Practice Note 20 (PN20) - Guidance note on announcements and documents under the Codes on Takeovers and Mergers and Share Buy-Backs (Codes)

submitted for comment. The first draft of the document submitted should be in advanced form and points of difficulty or any unusual aspects should be drawn to the attention of the Executive as early as possible.

Post-vetting

~~3.~~5. Since 25 June 2010, certain routine announcements are no longer required to be submitted to the Executive for comment prior to release or publication under Rule 12.1 of the Takeovers Code. A published version of the announcement (both English and Chinese version) and the translation

respect of unlisted offeree companies must be delivered to the Executive in electronic form for publication on the SFC's website (see Rule 12 of the Takeovers Code). In addition, announcements made under Rule 19.1 must also be published no later than 7:00 p.m. on the closing date.

~~6.~~8. Following publication of any document, the following should be submitted to the Executive as soon as practicable:

(i) a copy of the published version of the announcement/document (both English and Chinese versions);

(ii) a marked-up version of the announcement/document showing all changes (including deletions) made subsequent to the Executive's "no further comment" confirmation;

(iii) written confirmation by the issuing party or its advisers that:

(a) the announcement/document has been published and the time and date of publication; and

(b) there has been no material change to the version of the announcement/document in respect of which the Executive has confirmed that it has no further comment; and

(iv) written confirmation by the directors of the issuer of the announcement/document that the Chinese version of the announcement/document is a true and accurate translation of the English version (or vice versa). The provision of the confirmation does not absolve the responsibility of the directors of the issuing party in this regard.

(a) The translation confirmation should be signed by a director (on behalf of the board of directors) of the issuer of the announcement/document. If the announcement/document is jointly issued, a confirmation should be provided by each of the parties issuing that announcement/document.

(b) The confirmation should be provided as soon as possible after the issue of the "no further comment" confirmation and in any event no later than 5:00 p.m. on the business day after the publication or posting of the announcement/document. If the announcement falls within the Post-Vet List (see paragraph 5 above~~),~~5 above), the confirmation should be provided no later than 5:00 p.m. on the business day after publication.

(c) The confirmation should contain the following wording or wording of similar effect:

"We, [name of issuer], refer to the [description of the general offer/whitewash transaction/special deal/share buy-back/privatisation] and hereby confirm that the Chinese translation of the English version of the [description of the Document] issued by [name of issuer] on [date of Document] in relation to [description of the general offer/whitewash transaction/special deal/share buy-back/privatisation] (the "Document") is a true and accurate translation of the English version of the Document, and that it is consistent with the English version of the Document. A copy of the published versions of each of the English and Chinese version of the Document dated [date] is enclosed for identification purposes."

Stage 1 - Announcements of a proposed or possible offer, share buy-back, privatisation or whitewash transaction

Identity of potential offeror

~~7.~~9. In the case of an announcement made under Rule 3.7 of the Takeovers Code, where the identity of the potential offeror is not disclosed in the announcement, the Executive should be informed of the identity of the potential offeror including its ultimate shareholders.

Blackout period

during a blackout period (see Rule A3(a) of the Model Code for Securities Transactions by Directors of Listed Issuers, Appendix 10 to the Listing Rules and Rule 5.56(a) of the GEM

Previous 6 months dealings

14. An offeror should check carefully against its trading records to confirm whether it has dealt in

Offer period

18. An offer period commences when an announcement of a proposed offer or possible offer is made, i.e. announcements made under Rule 3.5 or Rule 3.7 of the Takeovers Code. It ends at the latest of:

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

    (ii)

in Note 4 to Rule 22). Potential offerors (if named in announcements), offerors and offeree companies should remind their associates (including persons holding 5% or more of a class of relevant securities of the offeror or the offeree company) of the dealing disclosure obligations under the Takeovers Code.

