

Takeovers Executive of the SFC publicly censures Zhang Qiang in relation to prohibited share acquisitions under the Takeovers Code

Public censure of Zhang Qiang

1. The Executive publicly censures Mr Zhang Qiang (“**Mr Zhang**”) for acquiring shares in Feishang Non-metal Materials Technology Limited (“**Company**”) within 6 months after the close of an offer (“**Restriction Period**”) at above the offer price in breach of Rule 31.3 of the Takeovers Code (Note).

Background

2. On 24 May 2017 Mr Zhang made an unconditional mandatory general offer in cash for the shares of the Company at HK\$0.70 per Share. The offer closed on 14 June 2017.
3. On 25 July 2017 during the Restriction Period, Mr Zhang made a series of on-market acquisitions of a total of 2,000,000 Shares at prices ranging from HK\$1.47 to HK\$1.50 per Share (“**Acquisitions**”). After becoming aware of the possible breach of the Takeovers Code, Mr Zhang sold all the 2,000,000 Shares on-market on 24 October 2017.

Breach of Rule 31.3 of the Takeovers Code

4. Rule 31.3 of the Takeovers Code prohibited Mr Zhang and his concert parties from buying Shares at prices higher than the offer price of HK\$0.70 per share during the Restriction Period. The Acquisitions were made at prices higher than HK\$0.70 in breach of Rule 31.3.
5. A profit of HK\$478,000 was made as a result of the disposal of the 2,000,000 Shares on 24 October 2017. Mr Zhang donated the amount to a charity on 18 December 2017.
6. On 14 June 2017 (being the date of the close of the offer) Mr Zhang’s financial adviser sent him emails reminding him about the restriction under Rule 31.3. Despite this, Mr Zhang made the Acquisitions. He reported the matter to the Executive on 27 October 2017 and submitted that the breach was not intentional. Mr Zhang has apologised for the breach and undertaken to take all steps to ensure future compliance with all rules and regulations (including the Takeovers Code).
7. Whilst Mr Zhang has cooperated with the Executive in this matter, the Executive considers the breach in this case to be serious and merits the present disciplinary action.
8. Mr Zhang accepted that he has breached Rule 31.3 and agreed to the current disciplinary action taken against him under section 12.3 of the Introduction to the Takeovers Code.
9. The Executive reminds all those involved in takeovers and mergers in Hong Kong of the prohibition imposed by Rule 31.3 of the Takeovers Code. Rule 31.3 affords equality of treatment to shareholders in an offer in accordance with General Principle 1 of the Takeovers Code. The rule provides shareholders with certainty that an offeror will not pay a price higher than the offer price for the shares in the offeree company in the 6-month period after the close of an offer, and as a result, it ensures that all shareholders of the offeree company are treated even-handedly.
10. If there is any doubt about the application of the Takeovers Code, the Executive should be consulted at the earliest opportunity.

Note: Rule 31.3 of the Takeovers Code states that *“Except with the consent of the Executive, if a person, together with any person acting in concert with him, holds more than 50% of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months after the end of the offer period of any previous offer made by him to the shareholders of that company which became or was declared unconditional, make a second offer to, or acquire any shares from, any shareholder in that company at a higher price than that made available under the previous offer. For this purpose the value of a securities exchange offer shall be calculated as at the day the offer became, or was declared, unconditional.”*

20 December 2017