

Takeovers Executive of the SFC publicly censures Goldman Sachs (Asia) L.L.C. in relation to breaches of Rules 22, 21.5, 10 and Note 4 to Rule 8.1 of the Takeovers Code

Disciplinary action against Goldman Sachs (Asia) L.L.C.

1. The Executive publicly censures Goldman Sachs (Asia) L.L.C. ("**Goldman Sachs**") under section 12.3 of the Introduction to the Code on Takeovers and Mergers ("**Takeovers Code**") for breaching Rules 22, 21.5, Note 4 to Rule 8.1 and 10 as a result of its failure to (i) disclose its dealings in the relevant securities of Wing Hang Bank, Limited ("**Wing Hang Bank**") between 8 November 2013 and 6 January 2014, (ii) seek, during an offer period, the Executive's consent prior to dealing in principal trades in the relevant securities of Wing Hang Bank which fell outside the scope of dealings covered by the exempt principal trading and exempt fund manager status granted to the various Goldman Sachs entities and, (iii) comply with certain requirements in relation to research reports on Wing Hang Bank.
2. Goldman Sachs was one of the financial advisors to Wing Hang Bank in relation to a voluntary general offer for Wing Hang Bank in 2014 and fell within the definition of "associate" of Wing Hang Bank for the purposes of the Takeovers Code.

Background and relevant provisions of the Takeovers Code

3. Goldman Sachs is a major international financial institution licensed to carry out a wide range of regulated activities under the Securities and Futures Ordinance. A number of fund managers and principal traders within the Goldman Sachs group are recognised as exempt principal traders and exempt fund managers under by the Executive.
4. On 16 September 2013 an offer period commenced for Wing Hang Bank when it announced, amongst other things, that its board of directors had been informed by Wing Hang Bank's substantial shareholders ("**Substantial Shareholders**") that they had been approached by independent third parties in relation to the possible sale of all of their shareholdings in Wing Hang Bank ("**Initial Rule 3.7 Announcement**"). The Initial Rule 3.7 Announcement contained a clear reminder to Wing Hang Bank's "associates" (as defined under the Takeovers Code) about the obligation to disclose their dealings in the securities of Wing Hang Bank pursuant to the requirements of the Takeovers Code.
5. Wing Hang Bank was added to the Offer Period Tables on the Takeovers page of the SFC website on 17 September 2013 to assist relevant parties to discharge their obligations under the Takeovers Code, including the dealing disclosure obligations under Rule 22 of the Takeovers Code and the dealing restrictions under Rule 21 of the Takeovers Code.
6. Wing Hang Bank issued refresher announcements updating shareholders about the status of the discussions on 16 October 2013, 15 November 2013, 16 December 2013, 6 January 2014, 24 January 2014, 21 February 2014 and 21 March 2014. The announcement dated 6 January 2014 confirmed that the Substantial Shareholders had signed an exclusivity agreement with Oversea-Chinese Banking Corporation Limited ("**OCBC**").

7. On 1 April 2014, OCBC, OCBC Pearl Limited and Wing Hang Bank announced a firm intention to make a pre-conditional voluntary general offer for the shares of Wing Hang Bank (“**Rule 3.5 Announcement**”) (“**Wing Hang Bank Offer**”).

Relevant provisions under the Takeovers Code

8. During an offer period, Rule 22 of the Takeovers Code requires parties to an offer and their respective associates (as defined in The Codes on Takeovers, Mergers and Share Buy-backs (the “**Codes**”)) to disclose their dealings in relevant securities (as defined in Note 4 to Rule 22) of the offeree company (and the offeror in securities exchange offers) conducted for themselves or on behalf of discretionary clients. The relevant provisions of Rule 22 are set out in full in the Appendix to this statement.
9. The Takeovers Code defines an “Associate” to include “*any bank and financial and other professional adviser... to the offeree company*”.

