

G.N. 5778

SECURITIES AND FUTURES ORDINANCE (Chapter 571)

Pursuant to section 399(1) of the Securities and Futures Ordinance, the revised Codes on Takeovers and Mergers and Share Buy-backs ('Codes') are gazetted by the Securities and Futures Commission.

The effective date of operation of the revised Codes is 29 September 2023, and shall supersede all previous versions of the Codes.

20 September 2023

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Securities and Futures Commission



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

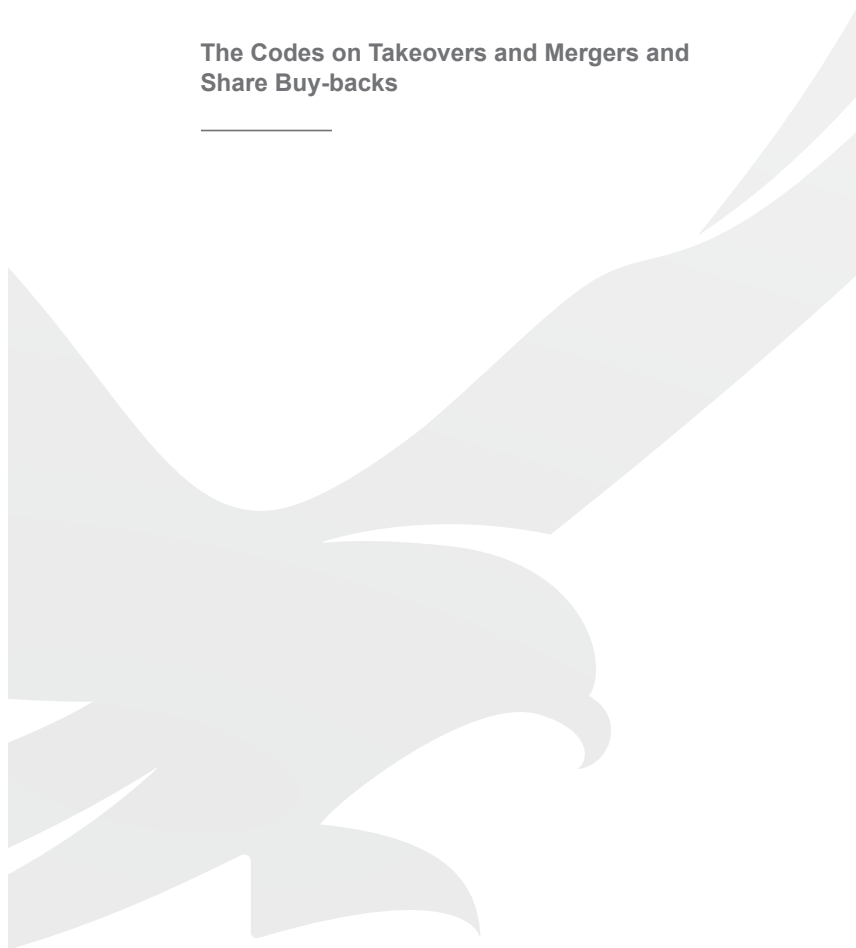
**The Codes on Takeovers and Mergers and
Share Buy-backs**
公司收購、合併及股份回購守則





SECURITIES AND
FUTURES COMMISSION
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The Codes on Takeovers and Mergers and Share Buy-backs



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INTRODUCTION

1. Nature and purpose of the Takeovers Code and Share Buy-backs Code

- 1.1** The Takeovers Code and the Share Buy-backs Code have been issued by the SFC in consultation with the Panel.
- 1.2** The primary purpose of the Codes is to afford fair treatment for shareholders who are affected by takeovers, mergers and share buy-backs. The Codes seek to achieve fair treatment by requiring equality of treatment of shareholders, mandating disclosure of timely and adequate information to enable shareholders to make an informed decision as to the merits of an offer and ensuring that there is a fair and informed market in the shares of companies affected by takeovers, mergers and share buy-backs. The Codes also provide an orderly framework within which takeovers, mergers and share buy-backs are to be conducted.
- 1.3** The Codes do not have the force of law. They are framed so far as possible in non-technical language and should not be interpreted as if they are statutes. The Codes represent a consensus of opinion of those who participate in Hong Kong's financial markets and the SFC regarding standards of commercial conduct and behaviour considered acceptable for takeovers, mergers and share buy-backs. This consensus of opinion is reflected in rulings made by the Panel when interpreting the Codes given the diverse range of interests represented by the Panel's members. Similar standards of commercial conduct and behaviour are applied in other leading financial centres.
- 1.4** Those who wish to take advantage of the securities markets in Hong Kong should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Codes. If they do not do so they may find, by way of sanction, that the facilities of such markets are withheld in order to protect the interests of those who participate in Hong Kong's securities markets. The Listing Rules expressly require compliance with the Codes.
- 1.5** The responsibilities provided for in the Codes apply to:–
- (a) directors of companies that are subject to the Codes;
 - (b) management companies (and their directors) and trustees of REITs (see Definitions section of the REIT Guidance Note in Schedule IX) that are subject to the Codes;
 - (c) persons or groups of persons who seek to gain or consolidate control of companies that are subject to the Codes;
 - (d) their professional advisers;
 - (e) persons who otherwise participate in, or are connected with, transactions to which the Codes apply; and
 - (f) persons who are actively engaged in the securities market.

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- 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 before despatch.
- 1.7 The role and responsibility of financial and other professional advisers is of particular importance given the non-statutory nature of the Codes, and it is part of their responsibility to use all reasonable efforts, subject to any relevant requirements of professional conduct, to ensure that their clients understand, and abide by, the requirements of the Codes, and to co-operate to that end by responding to inquiries from the Executive, the Panel or the Takeovers Appeal Committee. Financial and other professional advisers must therefore have the competence, professional expertise and adequate resources to fulfil their role and to discharge their responsibility under the Codes. If a financial adviser is in any doubt about its ability to meet these requirements, it should consult the Executive in advance. If the Executive considers that a financial adviser is not able to meet these requirements, it may not allow that financial adviser to act in that capacity. In such circumstances the financial adviser may ask the Panel to review the decision of the Executive. Financial advisers must also be mindful of conflicts of interest (see Schedule VII of the Codes).

Note to section 1.7:

Adequate resources

A financial adviser advising on a transaction subject to the Codes is expected to allocate to the transaction in question sufficient experienced and competent professional staff with the appropriate involvement of, or reasonable supervision by, a duly approved responsible officer or a suitably experienced senior member of the financial adviser's staff. The supervisor and his staff are expected to devote sufficient time and effort to the transaction to discharge the financial adviser's responsibilities under the Codes.

- 1.8 The Codes are not concerned with the financial or commercial advantages or disadvantages of a takeover, merger or share buy-back, as the case may be. These are matters for the company and its shareholders.
- 1.9 A company contemplating a takeover, merger or share buy-back should apprise itself of applicable company law requirements, if any, which may affect its ability to conduct the proposed transaction.

2. General Principles and Rules

- 2.1 The Codes share common definitions and the General Principles. The General Principles are essentially statements of good standards of conduct to be observed in takeovers, mergers or share buy-backs. The General Principles are expressed in broad general terms and do not define the precise extent or the limits of their application. The Executive and the Panel apply the General Principles in accordance with their spirit and may modify or relax the effect of the language to achieve their underlying purposes.

In addition to the General Principles, each of the Codes contains a series of Rules, some of which are effectively expansions of the General Principles and examples of their application and others are rules of procedure designed to govern specific types of

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takeovers, mergers or share buy-backs. Although the Rules are expressed in more detailed language than the General Principles, they, like the General Principles, are to be interpreted to achieve their underlying purposes. Accordingly, each of the Codes, through the General Principles, may apply to situations not specifically covered by any Rule. Therefore, the spirit of the Rules must be observed as well as their letter and the Executive and the Panel may each modify or relax the application of a Rule if it considers that, in the particular circumstances of the case, strict application of a Rule would operate in an unnecessarily restrictive or unduly burdensome, or otherwise inappropriate, manner.

2.2 To assist the interpretation of the Rules, notes have been inserted, where appropriate, to provide guidance as to how the Executive and the Panel will normally interpret the Codes.

2.3 The Executive and the Panel also interpret each of the Codes in the light of previous rulings that have been made under both Codes by the Executive and the Panel, or their predecessor, the Committee on Takeovers and Mergers.

3. Amendment of the Codes

3.1 The Codes may be amended or extended from time to time by the SFC in consultation with the Panel.

4. Companies and transactions to which the Codes apply

4.1 The Codes apply to takeovers, mergers and share buy-backs affecting public companies in Hong Kong, companies with a primary listing of their equity securities in Hong Kong and REITs (as defined in the REIT Guidance Note) with a primary listing of their units in Hong Kong. Subject to the factors in section 4.2 below, the Codes may apply to REITs listed in Hong Kong other than by way of a primary listing. As a result, although it is generally the nature of the offeree company, the potential offeree company, or the company in which control may change or be consolidated that is relevant, there are also circumstances, specified in Rule 2 of the Takeovers Code, in which it is necessary to consider the treatment of the offeror's shareholders in order to carry out the objectives of the Takeovers Code. The Executive will normally grant a waiver from the requirements of the Share Buy-backs Code for companies with a primary listing outside Hong Kong provided that shareholders in Hong Kong are adequately protected.

4.2 In order to determine whether a company is a public company in Hong Kong the Executive will consider all the circumstances and will apply an economic or commercial test, taking into account primarily the number of Hong Kong shareholders and the extent of share trading in Hong Kong and other factors including:—

- (a) the location of its head office and place of central management;
- (b) the location of its business and assets, including such factors as registration under companies legislation and tax status; and
- (c) the existence or absence of protection available to Hong Kong shareholders given by any statute or code regulating takeovers, mergers and share buy-backs outside Hong Kong.

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If a company is in any doubt about its status as a public company in Hong Kong, it should consult the Executive at an early stage.

Note to section 4.2:

A Grandfathered Greater China Issuer within the meaning of Rule 19C.01 of the Listing Rules with a secondary listing on the Stock Exchange will not normally be regarded as a public company in Hong Kong under this section 4.2. Where the bulk of trading in the shares of a Grandfathered Greater China Issuer migrates to Hong Kong such that it would be treated as having a dual-primary listing in Hong Kong pursuant to Rule 19C.13 of the Listing Rules, the Codes will apply to it.

- 4.3** The Takeovers Code is concerned with offers for, and takeovers and mergers of, all relevant companies, however effected. These include partial offers, offers by a parent company for shares in its subsidiary and certain other transactions where control (as defined) of a company is to be obtained or consolidated. References in the Takeovers Code to “takeovers” and “offers” include, where appropriate, all such transactions, including share buy-backs by general offer as described below. The Takeovers Code does not apply to offers for non-voting, non-equity capital unless required by Rules 13 and 14 of the Takeovers Code.
- 4.4** The Share Buy-backs Code is concerned with share buy-backs of all relevant companies. Share buy-backs by general offer will be considered to be offers and the Rules of the Takeovers Code will apply, *mutatis mutandis*, in addition to the Rules of the Share Buy-backs Code. Persons engaging in share buy-backs by general offer should therefore read the Takeovers Code as well as the Share Buy-backs Code.
- 4.5** Transactions under either of the Codes may from time to time be subject to the jurisdiction of both the Panel and an overseas regulator. In such cases, early consultation with the Executive is strongly recommended so that conflicts between the relevant requirements of the two jurisdictions may be resolved.
- 5. The Executive**
- 5.1** The Codes are administered by the Executive. The Executive undertakes the investigation of takeovers, mergers and share buy-backs and monitors related dealings in connection with the Codes. It is available for consultation and to give rulings on all matters to which the Codes apply.

Dealings with the Executive

- 5.2** Any person dealing with the Executive must do so in an open and co-operative way. Prompt co-operation and assistance are expected from persons dealing with the Executive and those to whom enquiries and other requests are directed. In such dealings, a person must disclose any information known to him and relevant to the matter being considered (and correct or update that information if it changes). A person dealing with the Executive or to whom enquiries or requests are directed must take all reasonable care to provide true, accurate and complete information.

Where a matter has been determined by the Executive and a person becomes aware that information supplied to the Executive was not true, accurate or complete, that person must

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promptly contact the Executive to correct the position. In addition, where a determination of the Executive has continuing effect (such as the grant of exempt status or a concert party ruling), the party or parties to that determination must promptly notify the Executive of any new information relevant to that determination.

For the avoidance of doubt, nothing in this section limits the general application of General Principle 10.

6. Consulting the Executive

- 6.1 When there is any doubt as to whether a proposed course of conduct is in accordance with the General Principles or the Rules, parties or their advisers should always consult the Executive in advance. In this way, the parties can clarify the basis on which they can properly proceed and thus minimise the risk of taking action which might be a breach of the Codes.
- 6.2 Consultations do not attract any fee. They generally take the form of verbal discussions and will not be concluded with any formal ruling from the Executive. Views expressed by the Executive under consultations are preliminary and do not bind the Executive.
- 6.3 While the Executive will respond to questions on interpretation of the Codes, it should not be expected to answer purely hypothetical questions, or to give provisional rulings (e.g. when the parties with an interest in such rulings cannot be identified).
- 6.4 Parties should be aware that consultations will not result in provisional rulings and, where the Codes require parties to consult, they are not precluded from seeking formal rulings and a fee becomes payable whenever a ruling is sought despite the fact that the process starts as a consultation. Where there is a difference in views between the Executive and parties about a Code issue based on preliminary information during or after a consultation, the Executive, mindful of the non-binding nature of consultations, generally urges parties to seek a formal ruling.

7. Rulings by the Executive

- 7.1 While the Executive may sometimes see fit to make a ruling under the Codes of its own volition, a ruling is more often requested by an interested party. A ruling by the Executive normally involves a consideration of all relevant information in relation to the application and a more thorough analysis than that permissible under a consultation. In some cases the Executive may find it necessary to convene an informal meeting or hear the views of other interested parties before making a ruling. The Executive requires prompt co-operation from those to whom enquiries are directed so that decisions may be both properly informed and given as speedily as possible. Rulings may initially be conveyed to parties orally but will always be confirmed in writing in time. Particular attention should be paid to the obligations under section 5.2 of this Introduction.

Compliance rulings

- 7.2 If the Executive is satisfied that:
- (a) there is a reasonable likelihood that a person will contravene a requirement imposed by or under the Codes; or

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- (b) a person has contravened a requirement imposed by or under the Codes, the Executive may give any direction that appears to it to be necessary in order to:
- (i) restrain a person from acting (or continuing to act) in breach of a relevant requirement under the Codes; or
 - (ii) restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of a relevant requirement under the Codes; or
 - (iii) otherwise secure compliance with a relevant requirement under the Codes.

8. Applications for rulings

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:–

(a) **Summary**

The ruling being sought, and any alternative courses of action, should be clearly described, and the issues for consideration summarised. The relevant sections of the Codes should be identified.

(b) **Parties**

All parties with a material interest in the submission, and their respective financial and legal advisers, should be identified.

(c) **Material Facts**

All material facts relevant to the application should be stated and should include, as appropriate, the following information:–

- (i) a description of the proposed transaction including the timetable for implementation, related regulatory requirements and the reasons and commercial rationale for the transaction;
- (ii) where known after reasonable inquiry, a description of the relevant offeror and the offeree company including their places of incorporation, a description of their capital structures, group structures, businesses and assets, and the identities of their controlling and substantial shareholders, accompanied by a structural chart depicting the structure of the relevant offeror and the offeree company and the interests of such shareholders, both before and after implementation of the proposed transaction;
- (iii) a historical chronology of related events;

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- (iv) the controlling shareholders' interests in the relevant offeror, the offeree company and the proposed transaction;
 - (v) the interest which directors of the relevant offeror and the offeree company have in the proposed transaction;
 - (vi) the effect which the proposed transaction will have on the relevant offeror and the offeree company;
 - (vii) steps to be taken, if any, to safeguard the interests of any independent shareholders;
 - (viii) a description of financing arrangements for the proposed transaction;
 - (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, within 6 months before the date of the application; and
 - (x) a description of the terms and conditions of material contracts.
- (d) Issues for Consideration

The issues for consideration by the Executive should be described and analysed, and all arguments advanced in support of the ruling being sought.

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 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.

8.3 Each application should be accompanied by a duly completed and signed prescribed filing form available on the SFC's website. Such filing form contains a statement by the applicant certifying the truth, accuracy and completeness of statements contained in the application. When the application is filed by an adviser, the filing form also contains a statement that the applicant has authorised the filing of the application by the adviser. Such statement does not relieve the adviser of its obligation to use all reasonable efforts to ensure that its client understands, and abides by, the relevant requirements of the Codes, and that the submission of its client is true, accurate and complete. Any subsequent submissions in respect of an application should also contain a statement by the applicant certifying the truth, accuracy and completeness of statements contained in the submission.

9. Review of Executive rulings

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

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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 no later than 14 days 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.

10. Executive referrals to the Panel

- 10.1** The Executive may refer a matter to the Panel for a ruling without itself giving a ruling when it considers that there is a particularly novel, important or difficult point at issue.

11. The Panel

- 11.1** The Panel is a committee of the SFC established under section 8(1) of the Securities and Futures Ordinance (Cap. 571).
- 11.2** The Panel hears disciplinary matters in the first instance, and reviews rulings by the Executive at the request of any party dissatisfied with such a ruling. It also considers novel, important or difficult cases referred to it by the Executive. The Panel also reviews, from time to time upon request by the SFC, the provisions of the Codes and the Rules of Procedure for hearings under the Codes and recommends appropriate amendments to the Codes and Rules to the SFC.
- 11.3** The Panel consists of up to 40 members not including members of the Disciplinary Chair Committee (see section 11.10 below) drawn from the financial and investment community, at least one of whom should be a non-executive director of the SFC. No Executive Directors or staff of the SFC may be members of the Panel. Members of the Panel are appointed, and may be removed, by the SFC. They normally hold office for a two-year term but may be reappointed at the end of each term. Discussions on proposals for review or amendment to the Codes shall include the Executive Directors and staff of the SFC.
- 11.4** The Panel will have a Chairman, and one or more Deputy Chairmen. The chairman of each meeting of the Panel will be either the Chairman or a Deputy Chairman of the Panel or, if neither is available, such other member as may be appointed by the Panel. The chairman of each meeting of the Panel will have a deliberative and a casting vote.
- 11.5** Each member of the Panel and, where applicable, his firm, is required to comply with Conflicts of Interest Guidelines referred to in section 13.1 of this Introduction.
- 11.6** Members of the Panel hearing a matter under sections 9.1, 10.1 or 12.1 of this Introduction will be remunerated at the prevailing rate determined from time to time by the SFC.
- 11.7** The Panel does not have the power to award costs.

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11.8 The quorum for hearings before the Panel is five including the Chairman. If after the commencement of any hearing a member other than the Chairman is absent resulting in an inadequate quorum, that hearing may, with the consent of the parties, proceed with a quorum of four. In the event of equality of votes, the Chairman shall, as provided for in section 11.4 above, have a casting vote.

11.9 The Chairman of a hearing and one other member of the Panel, may, as necessary, and subject to the approval of the Chief Executive Officer of the SFC, co-opt any suitably qualified person to participate as a member of the Panel. Such person will count as part of the quorum.

Disciplinary Chair Committee

11.10 The Disciplinary Chair Committee is established under section 8(1) of the Securities and Futures Ordinance (Cap 571) and comprises up to 8 duly experienced and legally qualified persons who are willing to act as Chairman of the Panel in disciplinary proceedings and Chairman of the Takeovers Appeal Committee on a case-by-case basis.

11.11 Members of the Disciplinary Chair Committee will be remunerated at the prevailing rate determined from time to time by the SFC.

11.12 If no member of the Disciplinary Chair Committee is available or eligible to sit in a matter, at least 2 members of the Disciplinary Chair Committee may, subject to the approval of the Chief Executive Officer of the SFC, co-opt any duly experienced and legally qualified person who they consider appropriate, and who is willing to act as a Chairman of the Panel in disciplinary proceedings or the Takeovers Appeal Committee.

Secretary to the Panel

11.13 The Panel is assisted by a Secretary who is normally a staff member of the SFC. The duties of the Secretary are to deal with the administrative arrangements for hearings and to carry out such secretarial duties as may from time to time be directed by the Chairman of the Panel or the Takeovers Appeal Committee.

Legal Adviser to the Panel

11.14 The Chairman of the Panel may appoint a Legal Adviser to the hearing who will not normally be a staff member of the SFC. The Legal Adviser must not have participated in the matter at issue in the proceedings before the Panel and must raise with the Secretary any concerns over possible conflicts of interest in accordance with the Conflicts of Interest Guidelines referred to in section 13.1 below as if the Legal Adviser were a member of the Panel hearing the matter.

11.15 The Legal Adviser's role is to assist/advise the Panel or its Chairman on questions of law or mixed fact and law and to intervene for the purpose either of informing the Panel of any irregularity in the conduct of the proceedings which comes to his knowledge, or of advising when it appears to him that, but for such advice, there is a possibility of a mistake in law being made.

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- 11.16** The Legal Adviser to the Panel is not a party to the proceedings or a witness in the proceedings and is therefore not subject to questioning by the parties. The parties may however address the Panel on any opinions expressed by the Legal Adviser.
- 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 before a decision is made. The Legal Adviser's advice on procedural matters need not be disclosed to the respondents.

Dealings with the Panel

- 11.18** The obligations set out in section 5.2 of this Introduction apply equally to a person dealing with the Panel.

12. Disciplinary proceedings

- 12.1** The Executive may institute disciplinary proceedings before the Panel when it considers that there has been a breach of either of the Codes or of a ruling of the Executive or the Panel.

- 12.2** If the Panel finds there has been a breach of either of the Codes or of a ruling, it may impose any of the following sanctions:-

- (a) issuance of a public statement which involves criticism;
- (b) public censure;
- (c) requiring licensed corporations, licensed representatives, registered institutions, or relevant individuals, for a stated period, not to act or continue to act in any or a stated capacity for any person who has failed to comply, or has indicated that he does not intend to comply, with either of the Codes or a ruling;
- (d) banning advisers from appearing before the Executive or the Panel for a stated period; and/or
- (e) requiring further action to be taken as the Panel thinks fit.

The Executive or the Panel may report a person to other regulatory authorities or professional bodies even though there has been no finding of a breach if the person so reported is governed by rules, regulations or standards of professional conduct of the relevant regulatory authority or professional body and the Executive or the Panel has reasonable grounds for believing that the conduct of such person may have contravened such rules, regulations or standards of professional conduct.

- 12.3** The Executive may itself deal with a disciplinary matter if the party to be disciplined agrees to the disciplinary action proposed to be taken by the Executive.

- 12.4** Failure of any licensed corporation, licensed representative, registered institution, or relevant individuals, to comply with either of the Codes, or a ruling, or a requirement not to act for a named person in accordance with section 12.2(c) above, is a breach of the Codes and may result in disciplinary proceedings against such corporation, representative, institution, or individual under this section 12. It may (in accordance with

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the provisions of the relevant Ordinances) also lead to suspension or revocation of the licence or registration of such entity or person.

13. Hearings

- 13.1** The SFC, in consultation with the Panel, has adopted Conflicts of Interest Guidelines for the Panel and the Takeovers Appeal Committee. Accordingly, where, by reference to such Conflicts of Interest Guidelines, a matter is likely to create a conflict of interest for any member of the Panel hearing a matter, that member may not participate in the hearing.

Hearings of the Panel

- 13.2** All non-disciplinary hearings of the Panel under sections 9.1 and 10.1 of this Introduction are informal and are held in private as they often involve confidential price sensitive information.
- 13.3** All disciplinary hearings of the Panel under section 12.1 of this Introduction are informal and in the interests of transparency are heard in public save in exceptional circumstances where it (or the Chairman of the hearing) considers it necessary to hear a matter in private in order to preserve commercial confidentiality such as price sensitive information. Hearings of the Panel which the Chairman has directed to be heard in private are confidential.
- 13.4** In general, all parties are entitled to be present throughout the hearing and to see all papers submitted to the Panel. Occasionally, however, a party may wish to present evidence to the Panel which is of a confidential commercial nature. In such exceptional cases, the Panel may, if it is satisfied that such course is justified, be prepared to hear the evidence in question in the absence of some, or all, of the other parties involved. The parties shall be absent during the Panel's deliberation on the case.
- 13.5** Parties or persons attending a private hearing must not disclose any details of the hearing to any other person, including the media, and must not make use of any information acquired during the course of the hearing for purposes other than those connected with the hearing itself. In the event of a public hearing, if the Panel or the Chairman of the hearing directs that part or parts of the hearing are held in private under sections 13.3 or 13.4 of this Introduction, the same restrictions will apply to parties or persons attending the private part(s) of the hearing.
- 13.6** At hearings before the Panel the matter is usually presented in person by the parties and/or their financial advisers. Parties may, if they so wish, be represented by their legal advisers although this is not usual at non-disciplinary hearings.
- 13.7** There are no rules of evidence.
- 13.8** The Panel directs its own proceedings and may make any enquiries it deems relevant or appropriate.
- 13.9** Hearings are conducted in accordance with the Panel's Rules of Procedure which are issued by the SFC from time to time. The Rules of Procedure are available on the SFC's website.

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- 13.10** The Chairman of the hearing may give any preliminary or procedural direction (including a compliance ruling of the nature described in section 7.2 of this Introduction) as he considers appropriate for the determination of a matter without the need for a hearing. Any ruling made by the Chairman is a ruling of the Panel.
- 13.11** The Chairman of a disciplinary hearing may decide all questions of law (as opposed to Codes issues). The Chairman of such hearing may also decide questions of mixed fact and law in consultation with the other members of the Panel if he thinks necessary. In non-disciplinary hearings questions of law and questions of mixed fact and law will be decided by the Panel collectively.
- 13.12** The Panel may also give directions of the nature described in section 7.2 of this Introduction.
- 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 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.

14. The Takeovers Appeal Committee

- 14.1** Like the Panel, the Takeovers Appeal Committee is a committee of the SFC established under section 8(1) of the Securities and Futures Ordinance (Cap. 571).
- 14.2** The Takeovers Appeal Committee reviews disciplinary rulings of the Panel for the sole purpose of determining whether any sanction imposed by the Panel is unfair or excessive based upon the Panel's finding of facts.
- 14.3** The Takeovers Appeal Committee comprises a Chairman who is a member of the Disciplinary Chair Committee and other members of the Panel who are selected on a case-by-case basis. No member of the Panel may participate in a hearing of the Takeovers Appeal Committee if he had participated in the disciplinary proceedings in question.
- 14.4** Members of the Takeovers Appeal Committee will be remunerated at the prevailing rate determined from time to time by the SFC.
- 14.5** An application for appeal must be made in writing to the Takeovers Appeal Committee no later than 5 business days after the ruling in question. The application must state the full grounds of appeal together with reasons.
- 14.6** The quorum for hearings before the Takeovers Appeal Committee is three including the Chairman. If after the commencement of any hearing a member other than the Chairman is absent resulting in an inadequate quorum, that hearing may, with the consent of the

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parties, proceed with a quorum of two. In the event of equality of votes, the Chairman shall have the casting vote.

14.7 The Chairman of a hearing and one other member of the Panel, may, as necessary, and subject to the approval of the Chief Executive Officer of the SFC, co-opt any suitably qualified person to participate as a member of the Takeovers Appeal Committee. Such person will count as part of the quorum.

14.8 The Takeovers Appeal Committee is assisted by a Secretary who will normally be a staff member of the SFC who did not act as Secretary to the Panel in the same matter.

14.9 The obligations set out in section 5.2 of this Introduction apply equally to a person dealing with the Takeovers Appeal Committee.

15. Hearings of the Takeovers Appeal Committee

15.1 Each member of the Takeovers Appeal Committee is required to comply with Conflicts of Interest Guidelines referred to in section 13.1 of this Introduction.

15.2 All hearings of the Takeovers Appeal Committee are informal and in the interests of transparency are heard in public save in exceptional circumstances where it (or the Chairman of the hearing) considers it necessary to hear a matter in private in order to preserve commercial confidentiality such as price sensitive information.

15.3 Hearings before the Takeovers Appeal Committee are generally conducted in a similar way to those before the Panel and in accordance with the Takeovers Appeal Committee's Rules of Procedure which are issued by the SFC from time to time. Sections 13.4 to 13.11 of this Introduction apply equally to hearings of the Takeovers Appeal Committee. The Rules of Procedure are available on the SFC's website.

16. Publication of rulings

16.1 Irrespective of the outcome of a matter it is the policy of the Panel and the Takeovers Appeal Committee to publish their rulings, and the reasons for those rulings on the SFC's website, as soon as reasonably practicable, so that their activities may be understood by the public. This includes a ruling of the Panel involving a finding of breach or breaches of the Codes which is pending appeal to the Takeovers Appeal Committee. However, in matters where the ruling is price sensitive or otherwise subject to confidentiality considerations of a commercial nature the Panel and the Takeovers Appeal Committee (as the case may be) may, in its absolute discretion, agree to delay the publication of the ruling.

16.2 In a private hearing parties or persons appearing before the Panel or the Takeovers Appeal Committee must not make any announcement of a ruling before the public announcement by the Panel or the Takeovers Appeal Committee. Such parties or persons may comment on the ruling but no announcement by any of them may contain any information about the meeting, or make any reference to the text of the ruling or the reasons for it in terms other than those used in the public announcement issued by the Panel or the Takeovers Appeal Committee.

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16.3 Subject to confidentiality considerations of a commercial nature such as price sensitive information, it is the policy of the Executive to publish an announcement when it initiates proceedings before the Panel under section 12.1 of this Introduction and to publish its important rulings and interpretations of the Codes, and the reasons for them, so that its activities may be understood by the public. There may be announcements of rulings in specific matters where the rulings are considered to have general application, or statements of policy which may take the form of Practice Notes setting out in greater detail the Executive's practice and interpretation of the Codes.

17. Co-operation with other authorities

17.1 Information given to the Executive, the Panel or the Takeovers Appeal Committee will be treated in the strictest confidence. Because of the overriding importance of maintaining a fair market and curbing improper activities, this information is made available to the SFC subject to the SFC's own obligations of confidentiality laid down by the Securities and Futures Ordinance (Cap. 571). Subject to those obligations, the SFC may from time to time give information received by it to other regulatory authorities, so that they can discharge their own duties. Conversely, the Executive may from time to time receive information from other regulatory bodies which is relevant to a matter then current. Co-operation with other regulatory authorities is regarded as an important part of the Executive's and the SFC's functions.

18. Review by SFC

18.1 As a matter of general policy, the SFC will not normally review or otherwise involve itself in a ruling of the Panel or the Takeovers Appeal Committee.

19. Financial institution recovery and resolution

19.1 Pursuant to section 153(7) of the Financial Institutions (Resolution) Ordinance (Cap. 628), all persons are exempt from any obligation arising in relation to the relevant listed entity (as defined in section 149 of that Ordinance) under the Codes where a stabilization option mentioned in section 33(2)(d) (bail-in) of that Ordinance has been applied to the listed entity or its group company (as defined in section 2(1) of that Ordinance) and the bail-in of which is ongoing.

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Acquisition of voting rights: Acquisition of voting rights includes the exercise of control or direction over voting rights other than by way of a revocable proxy given for no or nominal consideration for the purpose of one meeting of shareholders only.

Acting in concert: Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively cooperate to obtain or consolidate "control" (as defined below) of a company through the acquisition by any of them of voting rights of the company.

Without prejudice to the general application of this definition, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established:—

- (1) a company, its parent, its subsidiaries, its fellow subsidiaries, associated companies of any of the foregoing, and companies of which such companies are associated companies;
- (2) a company with any directors (together with their close relatives, related trusts and companies controlled[#] by any of the directors, their close relatives or related trusts) of it or its parent;
- (3) a company with any of its pension funds, provident funds and employee share schemes;

Note: Class (3) does not apply to an employee benefit trust. The Executive will apply Note 20 to Rule 26.1 to determine whether the directors and shareholders of a company are acting in concert with the trustees of an employee benefit trust of the same company.

- (4) a fund manager (including an exempt fund manager) with any investment company, mutual fund, unit trust or other person, whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;
- (5) a financial or other professional adviser (including a stockbroker)* with its client in respect of the shareholdings of the adviser and persons controlling[#], controlled by or under the same control as the adviser (except in the capacity of an exempt principal trader or exempt fund manager);
- (6) directors of a company (together with their close relatives, related trusts and companies controlled[#] by such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent;
- (7) partners;
- (8) an individual (including any person who is accustomed to act in accordance with the instructions of the individual) with his close relatives, related trusts and companies controlled[#] by him, his close relatives or related trusts; and

[#] See Note 1 at the end of the definitions.

* See Note 2 at the end of the definitions.

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- (9) a person, other than an authorised institution within the meaning of the Banking Ordinance (Cap. 155) lending money in the ordinary course of business, providing finance or financial assistance (directly or indirectly) to any person (or a person acting in concert with such a person) in connection with an acquisition of voting rights (including any direct or indirect refinancing of the funding of the acquisition).

Notes to the definition of acting in concert:

1. *Classes (1) and (8)*

If an individual owns or controls 20% or more of the voting rights of a company in class (1), he and one or more other persons falling within class (8) will be presumed to be acting in concert with one or more persons in class (1) unless the contrary is established.

2. *Full information required*

In cases where the question of whether parties are acting in concert is being investigated, relevant parties will be required to disclose all relevant information including their dealings in the relevant securities of the offeree company or potential offeree company. Failure to do so may result either in disciplinary proceedings or in an inference being drawn that they are acting in concert.

3. *Break up of concert parties*

When a ruling or admission has been made that a group of persons is or has been acting in concert, it will be necessary for clear evidence to be presented before it can be accepted that they are no longer acting in concert.

4. *Consortium offers*

Investors in a consortium formed for the purpose of making an offer (e.g. through a vehicle company) will normally be treated as acting in concert with the offeror. Where such an investor is part of a larger organisation, the Executive should be consulted to establish which other parts of the organisation will also be regarded as acting in concert. (See also the definitions of connected fund manager and connected principal trader and Rule 21.6 regarding discretionary fund managers and principal traders.)