~~15.~~22. Persons who are required to make dealing disclosures include a potential offeror (if it has been the subject of an announcement that talks are taking place and irrespective of whether it has been named~~, as set out in~~ -- see Note 13 to Rule 22), an offeror, an offeree company or any of their associates as defined in the ~~Takeovers Code~~Codes. Associates include a person who owns or controls 5% or more of any class of relevant securities of an offeror or offeree company (see class (6) of the definition of “associate”) or certain advisers to the parties to an offer.

~~16.~~23. As soon as possible and in any event within 3 business days after publication of the announcement which commences an offer period, each of the potential offeror, the offeror and the offeree company should provide the Executive with:

(i) a list of their class (6) associates;

Note: To identify their class (6) associates, during an offer period the board of the offeree company, the offeror or potential offeror should consult all available sources including the following:

(a) the shareholder register;

(b) notifications received under Part XV of the Securities and Futures Ordinance (Cap. 571);

(c) any ~~analysis~~information previously received, or readily available, from the offeree company’s stockbroker or other advisers.

(ii) details of any financial or other professional adviser (including a stockbroker) who is advising it or any of its group companies in relation to the current offer; and

(iii) details of any financial adviser or stockbroker that is

(ii) **Property valuation report** – where a property valuation report is included in the document (under Rule 11.1(f) of the Takeovers Code or otherwise) the requirements in Rule 11 (including but not limited to Rules 11.2(d) and 11.3 and Rule 10 in the case of valuations involving DCF or projections of profits) must be complied with. The valuation should clearly state the relationship between the property owner and the offeree company.

(iii) Prior to clearance of the document and as close to the LPD as possible, the Executive must be provided with the following:

(a) signed confirmation by the board of directors of the offeree company/offeror confirming matters required under Rule 10.11 which should be dated as at the LPD.

(b) signed letter by the financial advisers to the offeror reconfirming sufficient resources remain available to the offeror to satisfy full acceptance of the offer.

(iv) **Documents on Display** (**DoD**) - Notes 1 and 2 to Rule 8 set out the requirements in relation to documents being made available for inspection on websites. The DoD Submission Form and the "How to use" guide can be downloaded in the "Forms – Listings & Takeovers" section of the SFC website (www.sfc.hk):

(a) The electronic version of the DoDs together with the Submission Form should normally be provided to the Executive by 5:00 p.m. one business day before the date on which the document is to be despatched. Please consult the Executive as soon as possible if you foresee difficulties in meeting the deadline.

(b) The DoDs shall be accompanied by a confirmation which should contain wording along the following lines:

"We, [name of Issuer], refer to the [description of the general offer/whitewash transaction/privatisation/share buy-back by general

offer/off-market share buy-back] and the requirement to provide to the SFC in electronic format copies of documents for display on the SFC's website imposed under Note 2 to Rule 8 of the Code on Takeovers and Mergers (the "DoDs"). This confirmation is now submitted together with the DoD Submission Form dated [date] (the "Form").

We confirm that:

1. *[name], [position] of [Issuer] has reviewed the Form and the information in the DoDs submitted together with this confirmation;*

2. *the DoDs listed on the Form match the soft copies of the documents submitted; and*

3. *we take full responsibility for the description and information in the DoDs.*

We are aware that the provisions of section 384 of the Securities and Futures Ordinance (Cap. 571) will apply to this submission."

~~21.~~28. Following despatch of the document, in addition to the items specified in paragraph ~~6~~8(ii) to (iv) above, the Executive should be provided with the following immediately after the document is posted:

(i) Two hard copies and one electronic version of the published version of the document (both English and Chinese versions);

(ii) posting certificate for the document (see Note 4 to Rule 8); and

(iii) checklists of compliance with Schedules I, II, III and VI of the Codes as appropriate. The checklists must clearly mark the page number of the **published version** of the document against the relevant schedule requirement evidencing compliance. If any requirement is not

requirement. Every effort should be made to ensure that the document fully complies with the relevant Schedule disclosure requirements before the document is posted to shareholders.

~~22.~~29. The Executive will review the relevant document primarily for Schedule compliance after publication and make appropriate enquiries where necessary. Parties and their advisers are expected to respond promptly to any follow-up enquiries made by the Executive and provide all necessary information (see General Principle 10). A party and/or its advisers should make every effort to resolve an issue once it has been raised which may include the need to publish a clarification announcement or a supplementary document.

