
TAKE-OVERS BULLETIN

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

ISSUE NO. 1
JULY 2016

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Welcome Message

Welcome to the first issue of the SIC Secretariat's Take-overs Bulletin. This bulletin aims to provide market participants with:

- A better understanding of the Singapore Code on Take-overs and Mergers (Code).
- Guidance on procedures to comply with the Code and when engaging the Securities Industry Council and the Secretariat.
- Updates on regulatory developments.

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.

If you have any comments or suggestions for upcoming issues, please email us at sic@mas.gov.sg.

In this inaugural issue, we provide guidance on the disclosure of acceptances of offers and on the Code's application to certain corporate restructurings. We also provide pointers for applications to the SIC Secretariat.

MAS amends the Code

Following a review and public consultation in 2015, the Monetary Authority of Singapore, on the advice of the SIC, made several amendments to the Code on 25 March 2016. The amendments sought to (i) provide greater certainty in cases of competing offers, including a default auction procedure to achieve final offers in a timely and orderly manner; (ii) encourage offeree company boards to take a more active role in safeguarding shareholders' interests; and (iii) ensure that offeree companies apprise shareholders and

investors of material information or changes to published information on a timely basis.

For further interest:

["MAS Amends the Singapore Code on Take-Overs and Mergers"](#), 25 February 2016

Disclosure of acceptances under Rule 12 of the Code

The SIC Secretariat has received a number of queries on whether an associate's acceptance of an offer is required to be disclosed under Rule 12 of the Code. We have also encountered an instance where an acceptance of an offer was disclosed as a disposal of shares.

Rule 12 of the Code requires parties to a take-over offer, namely the offeror, offeree and any of their associates, to disclose their "dealings in the relevant securities" during the offer period. The purpose is to enable offeree company shareholders and the market generally to understand the possible impact of such dealings on the market prices of the relevant securities. The acceptance of a take-over offer in itself would have no impact on the market prices of the relevant securities. Further, the Code already provides for transparency on the level of acceptances by requiring the offeror to disclose the level of acceptances at significant milestones during the offer period. On this basis, we would like to clarify that an acceptance of a take-over offer does not constitute a dealing in relevant securities for the purposes of Rule 12 and is, accordingly, not required to be disclosed under Rule 12.

Where an associate is required to disclose a change in his shareholdings resulting from an acceptance of a take-over offer pursuant to a requirement outside of Rule 12, he should disclose clearly that the change was due to the acceptance of a take-over offer. The reason for the change should not be disclosed simply as a sale or disposal as this may mislead other market participants and result in a false market. For example, directors/chief executive officers (CEOs) and substantial shareholders of listed companies are subject to shareholding disclosure requirements under Part VII of the Securities and Futures Act (Cap. 289). An acceptance of an offer may be required to be disclosed pursuant to these requirements. In which case, it should be clearly disclosed in the prescribed forms (Form 1 for directors/CEOs and Form 3 for substantial shareholders) as "Acceptance of take-over offer for the Listed Issuer" under "Circumstance giving rise to the interest or change in interest".

Whether the Code applies to certain corporate restructurings

We have received a number of applications seeking a waiver of the application of the Code to a corporate restructuring effected by a scheme of arrangement. In many cases,

the restructurings involve a new holding company being formed and new shares in the new holding company being issued to current shareholders in the Code company in exchange for their Code company shares under a scheme of arrangement. In substance, there is no change in the effective control of the Code company. While the Code company would be wholly owned by the new holding company, it is, in turn, owned by the same shareholders of the Code company in the same shareholdings proportions as before.

The definition of an “offer” under the Code includes take-over and merger transactions, howsoever effected, including via reverse take-overs, schemes of arrangement, trust schemes, amalgamations, partial offers and also offers by a parent company for shares in its subsidiary. Whilst the definition mentions a scheme of arrangement, we would like to clarify that the Code does not apply to all schemes of arrangement. Rather, it only applies to schemes of arrangement through which a take-over or merger transaction is effected. Therefore, the Code does not apply to a corporate restructuring implemented through a scheme of arrangement where there is no change in effective control of the Code company.

Some pointers for applications to the SIC Secretariat

The SIC Secretariat handles applications for SIC’s rulings on a day-to-day basis, and provides confidential consultation on points of interpretation of the Take-over Code. We are mindful that applications can be time-sensitive and will endeavour to respond to the application within a reasonable time frame. However, applications may be delayed if they do not include the necessary information, are not properly substantiated or are not clearly drafted, and therefore require the SIC Secretariat to seek clarifications. On the other hand, we have also received requests for confirmations on matters which are set out clearly in the Code and therefore not necessary. We have set out below some pointers for practitioners making written applications to the SIC Secretariat.

- ✓ Ask specific questions. Practitioners should not simply set out details of the transaction and seek a confirmation that we have no objections to the transaction or that the transaction as proposed complies with the Code.
- ✓ State the relevant Rule(s) of the Code that applies/apply and explain why the Rule(s) is/are deemed relevant.
- ✓ Provide the ground(s) for each ruling sought. If a waiver from compliance with a Rule is sought, mitigating factors or alternative measures which address the concerns of the Rule should, where appropriate, be provided.
- ✓ Focus on the issue(s) raised in the application by excluding irrelevant information. For example, a description of the business, geography and industry of a company, unless relevant to a point being made, should be kept brief.

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- ✓ Avoid seeking confirmations on matters which are set out clearly in the Code. Examples include (i) a confirmation that parties who have an agreement to co-operate to obtain or consolidate effective control of a company are acting in concert with respect to that company and (ii) a confirmation that an offer of offeror securities as consideration to certain offeree company shareholders who have undertaken to accept such an offer will not be regarded as a special deal under Rule 10 on the basis that the same offer of offeror securities will be made available to all shareholders in addition to a cash offer.
 - ✓ Written applications may be made in softcopy to the SIC Secretariat's email address (sic@mas.gov.sg).
 - ✓ Once an officer from the SIC Secretariat has been assigned to their application, applicants are reminded that they should not copy the SIC Secretariat's email address (sic@mas.gov.sg) in their email correspondence with the assigned officer.

Half-yearly statistics on M&A activity

In the six months ended 30 June 2016, there were 23 offers 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.