

**CONSULTATION CONCLUSIONS ON
REVISION OF THE SINGAPORE CODE ON
TAKE-OVERS AND MERGERS**

SECURITIES INDUSTRY COUNCIL

Thursday, 15 March 2007

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INTRODUCTION

1 On 21 Jun 2006, the Securities Industry Council (“SIC” or the “Council”) issued a Consultation Paper on Revision of the Singapore Code on Take-overs and Mergers. The consultation ended on 28 Jul 2006.

2 A total of 17 respondents, including one that represented ten investment banks, provided feedback on the amendments proposed in the Consultation Paper. The list of respondents is at Annex I. The Council welcomes the feedback and is grateful to those who have participated. The feedback has been useful. As described in this paper, some suggestions have been accepted in its entirety while others have resulted in adjustments to the proposed amendments. Council has also decided to monitor developments in the areas of REITs and derivatives and options dealings before determining whether to introduce the relevant proposals set out in the Consultation Paper.

3 The Monetary Authority of Singapore, on the advice of the Council, has made amendments to the Code which will come into effect on 1 April 2007. Where parties have doubts as to the consequences of any of the rule changes, in particular the impact on any transaction which is in existence or contemplation, they should consult the Council prior to 1 April 2007 to obtain a ruling or guidance.

PART I: SPECIFIC CHANGES

4 Section 2 of the Introduction – Enforcement of the Code

Limit application of the Code

4.1 SIC had proposed to limit the application of the Code in respect of foreign-incorporated companies and business trusts to only those with a primary listing on the Singapore Exchange (“SGX”).

Public comments

4.2 All respondents agreed with the proposal.

SIC’s response

4.3 The Code is amended as proposed.

[Please see Annex III: page 3, Section 2 of the Introduction to the Code]

Discretion to waive application of the Code

4.4 Notwithstanding the amendments to exclude foreign-incorporated companies and foreign-registered business trusts with a secondary listing on the SGX from the ambit of the Code, the Code still applies to (i) foreign-incorporated companies or foreign-registered business trusts with a primary listing on the SGX; (ii) Singapore-incorporated companies or Singapore-registered business trusts with a primary listing overseas; and (iii) unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unitholders, as the case may be, and more than S\$5 million of net tangible assets. SIC had sought views on the proposal for Council to have the discretion to waive the application of the Code in respect of such companies and business trusts.

Public comments

4.5 One respondent commented that there was no basis for foreign-incorporated companies or business trusts with a primary listing on the SGX to be treated differently from similarly listed Singapore-incorporated companies and Singapore-registered business trusts. Therefore, the discretion to waive the application of the Code should not be extended to such foreign companies and business trusts.

SIC's response

4.6 Council agrees with this comment. A primary listing obliges a company or business trust to comply with all the SGX Listing Rules. On the other hand, SGX would waive most of its Listing Rules in respect of those seeking a secondary listing as SGX is not the primary listing authority for such a company or business trust. One motivation for a foreign company or business trust to seek a primary listing is to signal to investors and other parties that it complies with the governance standards of Singapore. Therefore, it could be said that if a company wished to benefit from the branding a primary listing would accord, it should comply with the full gamut of rules and regulations that are applicable to a Singapore-incorporated company listed on the SGX, i.e. compliance with both the SGX Listing Rules as well as the Code.

4.7 Accordingly, Council has decided that it would not normally waive the application of the Code in respect of foreign companies and business trusts with a primary listing in Singapore. In such cases, the foreign company or business trust would have to comply with the provisions of the Code in addition to any overseas take-over regulation it is obliged to comply with. To facilitate take-overs and mergers of such companies, Council will on application consider waiving specific provisions of the Code in appropriate circumstances, for instance, waiving specific provisions of the Code that conflict with the applicable overseas

regulation, such that compliance with the Code would not breach the overseas regulation or vice versa.

4.8 The relevant portions of new Note on Section 2 of the Introduction have been amended accordingly.

[Please see Annex III: page 2, new Note on Section 2 of the Introduction to the Code]

Provisions for business trusts

4.9 SIC had invited comments on whether there are any specific provisions that require revision to apply the Code to business trusts.

