Practice Note 20 (PN20) - Guidance note on announcements

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.

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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.

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"

Listing Rules). It is solely the duty of the director concerned to apprise himself of all applicable rules and regulations before proceeding with an offer or triggering a mandatory general offer for the securities of the offeree company or otherwise dealing in any securities of the offeree company. This is in line with General Principle 4 of the Takeovers Code that an offeror should announce an offer only after careful and responsible consideration. Directors are reminded that if they announce a firm intention to make an offer or trigger a mandatory general offer obligation for the securities of the offeree company during a blackout period, they will be required to proceed with the offer in accordance with the Takeovers Code. Please refer to the Frequently Asked Questions Series 14 to the Rules and Guidance on Listing Matters as sepi4-Hordas-3(er)9(s)-3( )] TJET EMC /P <MCID 4

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exchange offer) in the 6 months prior to (i) the date of submission of the first draft of the Rule 3.5 announcement; or (ii) the commencement of the offer period, whichever is earlier. The offeror should also make similar enquiries with its concert parties for this purpose. This should assist parties to ensure that relevant requirements of the Codes are met including those that arise under Rules 23, 24 and 26.3.

15. Likewise a whitewash applicant should also check its trading records in the 6 months prior to (i) the date of the submission of the first draft of the Rule 3.5 announcement; or (ii) the date of the first announcement of the whitewash proposal, whichever is earlier, to ensure there is no disqualifying transaction that may prevent the Executive from granting a whitewash waiver or invalidate any whitewash waiver granted (see Note 1 on dispensation from Rule 26 and paragraph 3 of Schedule VI to the Codes).

Financial resources confirmation

16. The financial adviser to the offeror should provide the Executive with a confirmation of sufficiency of financial resources at the same time as the submission of the first draft of a firm intention to make an offer announcement (see Note 3 to Rule 3.5 and Practice Note 15).

17. Financial advisers should note that whilst their confirmations constitute evidence to support their statement that sufficient financial resources are available to satisfy the offeror's obligations in respect of the offer,

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

(ii) the date when the offer lapses;

(iii) the time when a possible offeror announces that the possible offer will not proceed;

(iv) the date when an announcement is made of the withdrawal of a proposed offer; and

(v) where the offer contains a possibility to elect for alternative forms of consideration, the latest date for making such election.

19. In the case of a whitewash, if the whitewash applicant reserves the right to waive the whitewash condition, the possibility of shareholders receiving a general offer as a result of completion of the transaction cannot be ruled out. An offer period will therefore commence on the date the transaction is first announced. If the whitewash applicant does not reserve its right to waive the whitewash condition an offer period will not commence.

20. Once an offer period commences a number of Code disciplines will start to apply to relevant parties, including dealing disclosure obligations (Rule 22 and see paragraphs ~~21~~22 to ~~23~~24 below) and the rule against frustrating action by offeree company directors (Rule 4). This is not an exhaustive list and the Executive should be consulted when in doubt.

~~20.~~21. 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.

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(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

~~24.~~25. 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.

26. **Monthly update announcements** – where an offer document, composite document, whitewash circular, share buy-back circular or scheme document cannot be despatched within 21 days (or 35 days in the case of a securities exchange offer) of the date of the Rule 3.5 announcement as required under Rule 8.2, relevant parties should issue monthly update announcements until the relevant shareholder's document is despatched to keep the market regularly informed of the progress of the transaction. The obligation to issue a monthly update announcement equally applies when a special deal circular cannot be despatched within one month of the announcement of the special deal.

~~25.~~27. **Schedule disclosure requirements** - 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

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

disclosure requirements before the document is posted to shareholders.

~~29.~~31. The Executive will review the relevant document primarily for

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).

29 June 201531 March 2017S

Appendix 1 – Checklist of items for submission to the Executive

	Items required	Check/Date
I	**Rule 3.7 announcements**	
	(i) identity of potential offeror if not otherwise disclosed in the announcement, including its ultimate shareholders (ii) publication confirmation (iii) translation confirmation (iv) list of class (6) associates and financial advisers of offeree company (v) list of class (6) associates and financial advisers of potential offeror Note: Offeree company/potential offeror should send dealing disclosure reminders to their respective associates.	
II	**Rule 3.5 announcements – offers/whitewash transactions**	
	(i) confirmation of sufficiency of financial resources by offeror's financial adviser (ii) IFA independence confirmation (iii) publication confirmation (iv) translation confirmation (v) list of class (6) associates and financial advisers of offeree company (vi) list of class (6) associates and financial advisers of offeror Note: Offeree company/potential offeror should send dealing disclosure reminders to their respective associates.	

	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	

Appendix 2 – Independence of IFA

To assess the IFA's independence, the Executive needs

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 is “yes”, please give details, and state the reasons why the IFA considers it can give objective advice to the independent board committee.