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# TAKE-OVERS BULLETIN

A periodic newsletter by the Secretariat of the Singapore Securities Industry Council for participants in take-overs and mergers

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## Highlights

- **Welcome Message**
- **Reminder to financial advisers to consult the SIC if they have or had dealings with the offeror or offeree company**
- **Reminder that IFA opinions must be clear and unequivocal**
- **Disclosure obligations by an EFM or EPT**
- **Lodgement of documents on MAS OPERA**
- **H2 2018 Statistics on M&A activity**

## Welcome Message

Happy Lunar New Year! Welcome to the sixth issue of the SIC Secretariat's Take-overs Bulletin.

In this issue, we remind financial advisers ("FA") to consult SIC Secretariat prior to accepting an FA role, if doing so might put themselves in a position of conflict.

We remind independent financial advisers that their opinions on take-over offers must be clear and unequivocal.

We clarify the disclosure obligations by an exempt fund manager or principal trader under the Exempt Status Regime.

Finally, we also remind all relevant parties to lodge documents with the SIC via the MAS OPERA website, and not by email or submission of hardcopies.

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## Reminder to FAs to consult SIC Secretariat prior to accepting an FA role if doing so might put themselves in a position of conflict

In a recent take-over offer, an FA had to step down from its role as adviser to the offeror, as the multi-service organisation it was part of (the "FA group") had existing dealings with the offeree company. These dealings gave the FA group access to material confidential information on the offeree company. Therefore, appointing the FA as adviser to the offeror could confer, or be perceived to confer, the offeror an advantage in its take-over offer.

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Note 2 on Rule 7.3 of [the Singapore Code on Take-overs and Mergers](#) (the “Code”) provides that a financial or professional adviser in possession of material information on an offeror or the offeree company may need to decline to act for the other party because the information is such that a conflict of interest is likely to arise. It may not be possible to resolve such a conflict simply by isolating information within the relevant organisation or by assigning different personnel to the transaction.

The Note goes on to state that where the adviser to an offeror has assessed and is satisfied that the information which it has on the offeree company will not give the offeror an advantage in the take-over offer, the adviser must consult the SIC and be ready to justify the basis of its assessment before acting for the offeror.

It is imperative that the FA consults the SIC before being appointed as the offer, once announced, proceeds under a tight timetable. In the recent case, the FA failed to consult the SIC beforehand and had to step down in the midst of the offer, causing the offeror to have to find a replacement on an urgent basis.

We would like to remind FAs to consult us prior to acting for parties to a take-over if doing so might put themselves in a position of conflict. In this regard, FAs must familiarise themselves with the parts of the Code that deal with conflicts of interests with respect to advisers.

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## Reminder that opinions of independent financial advisers must be clear and unequivocal

The [Practice Statement on the Opinion Issued by an Independent Financial Adviser \(IFA\) in Relation to Offers, Whitewash Waivers and Disposal of Assets under the Singapore Code on Take-Overs and Mergers](#) (the “IFA Practice Statement”) issued on 25 June 2014 states that an IFA opinion must be clear and unequivocal as to whether an offer is fair and reasonable.

The IFA Practice Statement seeks to standardise IFA opinions to give better clarity to the market. The IFA should not include any additional statements in its opinion, e.g. whether an offer is prejudicial to the interests of shareholders as a whole and whether an offer is compelling.

We would like to take this opportunity to remind IFAs to comply with the IFA Practice Statement. IFAs should consult the SIC Secretariat where in doubt. IFAs should also consult us beforehand if required by regulation or a regulatory agency to include opinions in addition to the fair and reasonable opinion set out in the IFA Practice Statement.

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## Disclosure of dealings by a connected exempt fund manager or principal trader

The [Practice Statement on the Exemption of Connected Fund Managers and Principal Traders under the Code](#) (the “Exempt Status Regime Practice Statement”) issued on 1 February 2018 sets out disclosure obligations on the dealings by an exempt fund manager (“EFM”) or exempt principal trader (“EPT”).

Paragraphs 7.6(d) and 9.4(c) of the Exempt Status Regime Practice Statement state that disclosure of dealings in relevant securities by an EFM or EPT should also be concurrently made to the offeror and the offeree company or their respective financial advisers. We would like to clarify that this requirement applies only to public disclosures by the EFM or EPT in accordance with Note 5(a) on Rule 12 of the Code.

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## Reminder on the lodgement of documents

The [Practice Statement on Lodgement of Documents](#) issued on 16 September 2016 states that all documents to be lodged with the SIC pursuant to Rule 27, all dealings disclosures pursuant to Rule 12.1, 12.2 and written confirmations pursuant to Note 2 on Rule 9.1 should be lodged or submitted in electronic form only and in a searchable Adobe PDF format. These should be lodged or submitted via the Take-overs & Mergers section of the [MAS OPERA website](#) together with a completed SIC Form 1.

We would like to remind all relevant parties to make the lodgements and submissions via the MAS OPERA website, instead of via emails or hardcopy submissions to the SIC Secretariat. There is also no need to supplement the lodgement or submission made on the MAS OPERA website with emails or hardcopies to the SIC Secretariat.

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## Half-yearly statistics on M&A activity

In the six months ended 31 December 2018, there were 9 offers and 1 whitewash lodged with the SIC.

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## Useful links

- The Singapore Code on Take-overs and Mergers  
[http://www.mas.gov.sg/~media/resource/sic/The\\_Singapore\\_Code\\_on\\_Take\\_Overs\\_and\\_Merger\\_25%20Mar%202016.pdf](http://www.mas.gov.sg/~media/resource/sic/The_Singapore_Code_on_Take_Overs_and_Merger_25%20Mar%202016.pdf)
- Securities Industry Council's Website  
<http://www.mas.gov.sg/sic>

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You may send in your feedback and comments via email.

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The information in the bulletin is intended as informal guidance and not meant to substitute consultations with the SIC Secretariat on how the Code applies to a particular case.