5. *Irrevocable undertakings and warranties*

Where a shareholder gives an irrevocable undertaking to an offeror to accept his offer (or, in the case of a scheme of arrangement, to vote in favour of the relevant resolution to approve such scheme of arrangement) and/or provides warranties to an offeror in relation to the offeree company, the giving of the irrevocable undertaking and/or the warranties will not, of itself and in the absence of any other factor, lead to the presumption that the shareholder is acting in concert with that offeror.

6. *Standstill agreements*

Agreements between a company, or the directors of a company, and a shareholder which restrict the shareholder or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing shareholdings, may

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be relevant for the purpose of this definition. In cases of doubt, the Executive should be consulted. (See Rule 33.2.)

7. *Class (6) – whitewashes*

For the purposes of class (6), an offer includes a transaction which is to be the subject of a whitewash application.

8. *Deleted.*

9. *Underwriting arrangements*

The relationship between an underwriter (or sub-underwriter) of a cash alternative offer and an offeror may be relevant for the purpose of this definition. Underwriting arrangements on arms' length commercial terms would not normally amount to an agreement or understanding within the meaning of acting in concert. The Executive recognises that such underwriting arrangements may involve special terms determined by the circumstances, such as weighting of commissions by reference to the outcome of the offer. However, in some cases, features of underwriting arrangements, for example the proportion of the ultimate total liability assumed by an underwriter, the commission structure or the degree of involvement of the underwriter with the offeror in connection with the offer, may be such as to lead the Executive to conclude that a sufficient level of understanding has been created between the offeror and the underwriter to amount to an agreement or understanding within the meaning of acting in concert. In cases of doubt, the Executive should be consulted.

A purchaser may be prepared to acquire part only of a holding, particularly where he wishes to acquire under 30%, thereby avoiding an obligation under Rule 26 to make a general offer. The Executive will be particularly concerned in such cases to see that underwriting arrangements made by a vendor do not amount to an agreement or understanding with the purchaser within the meaning of acting in concert.

10. *Transfer of voting rights as a gift or at nominal consideration*

In cases where a person transfers voting rights, in whole or in part, to another person, as a gift or for nominal consideration, the transferor and transferee will be presumed to be acting in concert under class (9). Class (9) does not normally apply to a charitable body exempt under the Inland Revenue Ordinance (Cap. 112). The Executive should be consulted in the case of charitable bodies established under overseas jurisdictions.

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

- (1) any person acting in concert with the first person;
- (2) any financial and other professional adviser (including a stockbroker)* of the parent, subsidiaries and fellow subsidiaries of the first person, including persons controlling[#], controlled by or under the same control as such financial and other professional advisers (other than exempt fund managers and exempt principal traders covered in class (5) below);



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- (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;
- (4) the pension funds, provident funds and employee share schemes of the parent, subsidiaries and fellow subsidiaries of the first person;
- (5) any exempt principal trader or exempt fund manager which is controlling[#], controlled by or under the same control as the financial and other professional adviser (including a stockbroker)* of the first person, its parent, subsidiaries and fellow subsidiaries; and
- (6) a person who owns or controls 5% or more of any class of relevant securities (as defined in paragraphs (a) to (d) in Note 4 to Rule 22) issued by the first person, including a person who as a result of any transaction owns or controls 5% or more. When two or more persons act pursuant to an agreement or understanding (formal or informal) to acquire or control such securities, they will be deemed to be a single person for the purpose of this paragraph. Such securities managed on a discretionary basis by an investment management group will, unless otherwise agreed by the Executive, also be deemed to be those of a single person (see Rule 22.3).

[#] See Note 1 at the end of the definitions.

* See Note 2 at the end of the definitions.

Associated company: A company shall be deemed to be an associated company of another company if one of them owns or controls 20% or more of the voting rights of the other or if both are associated companies of the same company.

Business day: A business day is a day on which the Stock Exchange is open for the transaction of business.

Cash purchases: Cash purchases include contracts or arrangements where the consideration consists of a debt instrument capable of being paid off in less than 3 years.

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.

Codes: Codes means the Takeovers Code and the Share Buy-backs Code.

Connected fund manager and connected principal trader: A fund manager or principal trader will be connected with an offeror or the offeree company, as the case may be, if the fund manager or principal trader controls[#], is controlled by or is under the same control as:-

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- (1) an offeror;
- (2) the offeree company;
- (3) any financial or other professional adviser (including a stockbroker)* to an offeror or the offeree company; or
- (4) an investor in a consortium formed for the purpose of making an offer (e.g. through a special purpose company).

See Note 1 at the end of the definitions.

* See Note 2 at the end of the definitions.

Control: Unless the context otherwise requires, control shall be deemed to mean a holding, or aggregate holdings, of 30% or more of the voting rights of a company, irrespective of whether that holding or holdings gives de facto control.

Convertible securities: Unless the context otherwise requires, convertible securities means securities convertible or exchangeable into new shares or existing shares in a company.

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. The Executive will not normally regard a derivative which is referenced to a basket or index including relevant securities as connected with an offer or potential 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.

Directors: Directors include persons in accordance with whose instructions the directors or a director are accustomed to act.

Document: Unless the context otherwise requires, document includes any announcement, advertisement or document issued or published by any party to an offer or possible offer in connection with such offer or possible offer, other than documents which are required to be put on display for inspection under Notes 1 and 2 to Rule 8 of the Takeovers Code. For this purpose, parties to an offer or possible offer include all offerors, the offeree company, shareholders of an offeror or the offeree company and any persons acting in concert with any of them. Document also includes any announcement, advertisement or document issued or published by any person in connection with a transaction:–

- (1) where a ruling is sought that no offer obligation arises;
- (2) which is stated to be conditional on no such offer obligation arising; or

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- (3) which is stated to be conditional on a ruling being given that no such offer obligation arises.

Employee share buy-back: Employee share buy-back means a share buy-back made by an offeror from one or more of its current or former employees, or the current or former employees of a subsidiary of the offeror, in accordance with an employee share option scheme which has been approved by shareholders of the offeror in general meeting.

Executive: Executive means the Executive Director of the Corporate Finance Division of the SFC or any delegate of the Executive Director.

Exempt fund manager: An exempt fund manager is a person who manages investment accounts on a discretionary basis and is recognised by the Executive as an exempt fund manager for the purposes of the Codes (see Notes to the definitions of exempt fund manager and exempt principal trader).

Exempt principal trader: An exempt principal trader is a person who trades as a principal in securities only for the purpose of derivative arbitrage or hedging activities such as closing out existing derivatives, delta hedging in respect of existing derivatives, index related product or tracker fund arbitrage in relation to the relevant securities or other similar activities assented to by the Executive during an offer period, and is recognised by the Executive as an exempt principal trader for the purposes of the Codes. An exempt principal trader who carries out securities borrowing and lending transactions (including the unwinding of such transactions) in the ordinary course of its business is not subject to Rule 21.7.

Notes to the definitions of exempt fund manager and exempt principal trader:

1. *Persons who manage investment accounts on a discretionary basis and principal traders may apply to the Executive to seek the relevant exempt status and will have to comply with any requirements imposed by the Executive as a condition of the grant of such status. The Executive will normally require an applicant for exempt principal trader status to describe to the Executive on application the securities and other instruments in which the applicant is or proposes to be trading as principal. This disclosure will be a continuing obligation, in particular at the beginning of and during an offer period. (See Rule 22.)*
2. *When a principal trader or fund manager is connected with an offeror or the offeree company, exempt status is relevant only where the sole reason for the connection is that the principal trader or fund manager controls[#], is controlled by or is under the same control as a financial or other professional adviser (including a stockbroker)* to an offeror or the offeree company. References in the Codes to exempt principal traders or exempt fund managers should be construed accordingly. (See also Rule 21.6 regarding discretionary fund managers.)*

[#] See Note 1 at the end of the definitions.

* See Note 2 at the end of the definitions.

Exempt share buy-back: Exempt share buy-back means a share buy-back that falls into one of the following categories:–

- (1) an employee share buy-back;

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- (2) a share buy-back made in accordance with the terms and conditions attached to the shares being bought back which either permit or require such share buy-back without the prior agreement of the owners of the shares;
- (3) a share buy-back made by a company at the request of the owners of the shares bought back in accordance with the terms and conditions attached to the shares which provide the owners of the shares a right to require the company to effect such share buy-back; and
- (4) a share buy-back that is required by the law of the jurisdiction in which the offeror is incorporated or otherwise established.

Licensed corporation: means a licensed corporation as defined in Part 1 to Schedule 1 of the Securities and Futures Ordinance (Cap. 571).

Licensed representative: means a licensed representative as defined in Part 1 to Schedule 1 of the Securities and Futures Ordinance (Cap. 571).

Listing Rules: Listing Rules means the Rules Governing the Listing of Securities on the Stock Exchange.

Offer: Offer includes takeover and merger transactions however effected, including schemes of arrangement which have similar commercial effect to takeovers and mergers, partial offers, and offers by a parent company for shares in its subsidiary and (where appropriate) share buy-backs by general 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 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.

Offeror: Offeror includes companies wherever incorporated and individuals wherever resident. In relation to share buy-backs, offeror means a company engaged in, or considering engaging in, a share buy-back in respect of its own shares.

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;

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- (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.*

Off-market share buy-back: Off-market share buy-back means a share buy-back that is not a share buy-back by general offer, an exempt share buy-back or an 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.

Options: Unless the context otherwise requires, options means options to subscribe or purchase new shares or existing shares in a company.

Panel: Panel means the Takeovers and Mergers Panel.

Person: Person may be an individual or a company.

Privatisation: Privatisation means an offer (other than a partial offer), however effected, for a company by a shareholder which has control of that company, as defined above, or by any person or persons acting in concert with such shareholder.

Public company in Hong Kong: Public company in Hong Kong means any company which is subject to the Codes under sections 4.1 or 4.2 of the Introduction to the Codes.



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Recognised exchange: Recognised exchange means an exchange recognised by the Executive and the Stock Exchange as having share buy-back rules applicable to the company that are comparable to those of the Listing Rules.

Registered institution: means a registered institution as defined in Part 1 to Schedule 1 of the Securities and Futures Ordinance (Cap. 571).

Relevant individual: means a relevant individual as defined in section 20(10) of the Banking Ordinance (Cap. 155).

Rights over shares: Rights over shares include any rights acquired by a person under an agreement to purchase, or an option to acquire, shares, options, warrants, convertible securities or voting rights (or control of any of them), or any irrevocable commitment to accept an offer.

Ruling: Ruling includes any ruling, waiver, consent, decision, confirmation or other determination in writing under the Codes by the Executive, the Panel or the Takeovers Appeal Committee.

Securities exchange offer: Securities exchange offer means an offer in which the consideration includes securities of the offeror or any other company.

SFC: SFC means the Securities and Futures Commission.

Share buy-back: Share buy-back means a buy-back of shares, or an offer to buy back, redeem or otherwise acquire shares of an offeror made by an offeror, including a privatisation, scheme of arrangement or other form of reorganisation that consists in whole or in part of such an offer.

Share buy-back by general offer: Share buy-back by general offer means a share buy-back effected by way of an offer made by an offeror to all holders of shares of a class of shares of the offeror.

Share Buy-backs Code: Share Buy-backs Code means the Code on Share Buy-backs.

Shares: For the purpose of the Share Buy-backs Code, shares means shares of all classes and securities which carry a right to subscribe or purchase shares issued directly or indirectly by a company or any of its subsidiaries.

Stock Exchange: Stock Exchange means The Stock Exchange of Hong Kong Limited.

Subsidiary: Subsidiary has the meaning attributed to such term by the Companies Ordinance (Cap. 622) and includes any other entity whose assets and liabilities and results are consolidated in an entity's financial statements (or would be, if they were drawn up as at the relevant date).

Substantial shareholder: Substantial shareholder means a person who holds 10% or more of the voting rights of a company.

Takeovers Code: Takeovers Code means the Code on Takeovers and Mergers.

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



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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.

Warrants: Unless the context otherwise requires, warrants means rights to subscribe or purchase new shares or existing shares in a company.

Notes to Definitions:

1. *Control*

The normal test for whether a person controls, is controlled by or is under the same control as another person, is by reference to the definition of control, that is by reference to holding 30% or more of the voting rights of a company. In cases of doubt, the Executive should be consulted.

2. *References to banks or financial advisers*

References to "bank" do not apply to a bank whose sole relationship with a party to an offer is the provision of normal commercial banking services or such activities in connection with the offer as confirming that cash is available, handling acceptances and other registration work.

References to "financial and other professional adviser (including a stockbroker)" in relation to a party to an offer do not include an organisation which has stood down, because of a conflict of interest or otherwise, from acting for that party in connection with the offer. If the organisation is to have a continuing involvement with that party during the offer period, the Executive must be consulted. The above exclusion will normally apply only if the Executive is satisfied that the involvement is entirely unconnected with the offer.

3. *Calculation of time*

Where a period laid down by the Codes ends on a day which is not a business day, the period is extended until the next business day.

4. *Shareholders, shares and voting rights*

References to shareholders include persons who hold or acquire voting rights. Similarly, references to shares include voting rights.

GENERAL PRINCIPLES

1. Introduction

It is impracticable to devise rules in sufficient detail to cover all circumstances which can arise in offers including share buy-backs by general offer. Accordingly, persons engaged in offers should be aware that the spirit as well as the letter of the General Principles and Rules must be observed. Moreover, the General Principles and the spirit of the Codes will apply in areas or circumstances not explicitly covered by any Rule.

While the boards of an offeror and the offeree company and their respective advisers have a duty to act in the best interests of the shareholders of the offeror and offeree company respectively, these General Principles and the Rules will, inevitably, impinge on the freedom of action of boards and persons involved in offers. They must, therefore, accept that there are limitations, in connection with transactions which are the subject of the Codes, on the manner in which the pursuit of those interests can be carried out.

Each director of an offeror and of the offeree company has a responsibility to ensure, so far as he is reasonably able, that the Codes are complied with in the conduct of transactions which are the subject of the Codes.

2. General Principles

1. All shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly.
2. If control of a company changes or is acquired or is consolidated, a general offer to all other shareholders is normally required. Where an acquisition is contemplated as a result of which a person may incur such an obligation, he must, before making the acquisition, ensure that he can and will continue to be able to implement such an offer.
3. During the course of an offer, or when an offer is in contemplation, neither an offeror, nor the offeree company, nor any of their respective advisers may furnish information to some shareholders which is not made available to all shareholders. This principle does not apply to the furnishing of information in confidence by the offeree company to a bona fide potential offeror or vice versa.
4. An offeror should announce an offer only after careful and responsible consideration. The same applies to making acquisitions which may lead to an obligation to make a general offer. In either case the offeror and its financial advisers should be satisfied that it can and will continue to be able to implement the offer in full.
5. Shareholders should be given sufficient information, advice and time to reach an informed decision on an offer. No relevant information should be withheld. All documents must, as in the case with a prospectus, be prepared with the highest possible degree of care, responsibility and accuracy.

GENERAL PRINCIPLES

6. All persons concerned with offers should make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of a false market. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market.
7. Rights of control should be exercised in good faith and the oppression of minority or non-controlling shareholders is always unacceptable.
8. Directors of an offeror and the offeree company must always, in advising their shareholders, act only in their capacity as directors and not have regard to their personal or family shareholdings or to their personal relationships with the companies. They should only consider the shareholders' interests taken as a whole when they are giving advice to shareholders. Directors of the offeree company should give careful consideration before they enter into any commitment with an offeror (or anyone else) which would restrict their freedom to advise their shareholders. Such commitments may give rise to conflicts of interest or result in a breach of the directors' fiduciary duties.
9. At no time after a bona fide offer has been communicated to the board of the offeree company, or after the board of the offeree company has reason to believe that a bona fide offer might be imminent, may the board of the offeree company take any action in relation to the affairs of the company, without the approval of shareholders in general meeting, which could effectively result in any bona fide offer being frustrated or in the shareholders being denied an opportunity to decide on its merits.
10. All parties concerned with transactions subject to the Codes are required to co-operate to the fullest extent with the Executive, the Panel and the Takeovers Appeal Committee, and to provide all relevant information.



CODE ON TAKEOVERS AND MERGERS

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RULE 1

1. Approach

1.1 Offer to the board

The offer should be put forward in the first instance to the board of the offeree company or to its advisers, and before the offer is announced to the public.

1.2 Identity of offeror

If the offer or an approach with a view to an offer being made is not made by the ultimate offeror or potential offeror, the identity of that person must be disclosed at the outset to the board of the offeree company. When that person 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, must be disclosed.

1.3 Implementation of offer

A board which is approached is entitled to be satisfied that the offeror is, or will be, in a position to implement the offer in full.

1.4 Confidentiality

The vital importance of secrecy before an announcement must be emphasised. All persons privy to confidential information, and particularly price-sensitive information, concerning an offer or contemplated offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if the other person understands the need for secrecy. All such persons must conduct themselves so as to minimise the chances of an accidental leak of information.

Note to Rule 1.4:

Warning clients and others

Financial and legal advisers should, at the beginning of discussions and during the course of the transaction, ensure that their clients and other persons assisting their clients in relation to the transaction understand the importance of secrecy and security. Attention should be drawn to the Takeovers Code, in particular to this Rule 1.4 and to restrictions on dealings.



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2. Independent advice, independent committees and shareholder approval

2.1 Recommendations in relation to an offer

A board which receives an offer, or is approached with a view to an offer being made, must, in the interests of shareholders, establish an independent committee of the board to make a recommendation (i) as to whether the offer is, or is not, fair and reasonable and (ii) as to acceptance or voting. As soon as reasonably practicable, the board must retain a competent independent financial adviser to advise the independent committee in writing in connection with the offer and in particular as to whether the offer is, or is not, fair and reasonable and as to acceptance and voting. The independent committee must approve the appointment of any independent financial adviser before the appointment is made. The independent financial adviser's written advice, including reasons, must be made known to shareholders by including it in the offeree board circular along with the recommendations of the independent committee regarding the offer.

The board must announce the appointment of the independent financial adviser in the initial announcement of the offer or possible offer, or as soon thereafter as the appointment is made.

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 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*

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- (iii) *the resolution to approve the delisting is subject to the offeror having received 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.*

2.3 Costs of scheme of arrangement

Where any person seeks to use a scheme of arrangement to privatise a company and the proposal is either not recommended by the independent committee of the offeree company's board or is not recommended as fair and reasonable by the financial adviser to the independent committee, all expenses incurred by the offeree company in connection with the proposal shall be borne by the person seeking to privatise the offeree company by way of the scheme of arrangement if the scheme of arrangement is not approved.

2.4 Board of offeror company

The board of an offeror must obtain competent independent advice on any offer when the offer being made is a reverse takeover or when the directors are faced with a conflict of interest. The substance of such advice must be made known to its shareholders.

Notes to Rule 2.4:

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 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.

2. Reverse takeovers

A transaction will be a reverse takeover if an offeror may as a result increase its existing issued voting share capital by more than 100%.

3. Conflicts of interest

Subject to Note 4 below, a conflict of interest exists, for instance, when there are significant cross-shareholdings between an offeror and the offeree company, when a number of directors are common to both companies or when a person is a substantial shareholder in both companies. The Executive will normally waive the application of this Rule 2.4 in respect of a substantial shareholder who is not acting in concert with the offeror or the directors of the offeree company. Any application for a waiver must be submitted as early as possible.

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4. Offers by controlling shareholders

This Rule 2.4 will not normally apply to offers by controlling shareholders or a person or persons acting in concert with them where the only conflict, or potential conflict, of interest arises as a result of a number of directors of the offeror also being directors of the offeree company.

2.5 Offers for companies that control the offeror

Where an offeror is a public company in Hong Kong, and it or a subsidiary thereof proposes to make an offer for another company that, together with any persons acting in concert with the offeree company, controls, directly or indirectly, the offeror, the offeror's board should establish an independent committee to assess the proposed offer and Rule 2.4 applies.

2.6 Persons not suited to give independent advice

The Executive will not regard as appropriate to give independent advice a person who is in the same group as the financial or other professional adviser (including a stockbroker) to an offeror or the offeree company or who has, or had, a significant connection, financial or otherwise, with either an offeror or the offeree company, or the controlling shareholder(s) of either of them, of a kind reasonably likely to create, or to create the perception of, a conflict of interest or reasonably likely to affect the objectivity of his advice (see also Schedule VII).

Note to Rule 2.6:

Significant connection within 2 years

The Executive would normally regard any significant connection within 2 years 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.

2.7 Advice to independent shareholders

If there are shareholders who are not independent because they have an interest in the proposed transaction other than their interest as a shareholder of the offeror or the offeree company, as the case may be, the independent adviser should endeavour to represent the best interests of the offeror or the offeree company, respectively, by concerning itself only with the interests of the independent shareholders.

2.8 Independent committees

Members of an independent committee of a company's board of directors should comprise all non-executive directors of the company who have no direct or indirect interest in any offer or possible offer for consideration by the independent committee other than, in the case of a director of the offeree company, as a shareholder of the offeree company. In cases of doubt, the Executive should be consulted, e.g. in the case of an unlisted public company. If it is not possible to form an independent committee, responsibility for representing the interests of any independent shareholders shall reside primarily with the independent financial adviser.

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2.9 Shareholder votes to be conducted by way of poll

Whenever the Codes require a matter to be approved by shareholders or any class or group thereof in general meeting the vote must be conducted by way of a poll. The company convening such meeting must appoint its auditors, share registrar or external accountants who are qualified to serve as auditors for such company, as scrutineer for the vote-taking.

The identity of the scrutineer and the results of the poll, including:-

- (a) the number of shares of each class voted for and against the resolution and the percentage of the relevant class of share capital which those numbers represent; and
- (b) in the case of a scheme of arrangement which is subject to an approval by "a majority in number" requirement, the number of shareholders voting for and against the resolution and the percentage of the shareholders voting which that number represents and, among them, the number of CCASS Participants (as defined under the General Rules of the Central Clearing and Settlement System established and operated by Hong Kong Securities Clearing Company Limited) instructing HKSCC Nominees Limited to vote for and against the resolution and the number of shares voted by such CCASS Participants,

must be announced.

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 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.

The Executive may aggregate any series of transactions of which the scheme of arrangement or capital reorganisation forms part to determine whether such transactions taken together effectively assist a person to obtain or consolidate control or acquire or privatise a company. The Executive will normally only waive the requirements of the Takeovers Code and in particular this Rule 2.10 in the case of a scheme or capital reorganisation under which:-

- (a) there is no substantial change in percentage shareholding of any shareholder;
- (b) there is no acquisition or consolidation of control by any person or a group of persons; and

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- (c) except as a result of any debt restructuring to which the company is a party, shareholders' economic interests in the company are not affected by implementation of the proposal.

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 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.

Notes to Rule 2:

1. *Conflicts of interest*

A conflict of interest exists, for instance, when there are significant cross-shareholdings between an offeror and the offeree company, when a number of directors are common to both companies or when a person is a substantial shareholder in both companies. See also Schedule VII.

2. *Competent independent advice*

The requirement for competent independent advice is important in all transactions under the Codes when such advice is specifically required. It is essential that the reasons underlying the advice and the recommendations are clearly stated and that the adviser discusses all relevant factors with the independent board committee. As the responsibility borne by the adviser is considerable the board of the offeree company or potential offeree company should appoint an independent adviser as soon as possible after it becomes aware of the possibility that an offer may be made (see Rule 2.8).

3. *When there is uncertainty about financial information*

When there is a significant area of uncertainty in the most recently published accounts or interim figures of the offeree company (e.g. a qualified audit report, a material provision or contingent liability or doubt over the real value of a substantial asset, including a subsidiary company), the board and the independent advisers should highlight these areas and their implications on the offer and the offeree company.

4. *When no recommendation is given or there is a divergence of views*

When the board of an offeror or the offeree company, as the case may be, is unable to express a view on the merits of an offer or to give a firm recommendation or when there is a divergence of views amongst board members or between the board and the independent adviser as to either the merits of an offer or the recommendation, this must be drawn to shareholders' attention and an explanation given, including the arguments for acceptance or rejection, emphasising

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the important factors. The Executive should be consulted in advance about the explanation which is to be given.

When a financial adviser is unable to advise whether an offer is, or is not, fair and reasonable the Executive should be consulted.

5. *Success fees*

Certain fee arrangements between an adviser and the offeree company may create a conflict of interest which would disqualify the adviser as an independent adviser to the offeree company. For example, a fee which becomes payable to an offeree company adviser only in the event of failure of an offer will normally create such a conflict of interest. In cases of doubt the Executive should be consulted.

6. *Particular provisions for Rules 2.2, 2.10 and 2.11*

For the purpose of Rules 2.2, 2.10 and 2.11, “disinterested shares” means shares in the company other than those which are owned by the offeror or persons acting in concert with it.

Where an offeree company has more than one class of share capital, the requirements in Rules 2.2, 2.10 and 2.11 will normally apply separately in respect of each class.

7. *Clarification of the application of Rule 2.2 and Rule 2.10 and other requirements of the Takeovers Code*

The purpose of Rule 2.2 is to apply similar requirements as those set out in Rule 2.10 to a delisting proposal which is related to a proposed offer. This prevents the delisting proposal from being used to coerce independent shareholders into accepting the offer.

If a company proposes to dispose of its assets and/or operations; and, either,

- (i) as a result of such proposal the company may not be regarded as suitable for listing for the purpose of the Listing Rules; or*
- (ii) there is a proposal to withdraw the company’s listing on the Stock Exchange;*

the Executive must be consulted at the earliest opportunity by the company and/or its advisers and in such circumstances would normally apply Rule 2.10 and other requirements of the Takeovers Code. In such cases the Executive may aggregate any series of transactions if they are all completed within a 12 month period or are otherwise related.



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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.



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3. Announcements of offers or possible offers

3.1 Announcements to be made by offeror or potential offeror

Before the board of the offeree company is approached, the responsibility for making an announcement will normally rest with the offeror or potential offeror. Although the primary responsibility for making an announcement after the board of the offeree company has been approached lies with the offeree company, as set out in Rule 3.2 below, there may be circumstances where the actions of the offeror or persons acting in concert with it give rise to an obligation on the part of an offeror or potential offeror to make an announcement. The offeror or potential offeror should, therefore, keep a close watch on the offeree company's share price and volume for signs of undue movement.

The offeror or potential offeror must make an announcement:-

- (a) when, before an approach has been made to the offeree company, the offeree company is the subject of rumour or speculation about a possible offer or there is undue movement in its share price or in the volume of share turnover, and there are reasonable grounds for concluding that it is the actions of the potential offeror or persons acting in concert with it (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation;
- (b) when negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers); or
- (c) immediately upon an acquisition of voting rights which gives rise to an obligation to make an offer under Rule 26.

An offeror wishing to approach a wider group, for example, in order to arrange financing for the offer, to seek irrevocable commitments or to organise a consortium to make the offer should consult the Executive. Additionally, the Executive should be consulted in all cases of doubt.

3.2 Announcements to be made by offeree company

Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company. The offeree company must, therefore, keep a close watch on its share price and volume.

The board of the offeree company must make an announcement:-

- (a) when a firm intention to make an offer is notified to the board of the offeree company from a serious source, irrespective of the attitude of the board to the offer;
- (b) when, following an approach to the offeree company, the offeree company is the subject of rumour or speculation about a possible offer or there is undue movement in its share price or in the volume of share turnover, whether or not there is a firm intention to make an offer;

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- (c) when negotiations or discussions between the offeror and the offeree company are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers); or
- (d) when the board of a company is aware that there are negotiations or discussions between a potential offeror and the holder, or holders, of shares carrying 30% or more of the voting rights of a company or when the board of a company is seeking potential offerors, and
 - (i) the company is the subject of rumour or speculation about a possible offer or there is undue movement in its share price or in the volume of share turnover; or
 - (ii) the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.

In all cases of doubt the Executive should be consulted.

3.3 Announcements to be made by potential vendor

The potential vendor must make an announcement when there are negotiations or discussions between a potential offeror and the holder, or holders, of shares carrying 30% or more of the voting rights of the company and the company is subject to rumour or speculation about a possible offer or there is undue movement in its share price or in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential vendor's actions (whether through inadequate security or otherwise) which have led to the situation.

In all cases of doubt the Executive should be consulted.

Notes to Rules 3.1, 3.2 and 3.3:

1. *Agreements and letters of intent*

Unless announced publicly, agreements and letters of intent relating to an offer or possible offer to which an offeror or any person acting in concert with it is a party should be disclosed to the Executive.

2. *Undue movements in share price and volume*

Whether or not a movement in the share price or volume of a potential offeree company is undue for the purposes of Rule 3 is a question that will be considered in the light of all relevant facts and not solely by reference to the absolute percentage movement in the price or volume. Factors which may be considered to be relevant in determining whether a price or volume movement is undue for the purposes of these Rules include general market and sector movements, information relating to the company, trading activity in the company's securities and the time period over which the price or volume movement has occurred. In all cases of doubt the Executive should be consulted.

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3. Clear statements

The Executive will not normally require an announcement under Rule 3.1(a) if it is satisfied that the price or volume movement, rumour or speculation results only from a clear and unequivocal formal public announcement, e.g. (a) a disclosure under Part XV of the Securities and Futures Ordinance (Cap. 571); or (b) an announcement of an intention to purchase.

4. Gathering of irrevocable commitments

An offeror may approach a very restricted number of shareholders to obtain 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.

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 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.

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;

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- (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 its doing so, including details of any break fees payable as a result;
- (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

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- (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 (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.

Notes to Rule 3.5:

1. *Holdings by a group of which an adviser is a member*

It is accepted that, for reasons of secrecy, it would not be prudent to make enquiries so as to include in an announcement details of any holdings or borrowings of offeree company shares or options or derivatives in respect of them held by or entered into by other parts of an adviser's group (see class (5) of definition of acting in concert). In such circumstances, details should be obtained as soon as possible after the announcement has been made and the Executive consulted. If the holdings or borrowings are significant, a further announcement will be required.

2. *Irrevocable commitments*

References to commitments to accept an offer must specify in what circumstances, if any, they will cease to be binding; for example, if a higher offer is made.

3. *Confirmation of resources*

The Executive may require evidence to support a statement that resources are available to satisfy the offeror's obligations in respect of the offer. The Executive may also require evidence that the offeror has sufficient resources to complete the purchase of shares which gives rise to the offer obligation.

A financial adviser, in discharging its duties under this Rule 3.5 to confirm financial resources, should observe the highest standard of care to satisfy itself of the adequacy of resources, including performance of due diligence. The financial adviser confirming that resources are and will continue to be available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.

This confirmation will be required not only when the consideration is in cash, or includes an element of cash, but also when the consideration consists of, or includes, any other assets except new securities to be issued by the offeror.

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4. Subjective conditions

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

5. New conditions for increased or improved offers

See Rule 16.2.

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 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 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.

7. Conditional offers

The Executive should be consulted when a proposed offer is conditional on acceptance or undertakings to accept by one or more shareholders and the proposed announcement does not include a statement by those shareholders.

3.6 Announcements of certain purchases

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

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Note to Rule 3.6:

Potential offerors

The requirement of this Rule 3.6 to make an immediate announcement applies to any publicly announced potential offeror (whether named or not) either where a public indication of the price level of its possible offer has been made and the potential offeror or any person acting in concert with it acquires voting rights at above that level or where there already exists an offer from a third party and the potential offeror or any person acting in concert with it buys at above the price level of that offer. Disclosure will be required in accordance with Rule 22.1.

3.7 Announcement of a possible offer

Until a firm intention to make an offer has been notified a brief announcement by a potential offeror or the offeree company that talks are taking place or that a potential offeror is considering making an offer will normally satisfy the obligations under this Rule 3. If following the announcement of a possible offer no further announcement has been made in respect of that offer or possible offer within one month, an announcement must be made setting out the progress of the talks or the consideration of a possible offer. This obligation continues (and announcements will be required monthly) until announcement of firm intention to make an offer under Rule 3.5 or of a decision not to proceed with an offer. When talks are terminated or a potential offeror decides not to proceed with an offer an announcement must be made to that effect.

Notes to Rule 3.7:

1. *Identity of offeror*

In any announcement under this Rule 3.7 the Executive may require the potential offeror to be named. This is more likely where the identity of the potential offeror may be price-sensitive.

2. *New offeror*

In the event that a new offeror or potential offeror emerges, the same obligations will apply to that new offeror or potential offeror.

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.

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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.

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. 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.

In the announcement, the offeree company, the offeror or potential named offeror should remind their respective associates to disclose their dealings in any relevant securities of the offeree company. In a securities exchange offer, the offeree company, the offeror or potential named offeror should also remind their respective associates to disclose their dealings in any relevant securities of the offeror or potential named offeror (or of the company the securities of which are to be offered as consideration for the offer, as the case may be).

The text of Note 11 to Rule 22 should also be included in any announcement commencing an offer period.

If the information included in an announcement made under this Rule 3.8 changes during the offer period, a revised announcement must be made as soon as possible.

Note to Rule 3.8:

Relevant securities

See Note 4 to Rule 22.

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.



RULE 3

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.*



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RULE 4

4. No frustrating action

Once a bona fide offer has been communicated to the board of an offeree company or the board of an offeror 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, carry out or agree to carry out such frustrating actions. Examples of frustrating action include the following:—

- (a) issue 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. Where there are 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*

A shareholders' meeting 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.

2. *Service contracts*

The Executive will regard amending or entering into a service contract with, or creating or varying the terms of employment of, a director as entering into a contract "otherwise than in the ordinary course of business" for the purpose of this Rule 4 if the new or amended contract or terms constitute an abnormal increase in his emoluments or a significant improvement in his terms of service.

RULE 4

This will not prevent any such increase or improvement which results from a genuine promotion or new appointment but the Executive must be consulted in advance in such cases.

3. *Votes of controlling shareholders and directors*

The Executive should be consulted on whether shareholdings of controlling shareholders, directors and their respective associates should be voted at the shareholders' meeting, where an actual or potential conflict of interest exists.

