

## **Takeovers Executive of the SFC publicly criticises Nomura International (Hong Kong) Limited and related party for breaches of Rules 8 and 10 of the Takeovers Code**

### **Disciplinary action against Nomura International (Hong Kong) Limited and Lee Yuen Yee, Annisa**

1. The Executive publicly criticises Nomura International (Hong Kong) Limited (**Nomura Hong Kong**) and Lee Yuen Yee, Annisa (**Ms Lee**) for failure to comply with certain requirements in the issuance of research reports and profit forecasts on West China Cement Limited (**West China**) during an offer period in breach of the Code on Takeovers and Mergers (**Takeovers Code**).

### **The West China Offer**

2. On 27 November 2015, West China and Anhui Conch Cement Company Limited (**Anhui Conch**) jointly announced a possible offer by Anhui Conch for West China shares (**West China Offer**). An offer period for West China commenced on the same date. The making of the offer, valued at HK\$3.52 billion, was conditional on the completion of West China's proposed acquisition of various cement businesses from Anhui Conch. The offer period closed when the parties announced the lapse of the transaction on 30 June 2016.
3. In addition to ordinary shares, West China had also issued US\$400 million in five-year, 6.50% Senior Notes (**West China Bonds**) in September 2014.

### **Nomura Hong Kong and Ms Lee**

4. Nomura Hong Kong is a member of the Nomura Group (**Nomura Group**), a major international financial institution and it is licensed to carry out a number of regulated activities under the Securities and Futures Ordinance including Type 4 (advising on securities) and Type 6 (advising on corporate finance). Nomura Hong Kong has been granted exempt principal trader status by the Executive since 2011. Its Investment Banking Division advises on corporate finance matters and its Global Markets Division, through its Credit Desk, conducts the sale and trading of credit products such as sovereign and corporate bonds, as well as advisory business.
5. Ms Lee is a Managing Director of Nomura Hong Kong and the Head of Flow Credit Desk Analysis, Asia ex-Japan in its Sales/Trading business. She has been a licensed representative of Nomura Hong Kong with a Type 4 licence since 2008. Ms Lee's duties include supervising a team of four desk analysts which publishes commentaries on credit products for Nomura Hong Kong's clients and generates trade ideas for Nomura Hong Kong's credit flow traders.

### **Relevant provisions of the Takeovers Code**

6. Rule 8.1 provides 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”. This reflects General Principle 1 of the Takeovers Code which requires that all shareholders must be treated even-handedly and General Principle 3 which prohibits 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.

7. Note 4 to Rule 8.1 further explains that a financial adviser to an offeror or offeree company should stop issuing research reports on the offeree company (and on the offeror as well in the case of a securities exchange offer) except with the Executive's prior consent. If these reports contain profit forecast statements, full compliance with the reporting requirement under Rule 10 is required.
8. Note 5 to Rule 8.1 contains a reminder about the verification and reporting obligations under the Takeovers Code in relation to profit forecasts, asset valuations and estimates of other figures key to an offer. Note 5 also states that the release of such information without compliance with the relevant Takeovers Code requirements may constitute a breach of the Takeovers Code regardless of whether such information is withdrawn.