Public comments

4.10 One respondent suggested that Council provide guidance on how the Code will apply to an acquisition of units in a business trust by way of an amendment of the trust deed constituting the trust following voting approval by unitholders (“Trust Scheme”). A Trust Scheme is similar to a take-over offer by way of a scheme of arrangement (“SOA”) under Section 210 of the Companies Act. However, the Companies Act provisions in respect of SOAs do not apply to Trust Schemes, nor is there any body of rules governing such Trust Schemes.

SIC’s response

4.11 Council agrees with the suggestion. Trust Schemes fall within the ambit of the Code which defines “offer” to include take-over and merger transactions, howsoever effected. In this connection Council has, for clarity, included Trust Schemes in the definition of “offer” as one of the take-over and merger transactions to which the Code will apply.

4.12 Taking into account the different nature of Trust Schemes vis-à-vis tender offers, to which the Code is tailored, it is necessary to exempt Trust Schemes from certain provisions of the Code. In this regard, it is worth noting that, unlike SOAs, Trust Schemes are not subject to the safeguard of Court approval and do not have to comply with Court timings. Therefore, Code provisions¹ that deal with minority protection, equality of treatment and certain aspects of offer timetable, which are waived in respect of SOAs (to avoid administrative difficulties), need not be waived in the case of Trust Schemes. With this in mind and having consulted further with the respondents to this consultation, Council has decided to exempt a Trust Scheme from the following provisions:

- (a) Rule 20.1 to keep the offer open for 14 days after it is revised;
- (b) Rule 22 on offer timetable;
- (c) Rule 28 on acceptances; and
- (d) Rule 29 on the right of acceptors to withdraw their acceptances.

4.13 To ensure that the timetable of a Trust Scheme is in line with that of a tender offer, and to minimise the disruption and uncertainty surrounding a take-over via a Trust Scheme, any exemption granted would be subject to the following:-

¹ Rule 14 (mandatory offers), Rule 15 (voluntary offers), Rule 16 (partial offers), Rule 17 (type of consideration required), Rule 21 (purchases at above the offer price) and Rule 22 (offer timetable).

- (a) the Trust Scheme document being posted within 35 days² of the announcement of the Trust Scheme; and
- (b) the Trust Scheme being effective by 5:30 pm³ on the 60th day after the date the Trust Scheme is posted.

[Please see Annex III: page 10, Definition 10; and page 10, the Note on Definition of Offer]

5 **Definition 1(a)(vii) and 1(h)(vi) and Note 5 on Definition of Acting in Concert**

Providing financial assistance

5.1 SIC had sought views on the proposals to (i) regard a party which provides another party with financial assistance (other than a bank in its ordinary course of business) for the purchase of voting rights to be parties acting in concert; and (ii) consider on a case-by-case basis whether an arrangement, such as an equity “kicker”, gives rise to a presumption that a bank is acting in concert with the offeror to obtain or consolidate control of the offeree company.

Public comments

5.2 One respondent disagreed with the proposed amendment suggesting, instead, that it should be left to the parties to a take-over to consider their own circumstances and consult the SIC where necessary. Another respondent commented that the term “bank” was too narrow.

²35 days is the sum of the time permitted for the posting of the offer document (21 days) and the posting of the offeree company circular (14 days).

³Please see discussion on cut-off time on Day 60 at para 16 below.

SIC's response

5.3 Council disagrees with the comment. Where parties (other than a bank in the ordinary course of business) provide other parties with financial assistance for the purchase of voting rights, there is strong likelihood that they are acting in concert. Indeed, Council has determined this to be so in numerous cases previously. The proposed amendment merely serves to formalise an established position. As with all other presumptions, the relevant persons falling within the definition of this new category can apply to rebut the presumption that they are acting in concert. The effect of the proposed amendment would be to require such persons to consider carefully their circumstances and apply to rebut the presumption where appropriate.

5.4 On the other hand, Council agrees that the term "bank" may be too narrow and amendments have been made to Note 5 on the definition of acting in concert to clarify that a bank refers to a corporation that is licensed to carry on a banking or financing business.

[Please see Annex III: page 5, Definition 1; and page 7, Note 5 on Definition of acting in concert]

6 **Rule 9.2 – Information to Competing Offeror**

Assets offeror

6.1 SIC had invited comments on the proposal to apply Rule 9.2 to an offer for assets and/or businesses of the offeree company that account for or contribute more than 20% of the offeree company's sales, earnings or total assets or market capitalisation.

