

Updating Your Study Manual

Instructions for Inserting Version 1.4

The followings serve as the instructions for updating **Topic 3: Takeovers and Mergers and Share Repurchases** of Study Manual 5 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** the original front page and **Insert** the updated front page.
 3. **Remove** pages 3-31 to 3-32 and **Insert** new pages 3-31 to 3-32.
 4. **Remove** pages 3-37 to 3-38 and **Insert** new pages 3-37 to 3-38.
 5. **Remove** pages 3-47 to 3-48 and **Insert** new pages 3-47 to 3-48.
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STUDY MANUAL FOR

PAPER 5

REGULATION OF CORPORATE FINANCE

of

The Licensing Examination
for Securities and Futures Intermediaries

First published June 2003
Current Version 1.4 (April 2005)

Published by:

Hong Kong Securities Institute

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ISBN: 988-97139-4-2

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Executive decisions

- 7.5 While the Executive may sometimes see fit to make a ruling under the Codes of its own volition, a ruling is more often requested by an interested party. A ruling by the Executive normally involves a consideration of all relevant information in relation to the application and a more thorough analysis than that permissible under a consultation.
- 7.6 Any application for a ruling under either of the Codes should take the form of a written submission addressed to the Executive. The submission should be comprehensive and contain all relevant information which the Executive will require to render a fully informed decision. Such information should normally include the following:
- **Summary:** The ruling being sought, and any alternative courses of action, should be clearly described, and the issues for consideration summarized. The relevant sections of the Codes should be identified.
 - **Parties:** All parties with a material interest in the submission, and their respective financial and legal advisers, should be identified.
 - **Material facts:** All material facts relevant to the application should be stated, including:
 - a description of the proposed transaction, including the timetable for implementation, related regulatory requirements, and the reasons and commercial rationale for the transaction;
 - a description of the relevant offeror and the offeree company group structures, and the identities of their controlling and substantial shareholders;
 - a historical chronology of related events;
 - the controlling shareholders' interests in the relevant offeror, the offeree company and the proposed transaction;
 - the interest which directors of the relevant offeror and the offeree company have in the proposed transaction;
 - the effect which the proposed transaction will have on the relevant offeror and the offeree company;
 - steps to be taken, if any, to safeguard the interests of any independent shareholders;
 - a description of financing arrangements for the proposed transaction; and

- where known after reasonable enquiry, details of any dealings in securities of the offeree company by the relevant offeror, the directors and substantial shareholders of the relevant offeror and the offeree company, and all persons acting in concert with any of them, for the six-month period immediately preceding the date of the application.
- 7.7 Each submission should be signed by the applicant and should close with a statement certifying the truth, accuracy and completeness of statements contained in the submission. When the application is filed by an adviser, the statement should confirm that the applicant has authorized the filing of the application by the adviser. Such statement does not relieve the adviser of its obligation to use all reasonable efforts to ensure that its client understands, and abides by, the relevant requirements of the Codes, and that the submission of its client is true, accurate and complete.

Panel decisions

- 7.8 If a party wishes to contest a ruling of the Executive, he may ask for the matter to be reviewed by the Panel.
- 7.9 The Executive may refer a matter to the Panel for a ruling without itself giving a ruling when it considers that there is a particularly novel, important or difficult point at issue.

Members

- 7.10 The Panel is a committee of the SFC established under section 6(1) of the Securities and Futures Commission Ordinance (Cap 24) and hears disciplinary matters in the first instance, and reviews rulings by the Executive at the request of any party dissatisfied with such a ruling. It also considers novel, important or difficult cases referred to it by the Executive.
- 7.11 The Panel consists of up to [30 members](#) drawn from the financial and investment community, at least one of whom is required to be a non-executive director of the SFC. However, no executive directors or staff of the SFC may be members of the Panel.
- 7.12 Members of the Panel are appointed, and may be removed, by the SFC. They normally hold office for a one-year term but may be reappointed at the end of each term. The Panel may co-opt other people to assist in specific circumstances. Discussions on proposals for review of or amendment to the Codes shall include the executive directors and staff of the SFC.
- 7.13 The Panel has a Chairman, and one or more Deputy Chairmen. The Chairman of each meeting of the Panel will be either the Chairman or a

- The Codes do not have the force of law.
- The Codes apply to takeovers, mergers and share repurchases affecting public companies in Hong Kong and companies with a primary listing of their equity securities in Hong Kong.
- In order to determine whether a company is a public company, the Executive will look at the location of its head office and place of central management; the location of its business and assets; and the existence of protection available to Hong Kong shareholders outside of Hong Kong.
- The Codes contain ten General Principles.
- The Codes are non-statutory.
- The Codes apply to: directors of companies that are subject to the Codes; persons who hope to gain or consolidate control; their professional advisers; persons who participate in such transactions; and persons who are actively engaged in the securities market.
- Unless agreed with the Executive, all directors of the offeror or offeree take responsibility for the accuracy of the announcement or document issued by the offeror or offeree.
- Members of an independent committee should consist of directors who have no direct or indirect interest in the offer.
- Once an offer has been made, the Board must not take any frustrating action against the offer.
- In appropriate circumstances, the Executive may grant a waiver from the general principle to obtain shareholder approval in respect of any frustrating action.
- Mandatory offers are offers that are required to be made under rule 26 of the Takeovers Code.
- All other offers are voluntary offers.
- The general principle is that if control of a company changes or is acquired or consolidated, a general offer to all other shareholders is normally required.
- A mandatory offer is required when a person(s) acquires 30% or more of the voting rights of a company.
- The trigger will arise when any person(s) acquires voting rights which increases its holding to 30% or more of a company.
- The creeper imposes an obligation to make an offer when a person(s) holding between 30% and 50% of the voting rights of a company increases its holding by more than 2% in the preceding 12 months.

