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Application of presumption of acting in concert – class (9)

Class (9) of the presumption of acting in concert presumes a person who provides finance or financial assistance (directly or indirectly) to another in connection with an acquisition of voting rights (including any direct or indirect refinancing of the funding of the acquisition) to be acting in concert. Authorised institutions within the meaning of the Banking Ordinance lending money in the ordinary course of business are expressly carved out from this presumption.

An individual, private company, licensed money lender, licensed broker or person licensed by the SFC to carry out securities margin financing would therefore normally be caught under the presumption. The seller of a controlling stake (ie, the original controlling shareholder) who is prepared to receive deferred payment of consideration for the sale shares from the offeror would also be caught.

When caught under the presumption, implications of concert party status under the Codes will apply to the lender. The Executive therefore wishes to remind parties to check carefully whether the lender has dealt in any relevant securities of the offeree company in the six months prior to (i) the date of the submission of the first draft of the Rule 3.5 announcement or (ii) the commencement of the offer period, whichever is earlier.

This should help parties to ensure that the relevant requirements of the Codes are met including those that arise under Rules 23, 24 and 26.3, or in the case of a whitewash transaction, to ensure that there is no disqualifying transaction that may prevent the Executive from granting a whitewash waiver or invalidate any whitewash waiver. See also paragraphs 16 and 17 of Practice Note 20. If in doubt, the Executive should be consulted at the earliest opportunity.

Use of email by the Executive

To increase efficiency and promote environmentally friendly practices, the Executive will gradually move towards using emails as the main channel of written communication with market practitioners. We encourage market practitioners to use email when communicating with us, and to provide the Executive with their preferred email contact addresses at the onset of a transaction or case, particularly when a special project account is set up for that transaction.

To ensure that relevant members of the Takeovers Team receive electronic communications, they should be sent to cfmailbox@sfc.hk. Market practitioners should refrain from directly emailing individual members of the Takeovers Team.

Appointments and reappointments to the takeovers-related committees

We welcome the following new appointments and reappointments of members to the Takeovers and Mergers Panel (Panel) and the Takeovers Appeal Committee (Appeal Committee) with effect from 1 April 2019:

New appointments – Ms Alexandra Bidlake and Mr Jackson Woo

Reappointments – Mr Stephen Clark (Chairman of the Panel and Appeal Committee), Mr Freeman Chan and Mr David Webb (Deputy Chairmen of the Panel and members of the Appeal Committee), Ms Melissa Brown, Mr David Fu, Mr Ernest Ip, Mr Bonn Liu, Ms Park Yoo Kyung, Mr Asit Shah, Mrs Judy Vas, Mr Wong Wai Ming and Mr Frank Yuen



