

**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會



Special deal considerations for ordinary course of business transactions

The Executive has been consulted on a number of occasions as to whether certain arrangements with shareholders involving parties' ordinary business activities would constitute special deals under Rule 25 of the Takeovers Code.

Rule 25 reflects the provision in General Principle 1 that all shareholders should be treated equally. It provides that, among other things, neither the offeror nor any person acting in concert with it may make any arrangements with shareholders either during an offer or when an offer is reasonably in contemplation or for six months after the close of such offer if such arrangements have favourable conditions which are not to be extended to all shareholders, without the Executive's consent.

The Executive recognises that a strict interpretation of Rule 25 may at times result in unnecessary restrictions on the parties' ordinary course of business. Having considered the above, the Executive will not normally regard an arrangement (the Arrangement) as constituting a special deal where:

- (1) the Arrangement is in the parties' ordinary course of business;
- (2) (a) the Arrangement involves the provision of consumer goods and services on terms that are available to the public generally; or
- (b) the Arrangement is entered into periodically or involves a continuation or an extension of a previous arrangement; and

(3) where (2)(b) applies:

- (a) there is no material change to the terms of the Arrangement when compared with the previous arrangement; or
- (b) the terms of the Arrangement are determined pursuant to certain market standards or pre-determined formulas (such as established parameters or benchmarks or where a public tender process is involved) without the influence of either party.

As always, parties are encouraged to consult the Executive at the earliest opportunity if any of the above arrangements are being contemplated by the parties.

Early identification of connected fund managers and connected principal traders

The Executive notes that in recent cases, certain companies and their advisers have overlooked the possible Code implications of dealings in the relevant securities of the offeree company by connected fund managers or connected principal traders of the offeror during the period from six months prior to the commencement of the offer period up to and including the final closing date of the offer (Relevant Period).

The Codes set out that a fund manager or principal trader will be connected with an offeror (thereby becoming a connected fund manager or connected principal trader) if the fund manager or principal trader controls¹, is controlled by or is under the same control as: (1) an offeror; (2) any financial or other professional adviser (including a stockbroker) to an offeror; or (3) an investor in a consortium formed for the purpose of making an offer (eg, through a special purpose company).

¹ Please refer to Note 1 to the Definitions under the Codes.

Market practitioners, companies and their advisers are reminded that they must carry out appropriate due diligence at the outset of a Code transaction. They must identify all members within the offeror group who are engaged in fund management business or principal trading activities and may deal in the relevant securities of the offeree company or relevant securities of a company which are to be

offered as consideration (including the offeror's subsidiaries) in the relevant offer or transaction. (15.66 Extraordinary General Meeting of Shareholders)