Public comments

6.2 Respondents commented that the proposed 20% threshold for contributions of an asset or business to determine what constitutes all or materially all of the assets or business of the offeree company was too low. There was a consensus amongst the respondents that the threshold should at least be 30%.

SIC's response

6.3 Council agrees to increase the proposed 20% threshold to 30%. The Code is amended accordingly.

[Please see Annex III: page 50, Note 2 on Rule 9.2]

7 **Rule 13 – Dealings by Persons with Commercial Interests**
Requirement to consult

7.1 SIC had invited comments on the proposal to remove the requirement for a person with a commercial interest in the outcome of an offer to consult the Council in advance for his dealings.

Public comments

7.2 Respondents who commented on this proposal supported the deletion of Rule 13.

SIC's response

7.3 The Code is amended as proposed.

[Please see Annex III: page 63, Rule 13]

8 **New Rule 13 – Break Fees**

Regulation of break fees

8.1 SIC had invited comments on the proposal to introduce rules governing break fees.

Public comments

8.2 While most of the respondents agreed with the proposal to introduce rules governing break fees, one respondent suggested that the determination of whether break fee should be paid and the amount payable should be a commercial decision for the offeree company to make. Another respondent requested guidance on how the proposed 1% limit should be computed.

SIC's response

8.3 Council disagrees with the suggestion that break fees should not be regulated. As a break fee diminishes the value of the offeree company in the event that the offer fails, it may dissuade potential competing offerors from joining the fray to the detriment of offeree company shareholders. To ensure a fair and orderly auction for the target company, Council continues to believe that such fees should be kept to a minimum and limited to covering reasonable costs incurred.

8.4 The Code is amended as proposed. In addition, to provide clarity on how the 1% limit on break fees should be calculated, the Code is amended to adopt the UK practice in new Note 4 on Rule 13.

[Please see Annex III: page 63, new Rule 13]

9 **New Note 5 on Rule 14.3**

Relevant cash offer in respect of conditional acquisitions for securities

9.1 SIC had sought views on the new Note 5 on Rule 14.3 in relation to an offeror announcing a cash offer based on the value of consideration securities established by reference to the average market price of securities on the date of announcement of the conditional share acquisition or put and call option agreement.

Public comments

9.2 Most respondents agreed to the proposed New Note 5 on Rule 14.3. One respondent proposed that if the conditions precedent are fulfilled and the mandatory offer is triggered more than 3 months after the date of the announcement of the conditional share acquisition agreement or put and call option agreement, the relevant offer price should be the collared price between the average market price of the listed securities on (i) the date the conditions precedent are fulfilled and the mandatory offer is triggered and (ii) the date of announcement of the conditional share acquisition agreement or put and call option agreement.

SIC's response

9.3 Council rejects the proposal. The objective of the proposed Note 3 on Rule 14.3 is to balance the two conflicting concerns of (i) ensuring that value of the offer to minority shareholders based on the value of consideration securities offered to the exiting major shareholder is current and (ii) providing certainty to the offeror. In this regard, the proposal by the respondent would provide flexibility to the offeror at the expense of ensuring that the value of the offer is current. Further, where control has been acquired through the share acquisition agreement or the put and call

option agreement, there is no reason for the offeror to make the offer at a price other than the lowest collared price.

[Please see Annex III: page 86, New Note 5 on Rule 14.3]

Validity period for prices

9.4 SIC had invited comments on the application of a 3-month validity period for prices determined on the date of the announcement of the conditional share acquisition or put and call option agreement.

Public comments

9.5 Three respondents commented that a 3-month validity period may be too tight to obtain the requisite shareholders' approval, and insufficient in cases where regulatory approval is required, e.g. the Infocomm Development Authority has up to 120 days to consider whether to approve a take-over of a telecommunications company. One respondent proposed a 4-month validity period, while another proposed 6 months.

SIC's response

9.6 Most of the pre-conditional offers are conditional upon offeror shareholders approving the pre-conditional offer and/or the issue of new offeror shares to settle offeree company shares tendered in acceptance of the pre-conditional offer when made. Based on the typical timetable submitted by the respondents for such approval to be obtained, Council is of the view that a 3-month validity period is feasible. With respect to offers that require regulatory approval, however, there is a likelihood that a timeline of more than 3 months may be required.

