



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

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In the privatisation case mentioned above, the connected EPT in question held Relevant Shares as a simple custodian for and on behalf of non-discretionary clients and over which that EPT did not have any voting discretion. During the course of consultation with the Executive, that EPT failed to disclose that some of its underlying clients were in fact concert parties of the offeror and were not entitled to vote on certain resolutions (as the shares attributable to the concert parties of the offeror would not be counted as disinterested shares under Rule 2.10 of the Takeovers Code). The concert party relationships of those underlying clients were only identified and disclosed after further enquiries by the Executive.

Where a connected EPT seeks the Executive's confirmation that Rule 35.4 does not apply in the circumstances described above, the connected EPT should demonstrate to the Executive's satisfaction that it had conducted reasonable due diligence and made appropriate enquiries with its underlying clients on whose behalf it holds the Relevant Shares and confirm that the underlying clients are entitled to vote in the context of the offer in question.

Confirmations required

Going forward, in cases where a connected EPT acts as a simple custodian for and on behalf of non-discretionary clients and that EPT considers that Rule 35.4 does not apply to shares held for and on behalf of such non-discretionary clients, the Executive will require the connected EPT to provide a written confirmation to the Executive of the matters set out in points (1) and (2) above and whether the underlying clients are entitled to vote in the context of the offer. The EPT should also confirm in the results announcement published after the relevant meeting that the connected EPT did not exercise the voting rights attached to the shares owned by them (other than those shares held by such EPT as a simple custodian for and on behalf of non-discretionary clients who are entitled to vote in the context of the offer and over which such EPT has no voting discretion) in the context of the offer.

Parties or their advisers are encouraged to consult the Executive at the earliest opportunity if any of the above arrangements are being contemplated.

Pursuant to Paragraph 7.3 of Practice Note 9, where a client of a group's corporate finance department is involved in an offer or a whitewash transaction, the Executive requires the group to submit details of the group's aggregate holdings of relevant securities of the offeree company and, in the case of a securities exchange offer, the offeror, as at the close of business on the day the offer period commences or the whitewash transaction is announced. In addition to its long and short positions of relevant securities, details of relevant securities held by EPTs as a simple custodian for and on behalf of non-discretionary clients and over which the EPTs have no voting discretion should also be included when such arrangement exists. The submission should be made by 5:00pm on the day after the offer period commences or the whitewash transaction is announced. In cases of difficulty, the Executive should be consulted.

Amendments to paragraph 7.3 will be made in the next published version of Practice Note 9.

Preservation of confidentiality and taking reasonable precautions

The Executive has noted that in a small number of recent cases, inside information relating to the possibility of a Code transaction might have been leaked to the media. In particular, press articles indicated that information was obtained from "*sources familiar with the transaction*". In view of this, we would like to remind parties and their advisers once again of the importance of preserving confidentiality prior to a firm intention announcement.

Public criticism of CICC Financial Trading Limited and China International Capital Corporation Limited for dealing disclosure breaches

On 18 June 2020, we publicly criticised CICC Financial Trading Limited and China International Capital Corporation Limited for breaching the dealing disclosure requirements under Rule 22 of the Takeovers Code.

A copy of the Executive Statement can be found in the “*Listings & takeovers – Takeovers & Mergers – Decisions & statements – Executive decisions and statements*” section of the SEC website.

The disclosure obligations under Rule 22 of the Takeovers Code are intentionally onerous to reflect the fact that a high degree of transparency is essential to the efficient functioning of the market in an offeree company's shares, and in the case of a securities exchange offer, an offeror company's shares as well, during the critical period of an offer or possible offer. Timely and accurate disclosure ofTj2Tj0 -1etentshares as /8(ofble offer. Tim6tEftfB in ardarterct anda but are ige cying of the marsncy i the Co.inathe case doubtres al to tng applicatase of

New online platform for submission of Documents on Display

Currently, documents required to be put on display (DoD) under Note 1 to Rule 8 of the Takeovers Code are submitted to the Executive in electronic form using a recordable CD or DVD. The Executive will then arrange for publication on the SFC's website.

To streamline the DoD submission process and increase efficiency, we will be moving it to the SFC's WINGS (Web-based INTeGrated Service) portal. The procedure to prepare all documents in PDF format and the preparation of the DoD Submission Form remain largely the same, but these documents are no longer required to be copied to a CD or DVD for submission. These documents will be submitted online via WINGS instead. We target to commence the new procedure in August 2020.

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 March 2020, we

Of the 26 offer-on-offer cases analysed (public market TJO -155Wbq), private IPOs, unitary and mandatory general offers (Tc 0 -15 Td and off-market and general-offer share buy-backs), two whitewashes and 65 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*