SECURITIES INDUSTRY COUNCIL
("SIC" OR THE "COUNCIL")

PRACTICE STATEMENT ON THE EXEMPTION OF CONNECTED FUND MANAGERS AND PRINCIPAL TRADERS UNDER THE SINGAPORE CODE ON TAKE-OVERS AND MERGERS (THE "CODE")

(A) OVERVIEW OF THE EXEMPT STATUS REGIME

1 Introduction

1.1 This Practice Statement provides for the exemption of fund managers and/or principal traders that form part of a large multi-service financial group advising on an offer, from certain prohibitions, restrictions and obligations imposed by the Code on dealings by parties involved in an offer and persons acting in concert with such parties ("**Exempt Status Regime**"). It also sets out the implications of the Council's grant of such exemptions and highlights the disclosure requirements of such parties under the Code.

2 Definitions

2.1 **Connected fund manager** or **connected principal trader**: A fund manager or principal trader (as the case may be) that is connected with an offeror or offeree company because the fund manager or principal trader controls, is controlled by or under the same control[1] as a bank or financial or other professional adviser (including a stockbroker)[2] to an offeror or an offeree company.

2.2 **Exempt fund manager**: An exempt fund manager (EFM) is a person who manages investment accounts on a discretionary basis and is recognised by the Council as an exempt fund manager for the purpose of the Code.

2.3 **Exempt principal trader**: An exempt principal trader (EPT) is a person who trades as a principal in securities and other instruments only for the purpose of derivative arbitrage or hedging activities such as closing out existing derivatives, delta hedging in respect of existing derivatives, index related

[1] See Note 1 to the *Notes on Definitions* of the Code.
[2] See Note 2 to the *Notes on Definitions* of the Code.

product or tracker fund arbitrage in relation to the relevant securities or other similar activities assented to by the Council during an offer period (see paragraph 11.3), and is recognised by the Council as an exempt principal trader for the purpose of the Code.

Notes on Definitions of Exempt fund manager and Exempt principal trader

1. *Persons who manage investment accounts on a discretionary[3] basis and principal traders may apply to the Council to seek the relevant exempt status and will have to comply with any requirements imposed by the Council as a condition of the grant of such status. The Council will normally require an applicant for exempt principal trader status to describe in the application to the Council, the list of securities and other instruments which the applicant is or proposes to be trading as principal. This disclosure is a continuing obligation, in that, where there are any changes or additions to the list of securities and instruments which the applicant is or proposes to be trading as principal, the Council should be updated on this as soon as possible.*

2. *When a principal trader or fund manager is connected with an offeror or an offeree company, exempt status is relevant only where the sole reason for the connection is that the principal trader or fund manager controls, is controlled by or is under the same control as a financial or other professional adviser (including a stockbroker) to an offeror or an offeree company.*

3. *Discretionary fund managers and principal traders who are connected with an offeror, potential offeror or an offeree company, and who either do not have exempt status or whose exempt status is not relevant by virtue of Note 2 above (i.e. there are other reasons for the connection other than that stated in Note 2), will not normally be presumed to be acting in concert with that person until –*

   (a) where connected with an offeror or potential offeror,
      a. the identity of the offeror or potential offeror is publicly announced; or
      b. the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected,

   whichever comes first; and

   (b) where connected with an offeree company,
      a. the commencement of the offer period; or,

[3] See Note on Rule 12.1 of the Code on "*Discretionary accounts*".

b. the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company and that it was connected with the offeree company,

whichever comes first.

4. Any dealings during the offer by the discretionary fund managers and principal traders described in Note 3 above will be subject to the disclosure obligations under Rule 12.1 of the Code.

3 **The Rationale for Exempt Status**

3.1 Under paragraph (e) of the definition of *Acting in Concert* under the Code, financial and other professional advisers of corporate clients, together with persons controlling, controlled by or under the same control as such advisers, are presumed to be acting in concert with their clients in respect of their shareholdings.

3.2 Where an adviser is part of a larger financial group, the presumption of acting in concert extends to all entities within that group, including its fund managers and principal traders (i.e. its connected fund managers and connected principal traders).