Rule 21.5

10. Rule 21.5 of the Takeovers Code provides that “*[d]uring an offer period, except for exempt fund managers and exempt principal traders, no financial adviser... to an offeree company shall, except with the consent of the Executive... purchase offeree company shares or deal in convertible securities, warrants, options or derivatives in respect of such shares.*”

Rule 8.1

11. Rule 8.1 explains that “*[i]nformation about companies involved in an offer must be made equally available to all shareholders as nearly as possible at the same time and in the same manner*” in line with General Principle 1 requiring all shareholders to be treated even-handedly and General Principle 3 prohibiting an offeror, the offeree company or any of their respective advisers from furnishing information to some shareholders which is not made available to all shareholders.
12. Note 4 to Rule 8.1 further explains that a financial adviser to an offeree company should stop issuing research reports on the offeree company except with the Executive’s prior consent to safeguard against abuse by financial advisers who are connected with an offeree company. A financial adviser is not required to retrieve research reports already distributed prior to an offer period but all entities within the financial adviser’s group should stop distributing old reports and they should be removed from the websites.
13. A reminder of the verification and reporting obligations under the Takeovers Code on profit forecasts, asset valuations and estimates of other figures key to an offer is contained in Note 5 to Rule 8.1. Release of such information without compliance with the relevant Takeovers Code requirements may constitute a breach regardless of whether such information is withdrawn. The full text of Notes 4 and 5 to Rule 8.1 is set out in the Appendix to this statement.

Rule 10

14. Rule 10 of the Takeovers Code governs the treatment of profit forecasts and other financial information in the context of an offer or a possible offer. Where a document to shareholders includes information that constitutes a profit forecast under Rule 10, the party issuing the forecast must obtain and publish an accountant's report and financial adviser's report on the forecast in accordance with Rule 10.4. Rule 10.3(b) also provides that "... *the accounting policies and calculations for the forecasts must be examined and reported on by the auditors or consultant accountants. Any financial adviser mentioned in the document must also report on the forecasts.*" The types of statements which are treated as profit forecasts under the Takeovers Code are explained in Rule 10.6 and include "... *data necessary to calculate an approximate figure for future profits*" and "*profit forecast for a limited period*".

Breaches of the Takeovers Code

Breach of Rule 22 of the Takeovers Code

15. Immediately upon the verbal engagement of Goldman Sachs by Wing Hang Bank on 8 November 2013, Goldman Sachs became an "associate" of Wing Hang Bank within the meaning of the Takeovers Code and was required under Rule 22 of the Takeovers Code to disclose its dealings in the relevant securities of Wing Hang Bank during the offer period either publicly or privately depending on the nature of the dealings.
16. Between 8 November 2013 and 6 January 2014 Goldman Sachs executed 111 trades in the relevant securities of Wing Hang Bank ("**Dealings**"). Goldman Sachs did not disclose any of the Dealings in breach of Rule 22 of the Takeovers Code.
17. Goldman Sachs informed the Executive on 8 January 2014 that it had not made the required dealing disclosures in accordance with Rule 22 of the Takeovers Code. The requisite filings in respect of the Dealings were then made on 13 and 14 January 2014 following an internal review by Goldman Sachs.
18. Goldman Sachs explained that the application of the Takeovers Code to the Wing Hang Bank Offer had not been appreciated until 6 January 2014 after its verbal mandate on 8 November 2013 as a result of the failure of its Investment Banking Team to inform its Global Compliance Control Room (the "**Control Room**") of the commencement of an offer period for Wing Hang Bank on 16 September 2013.
19. The Control Room was responsible for maintaining various restricted trading lists which initiate various compliance procedures by the relevant teams for takeovers in Hong Kong, including dealing disclosures, trading restrictions and the suspension and withdrawal of research. Goldman Sachs acknowledged that at the material time, the Control Room relied solely on the staff of the Investment Banking Division and news sources for potential transaction announcements in performing its duties. The Control Room's procedures at the time did not include checking the websites of the Stock Exchange or the SFC for information on offer periods. As a result, notwithstanding the issue of the Initial Rule 3.7 Announcement and regular refresher announcements as referred to in paragraph 6 above as well as the entry of Wing Hang Bank onto the Offer Period Table, the Control Room did not appreciate until 6 January 2014 that Wing Hang Bank had

been in an offer period since 16 September 2013 and throughout Goldman Sachs' appointment as financial adviser to Wing Hang Bank.