- The Takeovers Code defines acting in concert as comprising persons who, through an agreement or understanding, actively cooperate to obtain or consolidate control of a company through the acquisition by them of voting rights of the company.
- Nine classes of persons will be deemed to be acting in concert.
- 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.
- In addition to the Takeovers Code, an offeror, offeree company and their corporate finance advisers must also comply with the relevant requirements of the Listing Rules, SFO and CO.
- A company may only carry out a share repurchase by means of an on-market share repurchase, an off-market share repurchase, an exempt share repurchase or a share repurchase by general offer.
- The Takeovers Panel is a committee of the SFC established under section 6(1) of the Securities and Futures Commission Ordinance.
- The Panel consists of [up to 30 members](#).
- If the Panel finds there has been breach of either of the Codes or of a ruling, it may impose up to seven forms of sanctions.

ordinary course of business, providing finance or financial assistance (directly or indirectly) to any person (or a person acting in concert with such a person) in connection with an acquisition of voting rights (including any direct or indirect refinancing of the funding of the acquisition).

- Answer 27: A whitewash vote is the independent shareholders' vote to approve the issue of new securities as consideration for an acquisition, or a cash subscription, or the taking of a scrip dividend, or the issue of shares to underwriters which would otherwise result in an obligation to make a mandatory offer under rule 26 of the Takeovers Code.
- Answer 28: Where shares of a company have been charged to banks on an arm's-length basis and, as a result of enforcement of such security for a loan, the lender would otherwise incur an obligation to make a mandatory offer, the Executive will normally waive such obligation provided the security was not given when the lender had reason to believe that enforcement was likely. However, when the lender disposes of the shareholdings following foreclosure, the requirements under rule 26 would apply to the purchaser.
- Answer 29: Where a company is in such serious financial position that the only way to save it is by an urgent rescue operation which involves the issue of shares by the independent directors, without shareholder approval, or by acquisition of existing securities by the rescuer, which would otherwise trigger a mandatory offer obligation, the Executive will normally grant a waiver.
- Answer 30: A waiver will normally be granted where a shareholder holding not more than 50% of the voting rights in a company places part of its holding to an independent third party and, as soon as practicable thereafter, subscribes for new shares up to the number placed at a price substantially equivalent to the placing price after expenses.
- Answer 31: The term *partial offer* is not defined in the Takeovers Code, but in practice it is taken to mean an offer for less than 100% of the voting rights. Any partial offer will require the consent of the Executive.
- Answer 32: A voluntary offer is not a mandatory offer under rule 26 of the Takeovers Code, but the offeror is still bound by most of the Takeovers Code requirements. A voluntary offer may be in cash or securities. However, in certain circumstances an offer in cash (or accompanied by a cash alternative) will normally be required unless the Executive has given consent.
- Answer 33: The Takeovers Code prescribes the timetable within which documentation must be sent by the offeror and by the offeree to shareholders of the offeree. It also provides the standards to which

documentation relating to a takeover offer must be prepared. General Principle paragraph 5 provides that the offeree shareholders should be given sufficient information, advice and time to reach an informed decision on an offer. General Principle paragraph 6 provides that all persons concerned with offers should make full and prompt disclosure of all relevant information.

Answer 34: The posting date under rule 8.2 of the Takeovers Code provides that an offer document, which must not be dated more than three days prior to despatch, should normally be posted in the case of a cash offer, within 21 days of the announcement of the terms of the offer.

Answer 35: The continuing obligations, in particular, notifiable transactions (Chapter 14) and connected transactions (Chapter 14A).

Answer 36: A company may only carry out a share repurchase by means of:

- an on-market share repurchase;
- an off-market share repurchase;
- an exempt share repurchase; or
- a share repurchase by general offer.

Answer 37: The most common method of repurchasing shares is 'on-market share repurchases'. These are carried out through the facilities of the Exchange in accordance with Listing Rules 10.05 and 10.06 for Hong Kong-incorporated issuers. Overseas issuers are governed by Listing Rule 19.20, which refers back to Listing Rule 10.06.

Answer 38: If a party wishes to contest a ruling of the Executive, he may ask for the matter to be reviewed by the Panel, which will normally be convened at short notice. The Executive will arrange with the Panel and the relevant party a practical time for a Panel meeting, taking into account the timetable of the transaction.

Answer 39: The Panel consists of up to **30 members** drawn from the financial and investment community, at least one of whom should be a non-executive director of the SFC. No executive directors or staff of the SFC may be members of the Panel. Members of the Panel are appointed, and may be removed, by the SFC. They normally hold office for a one-year term, but may be reappointed at the end of each term. The Panel may co-opt other persons to assist in specific circumstances. Discussions on proposals for review of or amendment to the Codes shall include the executive directors and staff of the SFC.