

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

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

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

- (a) any purchases by fund managers or principal traders connected to the offeror might result in an obligation on the offeror to make an offer in cash at the highest price paid or to revise any existing offer to that level (Rules 23, 24 and 26.3 of the Takeovers Code);
- (b) sales of offeree securities by such connected fund managers and connected principal traders would be restricted during an offer period

- 3 What exempt status means
 - 3.1 Once exempt, an EFM or EPT is not normally regarded as acting in concert with the client of the group's corporate finance department that is involved in an offer and hence the implications of concert party status under the Codes do not apply. A similar regime operates in London.
 - 3.2 It is important to note that the benefits of exempt

3.5 For the avoidance of doubt an EFM or an EPT must make full and proper disclosure of its dealings in relevant securities in compliance with Rule 22 (see paragraphs 4 and 6 below).

4 Practical guidance on Code implications and disclosure requirements for EFM s

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

4.2 Is an EFM s disclosure public or private?

The question of whether an EFM's disclosure of its dealings during an offer period are public or private is determined by whether or not the EFM is an "associate" under class (6) of the definition of associate under the Codes as described below:

- (a) Normally an EFM (who is not a class (6) associate) must make private disclosure to the Executive under Rule 22.1(b)(ii). This assists the Executive to monitor dealings during an offer period.
- (b) If an EFM holds 5% or more of any class of relevant securities, it would be regarded as an "associate" (by virtue of class (6) of the definition of associate in the Codes) and would therefore need to make public disclosure of its dealings in relevant securities (see Rule 22.1(b)(ii)). The reason for such public disclosure is that these dealings are considered to provide relevant information to shareholders and the market during an offer period.

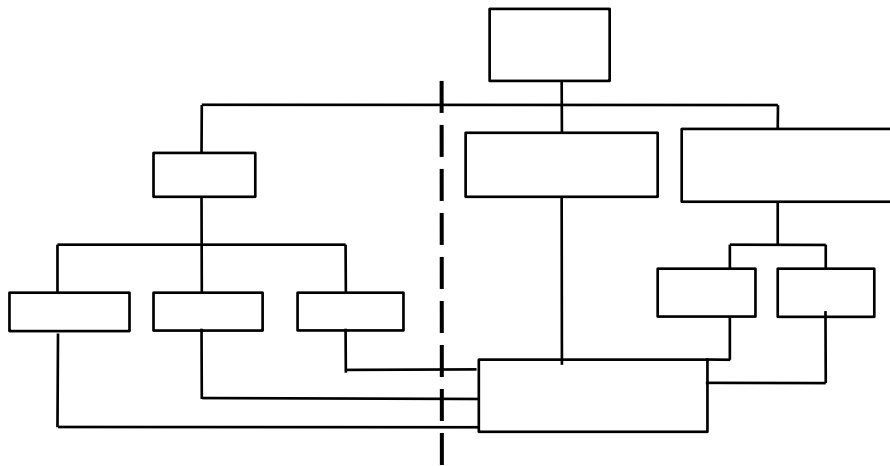
4.3 Why should an EFM aggregate its holdings?

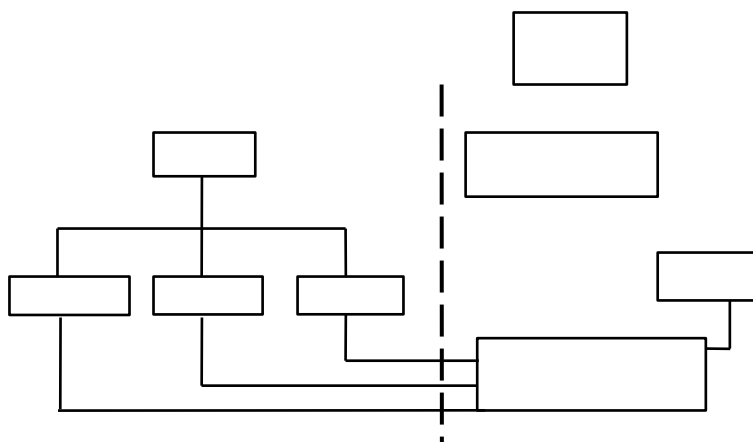
An EFM should aggregate its holdings for various purposes under the Codes including:

- (a) To determine whether it would be regarded as a class (6) associate.
 - (i) If an EFM is

(ii) If an

- (b) When an EFM makes a public disclosure because it is a class (6) associate, unless the Executive consents otherwise, it is required to disclose the aggregate holdings of relevant securities held by all discretionary fund managers within the same group (whether exempt or non-exempt). This

