

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 offer or whitewash transaction and refers to Practice Notes¹

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leading English language newspaper and one leading Chinese language newspaper published daily and circulated generally in Hong Kong. All documents published in respect of unlisted offeree companies must be delivered to the Executive 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

announcement/document is jointly issued, a confirmation should be provided by each of the parties issuing that announcement/document.

- (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 publication.
- (c) The confirmation should contain the following wording or wording of similar effect:

“We, [name of issuer], refer to the [description of the general offer/whitewash transaction/special deal/share buy-back/privatisation] and hereby confirm that the Chinese translation of the English version of the [description of the Document] issued by [name of issuer] on [date of Document] in relation to [description of the general offer/whitewash transaction/special deal/share buy-back/privatisation] (the “Document”) is a true and accurate translation of the English version of the Document, and that it is consistent with the English version of the Document. A copy of the published versions of each of the English and Chinese version of the Document dated [date] is enclosed for identification purposes.”

Stage 1 - Announcements of a proposed or possible offer, share buy-back, privatisation or whitewash transaction

Identity of potential offeror

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transaction;

- (iii) the name and title of each team member involved in the transaction;
- (iv) the detailed responsibility and role to be played by each team member during the transaction; and
- (v) the types of licences held by each team member and any conditions attached to his or her licences.

If no financial adviser has been engaged, a negative statement to this effect should be made, and the relevant information should be provided to the Executive within three business days after an appointment is made..

Within three business days after the end of an offer period or the general meeting for approving a whitewash transaction, the Executive should be provided with all changes (including interim changes) to the information submitted under this paragraph. If there is no such change, a negative statement should be provided.

12. Section 1.7 of the Introduction to the Takeovers Codes provides that financial advisers must possess the competence, professional expertise and adequate resources to fulfil their roles and to discharge their responsibilities under the Codes. If there is any doubt about a financial adviser's ability to meet this requirement, parties are encouraged to consult the Executive before the appointment is made.

Appointment of Independent Financial Advisers (IFA)

13. Rule 2.1 requires that “[t]he board must announce the appointment of the independent financial adviser in the initial announcement of the offer or possible offer, or as soon thereafter as the appointment is made.” Rule 2.6 further sets out persons not regarded to be suitable to give independent advice.
14. The Executive should be informed about the appointment or proposed appointment of an IFA. The IFA should as soon as possible send to the Executive a confirmation of independence. The confirmation should address the questions

set out in the standard questionnaire in Appendix 2 to assist the Executive's consideration of whether the financial adviser is suited to give independent advice.

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.
17. Likewise, a whitewash applicant should also check its trading records 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 date of the first announcement of the whitewash proposal, whichever is earlier, to ensure there is no disqualifying transaction that may prevent the Executive from granting a

sufficient resources are available to satisfy the offeror's obligations. Financial advisers should observe the highest standard of care to satisfy themselves of the adequacy of

special deal circular cannot be despatched within one month of the announcement of the special deal.

29. **Schedule disclosure requirements** - the Executive will not raise comments about compliance with the Schedule

Electronic versions of all documents including revised pages should be sent to cfmailbox@sfc.hk.

31. The following should be noted:

- (i) **Latest Practicable Date (LPD)** – the LPD of the document should not be more than three days from the date of despatch of the relevant document. When the LPD falls on a day which is not a “business day” (defined under the Codes), the LPD can be set on the preceding business day. If the LPD is set on a date which is more than three days before despatch, the Executive should be consulted prior to release or publication of the document.

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32. Following despatch of the document, in addition to the items specified in paragraph 8

39. The offeror should confirm in writing within three business days of the expiry of six months from the end of the offer period that it and all persons acting in concert with it have complied with Rule 31.3 and Rule 25.
40. **In the case of a whitewash transaction**, the whitewash applicant should confirm in writing within three business days of the expiry of six months from the shareholders' meeting that it and all persons acting in concert with it have complied with Rule 25. If the whitewash applicant or its concert party acquires shares in the six months period after the shareholders' meeting from a person who was a director or substantial shareholder of the offeree company at the time of the whitewash, such acquisition will be deemed to be a special deal prohibited under Rule 25 of the Takeovers Code (see Note 2 to paragraph 3(b) of Schedule VI of the Takeovers Code).
41. **In the case of partial offers**, the offeror should confirm in writing within three business days of the expiry of 12 months from the end of the offer period that it and all persons acting in concert with it have not acquired voting rights of the offeree company in compliance with Rule 28.3.
42. **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*).

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**Appendix 1 – Checklist of items for submission to the
Executive**

	Items required	Check/Date
I	Rule 3.7 announcements (i) identity of potential offer	

	Items required	Check/Date
III	Offer document	

	Items required	Check/Date
	(vii) checklists of Schedules I, II and VI (viii) posting certificate (ix) translation confirmation	
V	Closing announcements - offers (i) receiving agent's certificate (if applicable) (ii) publication confirmation	

Appendix 2 – Independence of IFA

To assess an IFA's independence, the Executive needs information

5. Are there any inducement fee, break fee or any other special fee arrangements between the IFA and the offeree company?
6. Are there any other matters which may mean the IFA has a conflict of interest?
7. If the answer to any of questions 1 to 6 is “yes”, please give details, and state the reasons why the IFA considers it can give objective advice to the independent board committee.