4. *Deleted.*

5. *Notice of general meeting*

The notice convening a meeting of shareholders pursuant to this Rule 4 must include information about the offer or possible offer.

6. *"Material amount"*

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

If several transactions relevant to this Rule 4, but not individually material, occur or are intended, the Executive will aggregate such transactions to determine whether the requirements of this Rule 4 are applicable to any of them.

The Executive should be consulted in advance where there may be any doubt as to the application of the above.

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

The Executive may allow an offeror not to proceed with its offer if, before the 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.*

8. *Established share option schemes*

Where the offeree company proposes to grant options over shares, the timing and level of which are in accordance with its normal practice under an established share option scheme, the Executive will normally give its consent.

9. *Interim dividends*

The declaration and payment of an interim dividend by the offeree company, outside the normal course, during an offer period may be contrary to General Principle 9 and this Rule 4 in that it could effectively frustrate an offer. The offeree companies and its advisers must, therefore, consult the Executive in advance.

RULE 5

5. No withdrawal of an offer

When there has been an announcement of a firm intention to make an offer, except with the consent of the Executive, the offeror must proceed with the offer unless the offer is subject to the fulfilment of a specific condition and that condition has not been met.

Notes to Rule 5:

1. *Specific change of circumstances*

A change in general economic, industrial or political circumstances will not justify failure to proceed with an announced offer: to support an application to the Executive not to proceed, circumstances of an exceptional and specific nature are required.

2. *Competing offer*

The Executive would normally consent to the withdrawal of an announced offer if a competitor has already posted a higher offer, which carries no additional conditions other than those necessary for the implementation of such announced offer. The Executive should be consulted if either offer is a securities exchange offer.

3. *Announcement required*

If an offeror is permitted to withdraw or an offer lapses because of non-fulfilment of a condition, the offeror will be required to make an announcement giving reasons for the withdrawal.

4. *Frustrating action and invoking of conditions*

See Note 7 to Rule 4 and Note 2 to Rule 30.1.

5. *In considering whether to grant consent under this Rule 5, the Executive may seek to hear the views of the offeree company and its advisers.*



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RULE 6

6. Equality of information to competing offerors

Any information, including particulars of shareholders, given to one offeror or potential offeror, whether named or unnamed, must, on request, be provided equally and promptly to another offeror or bona fide potential offeror, even if that other offeror is less welcome. The other offeror or potential offeror should specify the questions to which it requires answers. It is not entitled, by asking in general terms, to receive all the information supplied to its competitor. This requirement will normally apply only when there has been a public announcement of the existence of the offeror or potential offeror to which information has been given or, if there has been no public announcement, when the offeror or bona fide potential offeror requesting information under this Rule 6 has been informed authoritatively of the existence of another potential offeror.

Notes to Rule 6:

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 no later than 48 hours 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.

2. *Allotment of shares by offeree company during offer period*

The offeree company must immediately notify any offeror of any allotment or issue of shares and of the exercise of any rights mentioned in Note 1 to Rule 6 during the offer period and provide the offeror as soon as possible with all relevant details. An offeror must make appropriate arrangements to ensure that any person to whom shares of a type to which the offer relates are unconditionally allotted or issued during the offer period will have an opportunity of accepting the offer in respect of such shares. In cases of doubt, the Executive must be consulted.

3. *Management buy-outs*

If the offer or potential offer is a management buy-out or similar transaction, the information which this Rule 6 requires to be given to competing offerors or potential offerors is at least that information generated by the offeree company (including the management of the offeree company acting in their capacity as such) which is passed to external providers or potential providers of finance (whether equity or debt) to the offeror or potential offeror. The Executive expects the directors of the offeree company who are involved in making an offer to co-operate with the

RULE 6

independent board committee of the offeree company and its advisers in the assembly of this information.

If the offer or potential offer is a management buy-out or similar transaction, the offeror or potential offeror must, on request, promptly furnish the independent board committee of the offeree company or its advisers with at least all information which has been furnished by the offeror or potential offeror to external providers or potential providers of finance (whether equity or debt) for the buy-out.

In all of the above circumstances, the Executive should be consulted.

4. *Conditions attached to the passing of information*

The passing of information pursuant to this Rule 6 should not be made subject to any conditions other than those relating to the confidentiality of the information passed; reasonable restrictions forbidding the use of the information passed to solicit customers or employees; and, the use of the information solely in connection with an offer or potential offer. Any such conditions imposed should be no more onerous than those imposed upon any other offeror or potential offeror.

A requirement that a party sign a hold harmless letter in favour of a firm of accountants or other third party will normally be acceptable provided that any other offeror or potential offeror has been required to sign a letter in similar form.

RULE 7

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 resignation of any directors of an offeree company should not take effect until after the publication of the closing announcement on the first closing date of the offer, or the publication of the announcement that the offer has become or been declared unconditional, 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 under Note 1 on dispensations from Rule 26.

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 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 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.



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RULE 8

8. Timing and contents of documents

8.1 Availability of information

Information about companies involved in an offer must be made equally available to all shareholders as nearly as possible at the same time and in the same manner.

Notes to Rule 8.1:

1. *Furnishing of information to offerors*

This Rule 8.1 does not prevent the furnishing of information in confidence by an offeree company to a bona fide potential offeror or vice versa.

2. *Press, television and radio interviews*

Parties involved in an offer must take particular care not to release new material in interviews or discussions with the media. The requirements regarding meetings and presentations or other documents set out in Note 3 below will also apply to any interviews and discussions and any written communication relating to an offer which is provided to the media.

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, no later than 12.00 noon on the business day 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 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

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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 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 before the offer period as being "live".

5. *Profit forecasts, asset valuations and estimates etc.*

All persons involved should be fully aware of the verification and reporting obligations under the Takeovers Code in respect of profit forecasts, asset valuations and estimates of other figures key to the offer. Release of any profit forecast, asset valuation or estimate of key figures without compliance with the relevant Takeovers Code requirements may constitute a breach of the Takeovers Code, regardless of whether the forecast, valuation or estimate is withdrawn.

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6. *Announcements and circulars*

If, notwithstanding the provisions of Notes 2, 3 and 4 to Rule 8.1, any material new information or significant new opinions are released, they must be announced immediately to the shareholders and the market. The Executive may also require the information to be disseminated by means of a circular to shareholders. If such new information or opinion is not capable of being substantiated as required by the Takeovers Code (e.g. a profit forecast), this must be made clear and it must be formally withdrawn in the circular or announcement.

8.2 Offer document time limit

The offer document should be despatched by or on behalf of the offeror no later than 21 days (or, in the case of a securities exchange offer, 35 days) 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.)

Notes to Rule 8.2:

1. *Schemes of arrangement*

In cases of schemes of arrangement, the Executive should be consulted if an extended period is required to accommodate the Court timetable.

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 no later than 7 days after the fulfilment of all pre-conditions.

8.3 Contents of offer document

The offer document submitted by the offeror to the offeree company's shareholders should contain the information required by Schedule I, together with any other relevant information to enable offeree company's shareholders to reach a properly informed decision.

8.4 Timing and contents of offeree board circular

The offeree company should send to its shareholders no later than 14 days after the 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.

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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 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 8.4:

Preparation of circular

It is the responsibility of the offeree company's board and its advisers to start preparation of the offeree board circular as soon as an offer is announced so as to minimise the possibility of any delay in meeting this timetable. If the offeree company's board considers that all the information required may not be available in time, it must consult the Executive immediately. In any event the Executive will require that, within this timetable, a circular is sent to the shareholders of the offeree company containing all the information available at that time with a clear statement of the information not available, the reasons for the delay in producing it and when it will be available.

8.5 Subsequent documents

Documents subsequently sent to shareholders of the offeree company by either party must contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period. If there have been no such changes this must be stated. In particular, the following matters must be updated:-

- (a) changes or additions to material contracts;
- (b) shareholdings and dealings;
- (c) directors' emoluments;
- (d) special arrangements;
- (e) ultimate owner of securities acquired under the offer;
- (f) arrangements in relation to dealings; and
- (g) changes to directors' service contracts.

When a profit forecast has been made, documents subsequently sent to shareholders of the offeree company by the party making the forecast must comply with the requirements of Rule 10.5.

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8.6 English/Chinese language

Each document is to be written in English or Chinese and shall include or be accompanied by a translation, as the case requires, in Chinese or English, unless the Executive has previously agreed to waive this requirement.

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.

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).

Notes to Rule 8:

1. *Documents to be on display*

Except with the consent of the Executive, copies of the following documents must be made available for inspection, on the website (which may be a transaction

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specific website) of the issuer of the offer document or offeree board circular, as appropriate, from the time the offer document or offeree board circular, as appropriate, is published until the end of the offer period. The offer document or offeree board circular must state which documents are so available and the website address where inspection can be made. The Executive must be consulted immediately if there is any difficulty in complying with this Note.

- (a) memorandum and articles of association (in some jurisdictions known as by-laws) of the offeror or offeree company or equivalent documents;
- (b) audited consolidated accounts of the offeror or the offeree company for the last 2 financial years for which these have been published;
- (c) any report, letter, valuation or other document any part of which is exhibited or referred to in any document issued by or on behalf of the offeror or the offeree company;
- (d) written consents of the financial advisers stating that they have given and not withdrawn their consent to the publication of their names in the document;
- (e) where a profit forecast has been made:–
 - (i) the reports of the auditors or consultant accountants and of the financial advisers;
 - (ii) the letters giving the consent of the auditors or consultant accountants and of the financial advisers to the issue of the relevant document with the report in the form and context in which it is included or, if appropriate, to the continued use of the report in a subsequent document;
- (f) where an asset valuation has been made:–
 - (i) the valuation certificate and associated report containing details of the aggregate valuation;
 - (ii) the letter stating that the valuer has given and not withdrawn his consent to the publication of his name in the relevant document;
- (g) any document evidencing an irrevocable commitment to accept or reject an offer;
- (h) where the Executive has given consent to aggregation of dealings, a full list of all dealings (see Note 4 to paragraph 4 of Schedule I, Note 3 to paragraph 2 of Schedule II and Note 2 to paragraph 5 of Schedule III);
- (i) each material contract referred to in paragraph 26 of Schedule I and paragraph 9 of Schedule II;
- (j) each service contract referred to in paragraph 13 of Schedule II;
- (k) all derivative contracts which in whole or in part have been disclosed under Rule 22.1, paragraph 4 of Schedule I, paragraph 2 of Schedule II, or

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paragraph 5 of Schedule III. Documents in respect of the first mentioned must be made available for inspection from the time the offer document or the offeree board circular is published or from the time of disclosure, whichever is the later;

- (l) documents relating to the financing arrangements for the offer where such arrangements are described in the offer document in compliance with the third sentence of paragraph 12(b) of Schedule I;*
- (m) documents in relation to an inducement fee or similar arrangement;*
- (n) any other document required by the Executive to be displayed; and*
- (o) a copy of any agreement or arrangement or, if not reduced to writing, a memorandum of all the terms of such agreement or arrangement, disclosed in the offer document pursuant to paragraph 14A of Schedule I.*

2. *Display of documents on websites*

A copy of each document to be displayed under Note 1 above must be provided in electronic form acceptable to the Executive for display on the SFC's website before the despatch of the offer document or offeree board circular, as appropriate. Such document must state which documents are on display and the address of the website on which they are displayed.

After the end of the offer period, the provider of the documents on display may make arrangements to remove such documents from the relevant websites.

3. *Overseas shareholders*

The Executive would not normally waive the requirements under this Rule 8 so that shareholders in an overseas jurisdiction are excluded from receiving the offer document, unless the Executive is satisfied that it would be unduly burdensome to do so in such overseas jurisdiction. For example, the Executive may grant a waiver under this Rule 8 if issuance of the offer document to particular overseas shareholders requires registration of the document as a prospectus under overseas law and the number of shareholders in such jurisdiction is relatively small. However, the Executive will be concerned to see that all material information in the offer document is made available to such shareholders.

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.



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RULE 9

9. Standard of care and responsibility

9.1 Prospectus standard

Each document issued or statement made in relation to an offer or possible offer or during an offer period must, as is the case with a prospectus, satisfy the highest standards of accuracy and the information given must be adequately and fairly presented. This applies whether it is issued or made by the company direct, or by an adviser on its behalf, or by any other relevant person. Those who issue or make any such document or statement must ensure that it remains accurate and up to date throughout the offer period, and must notify shareholders of any material changes as soon as possible.

Notes to Rule 9.1:

1. *Financial advisers' responsibility for release of information*

The Executive regards financial advisers as being responsible to the Executive for guiding their clients and any relevant public relations advisers with regard to any information released in relation to an offer or possible offer or during an offer period.

Advisers must ensure at an early stage that directors and officials of companies are warned that they must consider carefully the Takeovers Code implications of what they say, particularly when giving interviews to, or taking part in discussions with, the media. It is very difficult after publication to alter an impression given or a view or remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed. In appropriate circumstances, the Executive will require a statement of retraction. Particular areas of sensitivity on which comment must be avoided include future profits and prospects, asset values and the likelihood of the revision of an offer (see also the Notes to Rule 8.1).

2. *Unambiguous language*

The language used in documents, releases or advertisements must clearly and concisely reflect the position being described. In particular, the word "agreement" must be used with great care. Statements must be avoided which may give the impression that any persons have committed themselves to certain courses of action (e.g. accepting in respect of their own shares) when they have not in fact done so.

3. *Sources*

The source for any fact which is material to an argument must be clearly stated, including sufficient detail to enable the significance of the fact to be assessed; however, if the information has been included in a document recently sent to shareholders, an appropriate cross reference may instead be made.

4. *Quotations*

A quotation (e.g. from a newspaper or a stockbroker's circular) must not be used out of context and details of the origin must be included.

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Since quotations will necessarily carry the implication that the comments quoted are endorsed by the board, such comments must not be quoted unless the board is prepared, where appropriate, to corroborate or substantiate them to the standard required under the Takeovers Code and the directors' responsibility statement pursuant to Rule 9.3 is included.

5. *Diagrams etc.*

Pictorial representations, charts, graphs and diagrams must be presented without distortion and, when relevant, must be to scale.

6. *Use of television, videos, audio tapes etc.*

If any of these are to be used, even when they do not constitute advertisements (see Rule 12.3), the Executive must be consulted in advance.

7. *Use of comparables*

Any comparables referred to in a document must be a fair and representative sample. The bases for compiling any comparables must be clearly stated in the document.

9.2 Sufficient information

Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer. Such information must be available to shareholders early enough to enable them to make a decision in good time. The obligation of an offeror in these respects towards the shareholders of the offeree company is no less than the offeror's obligation towards its own shareholders.

9.3 Directors' joint and several responsibility

All documents should state that all directors of the company issuing the document jointly and severally accept full responsibility for the accuracy of information contained in the document and confirm, having made all reasonable inquiries, that to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration and there are no other facts not contained in the document, the omission of which would make any statement in the document misleading.

9.4 Executive's consent for exclusion of directors

If it is proposed that any director should be excluded from such a statement, the Executive's consent is required. In such cases, the exclusion and reasons for it should be stated in the document.

Notes to Rules 9.3 and 9.4:

1. *Delegation of responsibility*

If detailed supervision of any document has been delegated to a committee of the board, each of the remaining directors of the company must reasonably believe that the persons to whom supervision has been delegated are competent to carry it out

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and must have disclosed to the committee all relevant facts directly relating to himself (including his close relatives and related trusts) and all other relevant facts known to him and relevant opinions held by him which, to the best of his knowledge and belief, either are not known to any member of the committee or, in the absence of his specifically drawing attention thereto, are unlikely to be considered by the committee during the preparation of the document. This does not, however, override the requirements of the Listing Rules relating to the acceptance of responsibility for listing documents where applicable.

The board as a whole must ensure that proper arrangements are in place to enable it to monitor the conduct of an offer so that each director may fulfil his responsibilities under the Takeovers Code. These arrangements should ensure that:–

- (a) the board is provided promptly with copies of all documents issued by or on behalf of their company which bear on the offer; the board receives promptly details of all dealings in relevant securities made by their company or its associates and details of any agreements, understandings, guarantees, expenditure (including fees) or other obligations entered into or incurred by or on behalf of their company in the context of the offer which do not relate to routine administrative matters;*
- (b) those directors with day-to-day responsibility for the offer are in a position to justify to the board all their actions and proposed courses of action; and*
- (c) the opinions of advisers are available to the board.*

The above procedures should be followed, and board meetings held, as and when necessary throughout the offer in order to ensure that all directors are kept up-to-date with events and with actions taken.

Any director who has any doubt concerning the propriety of any action as far as the Takeovers Code is concerned should ensure that the Executive is consulted.

The above procedures shall not affect the directors' joint and several responsibility under Rule 9.3.

The Executive requires directors to co-operate with it in connection with its enquiries; this will include the provision, promptly on request, of copies of minutes of board meetings and other information available to them which may be relevant to the enquiry.

2. *Joint announcement and composite document*

When a joint announcement is 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.

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3. Conflicts of interest

Where a director has a conflict of interest, depending on the circumstances, such a director may amend the responsibility statement required by Rule 9.3 to make it clear that he does not accept responsibility for the views of the board on the offer. See also Note 3 to paragraph 1 of Schedule II.

4. When an offeror is controlled

If an offeror is controlled, directly or indirectly, by another person or company, the Executive must be consulted. The Executive will normally require that, in addition to the directors of the offeror, such other person or the directors of an ultimate parent company or, if there is a listed company in the chain between the ultimate parent company and the offeror, the directors of the listed company take responsibility for documents issued by or on behalf of the offeror. In the case of professional trustee companies, the Executive would look to the person in accordance with whose directions or wishes the trustees are accustomed to act and such person would be required to take responsibility.

5. Quoting information about another company

Where a company issues a document or advertisement containing information about another company which makes it clear that such information has been compiled from published sources, the directors of the company issuing the document or advertisement need, as regards the information so compiled, only take responsibility for the correctness and fairness of its reproduction or presentation. The responsibility statement may be amended accordingly. Where statements of opinion or conclusions concerning another company or unpublished information originating from another company are included, these must normally be covered by a responsibility statement by the directors of the company issuing the document or advertisement or by the directors of the other company. The qualified form of responsibility statement provided for in this Note is not acceptable in such instances.

6. 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.

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10. Profit forecasts and other financial information

10.1 Standards of care

There are obvious hazards attached to the forecasting of profits. This should in no way detract from the necessity of maintaining the highest standards of accuracy and fair presentation in all communications to shareholders in an offer. A profit forecast must be compiled with due care and consideration by the directors, whose sole responsibility it is; the financial advisers must satisfy themselves that the forecast has been prepared in this manner by the directors.

Note to Rule 10.1:

Existing forecasts

At the outset, an adviser should invariably check whether or not his client has a forecast on the public record so that the procedures required by Rule 10.3(d) can be set in train with a minimum of delay.

10.2 The assumptions

- (a) When a profit forecast appears in any document addressed to shareholders in connection with an offer, the assumptions, including the commercial assumptions, upon which the directors have based their profit forecast, must be stated in the document.
- (b) When a profit forecast is given in an announcement made at the commencement of or during an offer period, any assumptions on which the forecast is based should be included in the announcement.

Notes to Rules 10.1 and 10.2:

1. Requirement to state the assumptions

- (a) *It is important that by listing the assumptions on which the forecast is based useful information should be given to shareholders to help them in forming a view as to the reasonableness and reliability of the forecast. This should draw the shareholders' attention to, and where possible quantify, those uncertain factors which could materially disturb the ultimate achievement of the forecast.*
- (b) *There are inevitable limitations on the accuracy of some forecasts and these should be indicated to assist shareholders in their review. A description of the general nature of the business or businesses with an indication of any major hazards in forecasting in these particular businesses should normally be included.*
- (c) *The forecast and the assumptions on which it is based are the sole responsibility of the directors. However, a duty is placed on the financial advisers to discuss the assumptions with their client and to satisfy themselves that the forecast has been made with due care and*

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consideration. Auditors or consultant accountants must satisfy themselves that the forecast, so far as the accounting policies and calculations are concerned, has been properly compiled on the basis of the assumptions made.

Although the accountants have no responsibility for the assumptions, they will as a result of their review be in a position to advise the company on what assumptions should be listed in the circular and the way in which they should be described. The financial advisers and accountants obviously have substantial influence on the information about assumptions to be given in a circular; neither should allow an assumption to be published which appears to be unrealistic, or one to be omitted which appears to be important, without commenting appropriately in its report.

2. General rules

(a) The following general rules apply to the selection and drafting of assumptions.

- (i) The shareholder should be able to understand their implications and so be helped in forming a judgement as to the reasonableness of the forecast and the main uncertainties attaching to it.
- (ii) The assumptions should be specific rather than general, definite rather than vague.
- (iii) Assumptions about factors which the directors can influence may be included, provided they are clearly identified as such. However, assumptions relating to the general accuracy of estimates should be avoided. The following would not be acceptable:—

“Sales and profits for the year will not differ materially from those budgeted for.”

“There will be no increases in costs other than those anticipated and provided for.”

Every forecast involves estimates of income and of costs and must obviously be dependent on these estimates. Assumptions of the type illustrated above do not help the shareholder in considering the forecast.

- (iv) The assumptions should not relate to the accuracy of the accounting systems. If the systems of accounting and forecasting are such that full reliance cannot be placed on them, this should be the subject of some qualification in the forecast itself. It is not satisfactory for this type of deficiency to be covered by the assumptions. The following would not be acceptable:—

“The book record of stock and work-in-progress will be confirmed at the end of the financial year.”

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(v) *The assumptions should relate only to matters which may have a material bearing on the forecast.*

(b) *Even the more specific type of assumption may still leave shareholders in doubt as to its implications, for instance:–*

“No abnormal liabilities will arise under guarantees.”

“Provisions for outstanding legal claims will prove adequate.”

Such phrases might be dismissed on the grounds that the first relates to the unforeseen and the second to the adequacy of the estimating system. In both these examples information would be necessary about the extent or basis of the provision already made and/or about the circumstances in which unprovided for liabilities might arise.

(c) *There may be occasions, particularly when an estimate relates to a period already ended, when no assumptions are required.*

3. *Report by independent financial adviser*

An independent financial adviser to the offeree company may perform a financial adviser’s role under Rule 10.1 and Note 1(c) to Rules 10.1 and 10.2.

10.3 Reports required in connection with profit forecasts

- (a) A forecast made by an offeror offering solely cash need not be reported on. With the consent of the Executive, this exemption may be extended to an offeror offering a non-convertible debt instrument.
- (b) In all other cases, the accounting policies and calculations for the forecasts must be examined and reported on by the auditors or consultant accountants. Any financial adviser mentioned in the document must also report on the forecasts.
- (c) When income from land and buildings is a material element in a forecast, that part of the forecast should normally be examined and reported on by an independent valuer: this requirement does not apply where the income is virtually certain, e.g. known rents receivable under existing leases.
- (d) Except with the consent of the Executive, any profit forecast which has been made before the offer period must be examined, repeated and reported on in the document sent to shareholders.
- (e) Exceptionally, the Executive may accept that, because of the uncertainties involved, it is not possible for a forecast previously made to be reported on in accordance with the Takeovers Code nor for a revised forecast to be made. In these circumstances, the Executive would insist on shareholders being given a full explanation as to why the requirements of the Takeovers Code were not capable of being met.

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10.4 Publication of reports and consent letters

Whenever a profit forecast is made during an offer period, the reports must be included in the document addressed to shareholders containing the forecast. When the forecast is made in an announcement, that announcement must contain a statement that the forecast has been reported on in accordance with the Takeovers Code and the reports have been lodged with the Executive. If a company's forecast is published first in an announcement, it must be repeated in full, together with the reports, in the next document sent to shareholders by that company. The reports must be accompanied by a statement that those making them have given and not withdrawn their consent to publication.

10.5 Subsequent documents – continuing validity of forecast

When a company includes a forecast in a document, any document subsequently sent out by that company in connection with that offer must, except with the consent of the Executive, contain a statement by the directors that the forecast remains valid for the purpose of the offer and that the financial advisers and accountants who reported on the forecast have indicated that they have no objection to their reports continuing to apply.

10.6 Statements which will be treated as profit forecasts

(a) When no figure is mentioned

Even when no particular figure is mentioned or even if the word "profit" is not used, certain forms of words may constitute a profit forecast, particularly when considered in context. Examples are "profits will be somewhat higher than last year" and "performance in the second half-year is expected to be similar to our performance and results in the first half-year" (when interim figures have already been published). Whenever a form of words puts a floor under, or a ceiling on, the likely profits of a particular period or contains the data necessary to calculate an approximate figure for future profits, it will be treated by the Executive as a profit forecast which must be reported on. In cases of doubt, professional advisers should consult the Executive in advance.

(b) Estimates of profit for a completed period

An estimate of profit for a period which has already expired should be treated as a profit forecast.

(c) Forecasts for a limited period

A profit forecast for a limited period (e.g. the following quarter) is subject to this Rule 10.

(d) Dividend forecasts

A dividend forecast is not normally considered to be a profit forecast unless, for example, it is accompanied by an estimate as to dividend cover.



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(e) Profit warranties

The Executive must be consulted in advance if a profit warranty is to be published in connection with an offer as it is likely to be regarded as a profit forecast.

10.7 Taxation, items which are exceptional because of size, nature and incidence and net profit or loss attributable to minority interests

When a forecast of profit before taxation appears in a document addressed to shareholders, there must be included forecasts of taxation, items which are exceptional because of size, nature or incidence and net profit or loss attributable to minority interests.

10.8 When a forecast relates to a period which has commenced

Whenever a profit forecast is made in relation to a period in which trading has already commenced, any previously published profit figures in respect of any expired part of that trading period, together with comparable figures for the same part of the preceding year, must be stated.

10.9 Interim and preliminary figures

Except with the consent of the Executive, any unaudited profit figures published during an offer period must be reported on. This provision does not, however, apply to:-

- (i) unaudited statements of annual or interim results which have already been published;
- (ii) unaudited statements of annual results which comply with the requirements for preliminary profits statements as set out in the Listing Rules;
- (iii) unaudited statements of interim results which comply with the requirements for half-yearly reports as set out in the Listing Rules in cases where the board of the offeree company has not publicly advised its shareholders not to accept an offer; or
- (iv) unaudited statements of interim results by offerors which comply with the requirements for half-yearly reports as set out in the Listing Rules, whether or not the offer has been publicly recommended by the board of the offeree company but provided the offer could not result in the issue of securities which would represent 10% or more of the enlarged voting share capital of the offeror.

The Executive should be consulted in advance if the company is not listed on the Stock Exchange but wishes to take advantage of the exemptions under (ii), (iii) or (iv) above.

Note to Rule 10.9:

Growth Enterprise Market companies

References to interim results include quarterly results for companies listed on the Growth Enterprise Market of the Stock Exchange.

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10.10 Merger benefits statements in securities exchange offers

In a securities exchange offer, a quantified statement about the expected financial benefits of a proposed takeover or merger is deemed to be a profit forecast statement for the purpose of this Rule 10. In addition to satisfying the existing standards of information and requirements under Rules 9 and 10 of the Takeovers Code, a person issuing such a statement must provide:–

- (a) the bases of the belief (including sources of information) supporting the statement;
- (b) an analysis and explanation of the constituent elements sufficient to enable shareholders to understand the relative importance of these elements; and
- (c) a base figure for any comparison drawn.

These requirements may also be applicable to statements to the effect that an acquisition will enhance an offeror's earnings per share where such enhancement depends in whole or in part on material merger benefits.

Parties wishing to make earnings enhancement statements which are not intended to be profit forecasts must include an explicit and prominent disclaimer to the effect that such statements should not be interpreted to mean that earnings per share will necessarily be greater than those for the relevant preceding financial period.

Parties should also be aware that the inclusion of unquantified earnings enhancement statements, if combined with merger benefits statements and/or other published financial information, may result in the market being provided with information from which the prospective profits for the offeror or the enlarged offeror group or at least a floor or ceiling for such profits can be inferred. Such statements would then be subject to this Rule 10. If parties are in any doubt as to the implications of the inclusion of such statements, they should consult the Executive in advance.

Note to Rule 10.10:

Statements that will be treated as profit forecasts

Quantified statements of merger benefits or earnings enhancements, such as a statement by an offeror that it would expect the offeree company to contribute \$x million of profit post acquisition, will be treated as profit forecasts. The Executive will also apply tests similar to those in Rule 10.6 to determine whether statements that do not mention any particular figure constitute profit forecasts. General statements that do not provide a floor or ceiling for profits, such as a statement by an offeror that it expects to achieve synergies through the rationalisation of head office costs, would not be regarded as forecasts.

10.11 Material changes in financial or trading position

Where a document to shareholders includes information about material changes in the financial or trading position or outlook of the offeror or offeree company subsequent to the last published audited accounts, in accordance with Schedules I and II or, in the case of a share buy-back by general offer or off-market share buy-back, Schedule III respectively,



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such information must be reported on in accordance with this Rule 10 if this information constitutes a profit forecast under Rule 10.6. The directors of the company must provide the Executive with evidence of the steps taken by them to support any statement included in such a document that there have been no such material changes (or none save as disclosed in the document).

Note to Rule 10.11:

Evidence of steps taken

The evidence required under this Rule 10.11 normally includes a confirmation in writing given to the Executive by the board of the offeror or offeree company that the board and the financial adviser have reviewed, among other things, the financial position of the company (including the latest consolidated management accounts, financial condition, capital and other commitments, contingent liabilities and future cash flow and financing requirements) and the trading position with respect to the company's suppliers and customers. The confirmation should also state that the board and the financial adviser have discussed all these aspects before the confirmation was made. Under Rule 9.3, the directors of the offeror or offeree company take full responsibility for statements made under this Rule 10.11. However, the directors and the financial adviser should disclose any material difference of opinion between the directors and the financial adviser regarding material changes or absence of such changes to the Executive. The Executive may require disclosure of such information in the document if it considers it to be relevant to a shareholder's decision on an offer.



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11. Asset valuations

N.B. All references in this Rule 11 to “the Valuation Standards” are to “The HKIS Valuation Standards on Properties” published by The Hong Kong Institute of Surveyors.

11.1 Disclosure of valuations

When valuations of assets are given in connection with an offer details of the valuations or an appropriate summary thereof must be included in the offer document, offeree board circular or other documents. The valuations should be supported by the opinion of a named independent valuer.

(a) Type of asset

This Rule 11 applies not only to land, buildings and process plant and machinery but also to other tangible and intangible assets. Where the assets consist of securities listed on the Stock Exchange that are not suspended from trading, a separate valuation and consent letter will not be necessary if the valuation is carried out by a qualified accountant or financial adviser to the company. In the case of securities listed on other exchanges, the Executive should be consulted.

Where it is proposed to give a valuation of assets, other than land and buildings, based on discounted cash flows or projections of profits, earnings or cash flows, the Executive must be consulted. Since it may be possible to derive a forecast of profits from such valuations, they will normally be regarded as if they were profit forecasts to which Rule 10 would apply. The Executive will normally only grant a waiver to allow such valuations to be given other than in accordance with Rule 10 in exceptional circumstances or where the predictability of cash flows is reasonably assured.

(b) The valuer

In relation to land and buildings, a valuer should be a professional member of The Hong Kong Institute of Surveyors or some other person approved by the Executive.

In respect of other assets, the valuer should normally be the financial adviser to the relevant party in respect of the offer. The Executive may, in appropriate cases, accept a valuation by a suitably qualified and experienced professional valuer which is also reported on by the financial adviser. In such cases the valuer must be able to demonstrate to the satisfaction of the Executive that it and the personnel engaged in the valuation meet any legal or regulatory requirements which apply in the circumstances in which the particular valuation is required and that they have, in respect of the particular type of property or asset, sufficient current local and international (as appropriate) knowledge of the particular market and the skills and understanding necessary to undertake the valuation competently.

(c) In connection with an offer

In certain cases, offer documents, offeree board circulars or other documents will include statements of assets reproducing directors’ estimates of asset values

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published with the company's accounts in accordance with the Listing Rules or Section 1 of Part 1, and Section 1 of Part 2, of Schedule 4 to the Companies Ordinance (Cap. 622), or in the case of companies incorporated outside Hong Kong, equivalent statutory requirements. The Executive will not regard such estimates as "given in connection with an offer" unless asset values are a particularly significant factor in assessing the offer and the estimates are, accordingly, given considerably more prominence in the offer documents, offeree board circulars or other relevant documents than merely being referred to in a note to a statement of assets in an appendix. In these circumstances, such estimates must be supported by an independent valuer in accordance with this Rule 11.

(d) Another party's assets

A party to a takeover transaction will not normally be permitted to issue a valuation, appraisal or calculation of worth of the assets owned by another party unless it is supported by the unqualified opinion of a named independent valuer and that valuer has had access to sufficient information to carry out a property valuation, appraisal or calculation of worth either in accordance with the Valuation Standards or, in respect of assets other than land and buildings, to appropriate standards approved by the Executive. Comments by one party about another's valuation, appraisal or calculation of worth of its own assets are unlikely to be permitted. In all cases, the Executive must be consulted in advance.

(e) Selective valuations not acceptable

Valuations of assets must not be prepared or presented on a selective basis unless the Executive accepts that special circumstances justify it. (See also Rule 11.6.)

(f) Companies with significant property interests when the offeror is an interested party

Except with the consent of the Executive, when the offeror is an interested party, a valuation will be required of the properties of (i) the offeree company if it has significant property interests; and (ii) in the case of a securities exchange offer, the offeror if it has significant property interests.

For the purpose of Rule 11.1(f) an interested party refers to (i) a party holding, or together with parties acting in concert with it holding, immediately before either the commencement of an offer period or an obligation arises to make a mandatory offer under Rule 26.1, 30% or more of the voting rights of the offeree company; (ii) a director of the offeree company; or (iii) a party acting in concert with any of (i) or (ii).

As a general guide, a company has "significant property interests" if the book value of its consolidated property assets exceeds 15% of its consolidated total assets.

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

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

- (g) Companies with property situated in developing property markets

If the valuation of assets of either the offeree company or offeror company includes valuation of property in developing property markets, the Executive should be consulted to determine the extent to which the requirements of Practice Note 12 to the Listing Rules should apply.