3.3 Given this presumption, dealings in securities of an offeree company during an offer period by connected fund managers and connected principal traders may have implications under the Code. For example:

(a) any purchases by connected fund managers or connected principal traders might result in an obligation on the offeror to make an offer in cash at the highest price paid or to revise any existing offer to that level (Rules 14.3, 17 and 21 of the Code);

(b) sales of any securities in the offeree company by such connected fund managers and connected principal traders would be restricted during an offer period, except where the sales are carried out in accordance with Rule 11.2 of the Code; and

(c) where fund managers or principal traders are connected to the offeror or potential offeror or offeree company (as appropriate) and do not

have exempt status under the Code, dealings in the securities of the offeree company or the offeror company (where appropriate) (including convertible securities, warrants, options and derivatives in respect of such securities) are prohibited between the time when there is reason to suppose that an approach of an offer or revised offer is contemplated and the announcement of the approach, the offer, the revised offer, or the termination of the discussions (see Rule 11.1 of the Code).

4 **The Exempt Status Regime**

4.1 Under the exempt status regime, the Council may grant exempt status to connected fund managers and connected principal traders for a period of time. Such exempt status is granted in recognition of the fact that certain dealing activities are carried out separately from, and are not influenced by, its corporate finance operations.

5 **The Implications of Exempt Status**

5.1 Once exempt, an EFM or EPT will not normally be regarded as acting in concert with the client of the group's corporate finance department that is advising on an offer.

5.2 The benefits of exempt status only apply where the **sole** reason for the connection with an offeror or offeree company is that the EFM or EPT is in the same group as the corporate finance department that is advising the offeror or offeree company[4].

5.3 Therefore, an EFM or EPT may not benefit from its exempt status if:

(a) it belongs to the same group as the offeror or offeree company; or

(b) it is a concert party of the offeror or offeree company, other than being presumed to be acting in concert under paragraph (e) of the definition of *Acting in Concert* under the Code.

[4] See Note 2 of the *Notes on Definition of Exempt Fund Manager and Exempt Principal Trader* of the Code.

Disclosure obligations will apply to EFMs and EPTs

5.4 Although an EFM and an EPT may not be regarded as acting in concert with the client of the group's corporate finance department, it may still be subject to disclosure obligations:

(a) EFMs will be required to disclose, either publicly or privately, to the Council, its dealings in relevant securities, in accordance with Rule 12 of the Code. Whether the disclosure is public or private depends on whether the EFM is regarded as an "associate". For the purpose of the Exempt Status Regime, the EFM will be regarded as an associate only if it satisfies paragraph (f)[5] of the definition of *Associate* under the Code, i.e. where it holds 5% or more of any class of relevant securities.

(b) EPTs will be required to disclose, either publicly or privately, to the Council, its dealings in relevant securities, in accordance with Rule 12 of the Code. Whether the disclosure is public or private depends on the type of transaction. Further details are set out in paragraph 9.3 below.

6 **The Scope of Exempt Status**

6.1 In the case of an EFM, the exempt status applies to **all** discretionary dealings in client funds managed by the EFM.

6.2 In the case of an EPT, the exempt status **only applies** to the trading activities conducted by the EPT trading as a principal in securities and other instruments for the purpose of derivative arbitrage or hedging activities such as closing out existing derivatives, delta hedging in respect of existing derivatives, index-related product or tracker fund arbitrage in relation to the relevant securities[6] or other similar activities agreed to by the Council during an offer period (see paragraph 11.3).

[5] Paragraph (f) of the definition of *Associate* under the Code states "*a holder of 5% or more of the equity share capital of the offeror or offeree company. This includes a holder who acquires shares which takes him through 5%. Where two or more persons act as a syndicate or other group, pursuant to an agreement or understanding (whether formal or informal) to acquire or hold such equity share capital, they will be deemed to be a single holder for the purpose of this paragraph*".

[6] See Note 3 to Rule 12 of the Code.

(B) DISCLOSURE REQUIREMENTS AND CODE IMPLICATIONS

7 EFMs

7.1 *Is an EFM's disclosure public or private?*

As mentioned at paragraph 5.4(a), an EFM is required to either publicly or privately disclose its dealings in the relevant securities to the Council, depending on whether it is an "associate" under paragraph (f) of the definition of *Associate* under the Code:

(a) **Private Disclosure** – An EFM who is not regarded as an "associate" must make a private disclosure to the Council in accordance with Notes 4, 5 and 6 on Rule 12 of the Code.

