SECURITIES INDUSTRY COUNCIL

("SIC" OR THE "COUNCIL")

PRACTICE STATEMENT ON THE OPINION ISSUED BY AN INDEPENDENT FINANCIAL ADVISER IN RELATION TO OFFERS, WHITEWASH WAIVERS AND DISPOSAL OF ASSETS UNDER THE SINGAPORE CODE ON TAKE-OVERS AND MERGERS (THE "CODE")

Introduction

General Principle 10 requires shareholders to be given sufficient information, advice and time to enable them to reach an informed decision on an offer. Further, General Principle 8 and Rule 7.1 require the board of the offeree company to obtain competent independent advice on any offer and make known the substance of such advice to its shareholders.

2 Hence, it is important the independent advice obtained must be clear and meaningful to enable shareholders to arrive at an informed decision on an offer. In this regard, Council considers it appropriate to set out the following guidance to improve the clarity and consistency of the advice given by an independent financial adviser ("IFA") in connection with offers, whitewash transactions and disposals which fall within the ambit of the Code.

Fair and Reasonable Opinion

Take-over offers

3 When advising the board of the offeree company on an offer, the IFA should conclude clearly and unequivocally in its advice whether an offer is "fair and reasonable". The term "fair and reasonable" should be regarded as comprising two different concepts.

4 The term “fair” relates to an opinion on the value of the offer price or consideration compared against the value of the securities subject to the offer (the “Offeree Securities”). An offer is “fair” if the price offered is equal to or greater than the value of the Offeree Securities.

5 In considering whether an offer is “reasonable”, the IFA should consider other matters as well as the value of the Offeree Securities. Such matters include, but are not limited to, the existing voting rights in the offeree company held by the offeror and its concert parties and the market liquidity of the Offeree Securities.

6 Under this approach, an offer can be “fair and reasonable”, “not fair but reasonable”, “not fair and not reasonable” or “fair but not reasonable”. In all cases, the IFA must explain clearly the bases for its conclusion. While the opinion “fair but not reasonable” is not ruled out, an offer would normally be considered “reasonable” if it is assessed to be “fair”. Hence, an opinion that an offer is “fair but not reasonable” should not be given unless there are strong and exceptional grounds.

Not fair but reasonable

7 Where the IFA concludes that an offer is “not fair but reasonable”, it should be on the basis that the IFA is of the view that despite the offer being “not fair”, the offer is “reasonable” after taking into consideration other matters as well as the value of the Offeree Securities. Consequently, if the IFA is to make a recommendation on whether to accept or reject the offer, the recommendation in such cases would be to accept the offer.

Non-Cash Consideration

8 Where an offer consideration is non-cash, the IFA is expected to examine the value of the non-cash consideration and compare it with the valuation of Offeree Securities when considering whether the offer is “fair”.

Where the offeror is obtaining or consolidating control of the offeree company and the offeree company shareholders will be receiving scrip constituting minority interests, the IFA should compare the value of the securities being offered on an enlarged group basis (allowing for a minority discount[1]), against the value of the Offeree Securities[2].

9 If the IFA uses the market price of the securities as a measure of the value of the offered consideration, the IFA should consider and comment on the depth of the market for those securities, the volatility of the market price and whether or not the market value is likely to represent the value if the take-over offer is successful.

10 In all offers, the IFA's advice is expected to be clear and unequivocal. For example, statements that are qualified by different investment horizons of shareholders should not be included. IFAs may, however, state that they have not taken into account the specific investment objectives of individual shareholders.

Whitewash Resolutions

11 When advising the independent shareholders of the offeree company on the whitewash resolution under Appendix 1 of the Code, the IFA should also state whether the transaction(s) that is(are) the subject of a whitewash resolution is(are) "fair and reasonable". Similar to a take-over offer, the term "fair and reasonable" should be analysed as two distinct concepts, and not be regarded as a composite term.

[1] A minority discount is the reduction applied to the valuation of a minority equity position in a company due to the absence of control. Separately allowing for a minority discount may not be necessary where the valuation methodology used already accounts for such a discount, for example market prices of traded securities.

[2] The IFA should assume that 100% of the Offeree Securities are for sale.

