

provided under Note 2(c) to Rules 10.1 and 10.2 of the Takeovers Code. For the avoidance of doubt, an estimate of profit for a period which has already expired should be treated as a profit forecast under Rule 10.6 (b). In these circumstances, instead of reviewing the assumptions, the financial advisers and auditors/accountants should review and report on the bases of the profit estimates.

II. Circumstances where Rule 10.4 may be relaxed

- (a) Financial projections published under the laws and regulations of an overseas jurisdiction

During the course of a Code-related transaction, an offeree company (or an offeror in the case of a securities exchange offer) may be required under the laws and regulations of an overseas jurisdiction to include certain financial projections in documents that are sent to shareholders containing details of the transaction. Such financial projections would normally be regarded as profit forecasts under Rule 10 of the Takeovers Code and would therefore need to be 'reported on' by both the offeree company's financial advisers and its accountants or auditors in accordance with Rule 10.4.

(b) Profit warning or positive profit alert announcements

During an offer period an offeree company may see the need to issue a profit warning or positive profit alert announcement pursuant to the Listing Rules and the inside information provisions under Part XIVA of the Securities and Futures Ordinance which took effect from 1 January 2013. The profit warning or positive profit alert announcements would normally be regarded as profit forecasts under Rule 10 of the Takeovers Code and would therefore need to be 'reported on' by both the offeree company's financial advisers and its accountants or auditors in accordance with Rule 10.4.

Often profit warning or positive profit alert announcements are issued almost immediately after the directors of the listed issuer come into possession of the relevant inside information. Given the

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company has not publicly advised its shareholders not to accept an offer;

- (iv) unaudited statements of interim results by offeror which comply with the requirements for half-yearly reports as set out in the Listing Rules, whether or not the offer has been publicly recommended by the board of the offeree company but provided the offer could not result in the issue of securities which would represent 10% or more of the enlarged voting share capital of the offeror

The Note to Rule 10.9 extends the exemptions from the reporting requirements to unaudited quarterly results of companies listed on the Growth Enterprise Market of the Stock Exchange (“GEM”).

The exemptions for companies listed on The Stock Exchange of Hong Kong Ltd (“Stock Exchange”) (either on the Main Board or GEM) from the reporting requirements contained in Rule 10.9 are appropriate as:

- (i) the relevant unaudited interim and quarterly figures and preliminary announcements of results are required to be published and prepared to the standards required by the respective applicable Listing Rules¹; and
- (ii) the unaudited figures must be included in a full-year audit in due course.

The Executive believes that if a company has a dual listing and is required by the relevant laws or regulations of the overseas jurisdiction to publish unaudited quarterly results the exemption from the reporting requirements in Rule 10.9 should also apply.

In relevant cases where a company with a dual listing wishes to take advantage of the exemptions from the reporting requirements in Rule 10.9 the Executive must be consulted at the earliest opportunity. Where appropriate the Executive may require the relevant party to apply for a formal ruling under section 8 of the Introduction to the Codes.

¹ See Appendix 16 to the Main Board Listing Rules and Chapter 18 of the GEM Board Listing Rules.

Rule 10.9 also provides that the Executive should be consulted in advance if a company is not listed on the Stock Exchange but wishes to take advantage of the exemptions under this Rule.

30 September 2013