This assists the Council in monitoring dealings during an offer period.

(b) **Public Disclosure** – Where an EFM holds 5% or more of any class of relevant securities, it would be regarded as an "associate" and would need to make public disclosure of its dealings in the relevant securities in accordance with Notes 4, 5 and 6 on Rule 12 of the Code.

Such disclosures provide relevant information to the market during an offer period, and is consistent with the requirement under the Securities and Futures Act (Cap. 289)[7] for persons holding 5% or more of any class of the relevant securities to disclose relevant changes to their holdings.

An EFM needs to aggregate its holdings to determine its obligations

7.2 An EFM should aggregate its holdings to determine two things under the Code:

(a) whether it would be regarded as an "associate" under paragraph (f) of the definition of *Associate* under the Code and hence, be required to either make private or public disclosure(s) of its dealings in accordance with paragraph 7.1 above; and

[7] See Part VII of the Securities and Futures Act (Cap. 289).

(b) whether any general offer implications arise under Rule 14 of the Code.

Determining whether it would be regarded as an "associate"

7.3 *How should an EFM aggregate its holdings for the purpose of determining whether it is an "associate" under paragraph (f) of the definition of Associate under the Code?*

(a) An EFM should aggregate the relevant securities held by the **investment accounts it manages on a discretionary basis** (including **all** relevant securities held in Start-up Capital accounts - see paragraph 8 below).

(b) It will not normally be required to include any principal (or proprietary) or discretionary client's holdings of the relevant securities held elsewhere in the group.

(c) The shareholdings of separate EFMs which operate independently within a financial group are not required to be aggregated for the purpose of determining whether they are associates.

7.4 *How should an EFM who is regarded as an "associate" aggregate its holdings for the purpose of public disclosure?*

(a) Where (i) an EFM makes a public disclosure because it is an associate; or (ii) there are two or more EFMs within the group and one or more of them are regarded as an associate, unless the Council consents otherwise, it is required to disclose the aggregate holdings of relevant securities held by **all discretionary fund managers within the same group (whether exempt or non-exempt)**.

This is consistent with the view that the relevant securities controlled by such operations are regarded as those of a single person and would be in line with Rule 12.1 of the Code (see also Note on Rule 12.1 of the Code).

(b) In practice, if there are appropriate reasons such as adequate Chinese Walls procedures, the Council may be prepared to waive the

requirement for an EFM to aggregate and disclose its interest in the relevant securities held by other discretionary fund managers within the group.

7.5 In all cases, an EFM should treat the relevant securities held by the investment accounts it manages on a discretionary basis as controlled by the EFM itself, and not by the person on whose behalf the relevant securities are managed (see Note on Rule 12.1 of the Code).

7.6 *How should an EFM disclose its dealings?*

(a) **Private disclosure** – Dealings in the relevant securities by a connected EFM that are required to be privately disclosed should be made in writing to the Council (see also Notes 4, 5 and 6 on Rule 12 of the Code). The disclosure must include the following information required under Note 6(b) on Rule 12 of the Code:

(i) the total number of the relevant securities purchased or sold;

(ii) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed); and

(iii) the identity of the associate that was dealing.

The Council reserves the right to make public such information if the circumstances warrant it.

(b) **Public disclosure** – Dealings by a connected EFM that are required to be publicly disclosed should be disclosed in accordance with Note 5(a) on Rule 12 of the Code. The disclosure must include the information set out in Note 6(a) on Rule 12 of the Code.

(c) Note 8 on Rule 12 of the Code is not applicable to EFMs. Therefore, an EFM must disclose any dealings in convertible securities, warrants, options and derivatives in respect of the relevant securities, in accordance with paragraphs 7.1(a) and (b) above.

(d) Disclosure should also be concurrently made to the offeror and the offeree company or their respective financial advisers.

Determining whether a mandatory offer obligation arises under Rule 14 of the Code

7.7 *How should an EFM aggregate its holdings for the purpose of determining whether a mandatory offer obligation arises under Rule 14 of the Code?*

(a) An EFM must aggregate **all holdings of the relevant securities of the group, irrespective of exempt status**, including but not limited to the EFM's discretionary client's holdings, and any principal (or proprietary) or discretionary client's holdings held elsewhere in group. Non-discretionary client's holdings need not be included.