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.
- (b) In relation to valuations of land and buildings, attention is drawn to the Valuation Standards. Special assumptions (see VS2.3 of the Valuation Standards) should not normally be made in a valuation but, if such assumptions are permitted by the Executive, they should be fully explained.
- (c) For non-specialised properties, the basis of valuation will normally be market value as defined in the Valuation Standards. A property which is occupied for the purposes of the business will be valued at existing use value. Where a property has been adapted or fitted out to meet the requirements of a particular business, the market value should relate to the property after the works have been completed. Alternatively, the market value may relate to the state of the property before the works had been commenced and the works of adaptation may be valued separately on a depreciated replacement cost basis, subject to adequate potential profitability. Specialised properties occupied by the business should be valued on a depreciated replacement cost basis, as defined in the Valuation Standards subject to adequate potential profitability. Properties held as investments or which are surplus to requirements and are held pending disposal should be valued at market value.
- (d) In the case of land currently being developed or with immediate development potential, in addition to giving the open market value in the state existing at the date of valuation, the valuation should include:—
- (i) the value after the development has been completed;
 - (ii) the estimated total cost, including carrying charges, of completing the development and the anticipated dates of completion and of letting or occupation; and

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- (iii) a statement whether planning or other regulatory consent has been obtained and, if so, the date thereof and the nature of any conditions attaching to the consent which affect the value.

11.3 Potential tax liability

When a valuation is given in connection with an offer, there should normally be a statement regarding any potential tax liability which would arise if the assets were to be sold at the amount of the valuation, accompanied by an appropriate comment as to the likelihood of any such liability crystallising.

11.4 Current valuation

A valuation must state the effective date as at which the assets were valued and the professional qualifications and address of the valuer. If a valuation is not current, the valuer must state that a current valuation would not be materially different. If this statement cannot be made, the valuation must be updated.

Note to Rule 11.4:

Effective date

The Executive will normally regard any valuation that is more than 3 months old as not current.

11.5 Opinion and consent letters

(a) Standards of care

There are obvious hazards attached to the valuation of an asset or business; this should in no way detract from the necessity of maintaining the highest standards of accuracy and fair presentation in all communications to shareholders in an offer. A valuation must be made with due care and consideration by the valuer or financial adviser making the valuation.

(b) Publication of opinion

The opinion of value must be contained in the document containing the asset valuation. In the case of a property valuation, the document containing the valuation must contain a summary of the valuation setting out the address sufficient to identify each property and the valuation of each property.

(c) Consent

The document must also state that the valuer has given and not withdrawn its written consent to the publication of its valuation report.

(d) Valuation certificate to be on display

Where a valuation of assets is given in any document addressed to shareholders, the full valuation report must be made available for inspection, in the manner described in Note 1 to Rule 8, together with an associated report or schedule containing details of

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the aggregate valuation. Where the Executive is satisfied that such disclosure may be commercially disadvantageous to the company concerned, it may consent to the report or schedule appearing in a summarised form.

11.6 Waiver in certain circumstances

In exceptional cases, certain companies, in particular property companies, which are the subject of an unexpected offer may find difficulty in obtaining, within the time available, the opinion of an independent valuer to support an asset valuation, as required by this Rule 11, before the offeree board circular has to be sent out. In such cases, the Executive may be prepared exceptionally to waive strict compliance with this requirement. The Executive will only do this where the interests of shareholders seem on balance to be best served by permitting informal valuations to appear coupled with such substantiation as is available. Advisers to offeree companies who wish to make use of this procedure should consult the Executive at the earliest opportunity.

Note to Rule 11:

Independent valuer

For the purposes of this Rule 11, an “independent valuer” means a valuer who meets the requirements of an “independent valuer” as defined in Appendix 1.1 of the Valuation Standards and, in addition, has no material connection with other parties to the transaction. The independent valuer must also meet the requirements of the Listing Rules.



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12. Issuance of documents

12.1 Filing of documents for comments

All documents (other than those referred to in the Note to Rule 12.1 below) must be submitted to the Executive for comment before publication and must not be released or published until the Executive has confirmed that it has no further comments thereon. 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 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 before publication if considered necessary or appropriate.

12.2 Publication of documents

All documents in respect of listed companies must be published in accordance with the requirements of the Listing Rules. 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.

12.3 Advertisements

The publication of advertisements during an offer period is prohibited unless the advertisement falls within one of the categories listed below. In addition, except where the advertisement falls within category (a), it must be filed with the Executive in accordance with Rule 12.1.

The categories are as follows:–

- (a) product advertisements not bearing on an offer or possible offer (where there could be any doubt, the Executive must be consulted);
- (b) corporate image advertisements not bearing on an offer or possible offer;
- (c) advertisements giving information, the publication of which by advertisement is required or specifically permitted by the Stock Exchange; or
- (d) advertisements communicating information relevant to holders of bearer securities.

Notes to Rule 12:

1. Adequate time

The Executive should be given a reasonable time for consideration of a document when it is submitted for comment. The first draft of the document submitted to the Executive should be in advanced form and points of difficulty should be drawn to the

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attention of the Executive as early as possible. If a draft document is not submitted in a substantially final form before 5.00 p.m. on a business day, the Executive would expect difficulties in commenting on the document on the same day, particularly if there are outstanding points or issues of difficulty.

2. The Executive's role in the commenting process

The Executive's role in the commenting process is no more than a consulting role where the Executive provides assistance in resolving any Code issues raised by the Executive or identified by the parties and their advisers. It is the sole responsibility of the issuer of the document (and its directors and advisers) to ensure that the Codes are fully complied with.

Where the Rules prescribe specific disclosure to be made parties and their advisers are expected to exercise due diligence to ensure that the required information is fully disclosed in the first draft document submitted to the Executive for comment under Rule 12.1.

Most importantly, parties and their advisers should not be under the misconception that by expressing that it has no further comment on a draft document the Executive is confirming that the document fully complies with the Codes. The Executive will not verify the accuracy of statements made in documents submitted for comment. If it subsequently becomes apparent that any statement was incorrect, or any document was incomplete, the Executive may require an immediate correction to be issued in addition to considering any possible disciplinary action in accordance with the Codes.

Parties and their advisers must consult the Executive at the earliest opportunity if there is any doubt as to whether a document qualifies for post-vetting.

3. Source

Each document must clearly and prominently identify the party on whose behalf it is published.

4. Confirmation of publication and no material change

As soon as practicable following the publication of any document, the issuer of that document or its advisers must confirm in writing to the Executive that (a) the document has been published and the time and date of publication and (b) save for where the document is one of the documents included in the list published under the Note to Rule 12.1, there has been no material change to the version of the document in respect of which the Executive has confirmed that it has no further comment. Such confirmation should be accompanied by a copy of the published version of the document (both English and Chinese versions) and a marked-up version of the document showing any changes (including deletions) made subsequent to the Executive's confirmation.



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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 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.



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13. Appropriate offers for convertibles, warrants, etc.

13.1 Offeree companies with convertible securities

Where an offer is made for equity share capital and the offeree company has convertible securities outstanding, the offeror must make an appropriate offer or proposal to the holders of the convertible securities to ensure that their interests are safeguarded. Equality of treatment is required.

13.2 Competent independent advice

The board of the offeree company must obtain competent independent advice in writing on the offer or proposal to the holders of such securities and the substance of such advice must be made known to all holders of its securities in accordance with Rule 2.1, together with the board's views on the offer or proposal.

13.3 Despatch of appropriate offers

Whenever practicable the offer or proposal should be despatched to the holders of such securities at the same time that the offer document is posted to shareholders, but if this is not practicable the Executive should be consulted and the offer or proposal should be despatched as soon as possible thereafter.

13.4 Conditions of appropriate offers

The offer or proposal required by this Rule 13 must be made conditional on the offer for equity share capital becoming or being declared unconditional and should not normally be subject to any other conditions. It may, however, be put by way of a scheme to be considered at a meeting of the holders of such securities.

13.5 Warrants, options and subscription rights

If an offeree company has warrants, options or subscription rights outstanding in respect of any class of equity share capital (including non-transferable options), the provisions of this Rule 13 apply as appropriate.

Notes to Rule 13:

1. *Consideration for appropriate offers*

Normally the consideration under any such offer or proposal in relation to convertible securities, warrants, options or subscription rights will be considered appropriate if it is based on the offer price for the relevant equity share capital and such "see-through" price should be regarded as the minimum offer price. However, there may be cases where another basis is more appropriate, and if the offeror is of the view that the consideration should be determined on some other basis, the Executive should be consulted in advance. A higher offer would not be considered appropriate if it is part of a special deal to provide an incentive to persons who also hold shares or other securities of the offeree company to accept the offer.

RULE 13

2. *Equality of treatment*

“Equality of treatment” under Rule 13.1 should be taken to mean equality of treatment within a class of security holders as opposed to equality of treatment between different classes of securities.

3. *When conversion rights etc. are exercisable during an offer*

All relevant documents issued to shareholders of the offeree company in connection with an offer must also, where practicable, be issued simultaneously to the holders of securities convertible into, rights to subscribe for and options over shares of the same class as those to which the offer relates. If those holders are able to exercise their rights during the course of the offer and to accept the offer in respect of the resulting shares, their attention should be drawn to this in the documents.

RULE 14

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 considered at meetings separately in respect of each class of the equity share capital.

Notes to Rule 14:

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 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.

2. *Offer for non-voting equity shares only*

Where an offer for non-voting equity shares only is being made, comparable offers for voting classes are not required.

3. *Offers must be interconditional*

An offer for one class of equity share capital must be conditional on the offers for other classes of equity share capital becoming or being declared unconditional.



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RULE 15

15. Timing of the offer

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 after the date of the offer document. Where the offeree board circular is posted after the date of the offer document, the offer must be open for acceptance for at least 28 days after the date of the offer document. 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.

15.2 No obligation to extend

There is no obligation to extend an offer the conditions of which are not met by the first or any subsequent closing date.

15.3 Offer to remain open for 14 days after unconditional

Where a conditional offer becomes or is declared unconditional (whether as to acceptances or in all respects), it should remain open for acceptance for not less than 14 days thereafter. When an offer becomes or is declared unconditional in all respects, at least 14 days' notice in writing must be given before the offer is closed to those shareholders who have not accepted the offer.

Note to Rule 15.3:

Announcement as to unconditionality

An announcement is required to be made both when an offer becomes unconditional as to acceptances and when it becomes unconditional in all respects.

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 after the 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

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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.

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 date of the initial offer document. 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 to Rule 15.5:

1. *Schemes of arrangement*

In cases of schemes of arrangement, the Executive should be consulted if a modified timetable is required to accommodate the Court timetable.

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 after the 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 the date of the offer document, the Executive should be consulted at the earliest opportunity. In appropriate cases, the Executive may

RULE 15

extend "Day 39" (see Rule 15.4) to the second day after the announcement of such approval with consequent changes to "Day 46" (see Rule 16.1) and "Day 60".

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 after the 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.

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 no later than 21 days after the first closing date or 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.

15.8 Acceptances and purchases to be taken into account

For the purpose of the acceptance condition, the offeror may only take into account acceptances or purchases of shares in accordance with the Notes to Rule 30.2 before the last time for acceptance set out in the offeror's relevant document or announcement. This time must be no later than 4.00 p.m. on the relevant closing date.



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RULE 16

16. Revised and alternative offers

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 after the date of the revised offer document. 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:

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 before the 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.

RULE 16

2. *When revision is required*

An offeror will normally be required to revise its offer if it, or any person acting in concert with it, purchases securities at above the offer price (see Rule 24) or it becomes obliged to introduce an offer under Rule 23 or to make a cash offer, or to increase an existing cash offer, under Rule 26.

3. *When revision is not permitted*

Since an offer must remain open for acceptance for 14 days after the date of the revised offer document, 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 after the date of the revised offer document.

16.2 New conditions for increased or improved offers

An offeror may introduce new conditions to be attached to a revised offer, but only to the extent necessary to implement the revised offer and subject to the consent of the Executive.

16.3 Timing and revision

In general, the provisions of Rules 15, 16, 18 and 20 apply equally to alternative offers, including cash alternatives.

Notes to Rule 16.3:

1. *Elections*

For the purpose of this Rule 16.3, an arrangement under which shareholders elect, subject to the election of other shareholders, to vary the proportion in which they are to receive different forms of consideration is not regarded as an alternative offer and may be closed without notice on any closing date. This must be clearly stated in the offer document.

RULE 16

2. Shutting off

Normally, if an offer has become or is declared unconditional as to acceptances, all alternative offers which have not been closed 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.

16.4 Reintroduction of alternative offers

Where a firm statement has been made that an alternative offer will not be extended or reintroduced, neither that alternative, nor any substantially similar alternative, may be extended or reintroduced. Where, however, such a statement has not been made and an alternative offer has closed, an offeror will not be precluded from reintroducing that alternative at a later date. Reintroduction constitutes a revision of the offer and is, therefore, subject to the requirements of, and only permitted as provided in, this Rule 16.

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 after the 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.

Notes to Rule 16.5:

1. Dispensation from obligation to post

The Executive will normally grant dispensation from the obligation to post a revised offer, which is lower than the final revised offer announced by a competing offeror, when the board of the offeree company consents.

2. Guillotine

The Executive may impose a final time limit for announcing revisions to competing offers for the purpose of any procedure established in accordance with this Rule 16.5 taking into account representations by the board of the offeree company, the revisions previously announced and the duration of the procedure.



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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, 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.



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RULE 18

18. Statements during course of offer

18.1 No misleading statements

Parties to an offer or possible offer and their advisers must take care not to issue statements which, while not factually inaccurate, may mislead shareholders and the market or may create uncertainty. In particular, an offeror must not make a statement to the effect that it may improve its offer without committing itself to doing so and specifying the improvement.

Notes to Rule 18.1:

1. *Holding statements*

While an offeror may need to consider its position in the light of new developments, and may make a statement to that effect, and while a potential competing offeror may make a statement that it is considering making an offer, it is not acceptable for such a statement to remain unclarified for more than a limited time, particularly in the later stage of the offer period. Before any statements of this kind are made, the Executive must be consulted as to the period allowable for clarification. This does not detract in any way from the obligation to make timely announcements under Rule 3.

2. *Statements of support*

The board of the offeree company must not make any statement about the level of support from its shareholders unless their up-to-date intention has been clearly stated to the offeree company or its advisers. The Executive will require any such statement to be verified to its satisfaction. This may include immediate confirmation being given directly to the Executive by the relevant shareholders.

18.2 No extension statements

If statements in relation to the duration of an offer such as “the offer will not be extended beyond a specified date unless it is unconditional as to acceptances” (“no extension statements”) are included in documents sent to offeree company shareholders, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to extend its offer beyond the stated date except where the right to do so has been specifically reserved. The provisions of Rule 15.3 will apply in any event.

18.3 No increase statements

If statements in relation to the value or type of consideration such as “the offer will not be further increased” or “our offer remains at \$x per share and it will not be raised” (“no increase statements”) are included in documents sent to offeree company shareholders, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to amend the terms of its offer in any way even if the amendment would not result in an increase of the value of the offer (e.g. the introduction of a lower paper alternative) except where the right to do so has been specifically reserved.

RULE 18

Notes to Rule 18:

1. Firm statements

In general, an offeror will be bound by any firm statements as to the duration or finality of its offer. Any statement of intention will be regarded for this purpose as a firm statement and accordingly the expression "present intention" should not be used as it may be misleading to shareholders. Furthermore, the Executive will treat any indication of finality as absolute, unless the offeror clearly states the circumstances in which the statement will not apply, and will not distinguish between the precise words chosen, i.e. the offer is "final", or will not be "increased", "amended", "revised", "improved", "changed", and similar expressions will all be treated in the same way.

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 no later than 4 business days after the 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 after the date of the circular.*

3. Recommendations

Subject to Note 4 to this Rule 18 below, an offeror can choose not to be bound by a no extension or no increase statement which would otherwise prevent the posting of an increased or improved offer recommended for acceptance by the board of the offeree company.

4. Reservation of right to set statements aside

A no extension or no increase statement may be set aside only if the offeror has specifically reserved the right to do so at the time the statement was made; this applies whether or not the offer was recommended at the outset. The first document in which mention is made of the statement must contain prominent reference to this reservation (precise details of which must also be included in the document). Any subsequent mention by the offeror of the statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details. Notes 2 and 3 to this Rule 18 describe examples of specific types of reservation to set aside a no extension or no increase statement. However, other types of reservation may also be made, provided that the reservation does not depend solely on subjective judgements by the offeror or its directors or the fulfilment of which is in their hands. If the right to set aside the statement has not been specifically reserved as set out above,



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only in wholly exceptional circumstances will the offeror be allowed to extend or increase its offer, as the case may be (except for a 14 day extension pursuant to Rule 15.3), even if a recommendation from the board of the offeree company is forthcoming or if the offer is unconditional in all respects.

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 no later than 4 business days after the date of the offeree company announcement) and shareholders are informed in writing at the earliest opportunity.



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RULE 19

19. Announcement of results of offer

19.1 Nature of announcement

By 6.00 p.m. (or such later time as the Executive may in exceptional circumstances permit) on a closing date the offeror must inform the Executive and the Stock Exchange of its decision in relation to the revision, extension, expiry or unconditionality of the offer. The offeror must publish an announcement in accordance with the requirements of the Listing Rules by 7.00 p.m. on the closing date stating whether the offer has been revised or extended, has expired or has become or been declared unconditional (and, in such case, whether as to acceptances or in all respects). A draft of such announcement must be submitted to the Executive by 6.00 p.m. for comment. Such announcement must state the total number of shares and rights over shares:-

- (a) for which acceptances of the offer have been received;
- (b) held, controlled or directed by the offeror or persons acting in concert with it before the offer period; and
- (c) acquired or agreed to be acquired during the offer period by the offeror or any persons acting in concert with it.

The announcement must include 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 the offeror has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

The announcement must specify the percentages of the relevant classes of share capital, and the percentages of voting rights, represented by these numbers (see also Rule 2.9, Rule 15.1 and the Note to Rule 15.3).

Note to Rule 19.1:

Schemes of arrangement

In the case of a scheme of arrangement, an announcement must be published in accordance with the requirements of Rule 19.1 on the date on which any shareholder meeting to approve the scheme of arrangement is held. See Rule 2.9 for the disclosure requirements applicable to such announcements.

19.2 Consequences of failure to announce

The Executive should be consulted if an offeror is unable to comply with any of the requirements of this Rule 19. The Executive may require that acceptors be granted a right of withdrawal, on terms acceptable to the Executive, until the requirements of this Rule 19 can be met.

RULE 19

Notes to Rule 19:

1. *Informing other parties*

The notification to the Executive and the Stock Exchange under Rule 19.1 should be communicated to the offeree company and any other competing offeror as soon as practicable after communication to the Executive and the Stock Exchange.

2. *Statements regarding acceptances*

If any statements are made during an offer period by an offeror, any person acting in concert with it or its advisers about the level of acceptances or the number or percentage of acceptors, an immediate announcement must be made giving the details mentioned in this Rule 19.

3. *Statements about withdrawals*

When the offeree company is proposing to draw attention to withdrawals of acceptance, the Executive must be consulted before any announcement is made.

4. *Incomplete acceptances and offeror purchases*

Acceptances not complete in all respects and purchases must only be included in the totals in an announcement under this Rule 19 where they could be counted towards fulfilling an acceptance condition under Note 1 to Rule 30.2.

5. *Persons acting in concert*

An announcement under this Rule 19 must make it clear to what extent acceptances have been received from persons acting in concert with the offeror and must state the number of shares and rights over shares (as nearly as practicable) held before the offer period and acquired or agreed to be acquired during the offer period by persons acting in concert with the offeror.

6. *Acceptances of cash alternatives*

Acceptances of cash alternatives are required to be disclosed under this Rule 19.

7. *Partial offers and share buy-back by general offers*

Where the offer is a partial offer or a share buy-back by general offer, the announcement of the results of the offer must include details of the way in which each shareholder's pro rata entitlement was determined.

RULE 20

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

20.2 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 no later than 7 business days 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.

Note to Rule 20:

Equality of treatment

All shareholders should be treated equally. Any commitment or arrangement to make payment or settle the consideration for certain shareholders at a particular time may constitute a special deal and therefore be prohibited.



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RULE 21

21. Restrictions on dealings before and during the offer

21.1 Restrictions on dealings before the offer

No dealings of any kind in the securities of the offeree company (including convertible securities, warrants, options and derivatives in respect of such securities) may be transacted by any person, not being the offeror, who has confidential price-sensitive information concerning an actual or contemplated offer or revised offer between the time when there is reason to suppose that an approach or an offer or revised offer is contemplated and the announcement of the approach, the offer, the revised offer, or of the termination of the discussions. Such restriction does not apply to persons acting in concert with an offeror in respect of such dealings where the securities the subject of such dealings are excluded from the offer or where there are no-profit arrangements in place.

No such dealings may take place in the securities of the offeror except where the offer or proposed offer is not price-sensitive in relation to those securities.

No person who is privy to such information may make any recommendation to any other person as to dealing in the relevant securities.

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 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 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.

Notes to Rules 21.1 and 21.2:

1. *No-profit arrangements*

Arrangements made by a potential offeror with a person acting in concert with it whereby offeree company securities are purchased (which would include entering into options or derivatives in respect of securities of the offeree company) by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule 21. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal

RULE 21

expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Executive must be consulted.

2. *Other circumstances in which dealings may not take place*

An offeror or other persons may also be restricted from dealing or procuring others to deal in certain other circumstances, e.g. before the announcement of an offer, if the offeror has been supplied by the offeree company with confidential price-sensitive information in the course of offer discussions.

3. *Consortium offers and joint offerors*

If an offer is to be made by more than one offeror or by a company formed by a group of persons to make an offer or by any other consortium offer vehicle, the offerors or group involved will normally be considered to be in a consortium for the purpose of this Note.

The Executive must be consulted before any purchases of offeree company securities are made by members or potential members of a consortium. If there are existing holdings of such securities, it will be necessary to satisfy the Executive that they were acquired before the consortium was formed or contemplated.

It will not normally be acceptable for members of a consortium to purchase such securities unless there are, for example, when a consortium company is to be the offeror, appropriate arrangements to ensure that such purchases are made proportionate to members' interests in the consortium company or under arrangements which give no profit to the purchaser.

4. *No dealing contrary to published advice*

Directors and financial advisers to a company who own securities in that company must not deal in such securities contrary to any advice they have given to shareholders, or to any advice with which it can reasonably be assumed that they were associated, without giving sufficient public notice of their intentions together with an appropriate explanation. For the purposes of this Note, securities in a company include options and derivatives in respect of or referenced to such securities.

5. *Discretionary fund managers and principal traders*

Dealings in securities of the offeree company by discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 21.6.

6. *Dealings between an offeror and connected exempt principal traders*

See Rule 35.2.

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21.3 Restrictions on share dealings and transactions by offeror during securities exchange offers

Except with the consent of the Executive, where the consideration under an offer includes securities of the offeror or a person acting in concert with it, neither the offeror nor any person acting in concert with it may deal in any such securities or conduct any on-market buy-back of such securities during the offer period.

Where the consideration under an offer includes securities of an offeror or a person acting in concert with it, and after the announcement of a firm intention to make an offer under Rule 3.5, such offeror or the issuer of the securities may not propose or conduct any off-market share buy-back, or share buy-back by general offer, until the end of the offer period. This restriction does not apply to buy-backs announced before the offeror's Rule 3.5 announcement.

This Rule 21.3 does not restrict an offeror or its financial advisers from arranging the underwriting of a cash alternative to the offeror's securities offered in exchange. However, if any such arrangement is likely to have more than a nominal effect on the value or the market price of the offeror's securities, the Executive should be consulted.

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 before an announcement of the position.

21.5 Dealings in offeree company securities by certain offeree company associates

During the offer period, except for exempt fund managers and exempt principal traders, no financial adviser or stockbroker (or any person controlling, controlled by or under the same control as any such adviser or stockbroker) to an offeree company (or any of its parents, subsidiaries or fellow subsidiaries, or their associated companies or companies of which such companies are associated companies) shall, except with the consent of the Executive:—

- (i) for its own account, or for any of its investment accounts managed on a discretionary basis, purchase offeree company shares or deal in convertible securities, warrants, options or derivatives in respect of such shares;
- (ii) make any loan to a person to assist him in making any such purchases or carrying out any such dealings save for lending in the ordinary course of business and on normal commercial terms; or
- (iii) enter into any indemnity or option arrangement or any arrangement, agreement or understanding, formal or informal, of whatever nature, which may be an inducement for a person to retain, deal or refrain from dealing in relevant securities of the offeree company.

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Note to Rule 21.5:

Recommended or unconditional mandatory offers

The Executive will normally give its consent under this Rule 21 where the offer is recommended by the board of the offeree company and there is no competing offer, or where the offer is an unconditional mandatory offer pursuant to Rule 26.

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 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 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.)
- (c) An exempt fund manager or exempt principal trader which is connected for the sole reason that it controls[#], is controlled by or is under the same control as a financial or other professional adviser (including a stockbroker) to the offeror or the offeree company will not be presumed to be acting in concert even after the commencement of the offer period or the identity of the offeror being publicly announced (as the case may be). (See Note 2 to the definitions of exempt fund manager and exempt principal trader.)

[#] See Note 1 at the end of the definitions.

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Notes to Rule 21.6:

1. Dealings 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 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 before that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company.*

2. Qualifications

- (a) *If a connected discretionary fund manager or principal trader is in fact acting in concert with an offeror or with the offeree company, the usual concert party consequences will apply irrespective of whether the offeree company is in an offer period or the identity of the offeror or potential offeror has been publicly announced.*
- (b) *If an offeror or potential offeror, or any company in its group, has funds managed on a discretionary basis by an exempt fund manager, Rule 21.6 may be relevant. If, for example, any securities of the offeree company are managed by such exempt fund manager for an offeror or potential offeror, the exception in Rule 21.6(c) in relation to exempt fund managers may not apply in respect of those securities. The Executive should be consulted in such cases.*
- (c) *Where a fund manager or principal trader is connected with an offeror by reason of class (4) of the definitions of connected fund manager and connected principal trader, the Executive may, in appropriate circumstances, waive the acting in concert presumption in Rule 21.6(a), for example where the investment in a consortium is insignificant.*

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 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

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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 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.

4. Rule 26

The Executive should be consulted if, once the identity of the offeror or potential offeror is publicly known, it becomes apparent that the number of shares in which the offeror or potential offeror and persons acting in concert with it, including any connected discretionary fund managers and principal traders to which Rule 21.6(a) applies, are interested carry in aggregate 30% or more of the voting rights of the offeree company.

5. Disclosure of dealings in offer documentation

Holdings of relevant securities and dealings (whether before or after the presumptions in Rules 21.6(a) and 21.6(b) apply) by connected discretionary fund managers and principal traders (unless exempt) must be disclosed in any offer document in accordance with paragraph 4 of Schedule I and in any offeree board circular in accordance with paragraph 2 of Schedule II, as the case may be.

21.7 Restriction on securities borrowing and lending transactions by offerors, the offeree company and certain other parties

During the offer period, none of the following persons may, except with the consent of the Executive, enter into or take action to unwind a securities borrowing or lending transaction in respect of relevant securities of the offeree company and, in the case of securities exchange offers, the offeror:

- (a) the offeror;
- (b) the offeree company;
- (c) a financial or professional adviser to a person acting in concert with an offeror or with the offeree company, and persons controlling[#], controlled by or under the same control as any such adviser (except for an exempt principal trader or an exempt fund manager); and
- (d) any other person acting in concert with the offeror or the offeree company.

[#] See Note 1 at the end of the definitions.

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Notes to Rule 21.7:

1. *Relevant securities*

See Note 4 to Rule 22.

2. *Return of borrowed relevant securities*

The Executive's consent will not normally be required under Rule 21.7 by a borrower taking action to redeliver relevant securities (or equivalent securities) which have been recalled, or a lender taking action to accept the redelivery of relevant securities (or equivalent securities) which have not been recalled, in each case in accordance with an existing securities borrowing or lending agreement. However, the Executive will normally require the redelivery or the accepting of the redelivery of such relevant securities to be publicly disclosed as if it were a dealing in the relevant securities in accordance with Notes 5, 6 and 7 to Rule 22.

3. *Disclosure or notice where consent is given*

Where the Executive consents to a person to whom Rule 21.7 applies entering into or taking action to unwind a securities borrowing or lending transaction in respect of relevant securities, the Executive will normally require the transaction to be publicly disclosed by that person as if it were a dealing in the relevant securities in accordance with Notes 5, 6 and 7 to Rule 22. Where a person wishes to enter into or take action to unwind more than one lending transaction in respect of relevant securities, the Executive may instead require that person to give public notice that he might do so. The Executive should be consulted as to the content and timing for the issue of such notice.

4. *Discretionary fund managers and principal traders*

Securities borrowing or lending transactions by discretionary fund managers and principal traders which are subject to Rule 21.7(d) will be treated in accordance with Rule 21.6.

5. *The Executive will normally waive the restrictions in this Rule 21.7 where an offer has been declared unconditional in all respects.*



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22. Disclosure of dealings during offer period

22.1 Dealings by parties and by associates for themselves or for discretionary clients

(a) Own account

Dealings in relevant securities by an offeror or the offeree company, and by any associates of either of them, for their own account during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

(b) For discretionary clients

(i) Dealings in relevant securities by an offeror or the offeree company, and by any associates of either of them, for the account of discretionary investment clients during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

If, however, the associate is an exempt fund manager connected with an offeror or the offeree company, paragraph (ii) below will apply.

(ii) Except with the consent of the Executive, dealings in relevant securities during an offer period for the account of discretionary investment clients by an associate of an offeror or the offeree company which is an exempt fund manager connected with an offeror or the offeree company (as the case may be) must be privately disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

If, however, the exempt fund manager is an associate of an offeror or the offeree company by virtue of class (6) of the definition of associate, the exempt fund manager must disclose publicly under Rule 22.1.

22.2 Dealings by parties and by associates for non-discretionary clients

Except with the consent of the Executive, dealings in relevant securities during an offer period by an offeror, the offeree company, and any associate of either of them, for the account of non-discretionary investment clients (other than an offeror, the offeree company, or any associate of either of them) must be privately disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

22.3 Discretionary accounts

If a person manages investment accounts on a discretionary basis, relevant securities so managed will be treated, for the purpose of this Rule 22, as controlled by that person and not by the person on whose behalf the relevant securities are managed.

Except with the consent of the Executive, where more than one discretionary investment management operation is conducted in the same group, relevant securities controlled by all such operations will be treated for the purpose of this Rule 22 as those of a single person and must be aggregated (see Note 10 to this Rule 22).

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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, no later than 12.00 noon on the first business day 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).

Notes to Rule 22:

1. *Consultation with the Executive*

In any case of doubt as to the application of this Rule 22 the Executive should be consulted.

2. *Disclosure of dealings in offeror securities*

Disclosure of dealings in relevant securities of an offeror is only required in the case of a securities exchange offer.

3. *Offer period*

This Rule 22 applies only during an offer period. Dealings by any associate of an offeror or the offeree company (other than persons acting in concert with any offeror) need not be disclosed during the period between the date when the offer becomes or is declared unconditional in all respects and the end of the offer period.

4. *Relevant Securities*

Relevant securities for the purpose of this Rule 22 include:-

- (a) *securities of the offeree company which are being offered for or which carry voting rights;*
- (b) *equity share capital of the offeree company and, in a securities exchange offer only, of an offeror or of a company the securities of which are to be offered as consideration for the offer (as the case may be);*
- (c) *securities of an offeror or of a company the securities of which are to be offered as consideration for the offer (as the case may be) which carry the same or substantially the same rights as any to be issued as consideration for the offer;*
- (d) *securities carrying conversion or subscription rights into any of the foregoing; and*

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- (e) *options and derivatives in respect of any of the foregoing.*

The taking, granting, exercising, lapsing or closing out of an option (including a traded option contract) in respect of any of the foregoing or the exercise or conversion of any security under (d) above whether in respect of new or existing securities and the acquisition of, entering into, closing out, exercise (by either party) of any rights under, or issue or variation of, a derivative will be regarded as a dealing in relevant securities (see also Notes 7 and 9 to this Rule 22).

5. *Timing of disclosure*

Disclosure must be made no later than 12.00 noon on the first business day 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 after the date of the transaction. The Executive should be consulted at the earliest opportunity if there is difficulty in meeting the deadlines set.

6. *Method of disclosure*

- (a) *Public disclosure*

Dealings should be disclosed in writing to the Executive using the prescribed forms available on the SFC's website. The Executive will arrange for the posting of the disclosure on the SFC's website and on the Stock Exchange's website.

Persons proposing to engage in dealings should also acquaint themselves with the disclosure requirements of Part XV of the Securities and Futures Ordinance (Cap. 571).

If any person chooses to make an announcement regarding dealings in addition to making formal disclosure, that person must ensure that no confusion results.

Public disclosure may be made by the person concerned or by an agent acting on its behalf. Where there is more than one agent (e.g. a merchant bank and a stockbroker), particular care should be taken to ensure that the responsibility for disclosure is agreed between the parties and that it is neither overlooked nor duplicated.

- (b) *Private disclosure*

Dealings should be disclosed in writing to the Takeovers and Mergers Executive – Securities and Futures Commission using the prescribed forms available on the SFC's website; they are not published.

7. *Details to be included in disclosures*

- (a) *Public disclosure (Rules 21.7, 22.1(a) and 22.1(b))*

A specimen disclosure form may be obtained from the Executive or the SFC's website. Disclosures should follow that format.