9.7 Council has decided to subject run-of-the-mill cases to time discipline while dealing with those that require prolonged regulatory approval on a case-by-case basis. The relevant amendments to effect this are made.

[Please see Annex III: page 86, new Note 5 on Rule 14.3]

10 **New Note on Rule 16.2**

Partial offer for less than 30% of voting rights

10.1 SIC had invited comments on the proposed conditions, in particular the requirement to appoint an independent financial adviser, in respect of partial offers for less than 30% of the voting rights of an offeree company.

Public comments

10.2 Respondents commented that an independent financial adviser is not necessary as the offeror acquires less than 30% of voting rights following the partial offer, and, therefore, would not acquire effective control of the offeree company.

SIC's response

10.3 Council agrees that there is no need to require an independent financial adviser to be appointed in respect of partial offers that result in an offeror holding less than 30%. Accordingly, there is a new Note 4 on Rule 7.1, in addition to the amendments proposed.

[Please see Annex III: page 33, new Note 4 on Rule 7.1 and page 98, new Note on Rule 16.2]

11 **Rule 16.4(c) – Approval by Shareholders**

Offerors with statutory control

11.1 SIC had sought views on the proposal to allow an offeror who has statutory control of an offeree company to make a partial offer without seeking shareholders' approval as long as the partial offer does not result in the offeree company breaching the minimum free float requirement under SGX Listing Rules.

Public comments

11.2 All respondents agreed to the proposal.

SIC's response

11.3 The Code is amended as proposed.

[Please see Annex III: page 99, Rule 16.4(c)]

12 **Rule 17.2 – When a Securities Offer is Required**

Requirement for securities offer

12.1 SIC had sought views on the proposed new Rule 17.2 which requires the offeror who makes substantial acquisitions of voting rights in the offeree company using securities as consideration during the offer period and the 3 months prior to the commencement of the offer period to make available a similar securities offer in his take-over offer.

Public comments

12.2 Respondents supported the proposed new Rule.

SIC's response

12.3 The Code is amended as proposed.

[Please see Annex III: page 104, new Rule 17.2]

Reference period for securities offer

12.4 SIC had invited comments on the proposed 3-month reference period for the requirement to make a securities offer.

Public comments

12.5 Respondents agreed with the proposed 3-month reference period for the requirement to make a securities offer.

SIC's response

12.6 The Code is amended as proposed.

[Please see Annex: page 104, new Rule 17.2]

13 **Note 2 on Rule 20.2*****"Competitive situation"***

13.1 SIC had invited comments on the proposal to amend Note 2 on Rule 20.2, Rule 22.6 and Rule 29 to replace the phrases "competitive situation arises" and "in a competitive situation" with "when a competing offer is announced".

Public comments

13.2 One respondent agreed with the proposed amendment, but suggested that a "competing offer" should be clarified to include a situation where a person has announced a pre-conditional offer. A pre-conditional

offer goes beyond the “mere possibility of a competing offer”, especially as all the pre-conditions must meet the “objective and material” test under Rules 14.2 and 15.1, and should therefore justify setting aside a “no increase” statement.

13.3 Another respondent disagreed, stating that it was a departure from the position in the UK. Moreover, there may be situations where a competitive situation (not being the announcement of a competing offer) arises which may warrant the setting aside of a no increase statement. For example, there may be a situation where a party makes an offer for all or substantially all of the assets of the target company which might qualify as a competitive situation, but falls short of a competing offer being announced. Hence, the concept of a “competitive situation” should be retained so that Council will continue to have the discretion to decide whether there is a competitive situation which warrants the setting aside of a no increase statement on a case-by-case basis.

SIC's response

13.4 The objective of this amendment is to make clear that an offeror would not be allowed to set aside a “no increase” statement on frivolous grounds. The mere possibility of a competing offer (e.g. based on rumour or speculation) is not sufficient basis for disregarding a “no increase” statement as no real alternative has materialised. On the other hand, where an alternative offer has been announced, it is clear ground for an offeror to set aside his no increase statement.

