

Guidelines on Exempt Fund Manager (“EFM”) Status Under the Code on Takeovers and Mergers (the “Code”)

EFM 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 EFM status, in appropriate cases, to fund managers 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 EFM as acting in concert with corporate clients. To maintain the exempt status, an EFM is expected to understand the following:

- An EFM is generally subject to private disclosures under Rule 22.1(b)(ii). However, an EFM is subject to public disclosures under Rule 22.1, if it holds 5% or more of any class of relevant securities and is therefore regarded as “associate” (by virtue of class (6) of the definition of associate).
- An EFM is not normally required to aggregate holdings and dealings with any principal or discretionary client holdings held elsewhere in the group for the purposes of determining whether it is an associate under class (6) of the definition of associate. 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.
- Exempt status will fall away if an EFM is, as a matter of fact, acting in concert with a corporate client or if Note 2 to the definition of exempt fund manager is not satisfied for any reason, for example if any member of the group itself made an offer under the Code.
- If an EFM 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 EFM 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 EFM 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 fund management activities before granting EFM status.

For further information regarding EFM 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 EFM Status for Discretionary Fund Manager (“DFM”) Activities

(Please deal with these 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 DFM and the Group.
3. Definition, structure, personnel (including specific responsibilities) and activities of DFM.
4. Outside ownership of DFM.
5. Physical location of DFM vis-à-vis rest of the Group and access to premises by others.
6. Details of any DFM's overseas operations.
7. Common directorships between DFM and the rest of the Group.
8. Non-executive directors of DFM from outside the Group.
9. Chinese Wall procedures, copies of relevant internal rules and guidelines issued to executives of DFM and the Group.
10. Details of any services shared by DFM and any other part of the Group, for example library and research department.
11. Information flows between DFM and other parts of the Group and access by other parts of the Group to details of DFM's business, for example with regard to dealings and book positions.
12. Financial interests of directors and executives of DFM in the performance of the Group as a whole, for example common bonus pools and common share option schemes.
13. Details of the compliance division and manner in which this division will ensure that the fiduciary duties owed to the fund clients are discharged by DFM and that the provisions of the Codes on Takeovers and Mergers and Share Repurchases and the Executive's rulings are observed.
14. Details of any past co-operative action by DFM with regard to the rest of the Group, including any consultative arrangements with the rest of the Group that may be of relevance.

15. Details of any house rules and practices relating to the acceptance on behalf of managed funds of offers in respect of which the Group's corporate finance arm is acting.
16. Whether DFM has ever entered into any arrangements with another part of the Group under which holdings of funds under management were indemnified against loss in return for undertaking a specific course of action at the behest of that other part of the Group.
17. Details of any equity funds managed by DFM for any part of the Group on a discretionary or non-discretionary basis.
18. Details of any business other than discretionary fund management carried out by DFM, including non-discretionary business, and how it is separated from the fund management operations.
19. A copy of the standard discretionary fund management contracts entered into between DFM and its clients.
20. Any other relevant matters.

10 April 2001 (Revised on 30 September 2010)