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Guidelines to fund managers on dealing disclosure obligations under Rule 22 of the Code on Takeovers and Mergers (Takeovers Code)

Rule 22 of the Takeovers Code requires parties to an offer and their respective associates to disclose dealings in relevant securities (as defined in Note 4 to Rule 22) of the offeree company (and the offeror as well in the case of a securities exchange offer) conducted for themselves or on behalf of discretionary clients during an offer period. The full text of the Takeovers Code is available under “Takeovers and Mergers – Codes” on the SFC website (www.sfc.hk).

An “associate” is defined under the Takeovers Code as, among others, any person who owns or controls 5% or more of any class of relevant securities. It is vital therefore that any associate, including a 5% shareholder, understands that dealing disclosure is required under Rule 22 of the Takeovers Code when an offer period commences for a relevant company.

To ensure that takeovers are conducted within an orderly framework, the Executive would like to emphasise the importance of timely and accurate disclosure of relevant information by associates and any party who may have the ability to exercise a material influence over the outcome of an offer. This is in line with General Principle 6 of the Takeovers Code.

Set out below are some practical guidance on the steps a fund manager, who is an “associate” under the Takeovers Code, might take to ensure timely and appropriate compliance with its dealing disclosure obligations. The Executive wishes to emphasise that ultimately it is an obligation for each fund manager to take all appropriate measures to ensure compliance with the Takeovers Code. Fund managers are advised to remind appropriate persons in their overseas offices, who are likely to deal in the relevant securities of Hong Kong-listed companies, of the relevant provisions of the Takeovers Code, including the obligations under Rule 22.

Practical guidance to fund managers:

(a) Identifying relevant companies in an offer period

- (i) Review regularly the Offer Period Tables under “Takeovers and Mergers – Offer Period Tables” on the SFC website for details of current offer periods under the Takeovers Code. The tables are updated on a best-effort basis and provide a useful reference to identify issuers in an offer period. We do not recommend using the Offer Period Tables as the sole source of monitoring.
- (ii) Monitor regularly HKExnews on the HKEx website (www.hkex.com.hk) and the SFC website to see (a) whether an announcement has been issued by, or in relation to, a relevant company that has commenced an offer period; or (b) whether disclosures of dealings of the relevant securities under Rule 22 have been issued.
- (iii) Subscribe to the News Alerts service on the HKEx website to receive relevant information.

- (iv) Monitor regularly media sources such as newspaper and financial news services to identify takeovers-related articles.

(b) *On-going training of staff*

- (i) All appropriate individuals should have proper training on the relevant provisions of the Takeovers Code including, in particular:
 - the meaning of the term “associate” and its significance; and
 - the rules relating to the disclosure of dealings in relevant securities of an offeror or an offeree company contained in Rule 22 and Schedules I and II of the Takeovers Code.

Such training should be conducted on a regular and on-going basis. Practice Notes 9 and 20 and the Takeovers Bulletin provide a good source of information on, among other things, practical guidance concerning dealing disclosure obligations and related recent developments. These can be found under “Takeovers and Mergers – Practice Notes/Takeovers Bulletin” on the SFC website.

- (ii) Compliance personnel should keep themselves fully up-to-date on changes to the Takeovers Code. They may find it useful to use the subscription service on the SFC website to receive notifications about Takeovers-related news such as when there is any update to the Offer Period Tables on the SFC website, news items relating to the issuance of the Takeovers Bulletin and market consultations on amendments to the Takeovers Code.

(c) *Proper compliance systems*

A fund manager should ensure that adequate and proper compliance systems are in place to enable it to fully discharge its obligations under the Takeovers Code including dealing disclosure obligations under Rule 22.

Please telephone the Takeovers Hotline at 2231 1210 if you have any questions regarding the above.

Corporate Finance Department
Securities and Futures Commission