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A disclosure of dealings must include the following information:–

- (i) the total of the relevant securities in question purchased or sold, or redeemed or bought back by the company itself;*
- (ii) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed);*
- (iii) the identity of the person dealing and, if different, the owner or controller;*
- (iv) if the dealing is by an associate of an offeror or the offeree company, an explanation of how that status arises;*
- (v) if the disclosure is made by a 5% shareholder or group of shareholders, a statement to that effect;*
- (vi) the resultant total amount of relevant securities owned or controlled by the person dealing (including those of any person with whom there is an agreement or understanding) and the percentage which it represents; and*
- (vii) if relevant, details of any arrangements required by Note 8 to this Rule 22.*

For the purpose of disclosing identity, the ultimate beneficial owner or controller must be specified, in addition to the person dealing. The naming of nominees or vehicle companies is insufficient. The Executive may require additional information to be disclosed when it appears to be appropriate, for example to identify other persons who have an interest in the securities in question. Subject to Note 10 to this Rule 22, in the case of disclosure of dealings by fund managers on behalf of discretionary clients, the clients need not be named.

In the case of option business or dealings in options or derivatives full details should be given so that the nature of the dealings can be fully understood. For options this should include the number of securities under option, the exercise period (or in the case of exercise, the exercise date), the exercise price and any option money paid or received. For derivatives this should include, at least, the number of reference securities to which they relate (when relevant), the maturity date (or if applicable the closing out date) and the reference price.

If an associate is an associate for more than one reason (for example because he falls within classes (5) and (6) of the definition of associate), all the reasons must be specified.

Where a disclosure of a securities borrowing and lending transaction (including the unwinding of such a transaction) is made pursuant to Notes 2 and 3 to Rule 21.7, all relevant details should be given as specified in the specimen disclosure form.

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Where a person to whom Rule 21.7 applies discloses a dealing in relevant securities and has previously borrowed relevant securities from, or lent such securities to, another person, the disclosure must be made in a form agreed by the Executive.

(b) *Private disclosure (Rules 22.1(b)(ii) and 22.2)*

Private disclosure under Rule 22.1(b)(ii) by exempt fund managers connected with an offeror or the offeree company must be in the form required by the Executive. A specimen disclosure form may be obtained from the Executive or the SFC website.

A private disclosure under Rule 22.2 must include the identity of the person dealing, the total number of relevant securities purchased or sold and the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). A specimen disclosure form may be obtained from the Executive or the SFC website. Rule 22.2 disclosures should follow that format. In the case of dealings in options or derivatives the same information as specified in Note 7(a) to this Rule 22 is required.

8. *Indemnity and other arrangements*

For the purpose of this Note 8, an arrangement includes any arrangement involving rights over shares, any indemnity arrangement, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or refrain from dealing.

If any person is party to such an arrangement with any offeror or an associate of any offeror, whether in respect of relevant securities of that offeror or the offeree company, not only will that render such person an associate of that offeror but it is also likely to mean that such person is acting in concert with that offeror; in that case Rules 21, 23, 24, 25 and 26 and paragraph 4 of Schedule I will be relevant. If any person is party to such an arrangement with an offeree company or an associate of an offeree company, not only will that render such person an associate of the offeree company but Note 5 to Rule 26.1 and paragraph 2 of Schedule II may be relevant.

When such an arrangement exists with any offeror, with the offeree company or with an associate of any offeror or the offeree company, details of the arrangement must be publicly announced and disclosed in the relevant circular, whether or not any dealing takes place (see also Rule 21.5).

Details of any change to any term of an indemnity or other arrangement which has previously been disclosed under this Note 8 must also be disclosed. In cases of doubt, the Executive should be consulted.

9. *Dealings in options and derivatives*

A disclosure of dealings in options or derivatives is only required if the person dealing in such options or derivatives owns or controls 5% or more of the class of

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securities which is the subject of the option or to whose price the derivative is referenced.

10. Discretionary fund managers

The principle normally applied by the Executive is that where the investment decision is made by a discretionary fund manager the relevant securities are treated as controlled by him and not by the person on whose behalf the fund is managed. For that reason, Rule 22.3 requires a discretionary fund manager to aggregate the investment accounts which he manages for the purpose of determining whether he has an obligation to disclose. The beneficial owner would not normally, therefore, be concerned with disclosure to the extent that his investment is managed on a discretionary basis.

This approach assumes that the discretionary fund manager does not take instructions from the beneficial owner on the dealings in question and that fund management arrangements are not established or used to avoid disclosure.

Where a transaction is carried out by a discretionary fund manager for the account of a person who is acting in concert with the offeror or the offeree company or a 5% shareholder, disclosure is also required by the discretionary fund manager of that person's dealings.

11. Responsibilities of stockbrokers, banks and other intermediaries

Stockbrokers, banks and others who deal in relevant securities on behalf of clients have a general duty to ensure, so far as they are able, that those clients are aware of the disclosure obligations attaching to associates of an offeror or the offeree company and other persons under Rule 22 and that those clients are willing to comply with them. Principal traders and dealers who deal directly with investors should, in appropriate cases, likewise draw attention to the relevant Rules. However, this does not apply when the total value of dealings (excluding stamp duty and commission) in any relevant security undertaken for a client during any 7 day period is less than \$1 million.

This dispensation does not alter the obligation of principals, associates and other persons themselves to initiate disclosure of their own dealings, whatever total value is involved.

Intermediaries are expected to co-operate with the Executive in its dealings enquiries. Therefore, those who deal in relevant securities should appreciate that stockbrokers and other intermediaries will supply the Executive with relevant information as to those dealings, including identities of clients, as part of that co-operation.

12. Unlisted public companies

The requirements to disclose dealings apply also to dealings in relevant securities of unlisted public companies.



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13. Potential offerors

If a potential offeror has been the subject of an announcement that talks are taking place (whether or not the potential offeror has been named) or has announced that it is considering making an offer, the potential offeror and persons acting in concert with it must disclose dealings in accordance with Rule 22 and such disclosures must include the identity of the potential offeror.

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.



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23. Nature of consideration to be offered

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 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 before its commencement;
- (b) subject to paragraph (a) above, shares of any class under offer in the offeree company are purchased for cash (but see Note 5 to this Rule 23.1) by an offeror or any person acting in concert with it during the offer period, 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; or
- (c) in the view of the Executive there are circumstances which render such a course necessary in order to give effect to General Principle 1.

If the offeror considers that the highest price (for the purposes of this Rule 23.1) should not apply in a particular case, the offeror should consult the Executive, which has discretion to agree a lower price.

(See also Rule 36.)

Notes to Rule 23.1:

1. *Price*

In calculating the price paid, stamp duty and dealing costs should be excluded.

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 offer period may be deducted.

3. *When the obligation is satisfied*

The obligation to make cash available under this Rule 23.1 will be considered to have been met if, at the time the purchase was made, a cash offer or cash alternative at a price per share not less than that required by this Rule 23.1 was open for acceptance, even if that offer or alternative closes for acceptance

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immediately thereafter. If the cash offer or cash alternative is less than that required under this Rule 23.1 (or there is no cash offer or alternative or they have closed already), the offeror is under an obligation to revise the offer and Rule 16 shall apply.

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 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 within 6 months 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 after the date of the revised offer document, 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.)

7. Convertible securities, warrants, options and subscription for new shares

The conversion or exercise of convertible securities, warrants, options or other subscription rights will be treated as purchases of the underlying shares at a price calculated by reference to the purchase price of the convertible securities, warrants or options and the relevant conversion or exercise terms. Subscription for new shares will be treated as a purchase for the purposes of this Rule 23.1. In any case of doubt, the Executive should be consulted.

8. Relevant factors for adjusted price

Factors which the Executive might take into account when considering an application for an adjusted price include:-

- (a) *the size and timing of the relevant purchases;*

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- (b) *the attitude of the offeree board;*
- (c) *whether shares have been purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (d) *the number of shares purchased in the preceding 6 months.*

9. *Discretionary fund managers and principal traders*

Dealings by discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 21.6.

10. *Allotted but unissued shares*

When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Executive should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under this Rule 23.1.

11. *Dividends*

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.

12. *Offer period*

References to the offer period in this Rule 23.1 are to the time during which the offeree company is in an offer period, irrespective of whether the offeror was contemplating an offer when the offer period commenced.

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 within 3 months

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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 to Rule 23.2:

1. *Basis on which securities are to be offered*

Any securities required to be offered pursuant to this Rule 23.2 must be offered on the basis of the same number of consideration securities received by the vendor for each offeree company share rather than on the basis of securities equivalent to the value of the securities received by the vendor at the time of the relevant purchase. Where there has been more than one relevant purchase, offeror securities must be offered on the basis of the greater or greatest number of consideration securities received for each offeree company share.

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 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.

3. *Vendor placings*

Shares acquired in exchange for securities will normally be deemed to be purchases for cash for the purposes of this Rule 23.2 if an offeror or any of its associates arranges the immediate placing of such consideration securities for cash, in which case no obligation to make a securities offer under this Rule will arise.

4. *Management retaining an interest*

In a management buy-out or similar transaction, if the only offeree company shareholders who receive offeror securities are members of the management of the offeree company, the Executive will not, so long as the requirements of Note 3 to Rule 25 are complied with, require all offeree company shareholders to be offered offeror securities pursuant to Rule 23.2, even though such members of the management of the offeree company propose to sell, in exchange for offeror securities, more than 10% of the offeree company's shares.

If however, offeror securities are made available to any non-management shareholders (regardless of the size of their holding of offeree company shares), the Executive will normally require such securities to be made available to all shareholders on the same terms.

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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 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 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.

7. *Applicability of the Notes to Rule 23.1 to Rule 23.2*

See Notes 2, 5, 6, 7 and 9 to 12 to Rule 23.1 which may be relevant.



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24. Purchases resulting in an obligation to offer a minimum level of consideration

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 3 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) 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.

(b) Purchases after a Rule 3.5 announcement

If, after an announcement made in accordance with Rule 3.5 and during the offer period, the offeror or any person acting in concert with it purchases shares in the offeree company at above the offer price (being the then current value of the offer), then the offeror must increase the offer to not less than the highest price (excluding stamp duty and dealing costs) paid for any shares so acquired.

Purchases of shares in the offeree company may also give rise to an obligation under Rule 23. Where an obligation is incurred under Rule 23 by reason of any such purchases, compliance with Rule 23 will normally be regarded as satisfying any obligations under this Rule 24 in respect of those purchases.

(See also Rule 36.)

24.2 Offers involving a further issue of listed securities

For the purposes of this Rule 24, if the offer involves a further issue of securities of a class already listed on the Stock Exchange, the current value of the offer on a given day should normally be established by reference to the weighted average traded price of board lots (excluding special bargains and odd lots) of such securities traded during the immediately preceding trading day. If the offer involves a combination of cash and securities and further purchases of the offeree company's shares oblige the offeror to increase the value of the offer, the offeror must endeavour, as far as practicable, to effect such increase while maintaining the same ratio of cash to securities as is represented by the offer.

24.3 Shareholder notification

Immediately after the purchase of shares at above the offer price, it must be announced that a revised offer will be made in accordance with this Rule 24 (see also Rule 16). The announcement should also state the number and class of shares purchased and the price paid.

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Notes to Rule 24:

1. *No increase during final 14 days of offer period*

Since an offer must remain open for acceptance for 14 days after the date of the revised offer document, 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).

2. *Convertible securities, warrants, options and subscription for new shares*

The conversion or exercise of convertible securities, warrants, options or other subscription rights will be treated as purchases of the underlying shares at a price calculated by reference to the purchase price of the convertible securities, warrants or options and the relevant conversion or exercise terms. Subscription for new shares will be treated as a purchase for the purposes of this Rule 24. In any case of doubt, the Executive should be consulted.

3. *Cum dividend*

When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, purchases in the market or otherwise by an offeror or any person acting in concert with it may be made at prices up to the net cum dividend equivalent of the offer value without necessitating any revision of the offer.

4. *Adjusted terms*

The Executive's discretion to agree adjusted terms pursuant to Rule 24.1(a)(i) or (ii) will only be exercised in exceptional circumstances.

Factors which the Executive might take into account when considering an application for adjusted terms include:—

- (a) whether the relevant purchase was made on terms then prevailing in the market;*
- (b) changes in the market price of the shares since the relevant purchase;*
- (c) the size and timing of the relevant purchase;*
- (d) the attitude of the offeree company's board;*
- (e) whether shares have been purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (f) whether a competing offer has been announced for the offeree company.*

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5. *Purchases 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.

6. *No less favourable terms*

For the purpose of Rule 24.1(a), except where Rule 26 (mandatory offer) or Rule 23 (requirement for cash offer or securities offer) applies, it will not be necessary to make a cash offer available even if shares have been purchased for cash. However, any securities offered as consideration must, at the date of the announcement of the firm intention to make the offer, have a value at least equal to the highest relevant purchase price. The proposed consideration should be discussed with the Executive, which will be concerned to see that the price at which the securities are valued in the calculation of the consideration is not affected by undue movements in price or volume of trading in the securities. If there has been any such undue movement in the period leading to such an announcement, the Executive may require the consideration to be adjusted or re-calculated so as to exclude, so far as practicable, the effects of the undue movement.

If there is a restricted market in the securities of an offeror, or if the amount of securities to be issued of a class already listed is large in relation to the amount already issued, the Executive may require justification of prices used to determine the value of the offer.

7. *Unlisted securities*

An offer where the consideration consists of securities for which an immediate listing is not to be sought will not be regarded as satisfying any obligation incurred under this Rule 24.

8. *Discretionary fund managers and principal traders*

Dealings by discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 21.6.

9. *Offer period*

References to the offer period in this Rule 24 are to the time during which the offeree company is in an offer period, irrespective of whether the offeror was contemplating an offer when the offer period commenced.



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25. Special deals with favourable conditions

Except with the consent of the Executive, neither the offeror nor any person acting in concert with it may make any arrangements with shareholders or enter into arrangements to purchase or sell securities of the offeree company, or which involve acceptance of an offer, either during an offer or when an offer is reasonably in contemplation or for 6 months after the close of such offer if such arrangements have favourable conditions which are not to be extended to all shareholders.

Notes to Rule 25:

1. *Top-ups and other arrangements*

An arrangement with special conditions attached includes any arrangement where there is a promise to make good to a vendor of shares any difference between the sale price and the price of any subsequent successful offer or any other price top-up arrangements. An irrevocable commitment to accept an offer combined with an option to put the shares should the offer fail will also be regarded as such an arrangement.

Arrangements made by an offeror with a person acting in concert with it, whereby shares in the offeree company are purchased by the person acting in concert on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule 25. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Executive must be consulted.

2. *Finders' fees*

The Rule also covers cases where a shareholder in an offeree company is to be remunerated for playing a part in promoting an offer. The Executive will not normally consent to such remuneration unless it can be demonstrated that the arrangement is on normal commercial terms and that a person who had performed the same services, but had not at the same time been a shareholder, would have been entitled to receive no less remuneration. It is not acceptable for such remuneration to be shared with any other shareholder of the offeree company. The Executive must be consulted at the earliest opportunity in all circumstances where this Note may be relevant.

3. *Management retaining an interest*

Sometimes an offeror may wish to arrange for the management of the offeree company to remain financially involved in the business. The methods by which this may be achieved vary but the principle which the Executive is concerned to safeguard is that the risks as well as the rewards associated with an equity shareholding should apply to the management's retained interest. For example, the Executive would not normally find acceptable an option arrangement which guaranteed the original offer price as a minimum. The Executive will normally require, as a condition of its consent, that the independent adviser to the offeree company publicly states that in its opinion the arrangements with the management

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of the offeree company are fair and reasonable. In addition, where the offeror and the management of the offeree company together hold more than 5% of the equity share capital of the offeree company, the Executive will also normally require such arrangements to be approved at a general meeting of the offeree company's shareholders. At this meeting the vote must be a vote of independent shareholders. Holdings of convertible securities, warrants, options and other subscription rights may also be relevant in determining whether a general meeting is required, particularly where such rights are exercisable during an offer. The Executive must be consulted in all circumstances where this Note may be relevant.

4. Disposal of offeree company assets

In some cases, certain assets of the offeree company may be of no interest to the offeror. There is a possibility, if a shareholder in the offeree company seeks to acquire the assets in question, that the terms of the transaction will be such as to confer a special benefit on him; in any event, the arrangement is not capable of being extended to all shareholders. The Executive will normally consent to such a transaction, provided that the independent adviser to the offeree company publicly states that in his opinion the terms of the transaction are fair and reasonable and the transaction is approved at a general meeting of the offeree company's shareholders. At this meeting the vote must be a vote of shareholders who are not involved in or interested in the transaction (otherwise than solely as shareholders of the offeree company). Where such a sale of assets takes place after the relevant period, the Executive will be concerned to see that there was no element of pre-arrangement in the transaction.

The Executive will consider allowing such a procedure in respect of other transactions where the issues are similar, e.g. a transaction with an offeree company shareholder involving offeror assets.

5. Repayment of shareholder loans

A repayment to a shareholder of indebtedness due by the offeree company, or an assignment by a shareholder to the offeror or a person acting in concert with the offeror of a debt due from the offeree company, may be considered as a special deal under this Rule 25. The Executive would normally consent to such repayment or assignment if it is an arms length transaction on normal commercial terms, subject to compliance with all the requirements under Note 4 to Rule 25.

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26. Mandatory offer

26.1 When mandatory offer required

Subject to the granting of a waiver by the Executive, when

- (a) any person acquires, whether by a series of transactions over a period of time or not, 30% or more of the voting rights of a company;
- (b) two or more persons are acting in concert, and they collectively hold less than 30% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 30% or more of the voting rights of the company;
- (c) any person holds not less than 30%, but not more than 50%, of the voting rights of a company and that person acquires additional voting rights and such acquisition has the effect of increasing that person's holding of voting rights of the company by more than 2% from the lowest percentage holding of that person in the 12 month period ending on and inclusive of the date of the relevant acquisition; or
- (d) two or more persons are acting in concert, and they collectively hold not less than 30%, but not more than 50%, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than 2% from the lowest collective percentage holding of such persons in the 12 month period ending on and inclusive of the date of the relevant acquisition;

that person shall extend offers, on the basis set out in this Rule 26, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares (see also Rule 36).

Offers for different classes of equity share capital must be comparable and the Executive should be consulted in advance in such cases. (See Rule 14.)

Notes to Rule 26.1:

1. *Persons acting in concert*

The majority of questions which arise relate to persons acting in concert. The definition of "acting in concert" contains a list of persons who are presumed to be acting in concert unless the contrary is established. The following Notes illustrate how this Rule 26 and definition are interpreted by the Executive.

There may also be circumstances where there are changes in the make-up of a group acting in concert that effectively result in a new group being formed or the balance of the group being changed significantly. This may occur, for example, as a result of the sale of all or a substantial part of his shareholding by one member of a concert party group to other existing members or to another person. The Executive will apply the criteria set out below, and in particular in Note 6(a) and Note 7 to this

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Rule 26.1 and may require a general offer to be made even when no single member holds 30% or more.

2. Shareholders coming together to act in concert

Acting in concert requires the co-operation of two or more parties. Where a party has acquired shares independently of other shareholders, or potential shareholders, but subsequently comes together with other shareholders to cooperate to obtain or consolidate control of a company and their existing shareholdings amount to 30% or more of the voting rights of that company, the Executive would not normally require a general offer to be made under Rule 26.1. Such parties having once joined together however, the provisions of Rule 26.1 would apply so that:—

- (a) if the combined shareholdings amounted to less than 30% of the voting rights of that company, an obligation to make an offer would arise if any member of that group acquired further shares such that total holdings of voting rights reached 30% or more; or*
- (b) if the combined shareholdings amounted to between 30% and 50% of the voting rights of that company, no member of that group could acquire shares which would result in acquisitions by the group amounting to more than 2% of the voting rights of the company in any 12 month period without incurring a similar obligation.*

3. Banks

An arm's length agreement between a shareholder and a bank under which the shareholder borrows money for the acquisition of shares which gives rise to an obligation under this Rule 26 will not normally result in the bank becoming a concert party. However, see class (9) of the definition of acting in concert.

4. Shareholders voting together

The Executive will not normally regard the action of shareholders voting together on particular resolution as action which of itself should lead to an offer obligation, but that circumstance may be taken into account as one indication that the shareholders are acting in concert.

5. Directors of a company

The directors of companies opposing an offer, their advisers, and others acting in concert with them, should consult the Executive before the acquisition of any voting rights which might lead to the incurring of an obligation under this Rule 26.

(See also class (6) of the definition of acting in concert.)

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

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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:–

- (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;*
- (2) the price paid for the shares acquired; and*
- (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.*

(b) *Acquisitions from non-members*

When the group holds between 30% and 50% of the voting rights, an offer obligation will arise if there are acquisitions from non-members of more than 2% in aggregate in any 12 month period. When the group holds over 50%, subject to Note 17 to this Rule 26.1 no obligations normally arise from acquisitions by any member of the group.

However, subject to considerations similar to those set out in paragraph (a) of this Note, the Executive may regard as giving rise to an obligation to make an offer the acquisition by a single member of the group of voting rights sufficient

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to increase his holding to 30% or more or, if he already holds between 30% and 50%, by more than 2% in any 12 month period.

(c) Calculation of highest price

For the purpose of calculating the highest price paid in the event of an offer under this Rule 26, the prices paid for voting rights transferred between members of a group acting in concert may be relevant where, for example, all voting rights held within a group are transferred to that member making the offer or where prices paid between members are materially above the market price.

7. Vendor of part only of a shareholding

Shareholders sometimes wish to sell part only of their holdings or a purchaser may be prepared to acquire part only of a holding. This arises particularly where an acquirer wishes to acquire under 30%, thereby avoiding an obligation under this Rule 26 to make a general offer. The Executive will be concerned to see whether in such circumstances the arrangements between the purchaser and vendor effectively allow the purchaser to exercise a significant degree of control over the retained voting rights, in which case a general offer would normally be required. These concerns will also apply when the purchaser is already a member of a group acting in concert with the vendor, or when the purchaser joins such a group.

The Executive will also take into account any other transactions between the purchaser and the vendor, and between the purchaser and other members of the group acting in concert with the vendor. This could include, for example, the aggregation of transfers of voting rights to the purchaser over a period of time, or arrangements which have an effect similar to transfer, such as the underwriting by a purchaser of a rights issue which the vendor has agreed not to take up, or a placing of shares with the purchaser.

A judgement on whether such a significant degree of control exists will obviously depend on the circumstances of each individual case, but, by way of guidance, the Executive would regard the following points as having some significance:—

- (a) *there would be less likelihood of a significant degree of control over the retained voting rights if the vendor was not an "insider";*
- (b) *the payment of a very high price for the voting rights would tend to suggest that control over the entire holding was being secured;*
- (c) *if the parties negotiate options over the retained voting rights it may be more difficult for them to satisfy the Executive that a significant degree of control is absent. On the other hand, where the retained voting rights are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms) a correspondingly greater element of independence may be presumed; and*
- (d) *it would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are*

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reasonably compatible with his own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from any other evidence of a significant degree of control over the retained voting rights, would not lead the Executive to conclude that a general offer should be made.

7A. Placing

The Executive would not give its consent to the acquisition of a holding of 30% or more by a person in conjunction with arrangements by the purchaser to place sufficient voting rights to reduce the holding below 30%.

When a purchaser acquires just under 30% of the voting rights of a company, it is the prime responsibility of the purchaser to ensure that it and parties acting in concert with it will not hold an aggregate of 30% or more of the voting rights of the company as a result of the acquisition. In the event that such voting rights would result in the concert group holding in aggregate 30% or more of the voting rights of the company a mandatory offer obligation will be triggered under this Rule 26.

Other general interpretations

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

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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 after the date of the document.

An offer made in compliance with this Rule 26 must remain open for not less than 14 days after the date of the offer document.

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.

10. Convertible securities, warrants and options

In general, the acquisition of convertible securities, warrants or options does not give rise to an obligation under this Rule 26 to make an offer but the exercise of any conversion or subscription rights or options will be considered to be an acquisition of voting rights for the purpose of this Rule 26.

The Executive will, however, give special consideration to the granting and taking of options, and will have regard to the time when the option is exercisable, whether the grantor of the option has also sold part of his holding (see Note 7 to this Rule 26.1), the consideration paid for the option, and any other circumstances in which the relationship and arrangements between the two parties concerned are such that effective control over underlying voting rights has or may have passed to the taker of the option. Where the Executive takes the view that effective control over the voting rights has passed, it will treat the grant of the option as constituting an acquisition of the voting rights.

The Executive will not normally require an offer to be made following the exercise of convertible securities, warrants, options or other subscription rights in respect of new securities provided that the issue of convertible securities, warrants or options to the person exercising the rights is approved by a vote of independent shareholders in general meeting in the manner described in Note 1 on dispensations from Rule 26.

Any holder of conversion or subscription rights who intends to exercise such rights and so to hold 30% or more of the voting rights of a company (or to have acquired

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more than 2% of such voting rights in any 12 month period) should consult the Executive before doing so to determine whether an offer obligation would arise under this Rule 26 and if so at what price. (See also Note 2(c) to Rule 26.3.)

Where there are conversion or subscription rights currently capable of being exercised, this Rule 26 is invoked at a level of 30% of the existing voting rights. Where they are capable of being exercised during an offer period, Note 2 to Rule 6 and Note 3 to Rule 30.2 will be relevant. (See also Note 18 to this Rule 26.1.)

11. *The 2% creeper – acquisitions and dispositions of voting rights during 12 month period*

A person, or group of persons acting in concert, holding 30% or more of the voting rights of a company is free to acquire and dispose of further voting rights within a band of 2% above the greater of 30% or its lowest percentage holding of voting rights in the previous 12 month period without incurring an obligation to make a general offer. Within this band dispositions of voting rights may be netted off against acquisitions thereof.

12. *The 2% creeper – effect of dispositions*

If a person, or group of persons acting in concert, holding 30% or more of the voting rights of a company disposes of voting rights in circumstances other than those mentioned in Note 11 to this Rule 26.1, the reduced holding establishes a new lowest percentage holding for purposes of the 2% creeper. As a result, an obligation to make a general offer will arise if:–

- (i) the reduced holding is 30% or more and is increased by net acquisitions of voting rights by more than 2% in any 12 month period, or
- (ii) following a reduction of the holding below 30% it is increased to 30% or more.

Except as mentioned in Note 11 to this Rule 26.1, dispositions of voting rights may not be netted off against acquisitions thereof.

13. *The 2% creeper – effect of dilution*

Subject to Note 14 to this Rule 26.1, the dilution of a holding of voting rights by the issue of new shares or otherwise will normally be regarded by the Executive as equivalent to a reduction by way of a disposition of voting rights.

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 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.

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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.

15. *The 2% creeper – effect of whitewash*

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 Note 1 on dispensations from Rule 26, 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 after 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. (See also Notes 11 and 12 to this Rule 26.1.)

By way of example, if a person, or group of persons acting in concert, originally holding 31% comes to hold 38% of the voting rights of a company as a result of a whitewashed transaction, such person or group of persons would be deemed to have a lowest percentage holding of 38% and thereby be free to acquire voting rights within the 2% band above 38% in the following 12 month period, unless any disposal of voting rights causes the lowest percentage holding of such person or group of persons to fall below 38%.

16. *The 2% creeper – voting rights acquired during mandatory offer*

For purposes of the 2% creeper, following a mandatory offer which does not become unconditional an offeror shall be deemed to have a lowest percentage holding equal to his aggregate holding of voting rights of the offeree company at the close of the offer period, including any voting rights which he acquired during the offer.

17. *The 2% creeper – holdings between 48% and 50%*

It should be noted also that the restriction in Rule 26.1(c) and (d) applies to any immediately preceding 12 month period if at any time during such period a person, or group of persons acting in concert, holds 50% or less of the voting rights. Thus, a person or group of persons with 49% of the voting rights of a company will be restricted from acquiring more than a further 2% of the offeree company's voting rights (resulting in a total of 51%) for a period of 12 months thereafter.

18. *Allotted but unissued shares*

When shares of a company carrying voting rights have been allotted (even if only provisionally) but have not yet been issued, for example, under a rights issue when

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the shares are represented by renounceable letters of allotment, the Executive should be consulted.

19. Discretionary fund managers and principal traders

Deals by discretionary fund managers and principal traders which are connected with an offeror or the offeree company will be treated in accordance with Rule 21.6.

20. Employee benefit trusts

The Executive must be consulted in advance of any proposed acquisition of new or existing shares if the aggregate holdings of the directors, any other shareholders acting, or presumed to be acting, in concert with any of the directors and the trustees of an employee benefit trust ("EBT") will, as a result of the acquisition, equal or exceed 30% of the voting rights or, if already exceeding 30% will increase further. The Executive must also be consulted in any case where a shareholder (or group of shareholders acting, or presumed to be acting, in concert) holds 30% or more (but not more than 50%) of the voting rights and it is proposed that an EBT acquires shares.

The mere establishment and operation of an EBT will not by itself give rise to a presumption that the trustees are acting in concert with the directors and/or a controlling shareholder (or group of shareholders acting, or presumed to be acting, in concert). The Executive, will, however, consider all relevant factors including: the identities of the trustees; the composition of any remuneration committee; the nature of the funding arrangements; the percentage of the issued share capital held by the EBT; the number of shares held to satisfy awards made to directors; the number of shares held in excess of those required to satisfy existing awards; the prices at which, method by which and persons from whom existing shares have been or are to be acquired; the established policy or practice of the trustees as regards decisions to acquire shares or to exercise votes in respect of shares held by the EBT; whether or not the directors themselves are presumed to be acting in concert; and the nature of any relationship existing between a controlling shareholder (or group of shareholders acting, or presumed to be acting, in concert) and both the directors and the trustees. Its consideration of these factors may lead the Executive to conclude that the trustees are acting in concert with the directors and/or a controlling shareholder (or group).

This Note will not apply in respect of shares held within the EBT but controlled by the beneficiaries.

21. Borrowed or lent shares

For the purpose of Rule 26, if a person has borrowed or lent shares he will be treated as holding the voting rights in respect of such shares save for any borrowed shares which the borrower has either on-lent or sold. A person must consult the Executive before acquiring or borrowing shares (irrespective of whether the borrowed shares are intended to be on-lent or sold) which, when taken together with shares in which he or any person acting in concert with him is already interested, and shares already borrowed or lent by him or any person acting in concert with him,

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might trigger a mandatory offer under Rule 26. If it is determined that a mandatory offer under Rule 26 will be triggered as a result of such acquisition or borrowing of shares, the Executive will then decide, inter alia, how the borrowed or lent shares should be treated for the purpose of the acceptance condition.

26.2 Conditions

Except with the consent of the Executive:–

- (a) offers made under this Rule 26 must be conditional only upon the offeror having received acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding more than 50% of the voting rights; and
- (b) no acquisition of voting rights which would give rise to a requirement for an offer under this Rule 26 may be made if the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements.

Notes to Rule 26.2:

1. *When more than 50% is held*

An offer made under this Rule 26 should normally be unconditional when the offeror and persons acting in concert with it hold more than 50% of the voting rights before the offer is made.

2. *When dispensations may be granted*

The Executive will not normally consider a request for a dispensation under this Rule 26 other than in exceptional circumstances, such as when the necessary cash is to be provided, wholly or in part, by a cash underwritten alternative which is conditional on the obtaining of a listing for new shares. The Executive will normally require that both the announcement of the offer and the offer document include statements that if the acceptance condition is satisfied but the listing condition is not, within the time required, and as a result the offer lapses:–

- (i) *the offeror will immediately make a new cash offer in compliance with this Rule 26 at the price required by this Rule 26; and*
- (ii) *until posting of the offer document in respect of that new offer, the offeror and persons acting in concert with it can only exercise less than 30% of the voting rights of the offeree company.*

When a dispensation is given, the offeror must endeavour to obtain a listing for the new shares with all due diligence.

3. *Acceptance condition*

Notes to Rule 30.2 apply to offers under this Rule 26.

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In the event that an offer under Rule 26 lapses because a purchase may not be counted as a result of Note 7 to Rule 30.2 and subsequently the purchase is completed, the Executive should be consulted. It will require appropriate action to be taken such as the making of a new offer or the reduction of the offeror's holding.

4. Regulatory approvals

No acquisition of voting rights which would give rise to a requirement for an offer under this Rule 26 may be made if such acquisition or offer may require prior approval from a regulatory body (in relation to merger control or otherwise). The restrictions in Rule 26.2 mean that the offeror cannot make an offer conditional upon any such regulatory approval. A potential offeror under this Rule 26 must seek the relevant regulatory approval before he triggers an obligation to make a general offer under Rule 26.1.

If an offeror triggers a mandatory offer without obtaining the relevant regulatory approval he will be in breach of this Note 4 and subject to possible disciplinary action.

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 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.
- (b) The Executive's consent is required if the offeror considers that the highest price should not apply in a particular case.

Notes to Rule 26.3:

1. Nature of consideration

When voting rights have been acquired for a consideration other than cash, the offer must nevertheless be in cash or be accompanied by a cash alternative of at least equal value, which must be determined by an independent valuation.

When there have been significant acquisitions in exchange for securities, General Principle 1 may be relevant and such securities may be required to be offered to all shareholders: a cash offer will also be required. The Executive should be consulted in such cases.

2. Calculation of the price

- (a) *In calculating the price paid, stamp duty and broker's commission should be excluded.*

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- (b) *If voting rights have been acquired in exchange for listed securities, the price will normally be established by reference to the weighted average traded price of board lots (excluding special bargains and odd lots) of the listed securities on the date of the acquisition.*
- (c) *If voting rights have been acquired by the conversion or exercise of convertible securities, warrants, options or other subscription rights, the price will normally be established by reference to the purchase price of the convertible securities, warrants or options and the relevant conversion or exercise terms. If however the convertible securities or warrants were issued or sold privately to the purchaser, the Executive may also take into account the weighted average traded price of board lots (excluding special bargains and odd lots) of the relevant shares on the day on which notice of conversion or subscription was submitted.*

The Executive should be consulted in advance in the circumstances described in (b) and (c) above.

3. Dividends

See Note 11 to Rule 23.1.

4. Dispensations from highest price

Factors which the Executive might take into account when considering an application for an adjusted price include:-

- (a) *the size and timing of the relevant purchases;*
- (b) *the attitude of the board of the offeree company;*
- (c) *whether shares had been purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (d) *the number of shares purchased in the preceding 12 months.*

26.4 Restrictions on control by offeror

Except with the consent of the Executive, no nominee of an offeror or persons acting in concert with it may be appointed to the board of the offeree company or any of its subsidiaries, nor may an offeror and persons acting in concert with it exercise offeree company voting rights, until the offer document has been posted.

