

SECURITIES INDUSTRY COUNCIL ("SIC")
PUBLIC STATEMENT ON REQUIREMENT FOR
INDEPENDENT ADVICE ON TAKE-OVER OFFERS

Independent advice is essential to the protection of the interests of minority shareholders in a public company which is the subject of a take-over offer ("offeree company"). This fundamental safeguard is enshrined in and enunciated by General Principle 8 and Rule 7.1 of the Take-over Code, which require the board of an offeree company to obtain independent advice and make known such advice to shareholders of the offeree company.

2 Note 1 on Rule 7.1 emphasises that such independent advice is particularly important where the offer is a management buy-out or similar transaction or is being made by or with the co-operation of the existing controlling shareholder or group of shareholders. This is to recognise that such offeror or its concert party is an insider or controller, and often has extensive proprietary information and/or substantial presence on the board on the offeree company. There is therefore a real risk that the advice obtained may not be truly independent.

3 Having regard to the purpose and the spirit of General Principle 8 and Rule 7.1 of the Take-over Code, all parties to a take-over offer including the offeror should not do anything that could fetter or compromise the independence of the person appointed as the independent financial adviser ("IFA") or that could influence the advice given by such IFA. It follows that no one should interfere with or influence the choice of the IFA, whose appointment is the sole responsibility of the board of the offeree company. Neither should any one, especially the offeror, influence or attempt to influence the advice given by the IFA.

4 For example, it would be improper for the offeror to effectively take over from the offeree board the process of selecting an IFA, or in substance decide for the offeree board the choice of an IFA. It would equally be improper for the offeror to seek the views of a prospective IFA on the offer and in particular whether he would support a proposed offer, and after receiving his endorsement of the offer, do anything which would have the effect of influencing the appointment of such person as IFA by the offeree board.

5 In assessing whether a person proposing to act as IFA is independent for the purposes of the Code, the board of the offeree company and the prospective IFA itself should take into account the considerations set out in the Appendix. In cases of doubt, the SIC should be consulted in good time.

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