(b) An EFM must consult the Council at the earliest opportunity in any case where an issue may arise under Rule 14 of the Code, so that a ruling may be given in light of the circumstances of the particular case. Therefore, to avoid problems under Rule 14 of the Code, all relevant holdings should be monitored from a central point within the group.

8 Example: Treatment of Start-up Capital

8.1 An EFM may inject its own money as start-up capital in a new fund at its launch (**"Start-up Capital"**). The Council regards Start-up Capital as proprietary funds. Notwithstanding this, given the fiduciary duties owed by an EFM to its discretionary clients, the Council will adopt the following approach for funds with Start-up Capital:

(a) where Start-up Capital represents less than 10% of the value of the fund, the whole of that fund would be covered by the EFM status;

(b) where Start-up Capital represents 10% or more (but less than 90%) of the value of the fund, the fund would be covered by the EFM status, subject to the following restrictions:

(i) the connected EFM must not carry out any dealing with the purpose of assisting the offeror or the offeree company in respect of the **whole** of the fund;

(ii) the connected EFM must not deal with the offeror and its concert parties in relevant securities in respect of the **whole** of the fund during the offer period;

(iii) subject always to the general principle that a connected EPT or EFM must not carry out any dealings or securities borrowing or lending transactions with the purpose of assisting the offeror or the offeree in an offer, where the EFM is connected with the offeror, the relevant securities may not be assented to the offer in respect of the **part** of the fund that constitutes the Start-up Capital until the offer becomes or is declared unconditional as to acceptances; and

(iv) the connected EFM must not vote in respect of the part of the fund that constitutes the Start-up Capital.

For example, if the Start-up Capital represents 50% of one of an EFM's funds (**"Start-up Capital Fund"**) and the Start-up Capital Fund holds 1 million of the relevant securities of an offeree company ("**Offeree Securities"**), the EFM:

- must not carry out any dealing in any Offeree Securities with the purpose of assisting the offeror or the offeree company in an offer;

- must not deal with the offeror and its concert parties in such Offeree Securities;

- (if connected with the offeror) must not assent to the offer in respect of 500,000 Offeree Securities held by the Start-up Capital Fund until the offer becomes or is declared unconditional as to acceptances; and

- must not vote in respect of the 500,000 Offeree Securities held by the Start-up Capital Fund.

(c) where Start-up Capital represents 90% or more of the value of the fund, **the whole of that fund will lose its EFM status** and, until such

time as the Start-up Capital portion reduces to less than 90% of the value of the fund, would be treated as an EPT and be subject to the dealing restrictions set out in the definition of EPT and paragraph 12 below.

9 **EPTs**

9.1 A connected EPT is required to make private or public disclosures of its dealings in the relevant securities during an offer period, in accordance with Rule 12 of the Code.

9.2 *Why should an EPT aggregate its holdings?*

An EPT should aggregate its holdings in the relevant securities for:

(a) public disclosure; and

(c) to determine whether any mandatory offer obligation arises under Rule 14 of the Code.

9.3 *How to determine whether an EPT's disclosure needs to be public or private?*

(a) **Private Disclosure** – Any dealings in the relevant securities by an EPT on behalf of **non-discretionary investment clients** (e.g. agency trades) should be privately disclosed to the Council.

(b) **Public Disclosure** – An EPT connected with an offeror or offeree company should make public disclosure of its dealings in all relevant securities **as principal**.

(c) Any dealings in convertible securities, warrants, options and derivatives in respect of the relevant securities by an EPT must be publicly disclosed. On this basis, Note 8 on Rule 12 of the Code is not applicable to EPTs.

(d) Dealings in relevant securities on behalf of non-discretionary investment clients that arise as a result of client facilitation orders must be publicly disclosed.

9.4 How should an EPT disclose its dealings?

(a) **Private disclosure** – Dealings in the relevant securities by a connected EPT that are required to be privately disclosed should be made in writing to the Council in accordance with Notes 4, 5 and 6 on Rule 12 of the Code. The disclosure must include the following information required under Note 6(b) on Rule 12 of the Code:

(i) the total number of the relevant securities purchased or sold;

(ii) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed); and

(iii) the identity of the associate that was dealing.

The Council reserves the right to make public such information if the circumstances warrant it.

