action constitutes a frustrating action to provide clarity, whereas two respondents commented that the Executive should set out in the Code provision examples of what it may consider as special circumstances of prior contractual obligations requiring early consultation.

SFC's responses

115. We note the desires of market practitioners to obtain clarity about the Executive's stance on frustrating actions. It is not our intention to scrutinise each and every single transaction or corporate action that the offeree company makes during an offer period. However, as a reminder, transactions classified as discloseable transactions under the Listing Rules normally fall within the ambit of Rule 4. The primary factor which the Executive will take into account is whether the corporate action is devised with an intention of frustrating the bid. This message is sufficiently clear from the current wording of Rule 4, supported with the existing examples. We do not find it necessary to further elaborate factors that the Executive would consider.

116. As for special circumstances involving prior contractual obligations requiring consultation, the description itself already suggested that these would not be in the

usual and ordinary course of business, and it would be difficult to draw a line or provide examples without having regard to the subsisting facts and circumstances of the case at the time.

117. The Executive agrees with a respondent's suggestion that it would be helpful to explicitly state in Note 1 to Rule 4 the procedures to follow if offeror's consent has been obtained.

118. Rule 4 will be amended as proposed with modification to reflect market feedback:

"**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.

The fact that the offeror has given its consent should be disclosed in an announcement. If no announcement is or will be made, the consent should be lodged with the Executive.

…

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.~~"

Renumbering of subparagraphs in Note 6 to Rule 26.1

119. We proposed to renumber the subparagraphs of Note 6 to Rule 26.1 to remove duplication and make it easier to reference specific parts of the note.

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

120. All but one respondent supported the proposal. Note 6 to Rule 26.1 will be amended:

"*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."

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

121. We proposed adding a new note to paragraph 10 of Schedule I to codify the current practice of requiring disclosure of, and comparison with: (a) the closing price for the full trading day before the trading halt; and (b) the last trading price immediately before the halt, when trading of shares is halted during a trading day.

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

122. All respondents agreed to the proposed addition and we will adopt the new note to paragraph 10 of Schedule I as proposed with modifications suggested by a respondent. A similar addition will also be made to paragraph 13 of Schedule III:

"*Note:*

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

Application of Rule 31.1 in whitewash transactions

123. In the consultation paper we proposed to add Rule 31.1 to the list of Takeovers Code requirements applicable to whitewash transactions in paragraph 2(d) of Schedule VI. This is because we believe 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 after it is completed.

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

124. All respondents agreed to the proposal. Rule 31.1 will 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)."

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

125. We proposed 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 to assist investors in compliance with Code requirements, in particular in determining whether they are class (6) associates requiring compliance with the Rule 22 disclosure obligations. The amendments will also include the new proposed Rule 3.9 in Rule 5.1(c) of the Share Buy-backs Code.

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.

126. All respondents supported the proposal, and accordingly Rule 5.1 of the Share Buy-backs Code will be amended as proposed:

> "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;
>
> …"

Housekeeping amendments

127. Lastly, all housekeeping amendments mentioned in the consultation paper will be adopted. Some typographical amendments have also be made and are included in Appendix II.

(a) Paragraph 2(a) of Schedule VI to be changed:

> "**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~~;
>
> …"

(b) Rule 14 – the typographic error "csonsidered" will be amended as "considered";

(c) Rule 11.2(a) – the reference to "Notes to Rule 10.2" at the last part of the provision will be amended as "Notes to Rules 10.1 and 10.2";

(d) Schedule II – the top left corner of the first page of Schedule II will be amended;

(e) Schedule VI paragraph 2(d) – Rule 11 will be included in the list; and

(f) Rules of Procedures for Panel hearings – a generic address will be used for service of Panel related documents.

128. Due to language differences, certain drafting and typographical amendments are made either to the English version or the Chinese version of the Codes only.

APPENDIX 1: LIST OF RESPONDENTS

(in alphabetical order)

Respondents whose comments are published on the SFC website in full

Freshfields Bruckhaus Deringer

Latham and Watkins LLP

Mr Joseph Chow, Dr Du Jinsong and Mr Iu Kwan Yuen

O'Melveny & Myers

Slaughter and May

Stevenson, Wong & Co.

Sullivan & Cromwell (Hong Kong) LLP

The Hong Kong Chartered Governance Institute

The Law Society of Hong Kong

Respondents who requested their names to be disclosed but their comments withheld from publication on the SFC's website

China International Capital Corporation Hong Kong Securities Limited

Simmons & Simmons

Respondents who requested their comments to be published on the SFC's website on a "no names" basis

One submission

APPENDIX 2: CONSOLIDATED 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.

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:-

…

(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…

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.*~~

Definition of associate

Associate: With respect to an offeror or potential offeror or the offeree company (the "first person"), the term associate normally includes the following:-

…

(3) the directors (together with their close relatives**, related trusts and companies controlled# by any of the directors, their close relatives or related trusts) of any subsidiary or fellow subsidiary of the first person;

…

See Note 1 at the end of the definitions.

* See Note 2 at the end of the definitions.

~~** See Note 8 to the definition of acting in concert.~~

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 the 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, **as the date** 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.~~:~~

Note to the definition of on-market share buy-back:

The appointment of a broker to effect buying-back of shares would not in itself be treated as the company or its directors being involved in the solicitation, selection or identification of sellers of shares.

~~(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).