Note to Rule 26.4:

Cross reference to Rule 7

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

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26.5 Obligations of directors selling shares

When directors (and their close relatives, related trusts and companies controlled by them, their close relatives or related trusts) sell shares to a purchaser as a result of which the purchaser is required to make an offer under this Rule 26, such directors must ensure that as a condition of the sale the purchaser undertakes to fulfil his obligations under this Rule 26.

Notes on dispensations from Rule 26:

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.

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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 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.

2. Enforcement of security for a loan, receivers, etc.

Where a shareholding in a company is charged to a bank or lending institution on an arm's length basis and in the ordinary course of its business as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a general offer under this Rule 26, the Executive will normally waive the requirement, provided that the security was not given at a time when the lender had reason to believe that enforcement was likely. In any case where arrangements are to be made involving a transfer of voting rights to the lender, but which do not amount to enforcement of the security, the Executive will wish to be convinced that such arrangements are necessary to preserve the lender's security and will also take into account the proviso above. When following enforcement a lender wishes to sell all or part of his shareholding, the provisions of this Rule 26 apply to the purchaser.

Although a receiver or liquidator of a company is not required to make an offer when he takes control of a holding of 30% or more of the voting rights of another company, the provisions of this Rule 26 apply to a purchaser from such a person.

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3. *Rescue operations*

There are occasions when a company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities without approval by a vote of independent shareholders or the acquisition of existing securities by the rescuer which would otherwise fall within the provisions of this Rule 26 and normally require a general offer. The Executive will consider waiving the requirements of this Rule 26 in such circumstances; particular attention will be paid to the views of the directors and advisers of the potential offeree company.

The requirements of this Rule 26 will not normally be waived in a case where a major shareholder in a company rather than that company itself is in need of rescue. The situation of that shareholder may have little relevance to the position of other shareholders and, therefore, the purchaser from such major shareholder must expect to be obliged to extend an offer under this Rule 26 to all other shareholders.

In considering whether to grant a waiver, the Executive must be satisfied about the urgency of the rescue and that it would be impracticable for the rescue proposal to be submitted for approval by shareholders not involved in or interested in the transaction under Note 1 on dispensations from Rule 26. If the urgency of the rescue is not established, the Executive may require an independent vote as a condition for a waiver. The Executive will also have regard to whether the rescue proposal is equitable to the existing shareholders and whether existing shareholders will have the right to participate in the rescue proposal on the same terms as the rescuing party, so far as practicable. Any application for a waiver under this Note must be submitted as early as possible.

4. *Inadvertent mistake*

If, due to an inadvertent mistake, a person incurs an obligation to make an offer under this Rule 26, the Executive will not normally require an offer if sufficient voting rights are disposed of within a limited period to persons unconnected with him.

5. *Balancing block: where 50% will not accept*

Situations may arise where a person, or group of persons acting in concert, acquires 30% or more of the voting rights of a company at a time when another person, or group of persons acting in concert, already holds 30% or more of the voting rights of that company. In such a situation the Executive will not normally waive the requirement for that person or group of persons to make a general offer under this Rule 26 unless:—

- (a) there is a single person holding 50% or more of the voting rights of the company who states that he will not accept the offer which the purchaser would otherwise be obliged to make; or*
- (b) the Executive is provided with written confirmation from the holders of 50% or more of the voting rights of that company that they would not accept the offer which the purchaser would be obliged to make.*

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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 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.

7. *Verification of independence of placees*

When compliance with a Rule or granting of a waiver is dependent upon a disposition or placement of voting rights to independent persons, the vendor of the voting rights must not make arrangements to dispose of or place the voting rights with persons acting in concert with him. The vendor of the voting rights should not be involved in screening or selecting the placees unless such involvement is strictly limited to due diligence enquiries by the placing agents and financial advisers regarding the independence of placees. It is the responsibility of the relevant financial adviser, placing agent and acquirer of the voting rights to ensure and confirm that the acquirer is independent of, and not acting in concert with, the vendor of the voting rights. The Executive would expect the relevant financial adviser, placing agent and acquirer of the voting rights to take all appropriate and reasonable steps to ascertain and verify whether the acquirer is independent of, and not acting in concert with, the vendor of the voting rights and then to provide appropriate confirmations to the Executive. The relevant confirmations should provide full details of any involvement of the vendor of the voting rights in the placing process. The relevant placee list setting out the identities of the placees should also be provided to the Executive.

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



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will normally be invalidated and the Executive will take appropriate action including possibly requiring a general offer to be made in accordance with the requirements of Rule 26.

Notwithstanding the above the Executive may also make enquiries about the independence of the acquirer of the voting rights before granting a waiver if it considers it appropriate to do so.



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27. Prompt registration of transfers

The board and officials and registrars of an offeree company should use their best endeavours to ensure the prompt registration of transfers during an offer period so that shareholders can freely exercise their voting and other rights.



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28. Partial offers

28.1 Executive's consent required

The Executive's consent is required for any partial offer. Consent will normally be granted in the case of an offer (a) which could not result in the offeror and persons acting in concert with it holding 30% or more of the voting rights of a company; or (b) where the offeror and persons acting in concert with it hold more than 50% of the voting rights of a company and the offer is for up to such number of shares as would take the holding of voting rights to not more than 75% of the voting rights of the company, or such higher percentage as the Listing Rules may permit.

28.2 Acquisitions 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 before the offer period.

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 after the end of the offer period. Rule 31.3 does not apply to partial offers. See also Rule 31.2.

Note to Rule 28.3:

Discretionary fund managers and principal traders

Deals by discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 21.6.

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, the offeror must declare the partial offer unconditional as to acceptances and 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 must declare a partial offer unconditional as to acceptances on the day the acceptance condition is met, provided that 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.

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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.

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.

28.6 Control position warning

In the case of a partial offer which could result in the offeror holding more than 50% of the voting rights of the offeree company, the offer document must contain specific and prominent reference to this and to the fact that, if the offer succeeds, the offeror will be free, subject to Rule 28.3, to acquire further shares without incurring any obligation to make a general offer.

28.7 Precise number of shares to be stated

A partial offer must be made for a precise number of shares, such number must be stated, and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number.

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28.8 Pro rata entitlement

Partial offers must be made to all shareholders of the class and arrangements must be made for those shareholders who wish to do so to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage must be accepted by the offeror from each shareholder in the same proportion as the number tendered to the extent necessary to enable him to obtain the total number of shares for which he has offered.

28.9 Comparable offer

When an offer is made for a company with more than one class of equity share capital which could result in the offeror holding shares carrying 30% or more of the voting rights, a comparable offer must be made for each other class.

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.

Notes to Rule 28:

1. *Cross reference to Rule 20.1(b)*

Reference is made to Rule 20.1(b) which prescribes the timing of acquisition of and payment for shares represented by acceptances in a partial offer.

2. *Odd lots*

As far as practicable an offeror in a partial offer should arrange its acceptance procedures to minimise the number of existing and new odd lot shareholdings.

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.*



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29. Proxies

An offeror may not require a shareholder as a term of his acceptance of an offer to appoint a particular person as his proxy to vote in respect of his shares in the offeree company or to appoint a particular person to exercise any other rights or take any other action in relation to those shares unless the appointment is on the following terms, which must be set out in the offer document:—

- (a) the proxy may not vote, the rights may not be exercised and no other action may be taken unless the offer is unconditional or, in the case of voting by the proxy, it will become unconditional or lapse immediately upon the outcome of the resolution in question;
- (b) where relevant, the votes are to be cast as far as possible to satisfy any outstanding condition of the offer;
- (c) the appointment ceases to be valid if the acceptance is withdrawn; and
- (d) the appointment applies only to shares assented to the offer.



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30. Conditions

30.1 Conditions to an offer

An offer must not normally be made subject to conditions which depend on judgements by the offeror or the offeree company or the fulfilment of which is in their respective hands.

Notes to Rule 30.1:

1. *An element of subjectivity*

The Executive may be prepared to accept an element of subjectivity in certain special circumstances where it is not practicable to specify all the factors on which satisfaction of a particular condition may depend, especially in cases involving official authorisations, the granting of which may be subject to additional material obligations for the offeror. It would also normally be acceptable in an announcement for an offer to be expressed as being conditional on statements or estimates being appropriately verified.

2. *Invoking conditions*

An offeror should not invoke any condition, other than the acceptance condition, so as to cause the offer to lapse unless the circumstances which give rise to the right to invoke the condition are of material significance to the offeror in the context of the offer.

3. *Listing conditions*

Except with the consent of the Executive, where securities are offered as consideration and it is intended that they should be listed on the Stock Exchange, the relevant listing condition should be in terms which ensure that it is capable of being satisfied only when the decision of the Stock Exchange to admit the securities to listing has been approved by the Stock Exchange.

30.2 Acceptance condition

Except with the consent of the Executive, all offers, except partial offers made under Rule 28, shall be conditional upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and persons acting in concert with it holding more than 50% of the voting rights of the offeree company.

A voluntary offer may be made conditional on an acceptance level of shares carrying a higher percentage of the voting rights.

Mandatory offers made under Rule 26 shall be subject to no other conditions, whether as to minimum or maximum levels of acceptances required to be received or otherwise. It follows that the offer should be unconditional where the offeror and persons acting in concert with it hold more than 50% of the voting rights before such offer is made.

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Notes to Rule 30.2:

1. Acceptances

An acceptance may not be counted towards fulfilling an acceptance condition unless:—

- (a) *it is received by the offeror's receiving agent on or before the last time for acceptance set out in the offeror's relevant document or announcement and the offeror's receiving agent has recorded that the acceptance and any relevant documents required by this Note have been so received; and*
- (b) *the acceptance form is duly completed and is:—*
 - (i) *accompanied by share certificates in respect of the relevant shares and, if those certificates are not in the name of the acceptor, such other documents (e.g. a duly stamped transfer of the relevant shares in blank or in favour of the acceptor executed by the registered holder) in order to establish the right of the acceptor to become the registered holder of the relevant shares; or*
 - (ii) *from a registered holder or his personal representatives (but only up to the amount of the registered holding and only to the extent that the acceptance relates to shares which are not taken into account under another subparagraph of this paragraph (b)); or*
 - (iii) *certified by the offeree company's registrar or the Stock Exchange.*

If the acceptance form is executed by a person other than the registered holder, appropriate evidence of authority (e.g. grant of probate or certified copy of a power of attorney) must be produced.

2. Offeror's receiving agent's certificate

Before an offer may become or be declared unconditional as to acceptances, the offeror's receiving agent must have issued a certificate to the offeror or its financial adviser which states the number of acceptances which have been received which comply with Note 1 to this Rule 30.2 and the number of shares otherwise acquired, whether before or during an offer period, but which do not fall within Note 8 to this Rule 30.2.

Copies of the receiving agent's certificate must be sent to the Executive and the offeree company's financial adviser by the offeror or his financial adviser as soon as possible after it is issued.

3. Convertible securities, warrants and options

For purposes of the 50% acceptance condition, the Executive should be consulted regarding the offeror's ability to count voting rights attached to shares issuable upon the exercise of conversion or subscription rights attached to convertible securities, warrants or options which the offeror acquires during the offer period. The Executive

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will normally allow the offeror to count such voting rights for this purpose provided he discloses his intention to do so in the announcement and offer document and first takes all steps which he is required to take to exercise such conversion or subscription rights for all purposes. Such voting rights would then be considered to be outstanding for the purpose of calculating the 50% acceptance condition.

4. *Information to offeror during offer period and extension of offer to new shares*

See the Notes to Rule 6 for information about the offeree company's share capital which is to be supplied to an offeror, and the offeror's obligations in relation to new shares.

5. *Dispensation from 50% acceptance condition*

The Executive may in exceptional circumstances permit an offer to be subject to acceptance by holders of shares carrying less than 50% of the voting rights.

6. *New shares*

For the purpose of the acceptance condition, the offeror must take account of all shares carrying voting rights which are unconditionally allotted or issued before the offer becomes or is declared unconditional as to acceptances, whether pursuant to the exercise of conversion or subscription rights or otherwise. If in any case, for example, as a result of a rights issue, shares have been allotted in renounceable form (even if provisionally), the Executive should be consulted.

7. *Purchases*

A purchase of shares by an offeror or a person acting in concert with the offeror may be counted towards fulfilling an acceptance condition. For this purpose, a purchase made through the Stock Exchange in the normal course of trading securities on the Stock Exchange and with no prearrangement or collusion between the parties to such transaction or their agents may be counted from the time of such dealing on the Stock Exchange. In all other cases, the purchase may be counted if and when the purchase is fully completed and settled. In the event that a purchase made through the Stock Exchange is not fully settled in accordance with the rules of the Stock Exchange, the Executive may require the offeror and/or its concert parties to take such action as the Executive may determine is appropriate in the circumstances, which may include the issue of a correcting announcement.

Note 8 below will also be relevant if the offeror or a person acting in concert with the offeror has borrowed any offeree company shares.

8. *Borrowed shares*

Subject to Note 21 to Rule 26.1, shares which have been borrowed by the offeror or any person acting in concert with it may not be counted towards fulfilling an acceptance condition except with the consent of the Executive.



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RULE 31

31. Restrictions following offers and possible offers

31.1 Delay before subsequent offer

- (a) Except with the consent of the Executive, where an offer has been announced or posted but has not become or been declared unconditional, and has been withdrawn or has lapsed, neither the offeror nor any person who acted in concert with it in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within 12 months from the date on which such offer is withdrawn or lapses either:—
 - (i) announce an offer or possible offer for the offeree company (including a partial offer which could result in the offeror holding shares carrying 30% or more of the voting rights of the offeree company), or
 - (ii) acquire any voting rights of the offeree company if the offeror or persons acting in concert with it would thereby become obliged under Rule 26 to make an offer.
- (b) The restrictions in this Rule 31.1 may also apply, for a period of 6 months, where a person, having made an announcement which, although not amounting to the announcement of an offer, raises or confirms the possibility that an offer might be made, does not announce a firm intention either to make, or not to make, an offer within a reasonable time thereafter.
- (c) Where a person makes an announcement that he does not intend to make an offer for a company, the restrictions in this Rule 31.1 will normally apply for 6 months unless there is a material change of circumstances or there has occurred an event which the person specified in his announcement as an event which would enable it to be set aside. Such an announcement must be as clear and unambiguous as possible. If a person intends to include in an announcement specific reservations to set it aside, he should consult the Executive in advance of issuing such an announcement.

31.2 Partial offers

- (a) The restrictions in Rule 31.1(a) also apply following a partial offer:—
 - (i) for not less than 30% and not more than 50% of the voting rights of the offeree company whether or not the offer has become or been declared unconditional. When such an offer has become or been declared unconditional, the period of 12 months runs from that date;
 - (ii) for more than 50% of the voting rights of the offeree company which has not become or been declared unconditional; and
 - (iii) for less than 30% of the voting rights of the offeree company which has not become or been declared unconditional.

RULE 31

- (b) The restrictions in Rule 31.1(b) also apply following a partial offer which could only result in a holding of less than 30% of the voting rights of the offeree company which has become or been declared wholly unconditional.
- (c) The restrictions in Rule 31.1(c) also apply where a person makes an announcement that he does not intend to make a partial offer for a company.

Notes to Rules 31.1 and 31.2:

1. *Recommended and competing offers*

The Executive will normally grant consent under Rules 31.1 and 31.2 when:–

- (a) *the new offer is recommended by the board of the offeree company and the offeror is not, or is not acting in concert with, a director or substantial shareholder of the offeree company. Such consent will not normally be granted within 3 months of the lapsing of an earlier offer in circumstances where the offeror was prevented from revising or extending its previous offer as a result of a no increase statement or a no extension statement;*
- (b) *the new offer follows the announcement of an offer by a third party for the offeree company; or*
- (c) *the new offer follows the announcement by the offeree company of a “whitewash” proposal (see Note 1 on dispensations from Rule 26) or of a reverse takeover (see Note 2 to Rule 2.4) which has not failed or lapsed or been withdrawn.*

2. *Rule 31.1 (b)*

Paragraph (b) of Rule 31.1 applies irrespective of the precise wording of the announcement and the reason it was made. For example, it is relevant in the case of an announcement that a person is “considering his options” if, in all the circumstances, those options may reasonably be understood to include the making of an offer. However, the Executive envisages that this provision will only be applied occasionally and usually only if the Executive is persuaded by the potential offeree company that the damage to its business from the uncertainty outweighs the disadvantage to its shareholders of losing the prospect of an offer.

The question as to what is “a reasonable time” has to be determined by reference to all the circumstances of the case: the stage which the offeror’s preparations had reached at the time the announcement was made is likely to be relevant.

3. *Privatisation offers*

In cases of unsuccessful privatisation offers, the offeror will normally be precluded from buying any shares in the offeree company within 12 months of the offer lapsing if the result would be that the listing of the offeree company’s shares on the Stock Exchange would be discontinued, unless previously approved by shareholders in accordance with the Listing Rules.

RULE 31

4. *Transactions conditional on not incurring a general offer obligation*

Where a person announces a transaction that is subject to a condition that he does not incur a general offer obligation, Rule 31.1 will apply in the following circumstances:-

- (a) if such person does not reserve the right to waive the condition, Rule 31.1(c) applies;*
- (b) if such person reserves the right to waive the condition and does waive it, an offer obligation is incurred and Rule 31.1(a) applies; or*
- (c) if such person reserves the right to waive the condition and does not waive it, Rule 31.1(c) applies.*

31.3 6 months delay before acquisition above offer price

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

Notes to Rule 31.3:

1. *Issue of new shares*

For the avoidance of doubt the issue of new shares by placing, subscription or in exchange for assets does not need the consent of the Executive under this Rule 31.3.

2. *Convertible securities, warrants and options*

The acquisition of convertible securities, warrants or options convertible or exercisable into existing shares in a company at a price, based on the acquisition price and the relevant conversion and exercise terms, above the offer price may be relevant for the purposes of this Rule 31.3. In any such case, the Executive must be consulted.

The exercise of convertible securities, warrants or options will be considered to be an acquisition of shares for the purpose of this Rule 31.3.

31.4 Restrictions on dealings by a competing offeror whose offer has lapsed

Except with the consent of the Executive, where an offer made by one of two or more competing offerors has lapsed, neither that offeror, nor any person acting in concert with that offeror, may acquire shares in the offeree company on terms better than those made



RULE 31

available under its lapsed offer until each of the other competing offers has either been declared unconditional in all respects or has itself lapsed. For these purposes, the value of the lapsed offer shall be calculated as at the day the offer lapsed.

31.5 Requisitioning shareholder meetings after an offer becomes unconditional in all respects

Once an offeror requisitions a general meeting after its offer becomes unconditional in all respects to seek to appoint directors of the offeree company:

- (i) the offeree board must extend the fullest cooperation and convene the general meeting as soon as possible; and
- (ii) the offeree board must not, without shareholder approval or consent of the offeror, take or agree to take any action listed in paragraphs (a) to (e) of Rule 4 after the end of the offer period and until the conclusion of such general meeting.

RULE 32

32. Share buy-backs

32.1 Code implications of share buy-backs

If as a result of a share buy-back a shareholder's proportionate interest in the voting rights of the repurchasing company increases, such increase will be treated as an acquisition of voting rights for purposes of the Takeovers Code. As a result, a shareholder, or group of shareholders acting in concert, could obtain or consolidate control of a repurchasing company and thereby become obliged to make a mandatory offer in accordance with Rule 26. If so the Executive should be consulted at the earliest opportunity. In the case of a share buy-back by general offer or an off-market share buy-back, as such terms are defined in the Codes, the Executive will treat an application for a waiver from the requirement to make a mandatory offer in accordance with Rule 26 as if it were an application for a whitewash waiver in accordance with Note 1 on dispensations from Rule 26. The Executive will normally grant such a waiver if—

- (a) the Takeovers Code implications of the share buy-back are disclosed in the repurchasing company's offer document;
- (b) the share buy-back is approved in accordance with applicable shareholder approval requirements of the Share Buy-backs Code by those shareholders who could not become obliged to make a mandatory offer as a result of the share buy-back; and
- (c) a procedure on the lines of that set out in Note 1 on dispensations from Rule 26 of the Takeovers Code and Schedule VI is followed. (See also paragraph 9 of Schedule VI.)

For the purpose of Rule 22, dealings in relevant securities include share buy-backs of the relevant securities of a repurchasing company.

Notes to Rule 32.1:

1. *Responsibility for making an offer*

If an offer obligation under this Rule 32.1 and Rule 26 is incurred and a dispensation is not granted, the prime responsibility for making the offer will attach to the principal member or members of the group of persons who are acting in concert and who, as a result of a share buy-back, obtain or consolidate control of the repurchasing company. In certain circumstances, the obligation to make such an offer may attach to other members of that group but no such obligation will attach to the company itself. However, the directors of the company and its principal shareholders may, depending on the circumstances, be presumed to be acting in concert unless the contrary is established.

2. *A shareholder not acting in concert with the directors*

A shareholder who comes to exceed the limits in Rule 26.1 in consequence of a company's redemption or buy-back of its own shares will not normally incur an obligation to make a mandatory offer unless that shareholder is a director, or the relationship of the shareholder with any one or more of the directors is such that the

RULE 32

shareholder is, or is presumed to be, acting in concert with any of the directors. A shareholder who has appointed a representative to the board of the company will be treated for these purposes as a director. However, there is no presumption that all the directors (or any two or more directors) are acting in concert solely by reason of a proposed redemption or buy-back by the company of its own shares, or the decision to seek shareholders' authority for any such redemption or buy-back. The exception will not normally apply, and an obligation to make a mandatory offer may therefore be imposed, if a shareholder (or any relevant member of a group of shareholders acting in concert) has purchased shares at a time when he had reason to believe that such a redemption or buy-back of its own shares by the company would take place.

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 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).

(b) Public disclosure

For the purpose of Rule 22, dealings in relevant securities include the redemption or buy-back of, or taking or exercising an option over, any of its own relevant securities by the offeree company. The total amount of securities of the relevant class remaining in issue following the redemption or buy-back must also be disclosed.

(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 before the offer period and ending on the latest practicable date of the document, and the details of any such redemptions and buy-backs, including dates and prices.

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 within 6 months before the offer period and the details of any such redemptions and buy-backs, including dates and prices.

(See also Rule 21.3.)

RULE 33

33. Inducement fees, break fees and standstill agreements

33.1 Inducement fees or break fees

In all cases where an inducement fee or break fee is proposed, certain safeguards must be observed. In particular, an inducement fee or break fee must be de minimis (normally no more than 1% of the offer value) and the offeree company board and its financial adviser must confirm to the Executive in writing that each of them believes that the fee is in the best interests of shareholders. Any inducement or break fee arrangement must be fully disclosed in the announcement made under Rule 3.5 and in the offer document. Relevant documents must be put on display in accordance with Rule 8.

The Executive should be consulted at the earliest opportunity in all cases where an inducement fee, break fee or any similar arrangement is proposed.

Note to Rule 33.1:

Arrangements to which Rule 33.1 applies

An inducement fee or break fee is an arrangement which may be entered into between an offeror or a potential offeror and the offeree company pursuant to which a cash sum will be payable by the offeree company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail (e.g. the recommendation by the offeree company board of a higher competing offer).

This Rule 33.1 will also apply to any other favourable arrangements with an offeror or potential offeror which have a similar or comparable financial or economic effect, even if such arrangements do not actually involve any cash payment.

Such arrangements will include, for example, penalties, put or call options or other provisions having similar effects, regardless of whether such arrangements are considered to be in the ordinary course of business. In cases of doubt the Executive should be consulted.

33.2 Standstill agreements

Any agreement between the offeree company and its shareholders or other parties which restricts the ability of, or restrains, any person from making a general offer for the offeree company must be fully disclosed to its shareholders on a timely basis by the board of the offeree company. Failure to do so will normally result in the Executive requiring independent shareholders' approval of the legal action proposed to be taken by the board of the offeree company to enforce such agreements which could effectively frustrate an offer. A standstill agreement may be relevant for the purpose of considering whether the parties to such agreement are acting in concert. (See Note 6 to the definition of acting in concert.)



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RULE 34

34. Shareholder solicitations

34.1 Information to be used in connection with shareholder solicitations

Any person proposing to solicit proxies, votes or acceptances of offers may only use for such purpose previously published information which remains accurate, and is not misleading at the time it is quoted.

34.2 Soliciting shareholders

Except with the consent of the Executive, shareholders, other than institutional shareholders, may only be solicited by staff of the financial adviser to the soliciting person who are fully conversant with the requirements of, and their responsibilities under, the Takeovers Code.

34.3 Consultation to be encouraged

Shareholders must not be put under pressure and must be encouraged to consult their professional advisers.

Notes to Rule 34:

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 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.*

2. *New information*

If, in spite of this Rule 34, new information is given to some shareholders, such information must immediately be made generally available to shareholders in the manner described in Note 6 to Rule 8.1.



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RULE 35

35. Dealings by connected exempt principal traders

35.1 Prohibited dealings and securities borrowing and lending transactions

An exempt principal trader connected with an offeror or the offeree company must not carry out any dealings or securities borrowing and lending transactions with the purpose of assisting the offeror or the offeree company, as the case may be.

Note to Rule 35.1:

Suspension of exempt status

Any dealings by an exempt principal trader connected with an offeror or the offeree company with the purpose of assisting an offeror or the offeree company, as the case may be, or any dealings outside the specified activities for which it has received exemption, will constitute a serious breach of the Takeovers Code. Accordingly, if the Executive determines that a principal trader has carried out such dealings, it will be prepared to rule that the principal trader should cease to enjoy exempt status for such period of time as the Executive may consider appropriate in the circumstances.

35.2 Dealings between offerors and connected exempt principal traders

An offeror and any person acting in concert with it must not deal as principal with an exempt principal trader connected with the offeror in relevant securities (as defined in Rule 22) of the offeree company during the offer period. To ensure compliance with this Rule 35.2, it may be necessary either for the offeror and any person acting in concert with it to refrain from dealing in relevant securities or for the principal trader to refrain from dealing as a principal in relation to such securities. The Executive must be consulted if a connected exempt principal trader believes that it has grounds to deal in relevant securities where such dealings cannot reasonably be expected to assist the offeror.

35.3 Assenting securities

Securities owned by an exempt principal trader connected with an offeror must not be assented to the offer until the offer becomes or is declared unconditional as to acceptances.

35.4 Voting

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.

Note to Rule 35:

Disclosure of dealings

See Rule 22.4.



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RULE 36

36. Obligations of other persons

In addition to the offeror, each of the principal members of a group of persons acting in concert with him may, according to the circumstances of the case, have the obligation to extend an offer.

The prime responsibilities under Rules 23, 24 and 26 normally attach to the person who makes the acquisition which imposes the obligation under the relevant Rule. If such person is not a principal member of the group acting in concert, the relevant obligation may attach to the principal member or members and, in exceptional circumstances, to other members of the group acting in concert. This could include a member of the group who does not hold any shares when the obligation arises. In this context, the Executive will not normally regard the underwriter of a mandatory offer, by virtue of his underwriting alone, as being a member of a group acting in concert and, therefore, responsible for making the offer or any other relevant obligations.



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CODE ON SHARE BUY-BACKS

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RULE 1

1. Methods of share buy-back

A company may only engage in the following types of share buy-back:–

- (a) an on-market share buy-back;
- (b) an off-market share buy-back approved in accordance with Rule 2;
- (c) an exempt share buy-back; and
- (d) a share buy-back by general offer in accordance with the General Principles and Rules of the Codes.

A share buy-back may normally be made only by the company the shares of which are the subject of the share buy-back. Where a wholly owned subsidiary of a company has issued securities exercisable or convertible into shares of that company such subsidiary may redeem or buy-back such securities in accordance with the terms of their issue.



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RULE 2

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);
- (b) the notice of meeting convening such general meeting being accompanied by a circular containing, in addition to the information to be disclosed in an offer document by virtue of Rule 4 and, where applicable, Rule 5, the following:–
 - (i) the identity of the proposed offeree(s) and a description of its (their) business activities and its (their) relationship with the offeror, if any;
 - (ii) a description of the terms and conditions of the agreement(s) between the company and the proposed offeree(s); and
 - (iii) the advice of an independent financial adviser and the recommendation of an independent committee of the company's board of directors as to whether shareholders should approve or disapprove the off-market share buy-back proposal;
- (c) a certified copy of the resolution contemplated by Rule 2(a) being filed with the Executive no later than 3 days after the general meeting of shareholders at which such resolution is passed; and
- (d) a copy of the agreement(s) referred to in Rule 2(b)(ii) above being available for inspection by shareholders at the meeting convened to consider the off-market share buy-back proposal and during the period from the date of mailing the notice of meeting up to and including the date of such general meeting.



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RULE 3

3. Shareholder approval

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 no later than 3 days after the general meeting of shareholders at which such resolution is passed.

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 no later than 21 days 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.)

3.2 Approval by independent shareholders

If a shareholder has a material interest in a share buy-back which is different from the interests of all other shareholders, the Executive will normally require the share buy-back to be approved by a majority of the votes cast by all other shareholders in attendance in person or by proxy at a general meeting of shareholders duly convened and held to consider the share buy-back.

3.3 Approval of delistings and privatisations by independent shareholders

If after a proposed share buy-back the shares of an offeror are to be delisted from the Stock Exchange or the company is to be privatised,

- (a) the directors of the offeror and any persons acting in concert with them will not be considered to be independent and therefore they may not vote at the meeting of shareholders convened in accordance with the Listing Rules; and
- (b) the share buy-back by general offer must be approved by:
 - (i) at least 75% of the votes attaching to the shares owned by independent shareholders that are cast either in person or by proxy at a duly convened general meeting; and
 - (ii) the number of votes cast against the resolution being not more than 10% of the votes attaching to the shares owned by independent shareholders.



RULE 3

3.4 Different classes of equity share capital

If the offeror has more than one class of equity share capital, the Executive should be consulted as it may require the share buy-back to be made subject to approval by a majority of the votes cast by holders of each class of shares in attendance in person or by proxy at separate class meetings of such shareholders duly convened and held to consider the proposed share buy-back.



RULE 4

4. The offer document

4.1 Contents of offer document

A share buy-back by general offer shall be made by way of an offer document which shall contain the information required by Schedule III, together with any other relevant information to enable shareholders to reach a properly informed decision.

4.2 Securities that may be exercised or converted

An offer document need not be despatched to registered holders of securities that may be exercised or converted into shares of the class of shares that is the subject of a share buy-back by general offer if the offer price is lower than the exercise or conversion price of such securities by more than 10%. If in doubt the Executive should be consulted.



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RULE 5

5. Application of the Takeovers Code to share buy-backs

5.1 Application of Takeovers Code

In all cases an offeror must consult the Executive at an early stage to determine the applicability to the proposed share buy-back of the provisions of the Codes.

In the case of a share buy-back by general offer seeking to privatise or delist the company, all provisions of the Takeovers Code will normally apply. In the case of a share buy-back by general offer or off-market share buy-back which involves a “whitewash”, in addition to the Rules set out in this Rule 5, Note 1 on dispensations from Rule 26 of the Takeovers Code and Schedule VI of the Codes would also apply.

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 3.4-3.9;
- (d) Rule 5;
- (e) Rules 8.1, 8.2, 8.5 and 8.6;
- (f) Rule 9;
- (g) Rules 10.1-10.9 and 10.11;
- (h) Rules 11 and 12;
- (i) Rules 15-20;
- (j) Rules 21.1, 21.3, 21.4, 21.6 and 21.7;
- (k) Rules 22 and 23;
- (l) Rules 24.1 and 24.3;
- (m) Rule 25;
- (n) Rule 27;
- (o) Rule 29;
- (p) Rule 30.1;
- (q) Rule 32.3; and
- (r) Rules 34 and 35.

RULE 5

Note to Rule 5.1:

Notes to Rules of the Takeovers Code

In the case of a number of the Rules of the Takeovers Code listed above in this Rule 5.1 that may be applicable to share buy-backs by general offer some of the Notes to such Rules may not be relevant and the Executive should be consulted.

5.2 Excluded shareholders

Where an offeror has shareholders located in a jurisdiction the laws of which prohibit a share buy-back by general offer to be made in accordance with the requirements of the Codes, the Executive must be consulted. The Executive will be concerned to ensure that the interests of such shareholders are not unduly prejudiced.

5.3 Pro rata entitlement

Share buy-backs by general offer must be made to all shareholders of the class and arrangements must be made for those shareholders who wish to do so to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage must be accepted by the offeror from each shareholder in the same proportion as the number tendered to the extent necessary to enable the offeror to obtain the total number of shares for which the offer has been made.

5.4 On-market share buy-backs

An offeror shall not engage in an on-market share buy-back 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 6

6. Takeovers Code implications of share buy-backs

If as a result of a share buy-back a shareholder's proportionate interest in the voting rights of an offeror increases, such increase will be treated as an acquisition for the purposes of the Takeovers Code and Rule 32 of the Takeovers Code shall apply.



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RULE 7

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 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.



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RULE 8

8. Waivers

The Executive has discretion to waive compliance with requirements of the Share Buy-backs Code particularly if any party to a share buy-back considers that compliance would be unduly burdensome, e.g. in the case of a share buy-back by general offer to odd lot shareholders or a share buy-back by general offer for non-voting fixed participation shares which are more analogous to debt securities than equity securities.



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SCHEDULES*

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* All terms used in Schedules I, II, III, VI, VII, VIII and IX (subject to the provisions of Schedule IX) have the meanings attributed to them by the definitions of the Codes.	



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SCHEDULE I

OFFER DOCUMENT FOR TAKEOVERS AND MERGERS

The offer document should contain the following statements in a prominent position:–

IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer or registered institution in securities, a bank manager, solicitor, professional accountant, or other professional adviser.

If you have sold all your shares in you should at once hand this document and the accompanying form to the purchaser or to the licensed securities dealer or registered institution in securities or other agent through whom the sale was effected for transmission to the purchaser.