Breach of Rule 21.5 of the Takeovers Code

20. 26 of the 111 trades were principal trades falling outside the scope of dealings covered by the EFM and EPT status granted to the various Goldman Sachs entities. Goldman Sachs should have obtained the Executive's consent to carry out these trades in accordance with Rule 21.5. As the application of the Takeovers Code to the Wing Hang Bank Offer had not been appreciated by Goldman Sachs at the time of the trades, the requisite consent was not obtained in breach of Rule 21.5.

Breach of Rule 8.1 and Rule 10 of the Takeovers Code

21. Goldman Sachs issued three research reports covering Wing Hang Bank on 17 September, 11 October and 22 November 2013 and a research commentary on Wing Hang Bank on 6 January 2014 ("**Research Reports**"). Research coverage on Wing Hang Bank was suspended from 7 January 2014 and all research on Wing Hang Bank that had been issued between 15 March 2013 and 6 January 2014 was removed from Goldman Sachs' research portal.
22. Goldman Sachs did not obtain the Executive's consent prior to the issue of the research report dated 22 November 2013 or the research commentary dated 6 January 2014. It also failed to remove the research reports dated 17 September and 11 October 2013 from its research portal immediately upon its appointment in accordance with Note 4 to Rule 8.1.
23. Goldman Sachs accepts that the Research Reports contained information relating to Wing Hang Bank's earnings that constituted profit forecasts under Rule 10 of the Takeovers Code. However, no reports on the profit forecasts were prepared by an accountant and a financial adviser in breach of Rule 10.3(b).

Apology by Goldman Sachs and Remedial Action Taken

24. Goldman Sachs has apologised for the breaches and explained that they occurred as a result of a failure to appreciate the fact that an offer period for Wing Hang Bank had commenced on 16 September 2013. Goldman Sachs has emphasised that it takes the breaches very seriously as evidenced by its self-reporting and immediate review of the incidents in question. Goldman Sachs has confirmed that no information was transmitted from the private side to the public side that necessitated wall crossing hence, there were no wall crosses for any public side employees, including research and trading staff with respect to the relevant securities of Wing Hang Bank. There was no personal account trading by Goldman Sachs staff in the securities of Wing Hang Bank from 8 November 2013 to 6 January 2014.
25. To address the shortcomings in its compliance with the Takeovers Code and to ensure future compliance, Goldman Sachs has implemented a number of remedial measures including the following:
 - (a) Wing Hang Bank was placed on the restricted trading list on 6 January 2014 restricting all trading in Wing Hang Bank's securities until the date permitted by the Takeovers Code other than trades that fell within the EPT or EFM exemptions;

- (b) all research coverage was suspended on Wing Hang Bank and relevant research was withdrawn from Goldman Sachs' portal;
 - (c) each of Goldman Sachs' active mandates with Hong Kong issuers was checked against the Offer Period Tables to confirm relevant restrictions were in place and to ensure no omissions in dealing disclosures;
 - (d) internal compliance reminders were issued to the Investment Banking Team's staff reminding them about their responsibilities under the Takeovers Code and external counsel was engaged to provide refresher training to the relevant members of the Investment Banking Team; and
 - (e) relevant compliance policies and procedures were reviewed and enhanced, including the implementation of Control Room checks against the Offer Period Tables, checking issuer's announcements on the Stock Exchange's website and subscribing to the relevant alerts from the SFC, the Stock Exchange and the Takeovers Bulletin.
26. In this regard the Executive also notes that since the discovery of the oversight of commencement of offer period for the Wing Hang Bank offer Goldman Sachs duly complied with the disclosure obligations under Rule 22 of the Takeovers Code for dealings in Wing Hang Bank securities from 7 January 2014 onwards.

