

Guidelines on Exempt Principal Trader (“EPT”) Status Under the Code on Takeovers and Mergers (the “Code”)

EPT status has been devised for groups which are regularly involved in transaction governed by the Code in a corporate finance capacity. The Executive is prepared to grant EPT status, in appropriate cases, to principal traders whose activities are carried on separately from, and are not influenced by, corporate finance operations. The related exemption means that the Executive does not normally regard the relevant EPT as acting in concert with corporate clients. To maintain the exempt status, an EPT is expected to understand the following:

- An EPT is required to comply with all relevant provisions of the Code including, in particular, Rules 22.4 and 35.
- An EPT is not normally required to aggregate holdings and dealings with any principal or discretionary client holdings held elsewhere in the group. However, for the purposes of Rule 26, such aggregation is required (i.e., all relevant holdings, irrespective of exempt status, are regarded as in concert). The Executive should be consulted in any case where an issue under Rule 26 arises so that a ruling may be given in light of all the circumstances of the particular case.
- Where a corporate client is involved in an offer period, the Executive will require details of an EPT’s book positions in relevant securities and will also expect an EPT to be ready and able to justify its actions at all times. The Executive expects the fullest co-operation, including the provision of conversation records and access to relevant personnel, to enable the Executive to investigate dealing behaviour where appropriate.
- Exempt status will fall away if an EPT is, as a matter of fact, acting in concert with a corporate client or if Note 2 to the definition of exempt principal trader is not satisfied for any reason, for example if any member of the group itself made an offer under the Code.
- If an EPT fails to comply with the provisions of the Code or the Executive’s requirements, for example if it deals with the purpose of assisting a corporate client in connection with an offer, its exempt status will be put in jeopardy and it may be the subject of disciplinary action.

In order to consider the grant of EPT status, the Executive requires a detailed application which deals with the various areas as listed in the following and includes all relevant information. An applicant would need to satisfy the Executive on these various areas in terms of suitability for the EPT status. Having considered the application the Executive may have certain questions and require further information. The Executive may ask for a meeting with the applicant to run through the application and let the applicant explain the relevant principal trader activities before granting EPT status.

For further information regarding EPT status please refer to [Practice Note 9](#) which is available on “Takeovers & Mergers” – “Exempt Status” of the SFC website.

Areas to be covered in the application for EPT Status for Principal Trader (“PT”) Activities

(Please deal with the following items in the order indicated and make negative statements where appropriate so that all these areas are covered in the application.)

1. Group structure.
2. Historical perspective: formation and development of PT and the Group.
3. Definition, structure, personnel (including specific responsibilities) and activities of PT.
4. Securities and products in which PT deals, including options and derivatives.
5. Details of position limits, hedging strategies and risk control procedures.
6. Description of the Group’s corporate finance activities, including list of current clients and principal transactions in which the Group has been involved in the last two years.
7. Outside ownership of PT.
8. Physical location of PT vis-à-vis rest of the Group and access to premises by others.
9. Details of any PT’s overseas operations.
10. Common directorships between PT and the rest of the Group.
11. Non-executive directors of PT from outside the Group.
12. Chinese Wall procedures, copies of relevant internal rules and guidelines issued to executives of PT and the Group.
13. Details of any services shared by PT and any other part of the Group, for example library and research department.
14. Information flows between PT and other parts of the Group and access by other parts of the Group to details of PT’s business, for example with regard to dealings and book positions.
15. Financial interests of directors and executives of PT in the performance of the Group as a whole, for example common bonus pools and common share option schemes.
16. Details of the compliance division and manner in which this division will ensure that the provisions of the Codes on Takeovers and Mergers and Share Repurchases and the Executive’s rulings are observed.

17. Details of any past co-operative action by PT with regard to the rest of the Group, including any consultative arrangements with the rest of the Group that may be of relevance.
18. Details of any business other than principal trading carried on by PT and how it is separated from the principal trading business.
19. Relationship between all other agency or principal dealing operations in the Group and PT.
20. Any other relevant matters.

10 April 2001 (Revised on 30 September 2010)