



Takeovers Bulletin

Highlights

- Undesirable conduct of practitioners in consultations
- Quarterly update on the activities of the Takeovers Team
- Proposed enhancements to the competency framework for intermediaries and practitioners (including those undertaking Codes-related work)

Undesirable conduct of practitioners when consulting the Executive

Section 6.1 of the Introduction to the Codes on Takeovers and Mergers and Share Buy-backs (the Codes) provides that when there is any doubt as to whether a proposed course of conduct accords with the General Principles or the Rules, parties or their advisers should always consult the Executive in advance. In this way, practitioners and parties can clarify the basis on which they can properly proceed and therefore minimise the risk of taking any action which might breach the Codes.

Section 5.2 of the Introduction to the Codes provides that any person dealing with the Executive must do so in an open and cooperative manner and, in such dealings, must disclose any information known to him or her and relevant to the matter being considered. Consultations with the Executive are critical in ensuring that parties conduct transactions in compliance with the requirements of the Codes. As such, when consulting the Executive, practitioners and parties are expected to act honestly and in utmost good faith.

Recently, the Executive noticed questionable behaviour by some practitioners when consulting the Executive. For example:

- Some practitioners consulted multiple officers on a “no-name” basis on the same issue within a fairly short period of time. As stated in Practice Note 8, the Executive should not be expected to answer purely hypothetical questions or to give provisional rulings. Moreover, section 6.2 of the Introduction to the Codes clearly provides that the views expressed by the Executive in a consultation are preliminary and non-binding. The Executive does not look favourably upon practitioners who ask multiple officers the same hypothetical question within a fairly short period of time as this not only disrupts the operation of the Executive, but is also an abuse of the consultation process.
- A practitioner who had been advising on an ongoing transaction consulted another officer who was not a member of the case team on a case-specific question. That practitioner was well aware of the Executive’s assigned officers for that transaction, but consulted another officer on a “no-name” basis instead. It was

subsequently discovered that this practitioner had already consulted the case team officers on the same issue. The Executive considers this conduct to be highly undesirable and an abuse of the consultation process. It was also unfair to the non-case team officer who is not familiar with the background of the ongoing transaction.

The Executive would like to remind practitioners to act professionally in all dealings with the Executive. Where a case team has been assigned to a transaction, practitioners should not approach other officers on matters related to that transaction.

In appropriate circumstances, the Executive may report a person to regulatory authorities or professional bodies under section 12.2 of the Introduction of the Codes where the Executive has reasonable grounds to believe that the conduct of such person may have contravened an authority's or body's rules, regulations or standards of professional conduct.

Consultation conclusions on proposals to enhance the competency framework for intermediaries and practitioners

On 11 December 2020, the Securities and Futures Commission (SFC) launched a two-month consultation on proposals to update the entry requirements for licence applicants and its ongoing competency standards for corporations and individual practitioners.

To address the SFC's concerns about the quality of work performed by some financial advisers on matters regulated by the Codes, one proposal was to enhance the competence requirements for individuals who are to advise on Codes-related matters.

The conclusions paper was issued on 18 June 2021. Market practitioners should take particular note that the new requirements will take effect from 1 January 2022:

1. Individuals who intend to engage in and advise on Codes-related matters have to complete an additional examination, Paper 17 of the Licensing Examination for Securities and Futures Intermediaries administered by the Hong Kong Securities and Investment Institute, within six months after the date of their first engagement in such work. First engagement refers to the first time an individual is engaged in a Codes-related transaction as a member of a transaction team on or after 1 January 2022;
2. Market practitioners are exempted from the examination if they engaged in at least one completed Codes-related transaction within three years preceding 1 January 2022 (Grandfathering Arrangement). This means that those practitioners who were involved in at least one Codes-related transaction that was completed and involved the effected issue of an offer document, offeree board circular, whitewash circular, share buy-back offer document or off-market share buy-back circular between 1 January 2019 and 31 December 2021, will be exempted;
3. Responsible officers or executive officers who were approved to advise on Codes-related matters in a "sole-capacity" are exempted from the examination requirement;
4. Similar to all licenced representatives and relevant individuals, responsible officers or executive officers who are approved to advise on Codes-related matters in a "non-sole-capacity" are required to complete the examination unless they are eligible for the exemption under the Grandfathering Arrangement;

5. An individual will be eligible to seek approval as responsible officer or executive officer to advise on Codes-related matters in a sole-capacity if he or she has been: (i) substantially involved in at least two completed Codes-related transactions within the past five years and has a minimum of five continuous years of relevant corporate finance experience; or (ii) a member of the Takeovers and Mergers Panel for two years within the past five years.

6. As part of the continuous professional training (CPT) requirements, individual practitioners who engage in Codes-related advisory work for a licensed corporation or registered institution are required to attend training on relevant topics. Such training should amount to at least 2.5 CPT hours per year.

Market practitioners should also familiarise themselves with the new Appendix B to the revised Guidelines on Competence which sets out the additional competence requirements for corporations and individuals who undertake activities in connection with matters regulated by the Codes.

The consultation and conclusions papers can be found in the "Regulatory functions – Intermediaries – Licensing – Consultations and conclusions" section of the SFC website.

Quarterly update on the activities of the Takeovers Team

In the three months ended 31 March 2021, we received 18 takeovers-related cases (including privatisations, voluntary and mandatory general offers and off-market and general-offer share buy-backs), 11 whitewashes and 93 ruling applications.

Useful links

- The Codes on Takeovers and Mergers and Share Buy-backs
- Practice notes
- Decisions and statements
- Previous *Takeovers Bulletins*

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