

Practice Note 13 (PN13) – Timing of disclosure of holdings by a group of which an adviser is a member

Rule 3.5 of the Takeovers Code requires that an announcement of a firm intention to make an offer must disclose details of the existing holding of voting rights and rights over shares in the offeree company owned or controlled or directed by any person acting in concert with the offeror. Under Class 5 of the presumption of acting in concert a financial or other professional adviser is presumed to be acting in concert with its client in respect of the shareholdings of the adviser and persons controlling, controlled by or under the same control as the adviser (except in the capacity of an exempt principal trader).

Note 1 to Rule 3.5 of the Takeovers Code acknowledges that for reasons of secrecy it would not be prudent to make enquiries (before the issue of the announcement) so as to include in an announcement details of any holdings or borrowings of offeree company shares or options or derivatives in respect of them held by or entered into by other parts of an adviser's group. The Note further provides that such details should be obtained as soon as possible after the announcement has been made and the Executive consulted. If the holdings or borrowings are significant, a further announcement will be required.

The Executive would like to clarify that for the purpose of this note, details of the holdings or borrowings of offeree company shares or options or derivatives in respect of them held by or entered into by other parts of an adviser's group should be provided to the Executive (i) in the case of holdings held by entities in Hong Kong, by 5:00 p.m. on the 1st business day after publication of the Rule 3.5 announcement ; and (ii) in the case of holdings by entities based overseas, by 5 p.m. on the 2nd business day after publication of the Rule 3.5 announcement. This is in line with the requirement that all exempt principal traders must provide to the Executive details of the holdings or borrowings of their group in the relevant securities of the offeree company and in the case of securities exchange offer, the securities of the offeror, by 5 p.m. on the day after the offer period commences. The Executive will then consider whether a further announcement setting out such details will be required.

However, in cases where an announcement identifying the offeror or potential offeror and its adviser(s)' connection with such offeror has been published prior to the release of the announcement of a

firm intention to make an offer under Rule 3.5, Note 1 to Rule 3.5 will not apply given secrecy will no longer be an issue. Accordingly, full disclosure of the details of the existing holdings and borrowings of the adviser's group must be made at the time of the announcement of the firm intention to make an offer in accordance with Rule 3.5 of the Takeovers Code.

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