Executive's comments

27. The Executive notes that the breaches of the Takeovers Code in this case were primarily attributable to two factors. First, the Investment Banking Team failed to inform the Control Room of the commencement of the offer period for Wing Hang Bank. Although the Investment Banking Team was aware of the Initial Rule 3.7 Announcement made on 16 September 2013 which triggered the commencement of an offer period, it did not inform the Control Room of the Initial Rule 3.7 Announcement nor the fact that Wing Hang Bank was in an offer period
28. Second, after the Control Room had been informed that Goldman Sachs had been verbally mandated it failed to take appropriate action to ascertain whether the offer period for Wing Hang Bank had already commenced, in particular, it did not enquire with the Investment Banking Team whether an offer period had commenced or if an announcement had been issued. The procedures in place at the Control Room then required the Control Room to monitor news sources for potential transaction announcements. The Executive notes that there was wide press coverage on the possible offer for Wing Hang Bank in September, October, November and December 2013. Notwithstanding the procedures and policies in place, the Control Room failed to follow up with the Investment Banking Team to verify whether an offer period had commenced for Wing Hang Bank.
29. The two factors above together with the inadequate compliance procedures which have since been rectified resulted in breaches of important provisions of the Takeovers Code.
30. The disclosure obligations under Rule 22 of the Takeovers Code are intentionally onerous to reflect the fact that a high degree of transparency is essential to the efficient functioning of the market in an offeree company's shares during the critical period of an offer or possible offer. The dealing restrictions imposed by Rule 21.5 of the Takeovers Code are designed to prevent abuse by advisers who

are connected to an offeree company. Timely and accurate disclosure of information in relation to dealings by the offeree company's advisers plays a fundamental role in ensuring that takeovers are conducted within an orderly framework and that the integrity of the markets is maintained. This is in line with General Principle 6 which provides that:

"All persons concerned with offers should make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of a false market. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market."

31. The restrictions imposed on the issue and distribution of research reports by connected advisers are designed to protect shareholders and ensure a fair and informed market and to prevent abuse by connected advisers similar to Rule 21.5. These principles are enshrined in General Principles 1, 5 and 6 and reflected in Rule 8.1 and Rule 10.
32. The Executive has taken a number of measures to remind market participants about the importance of dealing disclosure obligations under Rule 22 of the Takeovers Code and dealing restrictions under Rule 21 of the Takeovers Code. In addition to issuing a number of articles in the Takeovers Bulletin, since March 2011 the Executive has published Offer Period Tables containing details of companies in an offer period on the SFC's website to assist relevant parties to discharge their obligations under the Codes. The Executive also sent a letter to fund managers in December 2011 offering practical guidance with regards to compliance with the dealing disclosure requirements in the Takeovers Code which included the suggestion that practitioners regularly review the Offer Period Tables and subscribe to relevant SFC alerts. This guidance was later reproduced in the Takeovers Bulletin Issue No. 26 in September 2013. A copy of the letter to the fund managers is also publicly available on the SFC's website.
33. The Executive has taken into account that Goldman Sachs' self-reported the breaches to the Executive and has fully co-operated with the Executive's review of this matter. The Executive is pleased to note that Goldman Sachs has introduced enhanced compliance policies and procedures to ensure future compliance with the Takeovers Code. However, the Executive considers the breaches of the Takeovers Code in this case to be serious and to merit the present disciplinary sanction. The breaches suggest a significant breakdown in the compliance policies and procedures of Goldman Sachs in relation to takeovers in Hong Kong.
34. Section 1.7 of the Introduction to the Codes emphasises the importance of the role and responsibility of financial and professional advisers in the context of offers and states that it is part of their responsibility to use all reasonable efforts to ensure that their clients understand, and abide by, the requirements of the Codes. Goldman Sachs' conduct in this case fell far short of the standards expected of a financial adviser under the Codes.
35. The Executive wishes to take this opportunity to remind practitioners and parties who wish to take advantage of the securities markets in Hong Kong that they should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Codes. In particular, the Executive expects financial and other professional advisers to have the competence, professional expertise and adequate resources to fulfil their role and to discharge their responsibility under the Codes. Advisers are expected to be conversant with the

Codes as it is part of their responsibility to ensure their clients understand, and abide by, the requirements of the Codes as per section 1.7 of the Codes.

