

Takeovers Executive of the SFC publicly censures Bank of America, National Association and Merrill Lynch International in relation to breaches of Rule 22 of the Takeovers Code

Disciplinary action against Bank of America, National Association and Merrill Lynch International

1. The Executive publicly censures Bank of America, National Association ("**BANA**") and Merrill Lynch International ("**MLI**") under section 12.3 of the Introduction to the Codes on Takeovers and Mergers and Share Buy-backs ("**Codes**") as a

7. The Takeovers Code defines an “associate” to include “*any bank and financial and other professional adviser... to an offeror [or] the offeree company...*”

and rectified the deficiencies in its reporting system to ensure future compliance with the Takeovers Code. However, BANA's and MLI's failure to report their dealings in equity swaps in accordance with Rule 22 in both the CRB Partial Offer and the Power Assets Privatisation is a material breach of General Principle 6 and Rule 22 of the Takeovers Code and the Executive considers the breach to be serious and to merit the present disciplinary sanction.

17. The Executive is particularly concerned that the involvement of BANA in intermediating equity swaps did not come to light until 6 October 2015 in the context of the Power Assets Privatisation. This led to the consultation on 12 October 2015 and the self-report by BofAML Group for non-compliance with the Takeovers Code on 19 October 2015 in the CRB Partial Offer which was five months after the commencement of the offer period for CRB.
18. BofAML Group should have taken reasonable care to establish and maintain procedures and systems to guard against non-compliance with the Takeovers Code. In particular, three of its members including MLI are recognised as EPTs by the Executive and are required to submit a confirmation to the Executive on an annual basis confirming that, among other things, suitable compliance procedures are in place.

Appendix

The relevant provisions of Rule 22 are set out in full below:

Rule 22.1(a)

Dealings in relevant securities by an offeror or the offeree company, and by any associates, for their own account during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

Rule 22.4

Dealings in relevant securities by an exempt principal trader connected with an offeror or the offeree company should be aggregated and disclosed, in accordance with Note 6(a) to this Rule 22, not later than 10.00 a.m. on the business day following the date of the transactions, stating the following details:–

- (i) total purchases and sales;*

Note 5 to Rule 22