12 It is not practicable for Council to define what each of "fair" and "reasonable" would entail in different types of whitewash transactions as the transactions giving rise to a whitewash resolution differ from case to case. For instance, the IFA's consideration and analysis of a whitewash resolution involving a placement of new shares to a shareholder would differ significantly from another involving a reverse take-over ("RTO").

13 Nonetheless, the standard of "fair" and "reasonable" would still apply in the context of a whitewash transaction. For example, in the case of a whitewash resolution involving an RTO, in assessing whether the terms of the RTO are "fair", the IFA may take into account: (i) the price of the assets being injected into the offeree company; and (ii) the issue price of the new shares, the acquisition of which would lead to a potential controlling position. In assessing whether the terms of the RTO are "reasonable", the IFA may consider factors such as the financial situation of the offeree company.

Special Deals

14 Under Note 5 on Rule 10 of the Code, if a shareholder in an offeree company seeks to acquire certain assets in which the offeror has no interest, there is a possibility that the terms of the transaction will be such as to confer a special benefit to such shareholder. Council will normally consent to such a transaction, provided that the independent adviser to the offeree company publicly states that in his opinion the terms of the transaction are fair and reasonable.

15 The principle behind Rule 10 on Special Deals is equal treatment of all shareholders of the offeree company. To uphold this principle, the disposal of assets under Note 5 on Rule 10 of the Code must be held to a high standard where an opinion of both "fair" and "reasonable" is required to be given by the IFA, before Council will normally consent to it.

16 Having regard to the principle behind Rule 10 on Special Deals, the IFA should consider the merits of the disposal independently of the general offer, even if the take-over offer is conditional upon the disposal. Similarly, in the context of whitewash transactions under Appendix 1, the IFA should consider the merits of the disposal independently of the whitewash transaction, even if the completion of the whitewash transaction is conditional upon the disposal.

Assessment on Fairness of Take-over Offers

17 The IFA should exercise due care, skill and professional judgement in selecting the most appropriate valuation methodology or methodologies to be used in its analysis and this must be supported by reasonable grounds and logical assumptions. Generally, the IFA should undertake the following before reaching a conclusion whether or not the offer is fair:

(a) Select the most appropriate valuation methodology or methodologies. Justify its choice of methodology or methodologies and describe the methods used in the report. Where possible, more than one methodology should be used.

(b) Where more than one methodology is used, state whether reliance should be placed on a particular methodology or methodologies and the reasons for the same.

(c) Compare the results that are obtained from using the different methodologies. Comment on the differences, if any.

(d) Consider all other relevant factors. In particular, if the offeree company board has received any take-over bids in the past 6 months (e.g. through the conduct of a sale process), take into account the value of such bids.

(e) Provide a range of values of the Offeree Securities derived from the methodologies used. The range should be as narrow as possible, in any case not more than 15%. However, if this is not possible, explain the factors that create the uncertainty and how the opinion is still relevant despite the uncertainty.

(f) Describe and explain all key assumptions made. Consider including a sensitivity analysis if changes in any key assumptions are likely to affect the valuation significantly.

(g) Where comparables are used, ensure that they make up a fair and representative sample. The bases for compiling such comparables should be clearly stated, including the parameters or criteria for selecting the comparables, the reasons for using these parameters or criteria and any adjustments for the dissimilarities among the comparables.

18 The valuation methodologies that are generally appropriate to be considered by the IFA include, but are not limited to, the following:

(a) price earnings, EV/EBITDA multiples valuation;

(b) discounted cash flow method;

(c) market value; and

(d) asset-based approach.

19 As set out in the Introduction to the Code, the Council is not concerned with the financial or commercial advantages or disadvantages of

a take-over or merger, such matters should be decided by the company and its shareholders. Accordingly, it is not the role of the Council to consider the merits of the IFA's opinion.

20 Nevertheless, having regard to General Principles 10 and 11, the Council expects the IFA opinion to be clear and not misleading. This means that anything contained in the IFA's report which the Council finds unclear, misleading or incomplete will require correction by further circulars or announcements.

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.

Issued by the Securities Industry Council
25 June 2014
(The Practice Statement applies to transactions announced from 9 July 2014.)

Amended 23 February 2017

Amended 13 July 2020
(Paragraphs 17 to 20 of the Practice Statement apply to take-over offers announced from 13 October 2020.)