(b) **Public disclosure** – Dealings in the relevant securities by a connected EPT that are required to be publicly disclosed should be disclosed in accordance with Notes 4, 5 and 6 on Rule 12 of the Code. The disclosure must include the following information (in addition to that set out in Note 6(a) on Rule 12 of the Code):

(i) total purchases and sales (i.e. total number of shares purchased/sold and total amount paid/received);

(ii) the highest and lowest prices paid and received; and

(iii) whether the connection is with an offeror or the offeree company.

Where the dealings are in relation to convertible securities, warrants, options or derivatives in respect of the relevant securities, Note 6(a)(iii) on Rule 12 of the Code should be complied with.

(c) Disclosure should also be concurrently made to the offeror and the offeree company or their respective financial advisers.

9.5 *How should an EPT aggregate its holdings to determine whether a mandatory offer obligation arises under Rule 14 of the Code?*

(a) In order to determine whether a mandatory offer obligation arises under Rule 14 of the Code, an EPT must aggregate **all holdings of the relevant securities of the group, irrespective of exempt status**, including but not limited to the EPT's own holdings (principal or proprietary), EFM's or discretionary client's holdings held elsewhere in group. Non-discretionary client's holdings need not be included.

(b) An EPT should consult the Council at the earliest opportunity where an issue under Rule 14 of the Code arises, so that a ruling may be given in light of the circumstances of the particular case. To avoid encountering any problems with Rule 14 of the Code, all relevant holdings should be monitored from a central point within the group.

10 **Timing of Disclosures**

10.1 All disclosures must be made no later than 12.00 p.m. on the business day following the date of the relevant transaction[8].

10.2 The Council should be consulted where dealings have taken place on stock exchanges in the time zones of the United States and there may be difficulty in disclosing dealings by the timing stipulated in paragraph 10.1. In such cases, the Council may allow disclosure to be made no later than 12.00 p.m. on the second business day following the date of the relevant transaction.

10.3 Where a client of a group's corporate finance department is involved in an offer or a whitewash transaction, the Council will require the group to submit details of the group's aggregate holdings of the relevant securities of the offeree company as at the close of business on the day the offer period commences or the whitewash transaction is announced. In the case of a securities exchange offer, the Council will also require the group to submit details of the group's aggregate holdings of the relevant securities of the offeror.

[8] See Note 4 on Rule 12 of the Code.

10.4 In this regard, long and short positions should not be netted off and details should include all programmed trades involving the underlying securities.

10.5 The submission should be made by 5.00 p.m. on the day after the offer period commences or the whitewash transaction is announced. The Council should be consulted if the group has difficulty meeting this requirement.

(C) OTHER SIMILAR EPT TRADING ACTIVITIES THAT THE COUNCIL MAY ASSENT TO

11 General guidance on exempt principal trades

11.1 The exempt status for EPTs is limited to certain trading activities. The reason for imposing such limitations is that the risk of abuse in the context of an offer is considered to be greater in respect of proprietary dealing activities. In recognition of the fact that an EPT may need to fulfil pre-existing obligations or carry out related hedging or similar activities, dealings and related hedging referred to in the definition of EPT are permitted, provided that the dealings are not conducted for the purpose of assisting the offeror or the offeree company in an offer.

11.2 In keeping with this approach, the Council may treat other similar activities as exempt for the purpose of EPT status. In reaching a decision on what dealings should be exempt, the Council will consider whether the dealings:

- are wholly unsolicited, client-driven and conducted for client facilitation purposes; or

- arise as a result of pre-existing obligations (including market making or liquidity providing obligations).

11.3 General guidance on the treatment of certain types of trading activities commonly carried out by EPTs during an offer period are set out under five broad categories below:

(a) <u>Agency trades</u>

The Council regards any dealings in the relevant securities carried out by an EPT on behalf of non-discretionary investment clients as agency trades. This is because such trades are executed in accordance with the instructions given by non-discretionary clients. Therefore, the execution process does not involve the EPT trader, who deals in the relevant securities on behalf of its client, taking on a proprietary position. Agency trades will also include orders made by clients directly through a direct market access platform but executed under the name of the EPT. Such agency trades must be disclosed privately to the Council under Rule 12.2 of the Code.