13.5 Nonetheless, Council agrees that there may be instances where discretion to decide whether a competitive situation has arisen is necessary. Therefore, Council has decided to retain the flexibility that the phrase “competitive situation” affords to deal with such extraordinary instances. At the same time, Council will clarify via a Note that the

intention is for a real alternative to be announced before a competitive situation can be regarded as having occurred in normal cases. The Code is amended accordingly.

[Please see Annex III: page 112, Note 2 on Rule 20.2; page 118, new Note on Rule 22.6; and page 159, new Note on Rule 29]

14 **Note 3 on Rule 20.2**

No increase statement

14.1 SIC had invited comments on the proposal to allow an offeror to set aside a no increase statement only if he had included prominent reference in the first document sent to shareholders that he could choose not to be bound by the no increase statement if his improved offer is recommended by the offeree company board.

Public comments

14.2 Respondents generally agreed with the proposal. One respondent commented that Council should consider whether provisions should be included in the Code to require the offeror to compensate offeree company shareholders who may be prejudiced by the setting aside of the no increase statement, e.g. offeree company shareholders who had sold their shares on the basis of the no increase statement.

SIC's response

14.3 Council believes that it should be incumbent upon the offeree company board to take into account the interests of all offeree company shareholders, including those who have sold in reliance on the no increase statement, when deciding whether or not to release the offeror from his no increase statement. In this regard, Council notes that, in the offer for Natsteel Ltd, the offeror agreed to compensate shareholders who

had sold during the offer period as a condition for the offeree board to recommend his improved offer.

14.4 The Code is amended as proposed.

[Please see Annex III: page 113, Note 3 on Rule 20.2]

15 **Rule 21.2 - Offers involving a Further Issue of Listed Securities**

Price reference for listed securities

15.1 SIC had sought views on the proposed amendments to Rule 21.2 where reference would be made to the average market price of the offered shares on the immediately preceding trading day for the purpose of determining whether a revision to a share offer is required.

Public comments

15.2 Respondents expressed support for the proposed amendment. In respect of referencing the current value of the offer on a given day to the simple average market price traded on listed securities offered as consideration during the immediately preceding trading day, one respondent suggested clarifying that if there were no dealings in the shares on the immediately preceding trading day, the current value should be determined by reference to the simple average market price on the latest trading day on which there were dealings in the shares.

SIC's response

15.3 Council accepts the suggestion. The Code is amended accordingly.

[Please see Annex III: page 115, Rule 21.2]

16 **Rule 22.9 - Final Day Rule**

Cut-off time

16.1 SIC had sought views on the proposal to move the cut-off time on Day 60 from 3.30pm to 7:00pm.

Public comments

16.2 Respondents agreed that the cut-off time should be moved to after the close of trading on the SGX, but suggested a 5:00pm cut-off instead of 7:00pm.

SIC's response

16.3 Given that offerors mostly align the cut-off time on their first and subsequent closing days to that of the Final Day Rule, Council had proposed to push back the cut-off time of the Final Day Rule to encourage offerors to close their offers after trading hours. This is to minimize the disruptions in trading caused by trading halts called either to announce an extension of an offer or pending further announcement of a lapsed offer.

16.4 A 5:00pm cut-off right on closing would necessitate trading halts for announcements on extensions during trading. This would not resolve the issue of disruptions in trading that we seek to minimize. Therefore, taking into account the feedback, Council has decided to move the cut-off time on Day 60 to 5:30pm instead of 7:00pm. This would allow a half-hour window in the after trading hours for announcements of extensions. The Code is amended accordingly.

[Please see Annex III: page 119, Rule 22.9]

17 **Note 3 on Rule 24.1 - Conflicts of Interest**

When all directors are conflicted

17.1 SIC had invited comments on whether the responsibility to make a recommendation on the offer should rest with the appointed independent financial adviser in the event all the directors of the offeree board face conflicts of interests.

Public comments

17.2 Two respondents supported the proposed amendments to place the responsibility to make a recommendation with the appointed independent financial adviser in the event the entire offeree board faces a conflict of interest.

17.3 One respondent, concerned with the independent financial adviser attracting undue liability, commented that in such situations the independent financial adviser should nonetheless continue to address its opinion to the offeree company board (and not the shareholders), and the offeree company board should reproduce the entire opinion of the independent financial adviser in the offeree circular without making an express recommendation to shareholders.

