
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**
- **Exemption of Connected Fund Managers and Principal Traders under the Code**
- **Reminder that an offer should not be announced with incomplete or unclear terms**
- **Advertisements and reminder letters**
- **H1 2018 Statistics on M&A activity**

Welcome Message

Welcome to the fifth issue of the SIC Secretariat's Take-overs Bulletin.

In this issue, we highlight the Practice Statement on exemptions for connected fund managers and principal traders issued by the Council on 1 February 2018, and the Exempt Status Regime that came into effect on 1 May 2018. We strongly encourage all large multi-service financial groups who could potentially act as financial adviser in a take-over transaction under the Singapore Code on Take-overs and Mergers (the "Code") to apply for annual exempt status.

We remind offerors and their advisers that an offer should not be announced with incomplete or unclear terms.

Finally, we would also like to remind offerors and their advisers not to repeat the arguments supporting their offers, highlight particular features of their offers, or highlight favourable IFA opinions in advertisements or reminder letters to shareholders.

Exemption of Connected Fund Managers and Principal Traders under the Code

On 1 February 2018, the Council issued a Practice Statement on exemptions for connected fund managers and principal traders ("Practice Statement"). Under the Code, entities within the same large multi-service financial group as the financial adviser advising on an offer (e.g. fund managers and principal traders) are presumed to be acting in concert with the financial adviser and its client.

As concert parties, such entities' dealings in the relevant securities of the offeree company as principal would be subject to certain prohibitions, restrictions and obligations imposed by the Code.

The Practice Statement and related amendments to the Code to give effect to the Exempt Status Regime took effect on 1 May 2018. Exempt status may be granted on an annual renewable basis. Whilst the exempt status may also be granted on a per transaction basis, the considerations taken into account and time taken in processing such an application is no different from that in the case of an annual exempt status. An annual exempt status would allow a financial adviser to have more control over the timing of a take-over transaction. Hence, we strongly encourage all large multi-service financial groups who could potentially act as financial adviser in a take-over transaction under the Code to apply for annual exempt status.

Reminder that an offer should not be announced with incomplete or unclear terms

In a pre-conditional offer announced recently, a listed company offeror ("Listco Offeror") agreed, subject to certain pre-conditions, to purchase shares from certain vendors representing approximately 47% of the total issued capital of another listed company ("Listco Target"). As consideration, new shares in Listco Offeror would be issued to the vendors. If the pre-conditions were fulfilled or waived, the Listco Offeror would become obliged to make a mandatory offer for Listco Target under Rule 14 of the Code.

The announcement also referred to Rule 17.2¹ of the Code as requiring the offeror to provide a cash alternative in addition to securities offered to the vendors. In this regard, it was stated that Listco Offeror would apply to the Council to seek an exemption from the requirement to provide a cash alternative in light of the intention of the offeror to retain the listing status of the offeree company. While the exchange ratio for the securities offer was stated, the cash offer price was not. As a result, there was uncertainty as to whether there would be a cash offer and at what price that would be.

General Principle 12 states that all parties to a take-over or merger transaction should make full and prompt disclosure of all relevant information and use every endeavour to prevent the creation of a false market in the shares of an offeror or offeree company. Parties to such transactions must take care not to make statements which may mislead shareholders or the market.

In the case where an announcement of a firm intention to make an offer under Rule 3.5 or an announcement of a pre-conditional offer under Note 5 on Rule 15.1 or Note 1 on Rule

¹ The reference to Rule 17.2 of the Code was incorrect. It is Rule 14.3 that requires an offer to be made in cash or be accompanied by a cash alternative in the case of a mandatory offer. This is on the premise that when there is a change in effective control of the offeree company, shareholders should be given the opportunity to exit the offeree company completely.

14.2 is made, the terms of the offer, in particular the offer price, should be stated clearly to prevent the creation of a false market in the shares of an offeror or offeree company. Where there is doubt as to the application of the Code in relation to the terms of the offer, the SIC Secretariat should be consulted beforehand. We would like to remind offerors not to make an announcement where the terms of the offer are subject to consultation with, or the approval of, the Council.

Advertisements and reminder letters

Under Rule 8.5, advertisements connected with an offer or potential offer have to be confined to non-controversial information about an offer (e.g. reminders as to closing times or the value of an offer). Such advertisements must avoid argument or invective. The SIC Secretariat has applied a similar standard to reminder letters sent to offeree company shareholders.

The timetable and document requirements in the Code provide for a framework for the orderly conduct of a take-over offer (please see Rules 22, 23, and 24). The offeror should canvass fully all its arguments on the benefits of its offer in the offer document. The offeree company board then responds with its views and recommendations in the offeree circular, including the opinion of the appointed independent financial adviser (“IFA”). Thereafter, offeree company shareholders consider whether they should accept the offer taking into account the arguments from both sides, as well as the IFA opinion.

Offerors are reminded not to repeat the arguments supporting their offers, highlight particular features of their offers (e.g. the offer price is at x% over the last traded price of the offeree company shares prior to the offer announcement), or highlight favourable IFA opinions in advertisements or reminder letters to shareholders. In this regard, encouraging shareholders to consider the offer document and/or offeree circular, and providing information on how such documents can be obtained, is acceptable.

Half-yearly statistics on M&A activity

In the six months ended 30 June 2018, there were 9 offers and 2 whitewashes lodged with the SIC.

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
- 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.

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.