Except with the consent of the Executive, the document should include the following information:–

The Offeror

1. The name and address of the offeror and any financial adviser or other person making the offer on behalf of the offeror, and the principal members of the offeror's concert group. Unless otherwise agreed with the Executive, the offer document must contain a statement as to whether or not any securities acquired in pursuance of the offer will be transferred, charged or pledged to any other persons, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held. Details, including the terms and conditions of such agreement, arrangement or understanding and any related charges or pledges which may result in the transfer of voting rights, should also be disclosed.
2. If either the offeror or any principal member of its concert group is a company, in respect of such companies the identity of the ultimate controlling shareholders, and the names of the directors and the directors of their ultimate parent companies, or where there is a listed company in the chain between such companies and their ultimate parent companies, the directors of such listed company.

Intentions regarding the offeree company and its employees

3.
 - (i) The offeror's intentions regarding the continuation of the business of the offeree company;
 - (ii) the offeror's intentions regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree company;
 - (iii) the long-term commercial justification for the proposed offer; and
 - (iv) the offeror's intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries.

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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, 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, before the 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 before the offer period and ending on the latest practicable date 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.

Notes:

1. *Relevant shareholdings*

References in this paragraph 4 to shareholdings should be taken to mean:–

- (a) *in the case of shareholdings in the offeree company, holdings of:–*
- (i) *securities which are being offered for or which carry voting rights;*
- (ii) *convertible securities, warrants, options and derivatives in respect of (i);*
- (b) *in the case of shareholdings in the offeror company, holdings of:–*
- (i) *equity share capital;*

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- (ii) securities which carry substantially the same rights as any to be issued as consideration for the offer;
 - (iii) convertible securities, warrants, options and derivatives in respect of (i) or (ii); and
- (c) in the case of a securities exchange offer involving the offer as consideration of securities in a company other than the offeror, references to shareholdings in the offeror in this paragraph 4 should be taken to mean shareholdings in the company whose securities are being offered as consideration and (b) above should be construed accordingly.

2. Options and derivatives

Where holdings of options are disclosed, the exercise period and the exercise price must be given. Where dealings involving options are disclosed, the date of taking or granting the option, the number of securities under the option, the exercise period, the exercise price and any option money paid or received must be stated. The exercise of an option must also be disclosed; the date of exercise, the exercise price and any option money paid or received must be stated.

Where holdings of derivatives are disclosed, the number of reference securities to which they relate (when relevant), the maturity date and the reference price must be given. Where dealings involving derivatives are disclosed, the number of reference securities to which they relate, the date of entering into or closing out of the derivative, the maturity date and the reference price must be stated. In each case, full details must be given so that the nature of the holding or dealing can be fully understood.

3. Meaning of "interested"

References to directors being "interested" in shareholdings are interpreted in the manner described in Part XV of the Securities and Futures Ordinance (Cap. 571).

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 before its commencement there should be no aggregation;
- (ii) for dealings in the 2 months before that period, purchases and sales in that period can be aggregated on a daily basis; and
- (iii) for dealings in the 3 months before that period, purchases and sales can be aggregated on a weekly basis.

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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.

5. *Irrevocable commitments*

References to irrevocable commitments to accept or reject an offer must make it clear if there are circumstances in which they cease to be binding, for example, if a higher offer is made.

6. *Discretionary fund managers and principal traders*

Shareholdings of non-exempt discretionary fund managers and principal traders connected with an offeror should be disclosed under category (iii) of this paragraph 4. Their dealings should also be disclosed in accordance with this paragraph 4.

Partial offer

5. In the case of a partial offer, the reasons for making a partial offer rather than a full offer.

Shares offered for and dividends

6. Precise particulars of the securities in respect of which the offer is made and a statement whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared.
- 6A. Whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which that person will become liable to pay in respect of the transaction under the Stamp Duty Ordinance (Cap.117) or if the offeror will not so pay the stamp duty, the rate of the stamp duty that such person will become liable to pay in respect of the transaction under that Ordinance.

Conditions of offer

7. The price or other consideration to be paid for the securities.
8. All conditions of the offer and in particular whether the offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the offer can become unconditional as to acceptances. The offer document must include particulars of all documents required, and procedures to be followed, for acceptance of the offer.
9. A statement whether or not the offeror intends to avail itself of any powers of compulsory acquisition.

Market prices of offeree company's and offeror's securities

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 of the offer document;

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- (ii) on the last business day before the date of the initial announcement, if any, and on the last business day 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 before the offer period and ending on the latest practicable date 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 before the offer period and ending on the latest practicable date 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 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.

Resources for offer

- 11. Where the offer consists of, or includes, cash or any other assets except new securities to be issued by the offeror company, the offer document must include confirmation by a financial adviser or by another appropriate independent party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.

Financial information

- 12. (a) In the case of a securities exchange offer the following information about the offeror:–
 - (i) for the last 3 financial years for which the information has been published, revenue, profit or loss before taxation, profit or loss attributable to owners of the company, profit or loss attributable to non-controlling interests, comprehensive income attributable to owners of the company, comprehensive income attributable to non-controlling interests, tax expense, items of any income or expense which are material, the amount of dividends distributed to owners, and earnings and dividends per share;

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- (ii) a statement of financial position as shown in the last published audited accounts;
 - (iii) a statement of cash flows if provided in the last published audited accounts;
 - (iv) any other primary statement shown in the last published audited accounts;
 - (v) all material changes in the financial or trading position or outlook of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (vi) details relating to the items referred to in paragraph 12(a)(i) of this Schedule I above in respect of any interim statement or preliminary announcement made since the last published audited accounts;
 - (vii) significant accounting policies together with any points from the notes to the relevant published accounts which are of major relevance to an appreciation of the information contained in paragraphs 12(a)(i) to (vi) of this Schedule I above;
 - (viii) details of any modified opinion, emphasis of matter or material uncertainty related to going concern contained in the auditors' report in respect of each of the last 3 financial years or an appropriate negative statement; and
 - (ix) where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.
- (b) Except for cash offers seeking to privatise the offeree company, and without any waiver of the acceptance condition, all offer documents must contain a description of how the offer is to be financed and the source of the finance. The principal lenders or arrangers of such finance must be named. Where the offeror intends that the payment of interest on, repayment of or security for any liability (contingent or otherwise) will depend to any significant extent on the business of the offeree company, a description of the arrangements contemplated will be required. Where this is not the case, a negative statement to this effect must be made.

Notes:

1. *Where the offeror is a subsidiary company*

The Executive will normally look through unlisted subsidiaries in interpreting this paragraph 12 of Schedule I unless, with the approval of the Executive, the subsidiary in question is regarded as being of sufficient substance in relation to the group and the offer. Accordingly if the offeror is part of a group, information will normally be required on the ultimate holding company in the form of group accounts.

2. *Further information requirements*

If the offeror is not listed on the Stock Exchange, in addition to the above requirements, the Executive would normally expect it to include a general

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description of the business interests of the offeror and/or other person(s) concerned and details of those assets which the Executive considers may be relevant to the business of the offeree company.

3. *Partial offers*

Where the offer is a partial offer, the offer document must contain the information required under paragraph 12(a) of this Schedule I, whether the consideration is securities or cash.

4. *Where securities in a company other than the offeror are being offered as consideration*

In the case of a securities exchange offer involving the offer as consideration of securities in a company other than the offeror, references to the offeror in this paragraph 12(a) of Schedule I should be taken to mean the company whose securities are being offered as consideration. In these cases the Executive should be consulted.

5. *Where the offeror is a company listed on the Stock Exchange*

For the purpose of paragraphs 12(a)(ii), (iii), (iv), (vi) and (vii) of this Schedule I, if the offeror is listed on the Stock Exchange, the information may be incorporated in the offer document by reference to the offeror's other documents published in accordance with the Listing Rules.

Arrangements in connection with offer

13. Details of any benefit which will be given to any director of the offeree company as compensation for loss of office or otherwise in connection with the offer.
14. A statement as to whether or not any agreement, arrangement or understanding (including any compensation arrangement) exists between the offeror or any person acting in concert with it and any of the directors, recent directors, shareholders or recent shareholders of the offeree company having any connection with or dependence upon the offer, and full particulars of any such agreement, arrangement or understanding.
- 14A. 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 condition to its offer and the consequences of its doing so, including details of any break fees payable as a result.
- 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

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- (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.

Takeovers Code obligations

15. (i) A statement of the obligations of the offeror and the rights of the offeree company shareholders under Rules 15, 16, 17, 19 and 20 of the Takeovers Code.
- (ii) The address of the websites on which documents are displayed under Note 1 to Rule 8 of the Takeovers Code.

Further information in cases of securities exchange offers

The following additional information should be given by the offeror when it is offering its securities in exchange for the securities of the offeree company:–

16. The nature and particulars of its business and its financial and trading prospects.
17. The date and country of its incorporation.
18. The address of its principal office in Hong Kong.
19. The authorised and issued share capital and the rights of the shareholders in respect of capital, dividends and voting.
20. Whether or not the securities being offered will rank *pari passu* with the existing issued securities of the offeror, and if not, a precise description of the rights of the holders of the securities, including as to ranking for dividends and capital.
21. Details of shares issued and shares bought back since the end of the last financial year of the offeror.
22. Details of options, warrants and conversion rights affecting shares in the offeror.
23. Details of any re-organisation of capital during the 2 financial years 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 before the latest practicable date of the document.
25. Details of any material litigation to which the offeror is, or may become, a party.
26. Details of every material contract entered into within 2 years before 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,



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parties, principal terms and conditions and any consideration passing to or from the offeror or any of its subsidiaries.

27. How and when the documents of title to the securities will be issued.
28. Whether and in what manner the emoluments of the directors of the offeror will be affected by the acquisition of the offeree company or by any other associated transaction. If there will be no effect, this must be stated.

Note:

Commissions etc.

Information given under this paragraph 28 should include any alterations to fixed amounts receivable or, as far as practicable, the effect of any factor governing commissions or other variable amounts receivable. Grouping or aggregating the effect of the transaction on the emoluments of several or all of the directors will normally be acceptable.

29. The effect of full acceptance of the offer upon the offeror's assets, liabilities, profits and business which may be significant for a proper appraisal of the offer. This does not require a profit forecast to be made.

Estimated value of unlisted paper consideration

30. When the offer involves the issue of unlisted securities, an estimate of the value of such securities by an appropriate adviser, together with the assumptions and methodology used in arriving at the value.

No set-off of consideration

31. A statement to the effect that settlement of the consideration to which any shareholder is entitled under the offer will be implemented in full in accordance with the terms of the offer without regard to any lien, right of set-off, counterclaim or other analogous right to which the offeror may otherwise be, or claim to be, entitled against such shareholder.

Note:

Consent to set-off

The Executive would only grant consent to an offeror to set-off consideration where a shareholder consents to such set-off or in exceptional circumstances.

Arrangements in relation to dealings

32. Any arrangements of the kind referred to in the third paragraph of Note 8 to Rule 22 of the Takeovers Code which exist between the offeror, or any person acting in concert with the offeror, and any other person; if there are no such arrangements, this should be stated. If the directors of the offeror or their financial advisers are aware of any such arrangements between any other associate of the offeror and any other person, such arrangements must also be disclosed.



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SCHEDULE II

OFFEREE BOARD CIRCULAR FOR TAKEOVERS AND MERGERS

Except with the consent of the Executive, the offeree board circular should include the following information:—

Views of offeree board

1. The names of the directors of the offeree company and of the directors comprising the independent committee of the board of the offeree company established in accordance with Rules 2.1 and 2.8, and the recommendation of the independent committee of the board given in accordance with Rule 2.1, or a statement that the independent committee of the board is unable to make a recommendation (with reasons for the recommendation or for making no recommendation). A copy of the written advice of the independent financial adviser appointed in accordance with Rule 2.1 must also be given.

Notes:

1. *When a board has effective control*

A board whose shareholdings confer control over a company which is the subject of an offer must carefully examine the reasons behind the advice it gives to shareholders and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.

2. *Split boards*

If the board of the offeree company is split in its views on an offer, the directors who are in a minority should also publish their views. The Executive will normally require that these views be circulated by the offeree company.

3. *Conflicts of interest*

Where a director has a conflict of interest, he should not normally be joined with the remainder of the board in the expression of its views on the offer, and the nature of the conflict should be clearly explained to shareholders.

4. *Independent financial adviser's consent*

The circular must include a statement that the independent financial adviser has given and not withdrawn his consent to the issue of the circular with the inclusion of his recommendation or opinion in the form and context in which it is included.

5. *Management buy-outs*

If the offer is a management buy-out or similar transaction, a director will normally be regarded as having a conflict of interest where it is intended that he should have any continuing role (whether in an executive or non-executive capacity) in either the offeror or offeree company in the event of the offer being successful.

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6. *Views of the board on the offeror's plans for the company and its employees*

The board of the offeree company should, insofar as relevant, comment upon the statements in the offer document regarding the offeror's intentions in respect of the offeree company and its employees.

Shareholdings and dealings

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 before the offer period and ending on the

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latest practicable date 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 on the latest practicable date 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.

Notes:

1. *When directors resign*

When, as part of the transaction leading to an offer being made, some or all of the directors of the offeree company resign, the foregoing requirements of this paragraph 2 of Schedule II apply to them and their shareholdings and dealings must be disclosed in the offeree board circular in the usual way.

2. *Arrangements in relation to dealings*

The circular from the offeree board advising shareholders on an offer, whether recommending acceptance or rejection of the offer, must disclose any arrangements of the kind referred to in the third paragraph of Note 8 to Rule 22 of the Takeovers Code which exist between the offeree company, or any person who is presumed to be acting in concert with the offeree company by virtue of classes (1), (2), (3) or (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, and any other person; if there are no such arrangements, this should be stated. If the directors or their financial advisers are aware of any such arrangements between any other associate of the offeree company and any other person, such arrangements must also be disclosed.

3. *Notes to paragraph 4 of Schedule I*

The Notes to paragraph 4 of Schedule I apply equally to this paragraph 2 of Schedule II.

Share capital of offeree company

3. The authorised and issued share capital and the rights of the shareholders in respect of capital, dividends and voting.
4. The number of shares issued since the end of the last financial year of the offeree company.
5. Details of options, warrants and conversion rights affecting shares in the offeree company.

Financial information

6. (a) The following information about the offeree company:—

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- (i) for the last 3 financial years for which the information has been published, revenue, profit or loss before taxation, profit or loss attributable to owners of the company, profit or loss attributable to non-controlling interests, comprehensive income attributable to owners of the company, comprehensive income attributable to non-controlling interests, tax expense, items of any income or expense which are material, the amount of dividends distributed to owners, and earnings and dividends per share;
 - (ii) a statement of financial position as shown in the last published audited accounts;
 - (iii) a statement of cash flows if provided in the last published audited accounts;
 - (iv) any other primary statement shown in the last published audited accounts;
 - (v) all material changes in the financial or trading position or outlook of the offeree company subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (vi) details relating to items referred to in paragraph 6(a)(i) of this Schedule II above in respect of any interim statement or preliminary announcement made since the last published audited accounts;
 - (vii) significant accounting policies together with any points from the notes to the relevant published accounts which are of major relevance to an appreciation of the information contained in paragraphs 6(a)(i) to (vi) of this Schedule II above; and
 - (viii) details of any modified opinion, emphasis of matter or material uncertainty related to going concern contained in the auditors' report in respect of each of the last 3 financial years or an appropriate negative statement.
- (b) Where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

Note:

For the purpose of paragraphs 6(a)(ii), (iii), (iv), (vi) and (vii) of this Schedule II, if the offeree company is listed on the Stock Exchange, the information may be incorporated in the offeree board circular by reference to the offeree company's other documents published in accordance with the Listing Rules.

- 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 before the latest practicable date of the document.
- 8 Details of any material litigation to which the offeree company is, or may become, a party.

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Material contracts

9. Details of every material contract entered into within 2 years before 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.

Arrangements affecting directors

10. Details of any benefit to be given to any director of the offeree company as compensation for loss of office or otherwise in connection with the offer.
11. Details of any agreement or arrangement between any director of the offeree company and any other person which is conditional on or dependent upon the outcome of the offer or otherwise connected with the offer.
12. Details of any material contract entered into by the offeror in which any director of the offeree company has a material personal interest.

Directors' service agreements

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 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.

Notes:

1. *Particulars to be disclosed:-*
- (a) *the name of the director under contract;*
 - (b) *the expiry date of the contract;*
 - (c) *the amount of fixed remuneration payable under the contract, excluding arrangements for pension payments; and*
 - (d) *the amount of any variable remuneration payable under the contract (e.g. commission on profits) with details of the formula for calculating such remuneration.*

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Where there is more than one contract, a statement of the aggregate remuneration payable is normally regarded as fulfilling the requirements under (c) of this Note, except to the extent that this method would conceal material anomalies which ought to be disclosed (e.g. because one director is remunerated at a very much higher rate than the others). In cases where contracts have been replaced or amended, however, the particulars of remuneration payable under both the existing and the earlier contracts must relate to each individual separately.

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 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.

14. The address of the websites on which documents are displayed under Note 1 to Rule 8 of the Takeovers Code.
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.



SCHEDULE III

OFFER DOCUMENT FOR SHARE BUY-BACKS BY GENERAL OFFER

Except with the consent of the Executive, the offer document should contain in a prominent position the following statements:-

IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer or registered institution in securities, a bank manager, solicitor, professional accountant, or other professional adviser.

If you have sold all your shares in you should at once hand this document and the accompanying form to the purchaser or the licensed securities dealer or registered institution in securities or other agent through whom the sale was effected for transmission to the purchaser.

The offer document should include the following information:-

The offeror

1. The date when the document is despatched, the name and address of the offeror and any financial adviser or other person making the offer on behalf of the offeror, and the principal members of the offeror's concert group.

Intentions of offeror

2. The offeror's intention, if any, to rely upon sections 705, 711 to 716 and 718 to 721 of the Companies Ordinance (Cap. 622) or any comparable provision of applicable company law.
3. The offeror's intention, if any, to continue to meet the public float requirements of Rule 8.08 of the Listing Rules.

Intentions of potential new controlling shareholder

4. The Takeovers Code implications of the proposed share buy-back and, if the buy-back could result in a change of control, as that term is defined in the Takeovers Code, the intentions of the potential new controlling shareholder(s) as regards:-
 - (a) the continuation of the business of the offeror;
 - (b) any major changes to be introduced to the offeror's business, including any redeployment of fixed assets; and
 - (c) the continued employment of the employees of the offeror and its subsidiaries.

Shareholdings and dealings

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

SCHEDULE III

- (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, before the 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 before the offer period and ending on the latest practicable date 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.

Notes:

1. *Relevant shareholdings*

References in this paragraph 5 to shareholdings should be taken to mean holdings of:-

- (i) securities which are being offered for or which carry voting rights; and*
- (ii) convertible securities, warrants, options and derivatives in respect of (i).*

2. *Notes to paragraph 4 of Schedule I*

Notes 2 to 6 to paragraph 4 of Schedule I apply equally to this paragraph 5 of Schedule III.

- 6. Where known after reasonable inquiry, the intentions of each of the persons referred to in paragraph 5 of this Schedule III as regards acceptance of the offer including the number of shares to be tendered to the offer by each such person and the percentage which such number represents of their entire holdings. If such intentions cannot be determined after reasonable inquiry, a statement to such effect.

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7. Assuming the offer is successful, the effect which the offer will have on the percentage voting rights of the persons referred to in paragraph 5 of this Schedule III.

Terms of the share buy-back

8. The reasons for the proposed share buy-back and for the number of shares proposed to be bought back.
9. The pro rating and odd lot procedures of the offer.

Shares offered for and dividends

10. Particulars of the class and number of shares to be bought back and a statement as to whether the shares to be bought back are to be acquired cum or ex any dividend or other distribution which has been or may be declared.

Conditions of offer

11. The consideration to be offered for the shares.
12. All conditions of the offer and in particular whether the offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the offer can become unconditional as to acceptances. The offer document must include particulars of all documents required, and procedures to be followed, for acceptance of the offer.

Market prices of shares

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 of the offer document;
 - (ii) on the last business day before the date of the initial announcement, if any, and on the last business day 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 before the offer period and ending on the latest practicable date 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 before the offer period and ending on the latest practicable date 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

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current value of the offer and the price of the offeree company's shares on the last business day 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.

Resources for offer

14. Where the offer is in cash, or includes an element of cash, confirmation by a financial adviser or by another appropriate independent party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.
15. A description of how the offer is to be financed and the source of the finance. If funds are to be raised or borrowed for such purpose, the terms and conditions of such arrangements and the names of the principal lenders or arrangers of such finance.

Financial information

16. (a) The following information about the offeror:–
 - (i) for the last 3 financial years for which the information has been published, revenue, profit or loss before taxation, profit or loss attributable to owners of the company, profit or loss attributable to non-controlling interests, comprehensive income attributable to owners of the company, comprehensive income attributable to non-controlling interests, tax expense, items of any income or expense which are material, the amount of dividends distributed to owners, and earnings and dividends per share;
 - (ii) a statement of financial position as shown in the last published audited accounts;
 - (iii) a statement of cash flows if provided in the last published audited accounts;
 - (iv) any other primary statement shown in the last published audited accounts;
 - (v) all material changes in the financial or trading position or outlook of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (vi) details relating to the items referred to in (i) of this paragraph 16(a) in respect of any interim statement or preliminary announcement made since the last published audited accounts;
 - (vii) significant accounting policies together with any points from the notes to the relevant published accounts which are of major relevance to an appreciation of the information contained in (i) to (vi) of this paragraph 16(a); and

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- (viii) details of any modified opinion, emphasis of matter or material uncertainty related to going concern contained in the auditors' report in respect of each of the last 3 financial years or an appropriate negative statement.
- (b) Where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

Note:

For the purpose of paragraphs 16(a)(ii), (iii), (iv), (vi) and (vii) of this Schedule III, if the offeror is listed on the Stock Exchange, the information may be incorporated in the offer document by reference to the offeror's other documents published in accordance with the Listing Rules.

- 17. The nature and particulars of its business and its financial and trading prospects.
- 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 before the latest practicable date of the document.
- 19. Details of any material litigation to which the offeror is, or may become, a party.
- 20. The effect which the share buy-back will have on the offeror's earnings per share, net assets per share, liabilities and working capital and, if materially adverse, an explanation of how such effects will be addressed or an appropriate negative statement.

Share capital

- 21. The authorised and issued share capital and the rights of the shareholders in respect of capital, dividends and voting.
- 22. Details of shares issued and shares bought back since the end of the last financial year of the offeror.
- 23. Details of options, warrants and conversion rights affecting shares in the offeror.
- 24. Details of any re-organisation of capital during the 2 financial years 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 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 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 years before the date of the offer



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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.

Code obligations

28. A statement of the obligations of the offeror and the rights of the shareholders under Rules 15, 16, 17, 19 and 20 of the Takeovers Code.
29. The address of the websites on which documents are displayed under Note 1 to Rule 8 of the Takeovers Code.

SCHEDULE IV
EXTRACTS FROM PARTS 3 AND 5 AND SCHEDULE 2
OF THE SECURITIES AND FUTURES
(FEES) RULES

PART 3

FEES PRESCRIBED FOR PURPOSES OF
SECTION 395(1)(a)(ii) OF ORDINANCE

4. Interpretation of Part 3

In this Part, unless the context otherwise requires—

“Codes” means the codes entitled “The Codes on Takeovers and Mergers and Share Buy-backs” and published by the Commission under section 399(2)(a) and (b) of the Ordinance;

“Executive” means the Executive Director of the Corporate Finance Division of the Commission or any delegate of the Executive Director;

“Introduction to the Codes” means the part of the Codes entitled “Introduction”;

“offer” has the meaning assigned to it by the Codes and, in any case where section 5(2)(a)(ii) is applicable, includes any of the alternative offers or offers of different values (as the case may be) referred to in that section;

“offer document” means a document required to be submitted to the Executive under the Codes in connection with an offer;

“offeree company” means a corporation for which an offer is made in accordance with the Codes;

“off-market share buy-back” has the meaning assigned to it by the Codes;

“off-market share buy-back circular” means a document required to be submitted to the Executive under the Share Buy-backs Code in connection with an off-market share buy-back;

“relevant shares”—

- (a) in relation to an offer contained in an offer document, means the securities which are the subject of the offer;
- (b) in relation to an off-market share buy-back contained in an off-market share buy-back circular, means the securities which are the subject of the off-market share buy-back; or
- (c) in relation to a whitewashed offer, means the securities which would be the subject of the offer;

SCHEDULE IV

"ruling" includes any ruling, waiver, consent, decision, confirmation or other determination in writing, made under the Codes by the Executive, the Takeovers Panel or the Takeovers Appeal Committee;

"Share Buy-backs Code" means the parts of the Codes respectively entitled "Introduction", "Definitions", "General Principles", "Code on Share Buy-backs" and "Schedules";

"Takeovers Appeal Committee" means the committee established under section 8 of the Ordinance and known as the Takeovers Appeal Committee;

"Takeovers Code" means the parts of the Codes respectively entitled "Introduction", "Definitions", "General Principles", "Code on Takeovers and Mergers" and "Schedules";

"Takeovers Panel" means the committee established under section 8 of the Ordinance and known as the Takeovers and Mergers Panel;

"whitewash document" means a document required to be submitted to the Executive under the Whitewash Guidance Note in Schedule VI to the Codes;

"whitewashed offer", in relation to a whitewash document, means an offer which would be required to be made under Rule 26 of the Takeovers Code in the absence of a waiver under Note 1 on dispensations from Rule 26 of the Takeovers Code.

5. Fees relating to offer documents, off-market share buy-back circulars and whitewash documents

- (1) Where a first draft of an offer document, off-market share buy-back circular or whitewash document is submitted to the Executive for comment, a fee which is prescribed, opposite the applicable value set out in column 1 of Schedule 2, in column 2 of that Schedule shall be payable to the Commission.
- (2) For the purposes of subsection (1), the applicable value shall be equivalent—
 - (a) in the case of an offer document—
 - (i) subject to subparagraph (ii), to the value of the offer contained in the offer document; or
 - (ii) where the offer document contains alternative offers to the same offeree company, or contains 2 or more offers of different values to different offeree companies, to the value of the offer contained in the offer document which has the lower or lowest value;
 - (b) in the case of an off-market share buy-back circular, to the value of the off-market share buy-back contained in the off-market share buy-back circular; or
 - (c) in the case of a whitewash document, to the value of the whitewashed offer.
- (3) Where any offer contained in a draft offer document previously submitted to the Executive for comment is replaced by a revised offer, and a revised offer document is submitted to the Executive in connection with the revised offer,

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there shall be payable to the Commission a fee the amount of which shall be the difference between

- (a) the fee previously paid under subsection (1) on the submission of the draft offer document; and
 - (b) the fee which would have been payable under subsection (1) had the revised offer been contained in such draft offer document.
- (4) For the purposes of this section—
- (a) the value of any offer contained in an offer document or the value of an off-market share buy-back contained in an off-market share buy-back circular shall be—
 - (i) where the relevant shares are under the offer or the off-market share buy-back (as the case may be) to be acquired for cash, the total amount of such cash;
 - (ii) where the relevant shares are under the offer or the off-market share buy-back (as the case may be) to be acquired in exchange for securities, the total value of such securities on the date of announcement of a firm intention to make the offer or the off-market share buy-back (as the case may be) in accordance with the Codes; or
 - (iii) where the relevant shares are under the offer or the off-market share buy-back (as the case may be) to be acquired partly for cash and partly in exchange for securities, the aggregate of the total amount of such cash and the total value of such securities on the date of announcement of a firm intention to make the offer or the off-market share buy-back (as the case may be) in accordance with the Codes; and
 - (b) the value of a whitewashed offer in the case of a whitewash document shall be—
 - (i) where the relevant shares would under such whitewashed offer be acquired for cash, the total amount of such cash;
 - (ii) where the relevant shares would under such whitewashed offer be acquired in exchange for securities, the total value of such securities on the date of announcement of a firm intention to enter into the transaction which would require such whitewashed offer to be made in the absence of a waiver under Note 1 on dispensations from Rule 26 of the Takeovers Code; or
 - (iii) where the relevant shares would under such whitewashed offer be acquired partly for cash and partly in exchange for securities, the aggregate of the total amount of such cash and the total value of such securities on the date of announcement of a firm intention to enter into the transaction which would require such whitewashed offer to be made

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in the absence of a waiver under Note 1 on dispensations from Rule 26 of the Takeovers Code,

and where the application of this subsection may, in the case of any offer contained in an offer document or any whitewashed offer in the case of a whitewash document, result in 2 or more variable values, only the lower or lowest value shall be taken into account.

- (5) The payment of a fee payable under this section shall be accompanied by a statement showing the value of the offer, off-market share buy-back or whitewashed offer concerned and the manner in which the fee is determined having regard to subsection (4).
- (6) Where a first draft of an offer document, a first draft of an off-market share buy-back circular and a first draft of a whitewash document, or any combination of them, are combined in a draft when submitted to the Executive for comment—
 - (a) the fee payable under subsection (1) shall be the aggregate of the respective fees payable under that subsection in respect of each such first draft as if each such first draft had not been so combined in the draft, and the provisions of this section shall apply accordingly; and
 - (b) without prejudice to paragraph (a), subsection (3) shall apply as if—
 - (i) the reference to a draft offer document in subsection (3) included a reference to the draft in which each such first draft is so combined; and
 - (ii) the reference to a revised offer document included a reference to that draft as revised to include the revised offer.

6. Fees for applications to Takeovers Panel or Takeovers Appeal Committee

Where, pursuant to the Codes, a person other than the Executive applies to the Takeovers Panel for a review of any ruling of the Executive, or applies to the Takeovers Appeal Committee for a review of the appropriateness of any sanction imposed by the Takeovers Panel pursuant to the Codes—

- (a) a fee of \$50,000 shall be payable by the person to the Commission; and
- (b) an additional fee of \$20,000 shall be payable by the person to the Commission within 30 days after the delivery by the Takeovers Panel or the Takeovers Appeal Committee (as the case may be) of its ruling, in respect of each day or part of a day in excess of the first 2 days on which the Takeovers Panel or the Takeovers Appeal Committee (as the case may be) meets for the purposes of the review.

7. Fees for hearings concerning compliance with Codes or any rulings under them

- (1) Where a hearing takes place before the Takeovers Panel in any disciplinary proceedings instituted under section 12 of the Introduction to the Codes, a fee, the amount of which shall be determined in accordance with subsection (3), shall, within

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30 days after the delivery by the Takeovers Panel of its ruling, be payable to the Commission by any person who in the opinion of the Takeovers Panel—

- (a) has caused unnecessary expense to be incurred in connection with the investigation by the Commission of any allegation against the person or with the conduct of the hearing; or
 - (b) has committed a breach of the Takeovers Code, the Share Buy-backs Code or a ruling of the Executive or the Takeovers Panel.
- (2) Where a hearing takes place before the Takeovers Panel for the purpose of deliberating the appropriate sanction to be imposed upon a person who has agreed that he is in breach of the Takeovers Code, the Share Buy-backs Code or a ruling of the Executive or the Takeovers Panel, a fee, the amount of which shall be determined in accordance with subsection (3), shall be payable to the Commission by the person within 30 days after the delivery by the Takeovers Panel of its ruling.
- (3) The fee payable under subsection (1) or (2) shall be \$50,000 and, in addition, \$20,000 in respect of each day or part of a day in excess of the first 2 days on which the Takeovers Panel meets for the purposes of the hearing in question.

8. Fees for miscellaneous applications

- (1) Subject to subsection (2), where any person applies to the Executive for any ruling under the Takeovers Code or the Share Buy-backs Code and no fee is otherwise provided for by these Rules for the application, a fee of \$24,000 shall be payable by the person to the Commission.
- (2) Where a fee has been paid under section 5 on the submission of a first draft of a whitewash document, or of a draft in which a first draft of a whitewash document is combined with any first draft of any other document, no fee shall be payable under subsection (1) for an application to the Executive for a waiver in relation to the whitewash document under Note 1 on dispensations from Rule 26 of the Takeovers Code.

9. Time for payment of fees

- (1) The fee prescribed in section 5 shall be payable—
 - (a) in the case of a fee payable under section 5(1), at the time when—
 - (i) subject to subparagraph (ii), the first draft concerned; or
 - (ii) where section 5(6)(a) applies, the draft concerned,is submitted to the Executive; or
 - (b) in the case of a fee payable under section 5(3), at the time when—
 - (i) subject to subparagraph (ii), the revised offer document concerned; or



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- (ii) where section 5(6)(b)(ii) applies, the draft concerned (being the draft as revised to include the revised offer as described in that section 5(6)(b)(ii)),
is submitted to the Executive.
- (2) The fee prescribed in section 6(a) shall be payable at the time when the application concerned is made to the Takeovers Panel or the Takeovers Appeal Committee (as the case may be).
- (3) The fee prescribed in section 8(1) shall be payable at the time when the application concerned is made to the Executive.

PART 5

MISCELLANEOUS

11. Waiver of fees

- (1) ... the Commission may, in relation to any person or class of persons—
 - (a) waive, in whole or in part, the payment of any fee provided for under these Rules; or
 - (b) refund, in whole or in part, any fee paid as provided for under these Rules,if it is of the opinion that otherwise the payment of the fee would be unduly burdensome or inappropriate.