SIC's response

17.4 Council rejects the suggestion. Council notes that in normal cases, Rule 24.1(b) already requires the inclusion of a statement that the independent financial adviser has given and not withdrawn his consent to the issue of the offeree circular with the inclusion of his recommendation or opinion in the form and context in which it is included. Therefore, the independent financial adviser is already liable to shareholders in respect of its advice even though the advice is addressed only to the offeree board. Such liability does not increase in the event the independent financial

adviser assumes responsibility to make the recommendation to shareholders.

17.5 The Code is amended as proposed.

[Please see Annex: page 131, Note 3 on Rule 24.1]

18 **New Note 5 on Rule 28**

Purchases that count to the acceptance condition

18.1 SIC had sought views on the proposal to allow only (a) purchases made through the Securities Exchange in the normal course of trading securities on the Securities Exchange (i.e. with no pre-agreement or collusion between the parties to such transactions); and (b) purchases that are fully completed and settled, to count towards the acceptance condition.

Public comments

18.2 Three respondents supported the amendments to have clear rules on what purchases should count to the acceptance condition.

18.3 One respondent questioned the additional requirement for purchases on the Singapore Exchange (“SGX”) to be carried out with “no pre-agreement or collusion”, stating that as long as purchases are made through the SGX such purchases would be credited and delivered to the offeror.

SIC’s response

18.4 There is no doubt the offeror will receive the offeree company shares bought on the SGX given the buying-in process of the SGX. However, the concern is that the SGX’s buying-in process may be abused

by the offeror to bolster acceptances. Offerors may have pre-arrangements or collude with related or friendly parties to short sell to the offeror on the SGX towards the close of the offer. The offeree company shares that are acquired subsequently after the close of the offer as a result of the buying-in process should not count to the acceptance condition. To deal with this possible mischief, Council has decided to retain the requirement that purchases on the SGX be carried out with no pre-arrangement or collusion.

18.5 The Code is amended as proposed.

[Please see Annex III: page 157, new Note 5 on Rule 28.1]

19 **Rule 30 - Settlement of Consideration**

Settlement period

19.1 SIC had invited comments on the proposal to shorten the settlement period for acceptances tendered from 21 to 10 days.

Public comments

19.2 Respondents supported the proposal to shorten the settlement period.

SIC's response

19.3 The Code is amended as proposed.

[Please see Annex III: page 160, Rule 30; and page 101, Rule 16.6]

20 **Appendix 1 - Whitewash Guidance Note**

Whitewash validity period

20.1 SIC had sought views on the proposal to increase the Whitewash waiver validity period from 2 to 5 years.

Public comments

20.2 Respondents agreed to the proposed increase in the Whitewash waiver validity period.

SIC's response

20.3 The Code is amended as proposed.

[Please see Annex III: page 169, Section 2(i) of Appendix 1 to the Code]

21 **Rule 34, New Schedule 1 - Fees Leviable by Council**

Lodgement fees

21.1 SIC had invited comments on the proposed fee structure for lodgement of offer documents and Whitewash circulars.

Public comments

21.2 Respondents supported the proposed fee structure.

SIC's response

21.3 The Code is amended as proposed.

[Please see Annex III: page 184, new Schedule 1]

22 **Volume Weighted Average Price**

Public comments

22.1 Two respondents suggested that value of securities for the purposes of the Code should be based on the volume weighted average price (“VWAP”) of the security on the relevant trading day instead of the practice of using the simple average of daily highest and lowest traded prices (“SAP”).

SIC’s response

22.2 Council agrees with the suggestion and will adopt VWAP in place of SAP. Besides being a more accurate reflection of the current value of a listed security, the use of VWAP would make it more difficult for interested parties to affect the value of the securities. Consequently, it is likely that Council’s discretion on the adjustment of the value of securities for Code purposes need not be exercised as frequently. The Code is amended accordingly.

[Please see Annex III: page 83, Note 2 on Rule 14.3; page 85, Note 3 on Rule 14.3; page 86, Note 4 on Rule 14.3; page 86, Note 5 on Rule 14.3; page 115, Rule 21.2; and page 184, New Schedule 1]

23 **Amalgamation under Sections 215A to 215J of the Singapore Companies Act**

Public comments

23.1 One respondent suggested that the Code should apply to an amalgamation pursuant to Sections 215A to 215J of the Singapore Companies Act that was introduced following amendments to the Companies Act in 2006.

