

Updating Your Study Manual

Instructions for Inserting Version 1.6

The followings serve as the instructions for updating **Topic 8: Other SFC Regulated Activities** of Study Manual 1 for the Licensing Examination for Securities and Futures Intermediaries. Please be reminded that only the updated sections are provided for downloading. You may replace the relevant sections with this updated version for the study manual you possess.

Instructions:

1. Download and print out the following pages.
 2. **Remove** pages 8-7 to 8-8 and **Insert** new pages 8-7 to 8-8.
 3. **Remove** pages 8-15 to 8-16 and **Insert** new pages 8-15 to 8-16.
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- 2.13A The issuer must satisfy either the profit test or the market capitalisation/revenue/cash flow test or the market capitalisation/revenue test:

The profit test

The issuer must have a trading record of at least three financial years, with management continuity for at least the three preceding financial years, and ownership continuity and control for at least the most recent audited financial year. Profits attributable to shareholders for the most recent year must not be less than HK\$20 million and those for the two preceding years must in aggregate be not less than HK\$30 million. There must be a minimum of 300 shareholders at the time of listing.

The market capitalisation/revenue/cash flow test

The issuer must have a trading record of at least three financial years, with management continuity for at least the three preceding financial years, and ownership continuity and control for at least the most recent audited financial year. It must have a market capitalisation of at least HK\$2 billion at the time of listing, revenue of at least HK\$500 million for the most recent audited financial year, and positive cash flow for at least HK\$100 million in aggregate for the three preceding financial years. There must be a minimum of 300 shareholders at the time of listing.

The market capitalisation/revenue test

The issuer must have a trading record of at least three financial years, with management continuity for at least the three preceding financial years, and ownership continuity and control for at least the most recent audited financial year. It must have a market capitalisation of at least HK\$4 billion at the time of listing, revenue of at least HK\$500 million for the most recent audited financial year and at least 1,000 shareholders at the time of listing.

- 2.13B The SEHK may accept a shorter trading record period and/or may waive the profit or other financial standards requirement in certain cases as stated in the Listing Rules.
- 2.14 The qualifications for listing under the GEM Listing Rules are different from that of the Main Board. For example, in general, the track record must cover at least two years (GEM Rule 11.10). Applicants for GEM listings do not require to show a profits record. Those detailed requirements will not be discussed in this Study Manual.

Warrants (Listing Rules Chapter 15)

- 2.15 The warrants referred to in Chapter 15 are issued by a company or its subsidiaries. They give the holder the right, but not an obligation, to subscribe for shares of the company at the exercise price, which is a price fixed at the time of issue of the warrant. They include options, warrants and similar rights.

- 2.16 All warrants traded on the SEHK must be approved by the SEHK prior to their issue. The SEHK will only approve the issue so long as it does not exceed 20% of the issued share capital of the issuer and such warrants must expire not less than one and not more than five years from the date of issue or grant and must not be convertible into further rights outside the range of these time periods.

Derivative warrants (Listing Rules Chapter 15A)

- 2.17 A derivative warrant gives its holders the right to
- purchase from (call warrant) or sell (put warrant) to the issuer at a predetermined exercise price or strike price a specified number of securities or assets; or
 - receive from the issuer a cash payment equal to, the excess, if any, in the case of a derivative call warrant the value of an index over the stock price or in the case of a put warrant the strike price over the value of an index;
- within a specified period or at a specified date.
- 2.18 The issuers are not the companies whose shares are those underlying the warrant. They must be incorporated and must not be a private company and must be suitable for handling and managing such an issue. The issuer of non-collateralised warrants (i.e. where there is no security to support the warrant), must have a net asset value of not less than HK\$2 billion and also have a credit rating (which is one of the top three awarded by a SEHK recognised agency) or be regulated by the HKMA (or an overseas regulator acceptable to SEHK) or be regulated by the SFC {as a securities dealer (Type 1 activity)} or be a government or state.
- 2.19 Where a listing is sought for derivative warrants which are to be guaranteed, the guarantor must not be a private company and must meet the same requirements of an issuer of derivative warrants.

Share option schemes (Listing Rules Chapter 17)

- 2.20 Unless ‘refreshed’ by shareholder approval, the total number of securities under a share option scheme which may be issued by a listed company must not initially exceed 10% of the relevant class of securities in issue at the time of approval of the scheme. There are other restrictions on the exercise period and the exercise price. Share options may also be granted to directors, the chief executive, substantial shareholders or their associates, in which case they must be approved by the independent non-executive directors. The GEM Rules include a number of additional restrictions.

Revision questions:

Question 1: What matters are the Listing Rules intended to ensure?

When is a mandatory offer required?

3.15 Subject to the granting of a waiver by the Executive, a mandatory offer must be made when:

- any person acquires, whether by a series of transactions over a period of time or not, 30% or more of the voting rights of a company;
- two or more persons are acting in concert, and they collectively hold less than 30% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 30% or more of the voting rights of the company;
- any person holds not less than 30%, but not more than 50%, of the voting rights of a company and that person acquires additional voting rights and such acquisition has the effect of increasing that person's holding of voting rights of the company by more than 2% from the lowest percentage holding of that person in the 12 month period ending on and inclusive of the date of the relevant acquisition; or
- two or more persons are acting in concert, and they collectively hold not less than 30%, but not more than 50%, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than 2%.

Offers for different classes of equity share capital must be comparable and the Executive should be consulted in advance in such cases. (See Rule 14)

3.16 The '**trigger**' will arise when any person acquires or any one or two persons acting in concert acquire voting rights, the acquisition of which increases their holding to 30% or more of the voting rights of a company. The '**creeper**' imposes an obligation to make an offer when a person holding or two or more persons acting in concert collectively holding between 30% and 50% of the voting rights of a company increase their holding by more than 2% in the preceding 12 month period. Rule 26 requires the offer to be made to each class of shares.

3.16A A mandatory offer must be at a price not less than the highest price paid by the offeror or any member of a concert party acting with it during the offer period within 6 months prior to its commencement.

Persons acting in concert ('Concert parties')

- 3.17 Since mandatory offer obligations may arise if a controlling group acquires or consolidates control, the Takeovers Code introduced the concept of persons acting in concert in order to identify the controlling group, so that the voting rights acquired or held by persons acting in concert with each other are aggregated when determining the threshold.
- 3.18 The Takeovers Code defines concert parties as comprising persons who, pursuant to an agreement or understanding actively co-operate to obtain or consolidate control of a company through the acquisition by them of voting rights of the company. It specifies groups of persons who may fall within the description of concert parties. A knowledge of the specified groups is not required from students.

Voluntary offers

- 3.19 A voluntary offer is not a mandatory offer under Rule 26, but the offeror is still bound by most of the Takeovers Code requirements. A voluntary offer may be in cash or securities.

Share Repurchases

- 3.20 A share repurchase is an offer made by or on behalf of the offeror, to purchase its own shares from any shareholder of the offeror. It can include a privatisation, scheme of arrangement, or other form of reorganisation. The Share Repurchases Code extends to all classes of shares including warrants and convertible bonds.
- 3.21 Rule 1 of the Share Repurchases Code states that a share repurchase may normally only be made by the company whose shares are subject of the share repurchase.

Revision question:

Question 6: Define 'trigger' and 'creeper' in takeovers.

Disciplinary proceedings

- 3.22 The Executive may institute disciplinary proceedings before the Takeovers Panel when it considers that there has been a breach of either of the Codes or of a ruling of the Executive or the Panel. If the Panel