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SCHEDULE 2 FEES PRESCRIBED FOR PURPOSES OF SECTION 395(1)(a)(ii) OF ORDINANCE

Applicable value	Fee
Not exceeding \$75,000,000	\$25,000
Exceeding \$75,000,000 but not exceeding \$125,000,000	\$75,000
Exceeding \$125,000,000 but not exceeding \$300,000,000	\$150,000
Exceeding \$300,000,000 but not exceeding \$600,000,000	\$250,000
Exceeding \$600,000,000 but not exceeding \$1,200,000,000	\$350,000
Exceeding \$1,200,000,000 but not exceeding \$2,000,000,000	\$500,000
Exceeding \$2,000,000,000	\$500,000, plus 0.01% of the value over \$2,000,000,000



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SCHEDULE V

GUIDELINES FOR THE EXEMPTION OF LISTED COMPANIES FROM THE SHARE BUY-BACK REQUIREMENTS OF SECTIONS 238 TO 241 OF THE COMPANIES ORDINANCE (CAP. 622)

1.0 Definitions

1.1 Save for the terms hereinafter defined, and unless the context otherwise requires, terms used in these Guidelines shall have the meanings assigned to them by the Ordinance and any amendments thereto. In these guidelines:–

“Associate” has the meaning assigned to such term by the Listing Rules;

“Chief Executive” has the meaning assigned to such term by the Listing Rules;

“Code” means the Code on Share Buy-backs approved and published from time to time by the SFC;

“Executive” means the Executive Director of the Corporate Finance Division of the SFC or any delegate of the Executive Director;

“Guidelines” means these guidelines for the exemption of listed companies from the share buy-back requirements of sections 238 to 241 of the Ordinance that can be granted pursuant to section 241(1);

“Listing Rules” means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Ltd.;

“On-market share buy-back” has the meaning assigned to such term by the definitions to the Code;

“Off-market share buy-back” has the meaning assigned to such term by the definitions to the Code;

“Ordinance” means the Companies Ordinance (Cap. 622);

“Panel” means the Takeovers and Mergers Panel;

“SFC” means the Securities and Futures Commission;

“SF Ordinance” means the Securities and Futures Ordinance (Cap. 571);

“Share buy-back” has the meaning assigned to such term by the definitions to the Code; and

“Substantial shareholder” means a person who holds 10% or more of the voting rights of a company.

2.0 Nature and purpose of the Guidelines

2.1 Section 236(1) of the Ordinance provides that (subject to the prohibitions referred to in sections 236(2) and (3), and sections 257 to 266 regarding payment) a listed company

SCHEDULE V

may buy back its own shares in accordance with sections 238 to 243 of the Ordinance. Those sections prescribe, among other things, the ways in which a listed company may buy back its own shares and related shareholder approval and disclosure requirements.

- 2.2** The Code imposes similar requirements upon all public companies in Hong Kong regardless of their places of incorporation. Rule 8 of the Code provides, among other things, that the Executive may, upon the application of any person with an interest in a share buy-back, waive compliance with one or more provisions of the Code.
- 2.3** Section 241(1) of the Ordinance provides that the SFC may exempt any listed company from any of the provisions of sections 238, 239 or 240, subject to such conditions as it thinks fit. Section 241(1) of the Ordinance is intended to provide listed companies which are subject to the Ordinance with the same flexibility to seek relief from the share buy-back requirements of sections 238, 239 or 240 of the Ordinance as Rule 8 of the Code affords all public companies in Hong Kong in respect of the share buy-back requirements of the Code.
- 2.4** The SFC has delegated its power to grant exemptions pursuant to section 241(1) of the Ordinance to the Executive and the Panel pursuant to section 10(1) of the SF Ordinance. The Executive is thereby authorised to exercise the SFC's discretion to grant exemptions from the share buy-back requirements of sections 238, 239 or 240 in the first instance, and to refer novel, difficult or important exemption applications to the Panel for its consideration. The Panel is authorised to exercise the SFC's discretion to grant the exemptions sought by any novel, important or difficult exemption applications that are referred to it by the Executive, and it is also authorised to review decisions made by the Executive in the first instance at the request of an aggrieved applicant. Applications for exemption from the share buy-back requirements of sections 238, 239 or 240 of the Ordinance are therefore subject to the same procedural rules as applications for waivers from the share buy-back requirements of the Code. Reference is made in this regard to the Introduction to, and Rule 8, of the Code.
- 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.
- 2.6** The Guidelines are intended to provide listed companies with guidance as to the way in which the Executive and the Panel may exercise the discretion that has been delegated to them by the SFC to grant exemptions from the share buy-back requirements of sections 238, 239 or 240. The Guidelines are not exhaustive. They are simply intended to assist listed companies with an understanding of matters that the Executive and the Panel will take into consideration when deciding to exercise such discretion. They may be modified or varied as circumstances require.

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3.0 Application for an exemption or variation

- 3.1 An application for an exemption from sections 238, 239 or 240 of the Ordinance, or for a variation of an exemption previously granted, should be made in writing and directed to the Executive. Exemption applications which seek relief from share buy-back requirements of the Ordinance which are common to both the Ordinance and the Code should also seek relief from the comparable Code requirements.
- 3.2 An applicant, when deciding what matters to include in its written application, should have regard to the Guidelines and the General Principles of the Code. The Executive or the Panel, as the case may be, may request additional information or make such enquiries as it considers appropriate when considering any application.
- 3.3 These Guidelines provide for general or “blanket” exemptions and specific exemptions. Exemptions, whether general or specific, may be made subject to such conditions as either the Executive or the Panel considers to be reasonably appropriate in the circumstances.

4.0 General or “blanket” exemptions

- 4.1 A general or “blanket” exemption is intended to relieve all listed companies, or an identifiable group of companies, from one or more of the share buy-back requirements of sections 238, 239 or 240 of the Ordinance. Such an exemption would only be granted during a so-called “market emergency” and only if the exemption is considered to be in the best interests of the market.
- 4.2 An application for a general or “blanket” exemption would normally be referred by the Executive to the Panel for its consideration and any exemption granted by the Panel would normally be made conditional upon approval by the SFC. Both the Panel and the SFC would consider the matter promptly. Such an exemption would be strictly limited in terms of its duration and the number of shares that could be bought back, and it would require all share buy-backs effected in reliance upon the exemption to be made by way of an on-market share buy-back conducted in accordance with the Listing Rules.

5.0 Specific exemptions

- 5.1 A specific exemption is intended to relieve a particular listed company from one or more of the share buy-back requirements of sections 238, 239 or 240 of the Ordinance. It is currently anticipated that three types of specific exemptions would be granted.
- 5.2 The first type of specific exemption would relieve an applicant from the requirement to obtain the prior authorisation of its shareholders for a proposed share buy-back if a disorderly market for the shares of the company had developed, or was reasonably expected to develop, and time did not permit a shareholder’s meeting to be held. Such an exemption would normally be conditional upon the share buy-back being made by way of an on-market share buy-back conducted in accordance with the Listing Rules.
- 5.3 The second type of specific exemption would also relieve an applicant from the requirement to obtain the prior authorisation of its shareholders for a proposed share buy-back if the proposed share buy-back constituted an off-market share buy-back for a small number of shares of the company from a shareholder who was not a director, chief



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executive or substantial shareholder of the company or an associate thereof. Such an exemption would normally be granted only if the costs of prior shareholder authorisation were outweighed by the benefits to the company of the proposed share buy-back.

- 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 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.

SCHEDULE VI

WHITEWASH GUIDANCE NOTE

(See Note 1 on dispensations from Rule 26 of the Takeovers Code.)

1. Introduction

- (a) This Whitewash Guidance Note sets out the procedures to be followed if the Executive is to be asked to waive the obligation to make a general offer under Rule 26 of the Takeovers Code which would otherwise arise where, as a result of the issue of new securities as consideration for an acquisition or cash injection or in fulfilment of obligations under an agreement to underwrite the issue of new securities, a person or group of persons acting in concert acquires voting rights to an extent which would normally give rise to an obligation to make a general offer.
- (b) Where the word "offeror" is used in a particular Rule, it should be taken in the context of a whitewash as a reference to the potential controlling shareholders. Similarly, the phrase "offeree company" should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.
- (c) The General Principles of the Codes apply equally to a transaction which is the subject of the whitewash procedures.

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;
- (b) prior consultation with the Executive by the parties concerned or their advisers;
- (c) approval in advance by the Executive of the circular to shareholders setting out the details of the proposals and containing the information required in paragraph 4 of this Schedule VI below;
- (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);

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- (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);
 - (x) Rule 18 (statements during course of offer);
 - (xi) Rule 25 (special deals);
 - (xii) Rule 31.1 (restrictions following offers and possible offers); and
 - (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
- (f) disenfranchisement of the person or group seeking the waiver and of any other non-independent party at any such meeting.

Notes:

1. *Early consultation*

Consultation with the Executive at an early stage is essential. Late consultation may well result in delays to planned timetables. Experience suggests that the documents sent to shareholders in connection with the whitewash procedure may have to pass through several proofs before they meet the Executive's requirements and no waiver of the Rule 26 obligation will be granted until such time as the documentation has been approved by the Executive.

2. *Listing Division*

It must be noted that, in the case of listed companies, clearance of the circular by the Listing Division of the Stock Exchange does not constitute approval of the circular by the Executive.

3. **Disqualifying transactions**

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

- (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

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months 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.

Notes:

- 1 *Class (6) of the definition of acting in concert would apply to directors of a company and a whitewash would be regarded as an offer for this purpose.*
- 2 *If the applicant for a whitewash waiver or a person acting in concert with him acquires shares within 6 months after the shareholders' meeting from a person who was a director or substantial shareholder of the company at the time of the whitewash, such acquisition will be deemed to be a special deal transaction prohibited under Rule 25 of the Takeovers Code. The applicant or his concert party may seek consent from the Executive if the acquisition is de minimis.*

4. Circular to shareholders

The circular must contain the following information and statements or, where relevant, comply appropriately with the Rules of the Takeovers Code as set out below:–

- (a) competent independent advice contemplated by Rule 2 to the offeree company regarding the transaction, the controlling position which it will create and the effect which this will have on shareholders generally;
- (b) full details of the maximum potential controlling holding of voting rights:–
 - (i) where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential controlling shareholders will, in addition to any other entitlement, take up their full underwriting participation; and
 - (ii) where convertible securities, warrants, options or other subscription rights are to be issued, the potential controlling holding of voting rights must be indicated on the assumption that only the controlling shareholders will convert or exercise the subscription rights, and will do so in full and at the earliest opportunity (the date of which must also be given);
- (c) where the maximum potential holding of voting rights resulting from the proposed transaction will exceed 50% of the voting rights of the company, specific and prominent reference to this possibility and to the fact that the potential controlling shareholders may increase their holding without incurring any further obligation under Rule 26 to make a general offer;

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- (d) in cases where the potential controlling shareholding will be held by more than one person, the identity of the potential controlling shareholders and their individual potential holding of voting rights in addition to the information required under paragraph 4(k) of this Schedule VI below;
- (e) a statement that the Executive has agreed, subject to approval by independent shareholders in accordance with Note 1 on dispensations from Rule 26 of the Takeovers Code, to waive any obligations to make a general offer which might result from the transaction;
- (f) Note 1 to Rule 8 and paragraph 14 of Schedule II (documents to be on display);
- (g) Rule 9.2, paragraphs 1, 2, 3, 6 and 10 of Schedule I and paragraphs 6, 7 and 8 of Schedule II (information to shareholders which must include full details of the assets, if any, being injected);
- (h) Rules 9.3 and 9.4 (responsibility statements, etc.);
- (i) Rules 10 and 11 (profit forecasts, financial information, merger benefits statements and asset valuations relating to the offeree company or relating to assets being acquired by the offeree company);
- (j) paragraph 14 of Schedule I and paragraphs 10, 11 and 12 of Schedule II (arrangements in connection with the proposal);
- (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 before the date of the announcement of the proposals until the latest practicable date 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;
- (l) paragraph 9 of Schedule II (material contracts);
- (m) paragraph 13 of Schedule II (service contracts of directors and proposed directors);
and
- (n) paragraphs 3 to 5 of Schedule II (share capital of the offeree company).

5. Underwriting and placing

In cases involving the underwriting or placing of offeree company securities, the Executive must be given details of all the proposed underwriters or placees, including any relevant information to establish whether or not there is a group acting in concert, and the maximum percentage which they could come to hold as a result of implementation of the proposals.

6. Announcements following shareholders' approval

- (a) 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

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which the potential controlling shareholders have become entitled as a result (see also Rule 2.9).

- (b) Where the final controlling holding of voting rights is dependent on the results of underwriting, the offeree company must make an announcement following the issue of the new securities stating the number and percentage of voting rights held by the controlling shareholders at that time.
- (c) Where convertible securities, warrants, options or other subscription rights are to be issued:–
 - (i) the announcement of the potential controlling holding of voting rights must be made on the basis of the assumptions described in paragraph 4(b) of this Schedule VI above; and
 - (ii) following each issue of new securities a further announcement must be made confirming the number and percentage of voting rights held by the controlling shareholders at that time.

Note:

Copies of announcements

Copies of announcements made under this paragraph 6 should be sent to the Executive.

7. Subsequent acquisitions by controlling shareholders

When a person, or group of persons acting in concert, would otherwise be obliged to make a mandatory offer pursuant to Rule 26 of the Takeovers Code but the obligation is waived pursuant to a vote of independent shareholders in accordance with the terms of Note 1 on dispensations from Rule 26 of the Takeovers Code, 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 after 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% creper under Rule 26.1 of the Takeovers Code by reference to the lowest percentage holding in the 12 month period ending on the date of the completion of the relevant acquisition. (See Note 15 to Rule 26.1 of the Takeovers Code.)

8. Convertible securities, warrants and options

Where shareholders approve the issue of convertible securities, or the issue of warrants or the grant of options to subscribe for new shares where no immediate voting rights are obtained, the Executive will view the approval as sanctioning maximum conversion or subscription at the earliest possible moment without the necessity for the making of an offer under Rule 26 of the Takeovers Code. After conversion or subscription, the potential controlling shareholders shall be deemed to have a lowest percentage holding equal to their percentage holding immediately after the conversion or subscription. (See also Note 15 to Rule 26.1 of the Takeovers Code.)

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If the potential controlling shareholders acquire further voting rights after the date of the issue of the relevant convertible securities, warrants and options, the waiver will only apply to conversion into, or subscription for, such number of voting rights as, when added to the purchases, does not exceed the number originally approved by shareholders. Such further acquisition of voting rights would be subject to Rule 26 of the Takeovers Code so that an offer obligation would arise if as a result the percentage shareholding of the potential controlling shareholders increased to 30% or, if already over 30%, by more than 2% in any 12 month period.

Where shareholders approve the issue of convertible securities, or the issue of warrants or the grant of options to subscribe for new shares without the necessity for the making of an offer under Rule 26 of the Takeovers Code on conversion or subscription, for so long as any of these securities remain outstanding the company must include in its annual and interim accounts a statement describing the securities outstanding, the impact of full conversion or subscription and the fact that shareholders have approved that no offer under Rule 26 of the Takeovers Code would arise on full conversion or subscription. Such statement should be disclosed together with the disclosure of the interests of directors and substantial shareholders.

9. Share buy-backs

If 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 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.

10. Underwriting

Where a person or group of persons acting in concert seeks approval of shareholders for a maximum potential controlling holding of voting rights that may arise as a result of underwriting an issue of new securities, the percentage holding of voting rights following the issue shall be deemed to have been whitewashed, regardless of whether the increase in this percentage holding would have incurred a general offer obligation. The underwriting shareholder shall be deemed to have a lowest percentage holding equal to his percentage holding immediately after the issue.

11. Issue of new shares and off-market share buy-backs

The Executive will not normally grant a waiver of an obligation under Rule 26 of the Takeovers Code, or if granted such waiver will be invalidated, if the potential controlling shareholders subscribe 30% or more (or more than 2% if they are holding between 30% to 50%) new shares of a company and the company buys back a substantial number of shares of the company from other shareholders in an off-market share buy-back. For the



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purpose of this paragraph, the Executive reserves the right to aggregate transactions or arrangements over a reasonable period of time. If in doubt, parties must consult the Executive at the earliest opportunity.



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SCHEDULE VII

CONFLICTS OF INTEREST GUIDANCE NOTE

Instances where conflicts of interest may arise include those resulting from the possession of material confidential information or where the adviser is part of a multi-service financial organisation, as exemplified below.

(a) Material confidential information

A financial adviser may have the opportunity to act for an offeror or the offeree company in circumstances where the adviser is in possession of material confidential information relating to the other party, for example, because it was a previous client or because of involvement in an earlier transaction. This will often necessitate the financial adviser declining to act, for example, because the information is such that a conflict of interest is likely to arise. Such a conflict will normally be incapable of resolution simply by isolating information within the relevant organisation or by assigning different personnel to the transaction.

(b) Conflicts of multi-service financial organisations

A financial adviser, or proposed financial adviser, that is part of a multi-service financial organisation should be alert to possible conflicts of interest.

Such conflicts may arise in particular where organisations involve an auditor's practice or a lending institution. For example a financial adviser must not act as independent financial adviser to an offeree company under Rule 2 of the Takeovers Code if the financial adviser, or any of its affiliated entities, is the auditor of the offeree company.

In all cases of possible conflict the Executive must be consulted.

(c) Segregation of businesses

It is incumbent upon multi-service financial organisations to familiarise themselves with the implications under the Codes of conducting other businesses in addition to, for example, corporate finance or stockbroking. If one part of such an organisation is involved in an offer, for example, in giving advice to an offeror or the offeree company, a number of Rules of the Codes may be relevant to other parts of that organisation, whose actions may have serious consequences under the Codes. Compliance departments of such organisations have an important role in this respect and are encouraged to liaise with the Executive in cases of doubt.

The concepts of "exempt fund managers" and "exempt principal traders" in the Takeovers Code are in recognition of the fact that fund management and principal trading may be conducted on a day-to-day basis quite separately within the same organisation; but it is necessary for such organisations to satisfy the Executive that this is the case. It is essential, therefore, that such organisations arrange their affairs to ensure not only total segregation of those operations but also that those operations are conducted without regard for the interests of other parts of the same organisation or of their clients. The Takeovers Code contains a number of Rules which are designed to ensure that the principles on which these concepts are based are upheld.



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SCHEDULE VIII

RECEIVING AGENTS' CODE OF PRACTICE

Note: This Schedule VIII should be read in conjunction with Rules 26.2 and 30.2 of the Takeovers Code and, in particular, Notes 1, 2, 7 and 8 to Rule 30.2.

INTRODUCTION

1. This Code of Practice has been drawn up after consultation with the Stock Exchange and Hong Kong Federation of Share Registrars. It is reproduced with the agreement and support of these bodies.
2. It is essential when determining the result of an offer under the Takeovers Code that appropriate measures are adopted such that all parties to the offer may be confident that the result of the offer is arrived at by an objective procedure which, as far as possible, eliminates areas of doubt. This Code of Practice is designed to ensure that those acceptances and purchases which may be counted towards fulfilling the acceptance condition and thus included in the certificate are properly identified to enable the receiving agent to provide the certificate required by Note 2 to Rule 30.2. Receiving agents are also required to establish appropriate procedures such that acceptances and purchases can be checked against each other and between different categories so that no shareholding will be counted twice.
3. The principles and procedures outlined in this Code of Practice are, except with the prior consent of the Executive, to be followed in all cases. It must be understood that the co-operation between the offeree company's registrar and the offeror's receiving agent is expected to ensure that the procedures can be undertaken in a timely manner. Co-operation is interpreted to include the provision of data in a form convenient for the receiving agent. For example, if the receiving agent so requests, following the announcement of an offer, the registrar should, if practicable, provide the register in computer readable form. Whenever possible, if requested to do so, the registrar should provide, in similar form, details of changes to the register rather than a complete new register.
4. Receiving agents will have direct access to the Executive should they believe that there is insufficient co-operation or that they are being given instructions contrary to this Code of Practice.

QUALIFICATIONS FOR ACTING AS A RECEIVING AGENT

5. A receiving agent to an offer must either:—
 - (a) be a member of the Federation of Share Registrars; or
 - (b) be an organisation which has satisfied the Executive that it has the experience and resources necessary to act as receiving agent in connection with the relevant offer.

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THE PROVISION OF THE OFFEREE COMPANY'S REGISTER

6. (a) When a firm intention to make an offer is announced, the offeree company should instruct its registrar to respond no later than 2 business days 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.
- (b) The offeree company's registrar should also be instructed to keep the register as up-to-date as the register maintenance system will allow. The registrar should ensure that maintenance is such that it can comply with paragraph (c) below. The updating procedures should include, in addition to the registration of transfer, the registration of all changes affecting the register (e.g. grants of representation, marriage certificates, changes of address etc.).
- (c) The registrar must provide updates, on a daily basis, to the register 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 date³ 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.

- (d) Arrangements should be made to ensure that the offeror's receiving agent has access to the offeree company's registrar during office hours (i.e. from 9.00 a.m. to 6.00 p.m.) on any business days, during the period between the final register day* and the time the offer becomes or is declared unconditional as to acceptances or lapses, in order that any queries arising from acceptances and purchases can be investigated and accurate decisions taken. In case of urgency, the offeror's receiving agent should also be given access to the offeree company's registrar on any days that are not business days or outside office hours on a business day, provided that the receiving agent gives reasonable notice to the registrar to obtain its consent. Such consent should not be unreasonably withheld by the registrar.

³* See definitions at end of this Schedule.

COUNTING OF ACCEPTANCES

7. The offeror's receiving agent must ensure that all acceptances counted as valid meet the requirements set out in Note 1 to Rule 30.2.



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COUNTING OF PURCHASES

8. The offeror's receiving agent must ensure that all purchases counted as valid meet the requirements (subject to Note 8 to Rule 30.2) set out in Note 7 to Rule 30.2.

DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES

9. Certificates issued by the offeror's receiving agent should be unqualified, save for a disclaimer (if necessary) as to limitations on the responsibility of the receiving agent for the errors of third parties which are not evident from the documents available to the receiving agent. A disclaimer in the following form would normally be acceptable; any variation should be agreed specifically by the Executive in advance:–

"In issuing this certificate we have, where necessary relied on the following matters:

- (i) certifications of acceptance forms by the offeree company's registrar;
- (ii) certifications by the offeree company's registrar that a transfer of shares has been executed by or on behalf of the registered holder in favour of the offeror company or its nominees;
- (iii) confirmation from the offeror of the validity of shares recorded as registered holdings and purchases in the context of Note 8 to Rule 30.2.

As the offeror company's receiving agent, we have examined with due care and attention the information provided to us, and as appropriate, made due and careful enquiry of relevant persons, in order that we may issue this certificate and have no reason to believe that the information contained in it cannot be relied upon but, subject thereto, we accept no responsibility or liability whatsoever in respect of any error of the offeree company's registrar or the offeror company's buying broker for the matters set out above to the extent that we have relied upon them in issuing this certificate."

DEFINITIONS:

- * *final register day – the day 2 days before the final closing date[§] of an offer.*
- [§] *final closing date – the 60th day or other date beyond which the offeror has stated that its offer will not be extended.*



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SCHEDULE IX
REIT GUIDANCE NOTE

1. Introduction

- (a) The provisions of the Codes including the parts of the Codes respectively entitled "Introduction", "Definitions", "General Principles", "Takeovers Code", "Share Buy-backs Code" and "Schedules" apply to REITs subject to the modifications set out in this Guidance Note.
- (b) This Guidance Note is intended to provide all those involved in REITs with guidance as to how the Codes apply to REITs. The guidelines are not exhaustive. The Panel and the Executive will apply this Guidance Note in accordance with its spirit as well as its letter so as to achieve the underlying purpose.
- (c) The General Principles of the Codes apply equally to a transaction involving a REIT.

2. Definitions

Unless the context otherwise requires in the context of a REIT:–

"Acting in concert": In addition to the presumptions set out in the Definitions section of the Codes, persons in the following class will be presumed to be acting in concert with others in the same class unless the contrary is established:–

- (10) a REIT, its management company (together with persons controlling[#], controlled by or under the same control as the management company) and any director (together with their close relatives, related trusts and companies controlled[#] by any of the directors, their close relatives or related trusts) of such management company; and

Notes:

- 1. *The Executive must be consulted where a management company acts at the same time for more than one of the following:–*
 - (i) *offeror or possible offeror;*
 - (ii) *competing offeror or possible competing offeror; and*
 - (iii) *offeree REIT.*
 - 2. *The role carried out by a management company pursuant to its obligations under the REIT Code should be distinguished from a fund manager under class (4) and a financial or other professional adviser under class (5). Nonetheless, class (4) and/or (5) will also apply to a management company where the management company is acting in such capacity for a REIT.*
- (11) a REIT and its trustee acting in such capacity.

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Notes:

1. *The Executive must be consulted where a trustee acts at the same time in its capacity as trustee for more than one of the following:–*
 - (i) *offeror or possible offeror;*
 - (ii) *competing offeror or possible competing offeror; and*
 - (iii) *offeree REIT.*
2. *For the purpose of calculating the voting rights held by a group acting in concert, the voting rights held by a trustee in its capacity as trustee of unrelated trusts will not normally be counted. In case of doubt, the Executive must be consulted.*

“Associate”: In addition to the persons listed under the definition of “associate” in the Definitions section of the Codes, with respect to an offeror or potential offeror or the offeree company (the “first person”), the term “associate” normally includes the following:–

- (7) any trustee (in its capacity as trustee of a REIT) of an offeror, the offeree REIT or any company in class (1) of the definition of acting in concert; and
- (8) any management company (together with persons controlling[#], controlled by or under the same control as the management company) of an offeror, the offeree REIT or any company in class (1) of the definition of acting in concert.

“Board”: should be taken as a reference to include a management company and/or its board of directors.

“Company”: should be taken as a reference to a REIT and/or a company as the context requires.

Note:

In the context of a REIT, the concept of parent, subsidiary, fellow subsidiary and associated company should apply to REITs (see also the Notes to Definitions in this Guidance Note).

“Connected fund manager and connected principal trader”: In addition to the four classes of persons listed under the definition of “connected fund manager and connected principal trader” in the Definitions section of the Codes, a new class (5) is introduced:–

- (5) the management company of an offeror REIT or an offeree REIT.

“Constitutive documents”: has the meaning attributed to such term by the REIT Code.

“Director(s)”: should be taken as a reference to include a management company and/or any one or more of its directors and/or persons with whose instructions a management company or its directors or a director of such management company is accustomed to act.

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Note:

With respect to classes (2) and (6) of the presumptions of acting in concert set out in the Definitions section of the Codes, references to “directors” will also be taken as references to include the management company of a REIT (together with persons controlling⁸, controlled by or under the same control as the management company).

“Employee share scheme”: includes any employee share scheme of a management company adopted in connection with the REIT it manages.

“General meeting”: should be taken as a reference to a meeting of the unitholders of a REIT held in accordance with the REIT’s constitutive documents.

“Management company”: has the meaning attributed to such term in the REIT Code.

“Pension funds”: includes any pension funds of a management company established in connection with the REIT it manages.

“Provident funds”: includes any provident funds of a management company established in connection with the REIT it manages.

“REIT”: has the meaning attributed to such term by the REIT Code.

“REIT Code”: means the Code on Real Estate Investment Trusts.

“Shares”: should be taken as a reference to the units of a REIT.

“Share capital”, “Issued share capital”, “Equity share capital” or “Equity shares”: should be taken as references to the units of a REIT which are issued and outstanding from time to time.

“Shareholders”: should be taken as a reference to unitholders of a REIT.

“Special purpose vehicles”: has the meaning attributed to such term by the REIT Code.

“Trustee”: means a person appointed to act as trustee of a REIT.

Notes to Definitions:-

1. *Action by a trustee, a management company and/or any of its directors*

Where an action is taken by a trustee (in its capacity as trustee of a REIT) or a management company and/or any of its directors (in their respective capacity on behalf of a REIT), that action will be deemed to be an action taken by such REIT. In case of doubt, the Executive must be consulted.

2. *Voting rights owned, controlled or held by a trustee, a management company and/or any of its directors*

Any voting rights owned, controlled or held by a trustee (in its capacity as trustee of a REIT) or a management company and/or any of its directors (in their respective capacity on behalf of a REIT) will be deemed to be voting rights owned, controlled or held by such REIT of which any of the trustee/the management company and/or any

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of its directors acted on its behalf. In case of doubt, the Executive must be consulted.

3. *Assets owned, controlled or held by special purpose vehicle(s)*

Any assets owned, controlled or held by any special purpose vehicle will be deemed to be assets owned, controlled or held by the REIT that owns or controls the special purpose vehicle(s) in accordance with the REIT Code. In case of doubt, the Executive must be consulted.

3. Clarification of various provisions of the Codes

(a) Application of Note 7 to Rule 2 of the Takeovers Code

In the context of a REIT, paragraph (i) of Note 7 to Rule 2 of the Takeovers Code should be replaced by "as a result of such proposal the REIT may not be regarded as suitable to remain authorised by the SFC under section 104 of the Securities and Futures Ordinance (Cap. 571); or".

(b) Directors of a company (Rule 2.8 and Note 2 to Rule 7 of the Takeovers Code)

For the purpose of Rule 2.8 and Note 2 to Rule 7 of the Takeovers Code, "director(s)" of a company will be construed as "director(s) of the relevant management company". In case of doubt, the Executive must be consulted.

(c) Announcement of firm intention to make an offer (Rule 3.5(b) of the Takeovers Code)

In cases where the offeror is a REIT, in addition to disclosing the relevant information under Rule 3.5(b) of the Takeovers Code, the relevant announcement must also contain the identity of each of the management company and the trustee of such REIT.

(d) No frustrating action (Rule 4 of the Takeovers Code)

In accordance with Rule 4 of the Takeovers Code and its notes, in cases where the offeree company is a REIT, no frustrating action should be taken by any of the offeree REIT, the management company and/or any of its directors and/or the trustee (in its capacity as trustee of such offeree REIT). In particular, in addition to the matters set out under Rule 4 of the Takeovers Code, the relevant parties must not, without the approval of the unitholders of the offeree REIT, do or agree to do the following:—

- (a) alter the terms of engagement between the offeree REIT and its management company; or
- (b) enter into, or alter the terms of, the service contracts between the management company of the offeree REIT and any of its directors otherwise than in the ordinary course of business.

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(e) Service contracts (Rule 4, Rule 8.5, Note 1(j) to Rule 8 of the Takeovers Code and paragraph 13 of Schedule II to the Codes)

References to "directors' service contracts or service contracts of the directors" will be construed to include (i) any service contract between the management company and each of its directors; and (ii) any service contract in whatever form with the management company of the REIT in such capacity. In case of doubt, the Executive must be consulted.

(f) Availability of information – information issued by associates (Note 4 to Rule 8.1 of the Takeovers Code)

With respect to Note 4 to Rule 8.1 of the Takeovers Code, attention should also be drawn to classes (7) and (8) of the definition of "associate" under this Guidance Note.

(g) Resignation and appointment of the management company and its directors (Rule 7 and Rule 26.4 of the Takeovers Code)

In cases where any management company and/or any of its directors have difficulty in complying with Rule 7 and Rule 26.4 of the Takeovers Code due to compliance with any other rules, regulations and/or the constitutive documents of the REIT such management company manages, the Executive must be consulted.

(h) Documents to be on display (Note 1 to Rule 8 of the Takeovers Code)

In cases where the offeror or the offeree company is a REIT, in addition to the documents set out in Note 1 to Rule 8 of the Takeovers Code, copies of the relevant constitutive documents must also be made available for inspection in accordance with such note.

(i) Dividend forecasts (Rule 10.6(d) of the Takeovers Code)

A dividend forecast of a REIT is normally considered a profit forecast under Rule 10. In case of doubt, the Executive should be consulted.

(j) Appropriate offers for convertibles, warrants, etc. (Rule 13 of the Takeovers Code)

References to convertible securities in the context of a REIT in Rule 13 of the Takeovers Code will be construed to include those convertible securities issued by a REIT's special purpose vehicle(s) that are convertible into units of and whether or not guaranteed by such REIT (through its trustee acting in such capacity).

(k) Offer to remain open for a longer period after unconditional in all respects (Rule 15.3 of the Takeovers Code)

Where an offer is made to the unitholders of a REIT in relation to or together with:-

- (i) a proposal to withdraw the listing of the units of the REIT on the Stock Exchange; or

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- (ii) a proposal which might result in the REIT being not regarded as suitable to remain authorised by the SFC under section 104 of the Securities and Futures Ordinance (Cap.571); and

where such offer becomes or is declared unconditional in all respects, it should remain open for acceptance for a longer period than normally required by Rule 15.3. A corresponding extension of the written notice period will also be required. In the circumstances, a clear explanation of the implications of the proposal should be clearly and prominently disclosed in the offer document sent to those unitholders who have not accepted the offer.

(l) Lowest percentage holding for the 12 month period preceding 25 June 2010 (Rule 26.1 of the Takeovers Code)

For the purpose of Rule 26.1, the percentage holding of a person at the beginning of 25 June 2010 shall be deemed to be the lowest percentage holding of that person for the 12 month period preceding 25 June 2010.

(m) Requisitioning shareholder meetings after an offer becomes unconditional in all respects (Rule 31.5 of the Takeovers Code)

In cases where the offeree company is a REIT, the trustee (in its capacity as trustee of such offeree REIT) must also comply with Rule 31.5(ii). In case of doubt, the Executive should be consulted.

(n) Intentions regarding the offeree REIT (paragraph 3 of Schedule I and paragraph 4 of Schedule III to the Codes)

If the offeree company is a REIT, instead of the disclosure requirements under paragraph 3 of Schedule I or paragraph 4 of Schedule III (as the case may be), the offeror's intentions regarding the following should be disclosed:—

- (i) the continued operation of the REIT;
- (ii) any major changes to be made to the operation of the REIT, including any redeployment of the assets of such REIT, any proposed change of the property management company and any transitional arrangements;
- (iii) any major changes to be made to the investment policy of the REIT;
- (iv) any plan to remove the current management company (and/or its directors) and appoint a new management company (and/or its directors) and any corresponding transitional arrangements;
- (v) the long-term commercial justification for the proposed offer; and
- (vi) the listing status of the REIT.



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(o) Further information in cases of securities exchange offers (paragraph 17 of Schedule I to the Codes)

If the offeror is a REIT, instead of the disclosure requirements under paragraph 17 of Schedule I, the date of establishment and the governing law of the offeror should be disclosed.

(p) Shareholdings and dealings (paragraph 2 of Schedule II to the Codes)

In cases where the offeree company is a REIT, the disclosure obligations under paragraph 2 of Schedule II and Note 2 to such paragraph should also apply to any person who is an associate of the offeree company by virtue of classes (7) and (8) of the definition of associate.

4. Early consultation

Consultation with the Executive at an early stage is essential.



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