2 February 2016

Appendix

The relevant provisions of Rule 22 and Notes 4 and 5 to Rule 8.1 are set out in full below:

Rule 22.1(a)

Dealings in relevant securities by an offeror or the offeree company, and by any associates, for their own account during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

Rule 22.1(b)

- (i) *Dealings in relevant securities by an offeror or the offeree company, and by any associates, for the account of discretionary investment clients during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.*

If, however, the associate is an exempt fund manager connected with an offeror or the offeree company, paragraph (ii) below will apply.

- (ii) *Except with the consent of the Executive, dealings in relevant securities during an offer period for the account of discretionary investment clients by an associate which is an exempt fund manager connected with an offeror or the offeree company must be privately disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.*

If, however, the exempt fund manager is an associate by virtue of class (6) of the definition of associate, the exempt fund manager must disclose publicly under Rule 22.1.

Rule 22.2

Except with the consent of the Executive, dealings in relevant securities during an offer period by an offeror or the offeree company, and by any associates, for the account of non-discretionary investment clients (other than an offeror, the offeree company and any associates) must be privately disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

Rule 22.4

Dealings in relevant securities by an exempt principal trader connected with an offeror or the offeree company should be aggregated and disclosed, in accordance with Note 6(a) to this Rule 22, not later than 10.00 a.m. on the business day following the date of the transactions, stating the following details:–

- (i) *total purchases and sales;*
- (ii) *the highest and lowest prices paid and received; and*
- (iii) *whether the connection is with an offeror or the offeree company.*

In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 7 to this Rule 22).

Note 5 to Rule 22

Disclosure must be made no later than 10.00 a.m. on the business day following the date of the transaction. Where dealings have taken place on stock exchanges in the time zones of the United States and there may be difficulty in disclosing dealings by 10.00 a.m., the Executive should be consulted.

Note 4 to Rule 8.1

Rule 8.1 does not prevent the issue of circulars during the offer period to their own investment clients by brokers or advisers to any party to the transaction provided such issue has previously been approved by the Executive.

In giving to their own clients material on the companies involved in an offer, associates must bear in mind the essential point that new information must not be restricted to a small group. Accordingly, such material must not include any statements of fact or opinion derived from information not generally available.

The associate's status must be clearly disclosed.

Attention is drawn to class (2) of the definition of associate, as a result of which, for example, this Note will be relevant to stockbrokers who, although not directly involved with the offer, are associates of an offeror or the offeree company because the stockbroker is in the same group as the financial adviser to an offeror or the offeree company.

In this connection, financial advisers to an offeror or the offeree company should, after the commencement of an offer period, stop issuing research reports on the offeree company and in the case of a securities exchange offer, the offeror company, except with the Executive's prior consent. The concern is that these reports may contain profit forecast statements which require full compliance with Rule 10. The financial adviser is not required to retrieve research reports already distributed prior to the offer period but all entities within the financial adviser's group should stop distributing these old reports and they should be removed from the websites. The Executive should be consulted and it would normally regard any research reports issued within 6 months prior to the offer period as being "live".

Note 5 to Rule 8.1

All persons involved should be fully aware of the verification and reporting obligations under the Takeovers Code in respect of profit forecasts, asset valuations and estimates of other figures key to the offer. Release of any profit forecast, asset valuation or estimate of key figures without compliance with the relevant Takeovers Code requirements may constitute a breach of the Takeovers Code regardless of whether the forecast, valuation or estimate is withdrawn.