

Highlights

- Trading suspensions should be kept to a minimum
- New Practice Note 21–

Internal approval

- Obtain the appropriate level of approval (eg, from client or board of directors) of a variety of draft announcements to be released depending on the circumstances at the relevant time.
- Ensure all relevant directors and relevant authorized personnel are readily contactable at all times and are in a position to answer our enquiries.

4. The Takeovers Code treats persons acting in concert as being the equivalent of a single person and aggregates their shareholdings. However, there will be circumstances when the acquisition of voting rights by one member of a group acting in concert from another member of the concert group or from a non-member may give rise to an obligation to make a general offer under Rule 26.1 of the Takeovers Code. In addition, if the holdings or make-up of the group changes, a general offer may be

(b) Note 6(a)(i) relates to a group consisting of a parent company and its subsidiaries and is interpreted strictly in accordance with the definition of “subsidiary” in the Takeovers Code. The exclusion of associated companies (which are included in class (1) of the presumption of acting in concert in the Codes as presumed concert parties) is intentional. Unless a parent subsidiary or fellow subsidiary relationship can be demonstrated, based on the definition of “subsidiary” in the Takeovers Code, the concession provided for in sub-paragraph (i) will not be available.

(c) Similarly, Note 6(a)(ii) is interpreted strictly. The application of Note 6(a)(ii) by its wording, and as it has been applied for many years by the Executive, relates specifically to transfers between persons who are closely related, that is family members.

10. If Notes 6(a)(i) and (ii) do not apply, Note 6(a) sets out the following criteria that “will” be taken into account in considering whether to grant a waiver:

“In addition to the factors set out in Note 7 to this Rule 26.1, the factors which the Executive will take into account in considering whether to waive the obligation to make an offer include:–

(i) whether the leader of the group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;

(ii) the price paid for the shares acquired; and

(iii) the relationship between the persons acting in concert and how long they have been acting in concert.”

11. Points to note:

(a) Whilst Note 6(a) provides that the above criteria “will” be taken into account, it is clear that the Executive and the Takeovers Panel may also take into account all other relevant facts and circumstances.

(b) In determining the leader of the concert group for the purpose of Note 6(a)(i) above, the focus will be on the holder or controller of the relevant voting rights. The fact that one member of the concert group may have taken a leading role in terms of managerial and executive decisions is unlikely of itself to be determinative.

(c) In many cases where a waiver under Note 6(a) is granted, no premium is paid for the acquired shares. A substantial or atypical premium paid for the shares acquired would normally indicate a premium for control and therefore be an important factor in determining whether the grant of a waiver under the Note is appropriate. However, the absence of a control premium is unlikely of itself to be determinative of whether it is appropriate to grant a waiver under Note 6. Each case will rest on its own facts and circumstances.

(d) The relationship between the persons acting in concert and how long they have been acting in concert are fact specific matters and often necessitate the Executive raising enquiries. The Executive should be given sufficient time to raise enquiries and analyse the responses.

(e) Note 6(a) provides that the factors set out in Note 7 to Rule 26.1 may also be relevant in considering whether to grant a waiver under Note 6(a). These factors include whether (i) the vendor was an “insider”; (ii) there is a payment of a very high price for the voting rights; (iii) the parties negotiate options over the retained voting rights; and (iv) the purchaser’s nomination of board representation is supported by the vendor. Again these factors are highly fact specific and are examined on a case-by-case basis.

Announcement of ruling granted

12.

Full list of members of takeovers-related committees

Appeal Committee

The Appeal Committee reviews disciplinary rulings of the Panel for the sole purpose of determining whether any sanction imposed by the Panel is unfair or excessive. It comprises a Chairman who is a member of the Disciplinary Chair Committee and

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