### **Breaches of Rule 8.1 and Rule 10 of the Takeovers Code**

9. Nomura Hong Kong was engaged as West China's financial adviser on 5 November 2015. West China was added to the Nomura Group's watch list on 5 February 2015 and its restricted list on 29 November 2015 following the commencement of the offer period. The watch list contains the names of all companies for which Nomura Hong Kong possesses inside information, typically through the conduct of its capital markets or corporate finance advisory businesses. It enables the Compliance Department to conduct surveillance of trading activity and research products to ensure that the Chinese Walls are functioning appropriately. Companies are named on the restricted list when securities laws, regulations or firm policies prohibit Nomura Hong Kong and its employees from engaging in certain types of client solicitation and trading involving them. The intent is to prevent actual or potential conflicts of interest and misuse, or the appearance of misuse, of inside information by limiting the activities of the Nomura Group relating to these companies. All employees are required to follow the restricted list.
10. Between 30 November 2015 and 29 June 2016, Nomura Hong Kong's Credit Desk issued five credit commentaries and three weekly wraps to its institutional investor clients which referred to West China and specifically the West China Bonds (**Reports**). During this time, Nomura Hong Kong acted as the financial adviser to West China for the West China Offer and West China's name was on Nomura Hong Kong's restricted list. As the Reports contained desk analysts' views on West China's financial performance and recommendations regarding the West China Bonds, they constituted research reports subject to Rule 8.1 of the Takeovers Code. The Reports contained statements that, when considered in context, constituted profit forecast statements, and were issued without the Executive's consent and without any reporting in accordance with Rule 10 in breach of Note 4 to Rule 8.1. Their issuance also breached Nomura Hong Kong's internal policies.
11. Ms Lee wrote the relevant credit commentaries relating to the West China Bonds and approved the publication of the Reports. Ms Lee acknowledged that on 30 November 2015, she was informed by Nomura Hong Kong's Control Room by email that West China was on the restricted list. Ms Lee accepted that she was aware that she should not provide commentaries on West China but had forgotten about the email. Moreover, she failed to check the restricted list prior to the publication of the Reports, and thereby breached

Nomura Hong Kong's internal policy. Her actions also led to the breaches of the Takeovers Code by Nomura Hong Kong.

### **Apology by Nomura Hong Kong and Ms Lee and Remedial Action Taken**

12. Nomura Hong Kong accepts that there were shortcomings in its desk and compliance procedures and in its electronic communications surveillance system. Nomura Hong Kong and Ms Lee apologised for the breaches of the Takeovers Code. Nomura Hong Kong emphasised that it takes this matter extremely seriously as evidenced by its investigation into the incident, the remedial measures adopted and the fact that the matter was escalated to senior levels within the Nomura Group. Both Nomura Hong Kong and Ms Lee agreed to the current disciplinary action taken against them under section 12.3 of the Introduction to the Codes on Takeovers and Mergers and Share Buy-backs (**Codes**).
13. Nomura Hong Kong also implemented a number of remedial measures to address deficiencies and strengthen its compliance with the Takeovers Code, including (i) face-to-face refresher training and specific online training on the restricted list procedures for the Credit Desk Analysis Team, and (ii) enhanced desk procedures for the issuance of credit commentaries.

### **Executive's comments**

14. The Executive notes that the breaches of the Takeovers Code in this case were primarily attributable to (i) insufficiencies in the controls and procedures for issuing debt capital marketing material by its Credit Desk; (ii) the oversight of Ms Lee; and (iii) deficiencies in Nomura Hong Kong's electronic communications surveillance system and compliance procedures. These factors resulted in breaches of important provisions of the Takeovers Code.
15. 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. These principles are enshrined in General Principles 1, 5 and 6 and reflected in Rule 8.1 and Rule 10 of the Takeovers Code. Nomura Hong Kong and its relevant employees are bound by these provisions.
16. Ms Lee holds a senior position within Nomura Hong Kong. Whilst Ms Lee submitted that her actions were unintentional, they directly led to the breaches of the Takeovers Code. The Executive paid particular regard to Ms Lee's overall role in causing the breaches and to the level of prudence that might reasonably be expected from a senior executive of an international financial institution.
17. The Executive has taken into account that Nomura Hong Kong self-reported the matter to the Executive as required under paragraph 12.5 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, and Nomura Hong Kong and Ms Lee fully co-operated with the Executive in the review of this matter. The Executive also notes that Nomura Hong Kong introduced enhanced desk and compliance 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.

18. 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. The conduct of Nomura Hong Kong and Ms Lee in this case fell short of the standards expected of a financial adviser and its staff under the Codes.
19. 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.

5 March 2018