For the avoidance of doubt, dealings in relevant securities carried out by an EPT during the offer period only as brokerage agents for investment clients, and not as principal, will not be regarded as "agency trades" under the Code, and will continue to be subject to Rule 12.3 of the Code, pursuant to which such transactions need not be disclosed (whether publicly or privately).

(b) **Client facilitation trades**

At times, the client facilitation desk of an EPT may wish to take on a temporary principal position in connection with the fulfilment of a client's order (for example, an order based on the volume weighted average price or relating to basket/program trades or similar transactions). In these circumstances, the Council will regard such client facilitation trades as exempt dealing activities of an EPT during an offer period provided that:

- the client facilitation trades arise from wholly unsolicited client-driven orders. They must not arise as a result of solicitation or indication of interests by the client facilitation desk (via e-mails, telephone calls or otherwise) or recommendations provided by the EPT or its related parties during the offer period;

- the client facilitation desk operates independently of the group's proprietary trading desk (this should be supported by

appropriate compliance procedures such as the suspension of any proprietary trading by the client facilitation desk); and

- the proprietary positions that arise as a result of client facilitation trades (if any) are flattened no later than the close of the morning trading session the day after the trade is made.

Therefore, in assessing whether or not to facilitate a client trade, it is important that the client facilitation desk considers whether it is able to close/flatten or unwind the position within the permitted timeframe. EPTs should also maintain proper records and audit trails of all client facilitation trades and ensure that they are made readily available for inspection by the Council upon request.

Illustrations

(i) Delta 1 products and related hedging

A Delta 1 product is a financial derivative instrument that allows clients to have exposure to a particular stock without the need for the client to have a physical position in the underlying shares. When an EPT enters into a synthetic trade with a client, the EPT will hedge against the trade on a one-for-one basis by buying or selling the same number of underlying shares. The client retains the risks and returns of the trade as if the client had directly bought or sold the underlying shares. However, the EPT will hold the voting rights attached to the underlying shares as owner of the shares.

The Council considers the creation of Delta 1 products and related hedging arising from unsolicited client-driven orders during an offer period as an exempt activity of an EPT. This is provided that the EPT does not take a directional position as a result, for example, by retaining part of the product on its own account.

(ii) Convertible bonds

Convertible bonds ("**CB**") are debt instruments which provide the holder with the right, under pre-determined terms, to convert the CB

into a fixed number of shares of the issuer within a fixed period of time. The CB market is normally illiquid and CB trades are typically conducted on a principal-to-principal basis.

The Council will regard trading in CBs and related hedging arising from wholly unsolicited client-driven orders during an offer period as an exempt activity under the definition of EPT, provided that:

- the CB was already in issue before the offer period commenced; and

- the resultant proprietary positions (if any) are flattened no later than the close of the morning trading session on the day after the trade is made.

Issuance or participation in the issuance of a new CB during an offer period, albeit at the request of the client, will not be regarded as exempt.

(iii) *Issuance of new over-the-counter derivatives and related hedging*

Creation of a new derivative and related hedging (albeit as a result of unsolicited client requests) during an offer period is not regarded as an exempt activity under the definition of EPT.

The Council will not normally regard a derivative which is referenced to a basket or index including the relevant securities as connected with an offeror or potential offeror if at the time of dealing, the relevant securities in the basket or index represent less than 1% of the class in issue and less than 20% of the value of the securities in the basket or index. Dealings in such derivatives (and related hedging) would therefore be regarded as exempt under the definition of EPT. The Council should be consulted in cases of doubt.

(c) **Market making and liquidity providing activities**

(i) Market making or liquidity providing activities (and related hedging) in derivative warrants, callable bull/bear contracts and exchange-traded stock or index options involving the relevant

securities during an offer period are regarded as exempt activities for the purpose of EPT status, provided that:

- the EPT is recognised by the securities exchange[9] as a designated market maker or liquidity provider for the particular derivative or exchange-traded option;

- the derivative or series of exchange-traded options was already in issue before the offer period commenced; and

- the EPT does not apply for market maker or liquidity provider status relating to the relevant underlying securities during an offer period.

(ii) The Council should be consulted at the earliest opportunity if an EPT wishes to conduct market making or liquidity providing activities relating to unlisted derivatives, or if it wishes to fulfil its obligation as a market maker of a CB during an offer period. In determining whether such trades would be regarded as exempt, the Council would take into account all relevant factors, including the number of market makers for the particular unlisted derivative or CB.

