SFC
證監會

TAKEOVERS BULLETIN

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Introduction

1. Revised Practice Note 9 is issued clarifying, amongst other things, the scope of exempt trading activities by exempt principal traders.
2. Rule 22 disclosure forms have been revised.
3. The Executive issues a reminder that the Codes do not apply to all listed companies in Hong Kong.
4. The Executive clarifies the meaning of "completion of subscription" under paragraph 3(b) of the Whitewash Guidance Note.
5. Finally the Executive wishes to remind market practitioners of the importance of compliance with Rule 3.6.

Revised Practice Note 9 (PN9) – Exempt fund manager and exempt principal trader status

1. Since PN9 was issued in March 2008 the Executive has noted an increase in the number of enquiries relating to the nature of trading activities that an exempt principal trader (EPT) may carry out under its exempt status. As a result the Executive has reviewed the trading activities commonly carried out by EPTs which may be regarded under the definition of "exempt principal trader" in the Codes as exempt during an offer period. The Executive has consulted a number of financial institutions

- Revised Practice Note 9
- Revised Rule 22 disclosure forms
- Application of the Codes to companies with secondary listings
- Meaning of "completion of subscription" under paragraph 3(b) of Whitewash Guidance Note in Schedule VI of the Codes
- Reminder of importance of compliance with Rule 3.6

3. A number of miscellaneous amendments have also been made to PN9 including:

   (a) clarification that where "seed capital" of a connected exempt fund manager (EFM) represents 10% or more (but less than 90%) of the value of the fund, the connected EFM may continue to deal in relevant securities during the offer

The Executive regards the creation of Delta 1 products and related hedging arising from wholly unsolicited client-driven

(c) **Index-related products and Exchange Traded Funds**

Broad-based index-related product or tracker fund arbitrage in relation to relevant securities during an offer period (including index rebalancing and related hedging) are regarded as exempt activities under the definition of EPT. The Executive should be consulted in advance in respect of sector specific indices and other similar products.

Exchange Traded Funds (ETFs) are passively managed open ended investment funds that can be traded like shares on a stock exchange. The Executive notes that all stock-related ETFs currently listed on the SEHK track the performance of an index (index-tracking ETFs). The Executive regards the following activities relating to broad-based index-tracking ETFs as falling within the exempt dealing activities referred to in the definition of EPT:

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The Codes do not apply to all listed companies in Hong Kong

Investors may be under the impression that the Codes on Takeovers and Mergers and Share Repurchases (Codes) apply to all companies listed in Hong Kong. They should be aware that this may not be the case where the listing is a secondary listing.

Meaning of "completion of subscription" under paragraph 3(b) of the Whitewash Guidance Note (Schedule VI of the Codes)

Paragraph 3 of the Whitewash Guidance Note (ie Schedule VI) provides that:

> *"Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval of a majority of the*

3. Where an offer obligation under Rule 26.1 is triggered upon the completion of an agreement to sell and purchase shares, the requirement to announce under Rule 3.6 applies to the completion of the relevant sale and purchase agreement. This is in line