

Highlights

- Takeovers and Mergers Panel: Retirement of Mr Stephen Clark and appointment of Mr Freeman Chan as Chairman
- Additional disclosure of future intentions for unlisted securities
- Application of Rule 35.3 on connected exempt principal traders
- Appointments and reappointments to the takeovers-related committees
- Quarterly update on the activities of the Takeovers Team

such information is even more vital for shareholders due to their illiquid nature. Schedule I of the Codes prescribes the additional matters to be disclosed, such as information relating to the value of the offeror's securities, business operations and latest financial position.

General Principle 5 provides, among other things, that shareholders should be given sufficient information, advice and time to reach an informed decision on an offer, and that no relevant information should be withheld. In line with this spirit, going forward, in all offers, including privatisation proposals, where unlisted securities are offered as consideration, in addition to the disclosures required under Schedule I, we will require the offeror to state whether it intends to seek a listing of the unlisted securities (or the business of the offeree company in question) on a stock exchange, whether locally or in another jurisdiction. We believe this additional disclosure would assist shareholders in deciding whether to accept the unlisted securities as consideration.

Restrictions on assenting securities under Rule 35.3 of the Takeovers Code

Rule 35.4 prohibits connected exempt principal traders (EPTs) from voting in the context of an offer. However, in circumstances where an EPT is holding shares in its capacity as a custodian on behalf of non-discretionary clients, the Executive¹ is prepared to relax the application of Rule 35.4 if an EPT could confirm the matters set out in [Issue No. 53](#) of the *Takeovers Bulletin*.

On a number of occasions, the Executive has been consulted whether the same approach would be applied to Rule 35.3, where connected EPTs are not allowed to accept an offer until the offer has become unconditional as to acceptance. In circumstances where the securities are held by a connected EPT on a purely non-discretionary basis, the Executive is prepared to relax the application of Rule 35.3. Similar to the approach taken towards Rule 35.4, the Executive would expect a connected EPT to confirm the following in writing:

1. The connected EPT holds the shares (the Relevant Shares) as a simple custodian for and on behalf of non-discretionary clients; and
2. Contractual arrangements are in place between the connected EPT and its clients which strictly prohibit the EPT from exercising any discretion over the Relevant Shares. In particular, all instructions relating to an offer shall originate from the client only, and if no instructions are given, then no action shall be taken on the Relevant Shares.

In addition, the EPT should also confirm in the results announcement that it did not tender any shares for acceptance (other than those shares held as a simple custodian for and on behalf of non-discretionary clients) under the offer or where the offer has become unconditional, prior to the offer becoming unconditional as to acceptance. The number of shares an EPT holds but has no discretion over should also be included in the details of long and short positions of relevant securities submitted to the Executive pursuant to paragraph 7.3 of Practice Note 9.

¹ The Executive Director of the SFC's Corporate Finance Division or his delegate.

Appointments and reappointments to the takeovers-related committees

We welcome the following new appointments and reappointments of members to the Panel and the Takeovers Appeal Committee (Appeal Committee) with effect from 1 April 2021.

Panel and Appeal Committee

New appointments – Mr Freeman CHAN (Chairman of the Panel), Mr Stephen Edward CLARK and Ms Benita YU (Deputy Chairmen of the Panel) and Mr Stephen John CLARK

Reappointments – Mr David WEBB (Deputy Chairman of the Panel), Ms Alexandra BIDLAKÉ, Ms Melissa BROWN, Mr Ernest IP, Mr Bonn LIU, Ms Yoo Kyung PARK, Mr Asit SHAH, Mrs Judy VAS, Mr WONG Wai Ming, Mr Jackson WOO and Mr Frank YUEN

Full list of members of takeovers-related committees

Members are appointed for a term of two years until 31 March 2023 unless otherwise stated. The membership lists for the Panel, the Appeal Committee, the Disciplinary Chair Committee and the Nominations Committee are set out below.

Panel

The Panel hears disciplinary matters in the first instance, reviews rulings by the Executive at the request of any party dissatisfied with such a ruling and considers novel, important or difficult cases referred to it by the Executive. It also reviews, upon request by the SFC, the provisions of the Codes and the Rules of Procedure for hearings under the Codes and recommends appropriate amendments to the Codes and Rules to the SFC.

Chairman

Mr CHAN Yuk Sing Freeman

Deputy Chairmen

Mr CLARK Stephen Edward
Ms KO Teresa Yuk Yin, JP*
Ms LAM Chor Lai, Celia*
Mr MAGUIRE John Martin*
Mr SCHWILLE Mark Andrew*
Mr WEBB David Michael
Ms YU Ka Po, Benita

Members

Ms BIDLAKÉ Alexandra
Ms BROWN Melissa
Mr CHAN Che Chung (Alias: Conrad CHAN)*
Ms CHARLTON Julia Frances*
Mr CHENG Wai Sun, Edward, GBS, JP*
Mr CLARK Stephen John
Mr IP Koon Wing, Ernest
Mr LEE Kam Hung, Lawrence, BBS, JP*
Ms LEUNG Po Wah, Pauline*
Mr LIU Yun Bonn
Ms LLOYD Victoria Sally Tina*
Mr NORMAN David Michael*
Mr NORRIS Nicholas Andrew*
Ms PARK Yoo-kyung
Mr SABINE Martin Nevil*
Mr SHAH Asit Sudhir

* Reappointed on 1 April 2020 for a two-year term until 31 March 2022.

Mr STEINERT Timothy A.*
Mr TYE Philip Andrew*
Mrs VAS CHAU Lai Kun, Judy
Mr WINTER Richard David*
Mr WOLHARDT Julian Juul*
Mr WONG Richard*
Mr WONG Wai Ming
Mr WONG Yu Tsang, Alex*
Mr WOO Ka Biu, Jackson
Mr YUEN Ka Fai (Alias: Frank YUEN)

Appeal Committee

The Appeal Committee reviews disciplinary rulings

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 December 2020, we received 23 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), four whitewashes and 95 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*

All issues of the *Takeovers Bulletin* are available under 'Published resources – Newsletters – Takeovers Bulletin' on the SFC website at www.sfc.hk.

Feedback and comments are welcome and can be sent to takeoversbulletin@sfc.hk.

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