

Practice Note 20 (PN20) - Guidance note on announcements and documents under the Codes on Takeovers and Mergers and Share Buy -Backs (Codes)

Purpose

1. The purpose of this Guidance Note and Checklist (see Appendix 1) is to provide informal and non-exhaustive guidance to parties and their advisers. The Guidance Note consolidates a number of previous guidance letters and reminders issued by the Executive during the course of an
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issued by the Executive from time to time. It remains the sole responsibility of the issuer of a document (and its directors and advisers) to ensure that the Codes and any other applicable laws and regulations are fully complied with. As always, when there is any doubt as to whether a proposed course of conduct is in accordance with the Codes, parties or their advisers should consult the Executive in advance.

Vetting of documents

2. Rule 12.1 of the Takeovers Code requires all documents (other than those referred to in the Post-Vet List (see paragraph 5 below)) to be “filed with the Executive for comment prior to release or publication and must not be released or published until the Executive has confirmed that it has no further comments thereon.”
3. Notes 1 and 2 to Rule 8 of the Takeovers Code.”
4. At the outset of a transaction, issuers and advisers should carefully consider whether an announcement is a “document” for the purpose of the Codes

in electronic form for publication on the SFC's website (see Rule 12 of the Takeovers Code). In addition, announcements made under Rule 19.1 must also be published no later than 7:00pm on the closing date.

8. Following publication of any document, the following should be submitted to the Executive as soon as practicable (see Notes 4 and 5 to Rule 12.1 of the Takeovers Code):
 - (i) a copy of the published version of the announcement/document (both English and Chinese versions);
 - (ii) a marked-up version of the announcement/document showing all changes (including deletions) made subsequent to the Executive's "no further comment" confirmation;
 - (iii) written confirmation by the issuing party or its advisers that:
 - (a) the announcement/document has been published and the time and date of publication; and
 - (b) there has been no material change to the version of the announcement/document in respect of which the Executive has confirmed that it has no further comment; and
 - (iv) written confirmation by the directors of the issuer of the announcement/document that the Chinese version of the announcement/document is a true and accurate translation of the English version (or vice versa). The provision of the confirmation does not absolve the responsibility of the directors of the issuing party in this regard.
 - (a) The translation confirmation should be signed by a director (on behalf of the board of directors) of the issuer of the announcement/document. If the announcement/document is jointly issued, a

- (b) The confirmation should be provided as soon as possible after the issue of the “no further comment” confirmation and in any event no later than 5:00pm on the business day after the publication or posting of the announcement/document. If the announcement falls within the Post-Vet List (see paragraph 5 above), the confirmation should be provided no later than 5:00pm on the business day after

Securities Transactions by Directors of Listed Issuers, Appendix 10 to the Listing Rules and Rule 5.56(a) of the GEM Listing Rules). It is solely the duty of the director concerned to apprise himself of all applicable rules and regulations before proceeding with an offer or triggering a mandatory general offer for the securities of the offeree company or otherwise dealing in any securities of the offeree company

15. If there is any doubt regarding compliance with Rules 2.1 and 2.6, parties are encouraged to consult the Executive before the appointment is made and announced.

Previous six months dealings

16. An offeror should check carefully against its trading records to confirm whether it has dealt in any relevant securities of the offeree company (and of the offeror in the case of a securities exchange offer) in the six months prior to (i) the date of submission of the first draft of the Rule 3.5 announcement; or (ii) the commencement of the offer period, whichever is earlier. The offeror should also make similar enquiries with its concert parties for this purpose. This should assist parties to ensure that relevant requirements of the Codes are met including those that arise under Rules 23, 24 and 26.3.

announcement of a decision not to proceed with an offer. This requirement also applies to whitewash transactions regardless of whether the whitewash condition is waivable or not.

Dealing Disclosures

24. An offer period commences upon an announcement of a proposed or possible offer. Rule 22 of the Takeovers Code requires certain persons to make dealing disclosures during an offer period if they deal in “relevant securities” (as defined in Note 4 to Rule 22). Potential offerors (if named in announcements), offerors and offeree companies should remind their associates (including persons holding 5% or more of a class of relevant securities of the offeror or the offeree company) of the dealing disclosure obligations under the Takeovers Code.
25. Persons who are required to make dealing disclosures include a potential offeror (if it has been the subject of an announcement that talks are taking place and irrespective of whether it has been named – see Note 13 to Rule 22), an offeror, an offeree company or any of their associates as defined in the Codes. Associates include a person who owns or controls 5% or more of any class of relevant securities of an offeror or offeree company (see class (6) of the definition of “associate”) or certain advisers to the parties to an offer.
26. As soon as possible and in any event within three business days after publication of the announcement which commences an offer period, each of the potential offeror, the offeror and the offeree company should provide the Executive with:

- (i) a list of their class (6) associates;

Note: To identify their class (6) associates, during an offer period the board of the offeree company, the offeror or potential offeror should consult all available sources including the following:

- (a) the shareholder register;
- (b) notifications received under Part XV of the Securities and Futures Ordinance (Cap. 571);

- (c) any information previously received, or readily available, from the offeree company's stockbroker or other advisers.
- (ii) details of any financial or other professional adviser (including a stockbroker) who is advising it or any of its group companies in relation to (t)-5.14 (o)7.9 (8e/i)-1.2 (e)as

29. Schedule disclosure requirements - the Executive will no longer raise comments about compliance with the Schedule disclosure requirements during the commenting process unless they also relate to substantive Code issues. Every effort should be made to ensure that the draft document fully complies with the relevant Schedule requirements before it is submitted. Where the issuer of a document (or its directors or advisers) foresees any difficulty in meeting a Schedule disclosure requirement or has any doubt whether the disclosure fully meets a Schedule disclosure requirement, the Executive must be consulted at the earliest opportunity and be given a reasonable time to consider the matter before the due date for despatch of the document.
30. The Executive should be provided with the following for vetting:
- (i) four hard copies (including the acceptance forms, where applicable) and one electronic version (sent to T&Mdocuments@sfc.hk) of the draft document which should be in advanced form and each subsequent draft;
 - (ii) document fees and statement of calculation in accordance with Schedule IV of the Takeovers Code;
 - (iii) draft confirmation of no material change as required by Rule 10.11 of the Takeovers Code to be dated as at the LPD (as defined below) addressing all the points set out in the Note to Rule 10.11; and
 - (iv) draft update of the confirmation from the financial adviser to the offeror confirming that sufficient resources remain

“We, [name of Issuer], refer to the [description of the
general offer/whitewash
transaction/privatisation/share buy-back by general
offer/off-market share buy-back

evidencing compliance. If any requirement is not applicable because no such matter or arrangement exists, an appropriate negative statement should then be clearly marked against the relevant schedule requirement. Every effort should be made to ensure that the document fully complies with the relevant Schedule disclosure requirements before the document is posted to shareholders.

33. The Executive will review the relevant document primarily for Schedule compliance after publication and make appropriate enquiries where necessary. Parties and their advisers are expected to respond promptly to any follow-up enquiries made by the Executive and provide all necessary information (see General Principle 10). A party and/or its advisers should make every effort to resolve an issue once it has been raised which may include the need to publish a clarification announcement or a supplementary document.
34. Notwithstanding the above, the Executive may, where it considers it necessary or appropriate, require a party and/or its advisers to submit checklists of Schedule disclosure compliance prior to publication of the shareholder's document.

Stage 3 – First closing date of general offer or general meeting for whitewash transaction s

35. Close of offer announcements/announcements declaring offer unconditional as to acceptances – the Executive should be provided with a copy of the receiving agent's certificate evidencing acceptance (see Note 2 to Rule 30.2).
36. Announcements of results of a general meeting for approving a whitewash transaction – thensac e3Tw 23.504 0 6g a ns[bcert ns[b

offeree company, then the offeror and any person acting in concert with it may not within six months of the close of the offer:

f make a second offer to, or

f acquire any shares from

any shareholder in the offeree company at a price higher than the offer price. Practice Note 18 further clarifies that Rule 31.3 also applies to general offers that are unconditional at the outset.

38. Special deals

41. Final completion announcement for whitewash transaction – Once the issue of the new securities has completed, an announcement relating to the completion should be issued. In a transaction which involves a subscription for new shares by a whitewash waiver applicant, completion will be taken as the time the new shares are issued to the whitewash waiver applicant. In a transaction which involves an issue of convertible securities to a whitewash waiver applicant, completion will be taken as the time the convertible securities are issued to the whitewash waiver applicant, and not when the conversion rights are exercised (see Issue No. 14 of the Takeovers Bulletin).

28 June 2019

Appendix 1 – Checklist

	Items required	Check/Date
III	Offer document s/response document s/composite document s/share buy-back document s/scheme document s – offer s/share buy-backs (i) 4 copies of advanced draft (ii) submission of soft copies of first draft (and each subsequent drafts) to “T&Mdocuments@sfc.hk” (iii) document fees and schedule of calculation (iv) signed reconfirmation of sufficiency of financial resources by offeror’s financial adviser (v) signed Rule 10.11 confirmation by directors of offeree company/offeror (vi) DoD disc and submission form (vii) DoD confirmation (viii) publication confirmation (ix) checklists of Schedules I, II and III as appropriate (x) posting certificate (xi) translation confirmation	

	Items required	Check/Date
	(x) translation confirmation	
V	Closing announcement s - offers	
	(i) receiving agent's certificate (if applicable) (ii) publication confirmation (iii) translation confirmation (iv) confirmation of compliance with Rules 31.3 and 25 six months after closing date	
VI	Announcement s of results of general meetings – whitewash transactions and court meetings – privatisations by way of scheme of arrangement (i) scrutineer's certificate (ii) publication confirmation (iii) translation confirmation	

give objective advice to the independent board committee.