~~23.~~30. Notwithstanding the above, the Executive may, where it considers it necessary or appropriate, require a party and/or its advisers to submit checklists of Schedule disclosure compliance prior to publication of the shareholder's document.

Stage 3 – First closing date of general offer or general meeting for whitewash transactions

~~24.~~31. **Close of offer announcements/announcements declaring offer unconditional as to acceptances** - the Executive should be provided with a copy of the receiving agent's certificate evidencing acceptance (see Note 2 to Rule 30.2).

~~25.~~32. **Announcements of results of a general meeting for approving a whitewash transaction** - the Executive should be provided with a copy of the scrutineer's certificate.

Stage 4 – Restrictions following offers, possible offers and whitewash transactions

~~26.~~33. Rule 31.3 of the Takeovers Code provides that, except with the Executive's consent, if the offeror and parties acting in concert with it hold more than 50% of the voting rights of the offeree company, then the offeror and any person acting in concert with it, may not within 6 months of the close of the offer:

- make a second offer to, or
- acquire any shares from

any shareholder in the offeree company at a price higher than the offer price. Practice Note 18 further clarifies that Rule 31.3 also applies to general offers that are unconditional at the outset.

~~27.~~34. **Special deals** - Rule 25 of the Takeovers Code provides that, except with the Executive's consent, the offeror and parties acting in concert with it or in the case of whitewash transactions, the whitewash applicant and its concert parties, may not make or enter into any arrangements with shareholders of the offeree company (including persons acting in concert with the offeror or the whitewash applicant, as the case may be) which have favourable conditions not extended to all shareholders of the offeree company within six months after the close of the offer.

~~28.~~35. The offeror should confirm in writing within 3 business days of the expiry of 6 months from the end of the offer period that it and all persons acting in concert with it have complied with Rule 31.3 and Rule 25.

~~29.~~36. **In the case of a whitewash transaction**, the whitewash applicant should confirm in writing within 3 business days of the expiry of 6 months from the shareholders' meeting that it and all persons acting in concert with it have complied with Rule 25. If the whitewash applicant or its concert party acquires shares in the 6 months period after the shareholders' meeting from a person who was a director or substantial shareholder of the offeree company at the time of the whitewash, such acquisition will be deemed to be a special deal prohibited under Rule 25 of the Takeovers Code (see Note 2 to paragraph 3(b) of Schedule VI of the Takeovers Code).

~~30.~~37. **Final completion announcement for whitewash transaction** – Once the issue of the new securities has completed, an announcement relating to the completion should be issued. In a transaction which involves a subscription for new shares by a whitewash waiver applicant, completion will be taken as the time the new shares are

issued to the whitewash waiver applicant. In a transaction which involves an issue of convertible securities to a whitewash waiver applicant, completion will be taken as the time the convertible securities are issued to the whitewash waiver applicant, and not when the conversion rights are exercised (see September 2010 Issue No. 14 of the Takeovers Bulletin).

~~24~~29 June ~~2014~~2015

	Items required	Check/Date
III	**Offer documents/response documents/composite documents/share buy-back documents/scheme documents – offers/share buy-backs**	

(i) 4 copies of advanced draft
(ii) submission of soft copies of first draft (and each subsequent drafts) to "T&Mdocuments@sfc.hk"
(iii) document fees and schedule of calculation
(iv) signed reconfirmation of sufficiency of financial resources by offeror's financial adviser
(v) signed Rule 10.11 confirmation by directors of offeree company/offeror
(vi) DoD disc and submission form
(vii) DoD confirmation
(viii) publication confirmation
(ix) checklists of Schedules I, II and III as appropriate
(x) post1x) post1x) postgshm(app.0003 Tw[8-i2.2 Tw[(o

	Items required	**Check/Date**
	(x) translation confirmation	

Appendix 2 – Independence of IFA

To assess the IFA's independence, the Executive needs information about the IFA's group and the employees in the