Note 6 to Rule 3.5 of the Takeovers Code

6. Pre-conditions

In certain circumstances a potential offeror may make an announcement that it is considering a possible offer at a time when it does not want to be committed to making that offer (a "possible offer announcement"). The Executive must be consulted in advance if it is proposed to make a pre-conditional possible offer announcement.

There may be a case where a potential offeror makes a possible offer announcement which states that it is considering making an offer subject to the satisfaction of certain pre-conditions. Such an announcement may create a misleading or confusing impression about the intentions of the potential offeror, because shareholders may be unable to assess in what circumstances an offer may be forthcoming. Accordingly, it must be clear from the wording of any possible offer announcement referring to pre-conditions whether or not the pre-conditions must be satisfied before an offer can be made, or whether they are effectively waivable.

Although there is no obligation to specify all the ~~***preconditions***~~ ***pre-conditions*** *to the making of an offer, if a potential offeror does so and states that it will proceed with its offer if they are all satisfied or waived, then any announcement must be structured as a pre-conditional Rule 3.5 announcement. It must, however, be made clear in such an announcement whether or not the pre-conditions are waivable. Such* ~~***preconditions***~~ ***pre-conditions*** *may, depending on the specific circumstances of the case, be subjective in form, in contrast to conditions to an offer which should, under Rule 30, normally be objective.*

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.

The fact that the offeror has given its consent should be disclosed in an announcement. If no announcement is or will be made, the consent should be lodged with the Executive.

…

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***~~ ***date*** *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***~~ ***after*** *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~~ **~~posting~~** before **the date** 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 **dissemination** 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~~ **published** 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.

~~**The requirement of Rule 12.2 that apply to unlisted offeree companies apply equally to unlisted offerors in the event that they are not able to publish documents on the Stock Exchange's website in accordance with the requirements of the Listing Rules.**~~

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 **initial** 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.)

Notes 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.

…

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.

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 **first** 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 **first** 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.

Where an offeror has made a no increase statement to which Rule 18.3 applies and a dividend (or other distribution) is subsequently paid or becomes payable by the offeree company to offeree company shareholders, the offeror must reduce the offer consideration by an amount equal to that dividend (or other distribution) so that the

overall value receivable by the offeree company shareholders remains the same, unless, and to the extent that, the offeror has stated that offeree company shareholders will be entitled to receive all or part of a specified dividend (or other distribution) in addition to the offer consideration.

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 of the respective companies ***and, where both companies are listed, their respective market capitalisation****. 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***~~ ***after*** *the date* ~~***on which***~~ ***of*** *the* ***offer*** *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 an~~ 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 **day must be extended to** 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 **Comparable** offers for **convertible** 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 **a comparable** 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 **under** 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

Off-market share buy-backs must be approved by the Executive before a repurchasing company acquires any shares pursuant to such share buy-back. Such approval will normally be conditional upon the following:–

(a) approval of the proposed off-market share buy-back by at least three-fourths of the votes cast on a poll by disinterested shareholders in attendance in person or by proxy at a general meeting of shareholders duly convened and held to consider the proposed transaction (see also Rule 2.9 **of the Takeovers Code**);

…

(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 **of the Takeovers Code**). 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~~ **after** 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 **halted or** suspended during a trading day, the closing price on the last full trading day and the trading price immediately before the **halt or** 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 23, 24 and 26 of Schedule I to the Codes

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

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.

…

26. 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 the business carried on or intended to be carried on by the offeror or any of its subsidiaries, including particulars of dates, parties, principal terms and conditions and any consideration passing to or from the offeror or any of its subsidiaries.

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.

Note:

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

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.

Paragraphs 24 to 27 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.

25. The number and price of shares of the offeror that were bought back by the offeror during the 12 month period ~~immediately preceding~~ before the date of the offer document and the dates on which such buy-backs were made.

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~~ years before the offer period, the date of such distribution, the issue price per share and the aggregate proceeds received by the offeror.

27. The frequency and amount of dividends that have been paid out by the offeror to holders of shares proposed to be bought back during the 2 ~~year period immediately preceding~~ years before the date of the offer document together with a description of the offeror's ability to pay dividends, and any plan or intention to declare a dividend or alter a dividend policy.

Paragraph 2.5 of Schedule V to the Codes

2.5 Section 241(2)~~)~~ of the Ordinance provides that the SFC may suspend or withdraw an exemption granted under section 241(1) on the ground that the conditions subject to which the exemption was granted have not been complied with or such other ground as the SFC thinks fit. Section 241(2) further provides that the SFC may vary any condition attached to an exemption granted pursuant to section 241(1). The SFC has also delegated its powers under section 241(2) to the Executive and the Panel pursuant to section 10(1) of the SF Ordinance. The Executive and the Panel are thereby authorised to exercise the SFC's discretion to suspend, withdraw or vary exemptions granted pursuant to section 241(1) in the manner contemplated by paragraph 2.4 hereof for exemptions from the share buy-back requirements of sections 238, 239 or 240.

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 after 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)~~.~~;

(e) approval of the proposals by an independent vote at a meeting of the holders of any relevant class of securities in accordance with Note 1 on dispensations from Rule 26 of the Takeovers Code, whether or not any such meeting needs to be convened to approve the issue of the securities in question; and~~…~~

…

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 two~~ no later than 2 business days ~~to~~ **after receipt of** 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 two~~ no later than 2 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~~ 2 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 Futures 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 Futures 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 Futures Commission from time to time, and copied to all parties.