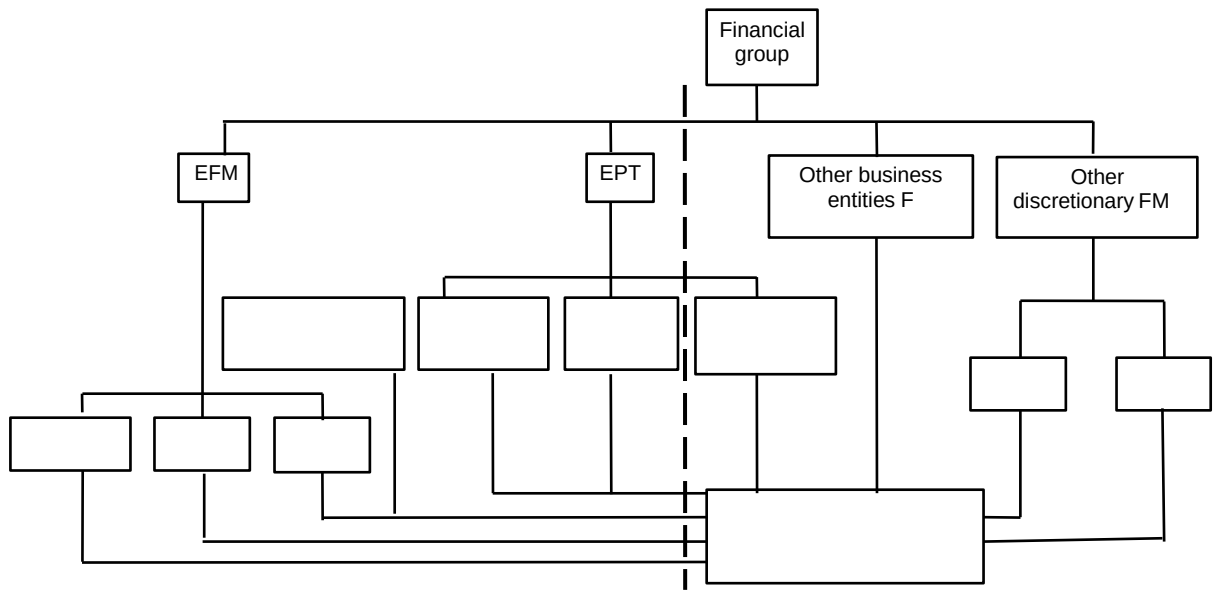




- (c) Given that Rule 22.1 provides that an EFM should disclose (whether privately or publicly) dealings in all relevant securities, Note 9 to Rule 22 is not applicable to EFMs. Therefore an EFM must disclose any dealings in options and derivatives.
- (d) ~~Disclosure should also be made to the offeror and the offeree company or their respective financial advisers at the same time (see Note 6~~

(iii) subject always to Rule 35.1,

6.2 Is an EPT



6.6 Dealing activities conducted by an EPT

(a) Exempt Principal Trades

The Codes define an EPT as follows:

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

6.7 Guidance on exempt principal trades

As already stated exempt status for EPTs is limited to the trading activities that are set out in the definition of EPT. The reason for imposing such limitations is that the risk of abuse in the context of an offer is considered to be greater in respect of proprietary dealing activities. Essentially dealings and related hedging referred to in the definition of EPT are permitted in recognition of the fact that an EPT may need to fulfill pre-existing obligations or carry out related hedging or similar activities. In keeping with this approach, the Executive regards certain dealings as exempt for the purpose of EPT status primarily by reference to the restrictions imposed by the definition of EPT (and Rule 35) and provided that the dealings are not conducted for the purpose of assisting the offer. In reaching a decision the Executive may also take into account whether the dealings:

- are wholly unsolicited and client driven and conducted for client facilitation purposes; or
- arise as a result of pre-existing obligations (including market making or liquidity providing obligations).

General guidance on the treatment of certain types of trading activities commonly carried out by EPTs during an offer period under four broad categories is set out below.

(a) Client facilitation trades

At times the client facilitation desk of an EPT might wish to take on a temporary principal position in connection with the fulfilment of a client's order (for example, an order based on the volume weighted average price or relating to basket/program trades or similar transactions). In these circumstances the Executive will take a pragmatic approach and will regard such client facilitation trades as falling within the exempt dealing activities referred to in the definition of EPT during an offer period provided that:

- the client facilitation trades arise from wholly unsolicited client-driven orders. They must not arise as a result of solicitation or indication of interests by the client facilitation desk (by way of e-mails, telephone calls or otherwise) or recommendations

provided that the EPT does not take a directional position as a result, for example, by retaining part of the product on its own book.

(ii) Convertible bonds

Convertible bonds (CBs) are debt instruments which provide the holder with the right, under pre-determined terms, to convert into a fixed number of shares of the issuer within a fixed period of time. The CB market is normally illiquid and CB trades are typically conducted on a principal-to-principal basis.

The Executive will regard trading in CBs and related hedging arising from wholly unsolicited client-driven orders during an offer period as exempt under the definition of EPT provided that:

the CB pre-existed at the commencement of the offer period; and

the resultant proprietary positions (if any) are flattened no later than the close of the morning trading session the day after the trade is made.

Issuance or participation in the issuance of a new CB during an offer period, albeit at the request of the client, would not be regarded as exempt.

(iii) Issuance of new over-the-counter derivatives and related hedging

Creation of a new derivative and related hedging (albeit as a result of unsolicited client requests) during an offer period is not regarded as an exempt activity under the definition of EPT.

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

Exchange Traded Funds (ETFs) are passively managed open ended investment funds that can be traded like shares on a stock exchange. The Executive notes that all stock-related ETFs currently listed on the SEHK track the performance of an index (index-tracking ETFs). The Executive regards the following activities relating to broad-based index-tracking ETFs as falling within the exempt dealing activities referred to in the definition of EPT:

- dealing in pre-existing index-tracking ETFs

using the securities as collateral for loans.

7 ***Timing of disclosure***

7.1 All disclosure must be made no later than ~~10~~12.00 a.m./noon on the business day following the date of the transaction (see Note 5 to Rule 22).

7.2 Where

involved in corporate finance activities may appl

(iii) details of any overlap, information sharing or information flow between any of the JV Partner or its group members on the one hand and the applicant entity or its group members on the other hand.

8.3 In order to

9 ***Dealings by connected non-exempt fund managers and principal traders***

9.1 The Executive

identity of the offeror being publicly announced (as the case may be).

| ~~30 September 2010~~ 13 July 2018