SIC's response

23.2 An amalgamation pursuant to Sections 215A to 215J of the Singapore Companies Act falls within the ambit of the Code. Nevertheless, as in the case of Trust Schemes, Council has amended the Code to clarify that the definition of "offer" under the Code includes amalgamation. In addition, as an amalgamation has very similar characteristics to those of a Trust Scheme (both do not require Court approval and consequently are not subject to Court timings), Council is of the view that the provisions waived in respect of Trust Schemes and the conditions imposed for such waivers should similarly apply to amalgamations. The Code is amended accordingly.

[Please see Annex III: page 10, Definition 10; and page 10, Note on Definition of Offer]

PART II: EMERGING ISSUES AND DEVELOPMENTS

24 Real Estate Investment Trusts (“REITs”)

Application of the Code

24.1 SIC had invited comments on whether the Singapore Code should apply to CIS REITs.

Public comments

24.2 Respondents objected to the proposal of extending the ambit of the Code to include offers for CIS REITs. The reasons cited include:

- (a) Investment in units in a CIS REIT is a different proposition to an investment in shares. There is no expectation that investors in a REIT should take an active role in the management of the REIT.
- (b) Due to the differences in the structure and control of CIS REITs, the thresholds applicable (i.e. 30%) do not carry the same level of control and influence in the decision making process. In CIS REITs, day-to-day control and management lies exclusively with the managers. In addition, if the Code is to be applied to CIS REITs, the mandatory offer threshold should be set at 50% as the manager may only be removed by a simple majority (i.e. 50% of the units in issue).
- (c) Although the take-over provisions under the Australian Corporations Act apply to “managed investment schemes” (which include REITs), it appears that the main reason to do so was to remove any potential regulatory arbitrage between

acquisitions of units in a managed investment scheme and shares.

SIC's response

24.3 Council does not agree with the feedback in respect of differences between control over a CIS REIT and control over a company or business trust. Unitholders of CIS REITs are entitled to similar rights as shareholders. A unitholder who holds a majority interest in a CIS REIT should be able to decide on the management of the REIT in the same way as a majority shareholder of a company is in respect of the composition of the board of directors. In this connection, it is worth noting that unitholder approval is required for important decisions regarding the CIS REIT, such as the issue of new units, interested party transactions and major transactions. This, again, is no different from a company.

24.4 The representation that there is no expectation that investors in a CIS REIT should take an active role in the management of the REIT is also questionable. Like their counterparts in a company or business trust, a major unitholder of a CIS REIT wields significant influence over the manager.

24.5 Council is studying the position in greater detail and in particular the extent to which specific provisions of the Code would need to be tailored to apply to CIS REITs. Once the study is completed, Council will submit its recommended position to the MAS as the application of the Code to CIS REITs would require amendments to be made to the Securities and Futures Act. Council will provide guidance on this matter in due course. Prior to the release of such guidance, parties intending to acquire (i) 30% or more of the total units of a CIS REIT; or (ii) when holding not less than 30% but not more than 50% of the total units of a CIS REIT, more than 1% of the total units of a CIS REIT in any 6-month period, as

well as parties intending to make a general offer for a CIS REIT, should consult Council beforehand.

25 **Dealings in Options and Derivatives**

The UK approach

25.1 SIC had invited comments on whether the UK approach in respect of dealings of options and derivatives should be adopted.

Public comments

25.2 While one respondent expressed support for the proposal, most practitioners have refrained from commenting on the adoption of the UK approach in respect of dealings of options and derivatives. Another respondent suggested a more detailed consultation where specific changes required to the Code can be more thoroughly considered, citing the different shareholding patterns between Singapore and UK-listed companies and the difference in the level of development in the equity derivatives markets in the two countries.

25.3 As this is a developing area, Council has decided not to introduce this amendment for the time being. Council will consider this issue in greater depth before deciding whether to conduct a more detailed consultation on specific rule changes later. In the meantime, a person who wishes to acquire options or derivatives should consult Council beforehand, if the shares underlying such options or derivatives when aggregated with those already owned causes such person to increase his shareholding in a company to :

- (a) 30% or more; or
- (b) more than 1% in any 6 -month period in the case where he holds not less than 30% but not more than 50% of the voting rights.