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 regula tions 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.

those referred to in the Post-Vet List (see paragraph 5 below)) to be filed with the Executive for comment prior to release or publication and must not be released or published until the Executive has confirmed that it has no further comments thereon.

3. Notes 1 and 2 to Rule 8 of the Takeovers Code."

4. At the outset of a transaction, issuers and advisers should carefully consider whether an announcement is a "document" for the purpose of the Codes

published in respect of unlisted offeree companies must be

(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.~~ 00pm 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), the confirmation should be provided no later than 5:00pm 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

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

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 confirmation will not absolve the financial adviser's

24. Once an announcement has been made under Rule 3.7, relevant parties are required to issue monthly update announcements until the issuance of either an announcement of a firm intention to make an offer under Rule 3.5 or an announcement of a decision not to proceed with an offer. This requirement also applies to whitewash transactions regardless of whether the whitewash condition is waivable or not.

Dealing Disclosures

25. An offer period commences upon an announcement of a proposed or possible offer. Rule 22 of the Takeovers Code requires certain persons to make dealing disclosures during an offer period if they deal in “relevant securities” (as defined 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.

26. 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

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

(c) any 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 currently retained by it, or any of its group companies, in relation to any advisory projects (other than the current offer) which are significant in size or nature.

In the event there is no such person in any of paragraphs (i) to (iii) above, a negative statement to this effect should be provided.

During the offer period, the potential offeror, the offeror and the offeree company should notify the Executive immediately of any changes or updates to the information previously submitted under this paragraph.

Stage 2 Document vetting

28. This section provides guidance about the vetting process of a document th( )Tj -0.001 T05 3 (i)-1.2 (i)-1.(e)-3 fu1.2 (o)-03(s)-5n .001 T05-(e

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special deal circular cannot be despatched within one month of the announcement of the special deal.

date of despatch of the relevant document. When the LPD falls on a day which is not a “business day” (defined under the Codes), the LPD can be set on the preceding business day. If the LPD is set on a date which is more than three days before despatch, the Executive should be consulted prior to release or publication of the document.

(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 discounted cash flow 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 (DoDs) - 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 and Mergers” 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 pm~~00pm 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.

33. Following despatch of the document, in addition to the items specified in paragraph 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

Stage 4 Restrictions following offers, possible offers and whitewash transactions

38.

special deal prohibited under Rule 25 of the Takeovers Code (see Note 2 to paragraph 3(b) of Schedule VI of the Takeovers Code).

42. 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

	Items required	Check/Date
III	Offer document s/response document s/composite document s/share buy-back document s/scheme document s offer s/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) posting certificate (xi) translation confirmation	
IV	Circulars whitewash transactions	
	(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 Rule 10.11 confirmation by directors of offeree company (v) DoD disc and submission form (vi) DoD confirmation (vii) publication confirmation (viii) checklists of Schedules I, II and VI (ix) posting certificate	

	Items required	Check/Date
	(x) translation confirmation	
V	Closing announcement s - offers	
	(i) receiving agent's certificate (if applicable) (ii) publication confirmation (iii) translation confirmation (iv) confirmation of compliance with Rules 31.3 and 25 six months after closing date	
VI	Announcement s of results of general meetings whitewash transactions and court meetings privatisations by way of scheme of arrangement (i) scrutineer's certificate (ii) publication confirmation (iii) translation confirmation	

Appendix 2 Independence of IFA

To assess ~~the~~an IFA's independence, the Executive needs information about the IFA's group and the employees in the division handling the relevant transaction ~~("~~(relevant employees ~~").~~).

1. Has the IFA group or any of its relevant employees in the past two years acted as financial adviser to or agent .04 -0 3.5 (2)-3.6 ( )]TJ 0 TT

6. Are there any other matters which may mean the IFA has a conflict of interest?

7. If the answer to any of questions 1 to 6 is “yes”, please give