(d) **Index-related products and Exchange Traded Funds**

Broad-based index-related product or tracker fund arbitrage in relation to the relevant securities during an offer period (including index rebalancing and related hedging) are regarded as exempt activities under the definition of EPT. The Council should be consulted in advance in respect of sector specific indices and other similar products.

Exchange Traded Funds ("**ETF**") are passively managed open-ended investment funds that can be traded like shares on a stock exchange. The Council regards the following activities, which relate to ETFs listed on a securities exchange that track the performance of an index ("**index-tracking ETFs**"), as exempt activities of an EPT:

[9] See definition of "*securities exchange*" under the Securities and Futures Act (Chapter 289).

- dealing in pre-existing index-tracking ETFs and related hedging (where relevant);

- redemption of pre-existing index-tracking ETFs (as a result of unsolicited client requests) and disposal of the underlying shares received from such redemption; and

- creation of new index-tracking ETFs and related hedging so long as the relevant share component in the basket or index represents less than 1% of the class in issue and less than 20% of the value of the securities in the basket or index.

The Council should be consulted in respect of dealings in, or redemptions of, an ETF that is not a broad-based index-tracking ETF, or in the case of a creation of a new ETF, if the relevant share component exceeds the above-mentioned limit.

(e) **Securities borrowing and lending**

Unwinding of securities borrowing and lending transactions are regarded as exempt activities under the definition of EPT. Entering into new securities borrowing and lending transactions would however require the Council's consent.

The brokerage desk of an EPT provides custodial and clearing services to clients and, in exchange, the broker is typically granted the right to re-hypothecate the securities held in a client's account. This right entitles the broker to take beneficial title of a client's securities and to use the securities for its own banking group's funding purposes, for example, by on-lending to its own banking group or to third parties or by using the securities as collateral for loans.

The act of re-hypothecation or the returning of recalled securities is regarded as an exempt activity under the definition of EPT. However, any proprietary dealing in re-hypothecated securities (for example disposal of such securities) during an offer period would not be regarded as exempt under the definition of EPT.

The voting rights of re-hypothecated shares should be aggregated with an EPT's group's shareholding for the purpose of Rule 14 of the Code (see paragraph 9.5 above).

12 Restrictions on an EPT

12.1 Certain restrictions will apply to connected EPTs so as to prevent a principal trader from abusing its exempt status.

12.2 As a principle, a connected EPT must not carry out any dealings or securities borrowing or lending transactions with the purpose of assisting the offeror or the offeree company in an offer. Failure to comply may lead to revocation of the exempt status.

12.3 The following restrictions apply to EPTs:

(a) if the EPT is connected with an offeror, it must not deal in the relevant securities of the offeree company with the offeror or its concert parties during the offer period;

(b) if the EPT is connected with an offeror, securities owned by it must not be assented to the offer until the offer becomes or is declared unconditional as to acceptances; and

(c) an EPT connected with an offeror or an offeree company must not exercise the voting rights in respect of the relevant securities owned by it in the context of an offer.

13 Suspension of exempt status

13.1 Any dealings by an EPT connected with an offeror or an offeree company with the purpose of assisting an offeror or an offeree company in an offer, as the case may be, or any dealings outside the specified activities for which it has received exemption, will constitute a serious breach of the Code.

13.2 Accordingly, if the Council determines that a principal trader has carried out such dealings, it will be prepared to rule that the principal trader shall cease

to enjoy exempt status for such period of time as the Council may consider appropriate in the circumstances.

14 Other obligations of an EPT

14.1 In addition to its own disclosure obligations, an EPT who deals in the relevant securities on behalf of its clients should ensure, so far as they are able, that they are aware of, and comply with, the disclosure obligations under Rule 12 of the Code if the clients are associates of the offeror or offeree company[10].

(D) APPLICATION PROCESS

15 How to apply for exempt status

15.1 Applicants may apply to the Secretariat for exempt status. They can approach the Secretariat for the information to be provided for the assessment of applications for exempt status.

