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

Purpose

1. The purpose of this Guidance Note and Checklist (see Appendix 1) is to provide informal and non-exhaustive guidance to parties and their advisers. The Guidance Note consolidates a number of previous guidance letters and reminders issued by the Executive during the course of an offer or whitewash transaction and refers to Practice Notes[1] issued by the Executive from time to time. It remains the sole responsibility of the issuer of a document (and its directors and advisers) to ensure that the Codes and any other applicable laws and regulations are fully complied with. As always when there is any doubt as to whether a proposed course of conduct is in accordance with the Codes, parties or their advisers should consult the Executive in advance.

2. *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*

Post-vetting

3. Since 25 June 2010, certain routine announcements are no longer required to be submitted to the Executive for comment

announcements appearing in the Post-Vet List. If there is any doubt as to whether an announcement qualifies for post-

[1] http://www.sfc.hk/web/EN/regulatory-functions/listings-and-takeovers/takeovers-and-mergers/practice-notes.html

[2] http://www.sfc.hk/web/EN/files/CF/pdf/Practice_Notes/Practice%20Note%2005_EN_revised%20250610%20(2013).pdf

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

(b) there has

16. Financial advisers should note that whilst their confirmations constitute evidence to support their statement that sufficient

obligations in respect of the offer, it remains the responsibility of the financial adviser, and not the Executive, to ensure that

obligations. Financial advisers should observe the highest standard of care to satisfy themselves of the adequacy of resources. The provision to the Executive of a letter of

responsibility in this respect.

Stage 2 Document vetting

17. This section provides guidance about the vetting process of a document that is to be despatched to shareholders i.e. an offer document, offeree board circular, composite document, whitewash circular, share buy-back circular or scheme document.

18. The Executive will no longer raise comments about compliance with the Schedule disclosure requirements during the commenting process unless they also relate to substantive Code issues. Every effort should be made to ensure that the draft document fully complies with the relevant Schedule requirements before it is submitted. Where the issuer of a document (or its directors or advisers) foresees any difficulty in meeting a Schedule disclosure requirement or has any doubt whether the disclosure fully meets a Schedule disclosure requirements, the Executive must be consulted at the earliest opportunity and be given a reasonable time to consider the matter before the due date for despatch of the document.

19. The Executive should be provided with the following:

(i)

(iii) draft confirmation of no material change as required by Rule 10.11 of the Takeovers Code to be dated as at the LPD (as defined below) addressing all the points set out in the Note to Rule 10.11; and

(iv) draft update of the confirmation from the financial adviser to the offeror confirming the sufficient resources remain available to the offeror to satisfy full acceptance of the offer (see December 2012 Issue No. 23 of the Takeovers Bulletin).

20.

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

21. Following despatch of the document, in addition to the items specified in paragraph 6(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. 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. 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. 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 document.

28. 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. **In the case of a whitewash transaction**, the whitewash applicant should confirm in writing within 3 business days of the expiry of 6
and all persons acting in concert with it have complied with Rule 25. If the whitewash applicant or its concert party

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. **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

	Items required	Check/Date
	(x) translation confirmation	
V	**Closing announcements - offers**	
	(i) r certificate (if applicable) (ii) publication confirmation (iii) translation confirmation (iv) confirmation of compliance with Rules 31.3 and 25 six months after closing date	

Appendix 2 Independence of IFA

division handling the relevant

1. Has the IFA group or any of its relevant employees in the past two years acted as financial adviser to or agent for:

   the Offeror;
   the Offeror's controlling shareholder(s);
   the Company;
   the Company's controlling shareholder(s);
   parties to the specials deal transactions (if any);

   [In cases of whitewash/share buy-back with whitewash/off-market share buy-back with whitewash:
   the party seeking whitewaswei3(ivf)5(f)3(ing)0(-)-(i)8(f4(no13(ant)4( )-3

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6. Details of any other matters which may mean the IFA has a conflict of interest.

7. If the answers to any of questions 1, 2, 3, 4 or 6 , please give details, and state the reasons why the IFA considers it can give objective advice to e teasfso e ïgd&Ïlw@;ïå