

# REGULATION UPDATE

1 March 2016

## SINGAPORE TAKE-OVER CODE REVISED

### INTRODUCTION

The Singapore Code on Take-overs and Mergers (“**Code**”) has been revised by the Monetary Authority of Singapore (“**MAS**”) on the advice of the Securities Industry Council (“**SIC**”). The amendments to the Code will come into force on **25 March 2016**.

Click [here](#) for Drew & Napier LLC’s update on the changes proposed at the consultant stage.

Following feedback during the consultation, the proposed changes were largely adopted in the form in which they were proposed, save for a few adjustments which are outlined below.

### KEY CHANGES

Key changes to the Code include:

- (a) clarifying that in a competitive situation the offer timetables will be aligned to that of the latest offer;
- (b) prescribing a default auction procedure, if neither offeror has declared its final offer price in the later stages of the offer period;
- (c) extending the deadline for a potential competing offeror to clarify its intentions;
- (d) clarifying that soliciting a competing offer or running a sale process does not amount to frustration of the existing offer, and including a statement that in cases of doubt SIC should be consulted;

- (e) clarifying that an offeree board may consider sharing available management projections and forecasts with its independent financial adviser;
- (f) changes to when no increase and no extension statements may be set aside following the release of new information by the offeree company;
- (g) providing for settlement of acceptances within 7 business days (instead of 10 calendar days);
- (h) requiring prompt disclosure of any material change to information previously published in an offer in order to ensure that shareholders and investors are apprised of material information on a timely basis; and
- (i) codifying and streamlining existing practices relating to pre-conditions in a pre-conditional voluntary offer, allowing the posting of offer documents by offeree companies at an earlier date in a pre-conditional offer, and calculation of the values of comparable offers for different classes of shares.

### AMENDMENTS TO THE CHANGES AS PROPOSED DURING THE CONSULTATION STAGE

Taking into account feedback received during the consultation, adjustments were made to some of the proposed amendments. These include:

#### 1. Paid press notice

Under Note 7 on Rules 3.1, 3.2 and 3.3, the paid advertisement may be published in the most widely-circulated leading English-language newspaper, instead of in two leading English newspapers.

The SIC has also clarified that “published daily” includes, for the avoidance of doubt, “published every day except Sunday”.

## 2. Solicitation of a competing offer

SIC has clarified that the intention is not to impose an obligation to seek a competing offer and that it believes this is sufficiently clear in the proposed amendments. It has however added a statement in Note 8 on Rule 5 that it should be consulted in cases of doubt.

## 3. Material changes in new or published information

Suggestions made during the consultation included aligning the Code requirements for prompt disclosure of changes to previously disclosed information or new information with the SGX rules on disclosure including the exceptions provided for in those rules. This was not accepted. SIC pointed out that parties may consult it if necessary and added a statement in Note 1 on Rule 8.1 to remind parties of this.

SIC is also of the view that it is not practicable for the Code to set out all the circumstances in which a material change of information will require the offeree board and independent financial adviser (“IFA”) to update their recommendations. Note 1 on Rule 8.1 has been amended to provide that such information should be taken into account and where appropriate the offeree board and IFA should amend their recommendation or advice, and that SIC should be consulted in cases of doubt.

## 4. Shareholdings and dealings

Rule 24.3 is amended to clarify that the applicable period for the dealings disclosure should be 3 months in the case of voluntary offers.

## 5. Offer timetable after the end of an auction procedure

Adjustments were made to the timetable following the end of an auction procedure. The deadline for posting of revised offer documents is now 7 days after the end of the auction. The offeree must post its circular on a revised offer no later than 7 days after the revised offer document is posted. The latest date by which a competing offer may

become unconditional as to acceptance is 7 days after posting of the revised offer document.

## REFERENCES

Please click on the following links to access the documents.

1. **MAS’ Media Release titled “MAS Amends the Singapore Code on Take-Overs and Mergers” dated 25 February 2016**
2. **SIC’s Consultation Conclusions on the Revision of the Singapore Code on Take-overs and Mergers**
3. **Revised Singapore Code on Take-overs and Mergers (marked up to show changes)**

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