15.2 Exempt status may be granted on an annual basis if the applicant provides a signed confirmation from the group senior compliance officer confirming, among others, that:

(a) the applicant entity and the fund managers and/or principal traders employed by it are independent of the group's corporate finance operations in Singapore;

(b) there are sufficient Chinese Walls and compliance procedures in place to maintain the independence of the relevant business operations; and

(c) the individual fund managers or principal traders of the applicant entity are well-versed in the relevant rules of the Code and in particular, that they understand the meaning and significance of "acting in concert" and the situations in which the EFM or EPT status (as the case may be) will be revoked or suspended.

[10] See Note 9 on Rule 12 of the Code.

15.3 In order to maintain its exempt status, the EFM or EPT must provide an updated signed confirmation to the Council on an annual basis. Failure to do so may result in the revocation of its exempt status. It will then have to make a fresh application in order to reinstate its exempt status.

(E) INTRODUCTION OF THE EXEMPT STATUS REGIME

16 Amendments to the Code

16.1 The Monetary Authority of Singapore, on the advice of the Council, has made amendments to the Code pursuant to section 139(6) of the Securities and Futures Act, Chapter 289.

16.2 The amendments to the Code are made in conjunction with the Council's introduction of the Exempt Status Regime by way of the Practice Statement. The amendments to the Code can be found in Appendix 1 of the Practice Statement.

17 Effective Date

17.1 The Practice Statement and amendments to the Code will take effect on 1 May 2018 ("**Effective Date**"). Exempt status granted under the Exempt Status Regime will apply to all transactions which are entered into on or from the Effective Date. Prior to the Effective Date, fund managers and principal traders who wish to qualify for exempt status should submit an application to the Council early so as to avoid any delay which may result in them obtaining their exempt status beyond the Effective Date.

17.2 In the interim period prior to the Effective Date, financial advisers should continue to submit applications to the Council on a case-by-case basis under the old regime. For the avoidance of doubt, rulings and confirmations which are granted in this regard will continue to be valid after the Effective Date. Where parties have doubts as to the consequences of any of the rule changes or the Practice Statement, particularly the impact on any transaction which is in existence or contemplation, they may consult the Council to obtain a ruling or guidance.

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Practice Statements are issued by the SIC to provide informal guidance to companies involved in take-overs and practitioners as to how the SIC normally interprets and applies relevant provisions of the Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the SIC and are not a substitute for consulting the SIC to establish how the Code applies in a particular case.

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Appendix 1

Amendments to the Code

The changes to the Code are as follows:-

(a) Deletion of Definition 1(e)(ii) – The Exempt Status Regime will provide a more appropriate and targeted method of identifying fund managers that should not be considered concert parties. On this basis, retaining Definition 1(e)(ii) would cause conflict with the regime and hence, has been deleted.

With the deletion, all funds managed by fund managers within the multi-service financial group would be presumed to be acting in concert with the adviser by virtue of Definition 1(d) and the revised Definition 1(e) of the Code. The managers of such funds may however be granted exempt status under the Exempt Status Regime.

"(e) a financial or other professional adviser, including a stockbroker, with its client in respect of the shareholdings of:-

~~(i)~~ the adviser and persons controlling, controlled by or under the same control as the adviser.~~; and~~

~~(ii) all the funds which the adviser manages on a discretionary basis, where the shareholdings of the adviser and any of those funds in the client total 10% or more of the client's equity share capital;~~

…"

(b) Amendments to Note 11 on Rule 12 – Note 11 on Rule 12 of the Code makes reference to the Council's current practice of "ring-fencing" the adviser and the Singapore entities of the multi-service financial group as concert parties and associates.

This would not be relevant under the Exempt Status Regime. Accordingly, such a reference will be deleted and Note 11 on Rule 12 will be amended to reflect the position under the Exempt Status Regime.

"11. Disclosure by advisers belonging to a large group

For a financial or professional adviser that belongs to a group with an extensive network of companies worldwide, the Council will normally exempt ~~the companies~~ funds managed on a discretionary basis within the group ~~(other than the adviser itself, the other Singapore entities of the group and their respective subsidiaries and associated companies)~~ from the requirements of this Rule if:-

(a) the group has in place distinct and effective "Chinese Walls" between its various operations; and

(b) the offeror is not part of the group.

Such exemption would be invalidated if ~~the companies within the group~~ such funds acquire/have acquired shares in the offeree company before or during the offer period that would give rise to inferences that such acquisitions are/were for the purpose of assisting the offeror in obtaining or consolidating effective control of the offeree company."