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13 March 2008

Breach of Takeovers Code

The Takeovers Executive of the Securities and Futures Commission today issued a public notice criticising the failure of NWS Financial Management Services Limited (NWSFM) and two of its directors, Mr Wong Kwok Kin, Andrew and Mr Lam Wai Hon, Patrick to comply with the Takeovers Code in connection with the acquisition of shares in Taifook Securities Group Limited (Taifook).

The purchases by NWSFM of Taifook shares at prices higher than its previous offer during the period restricted by the Takeovers Code constitute a breach of the Takeovers Code.

NWSFM is a wholly owned subsidiary of NWS Holdings Limited which is listed on The Stock Exchange of Hong Kong Limited.

A copy of the [notice of criticism](#) can be found in the "Prospectuses, Takeovers & Mergers" – "Takeovers and Mergers" – "Panel and Executive Decisions / Statements" section of the SFC Website at <http://www.sfc.hk>.

Ends

Notice of Criticism by the Takeovers Executive of the Securities and Futures Commission

An unconditional offer was made on 15 June 2007 by NWS Financial Management Services Limited (“NWSFM”) for all the shares in Taifook Securities Group Limited (“Taifook”) at HK\$2.43 per share and the offer closed on 13 July 2007.

During the period from 4 to 11 January 2008, NWSFM acquired a total of 2,566,000 Taifook shares at prices ranging from HK\$4.70 to HK\$5.40 per share from the markets. None of these purchases were pre-arranged with any of the sellers of the shares involved.

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.”*

Rule 31.3 precludes NWSFM and its concert parties from buying Taifook shares at prices higher than HK\$2.43 per share for a period of 6 months after the close of the offer on 13 July 2007. The purchase by NWSFM of 2,566,000 Taifook shares at prices higher than HK\$2.43 each between 4 and 11 January 2008 constituted a breach of Rule 31.3.

According to NWSFM, the breach was caused by an inadvertent miscalculation of the 6-month period as prescribed under Rule 31.3 by the company secretary of NWSFM’s holding company, who together with his colleagues in the company secretarial department are responsible for the compliance matters of NWSFM. Rather than using the offer closing date of 13 July 2007, the company secretarial department mistakenly took the date of despatch (15 June 2007) of the offer document to the shareholders of Taifook as the commencement date for the calculation of the 6-month period for the purpose of Rule 31.3. The decision to make the purchases was made and instructions were given to effect the purchases by Mr Wong Kwok Kin, Andrew (“Mr Wong”), a director of NWSFM after discussion with Mr Lam Wai Hon, Patrick (“Mr Lam”), a fellow director, who had during the discussion specifically raised that compliance with relevant rules should be ensured. Before placing the order for the first purchase, Mr Wong checked with the abovementioned company secretary who confirmed that the proposed purchase would comply with relevant rules. None of the other directors of NWSFM was involved in the decision making or the giving of instructions for the purchases.

Further to the incident, NWSFM has strengthened its internal controls and will also use all its best endeavours to ensure that incidents of a similar nature will not happen in future.

The Takeovers Executive of the Securities and Futures Commission (the "Executive") criticises NWSFM, Mr Wong and Mr Lam for breaching Rule 31.3 of the Takeovers Code. NWSFM, Mr. Wong and Mr Lam admit and apologize for the breach and accept the Executive's criticism.

The Executive has found that the breach was not in any sense deliberately made, but did reflect a culpable failure to ensure that the requirements of the Takeovers Code were met. In arriving at the decision to criticise the parties, the Executive has taken into account the inadvertent nature of the breach and the co-operation of the parties in the Executive's enquiry.

The Executive would like to remind all those involved in takeovers and mergers in Hong Kong of the restriction 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 the 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 the offer, and as a result, it ensures that all shareholders of the offeree company are treated even-handedly. The importance of the rule is reflected by the fact that the Executive normally sends a letter after the close of an offer to the parties reminding them of their obligation to comply with Rule 31.3. On 24 July 2007 the Executive sent a letter to NWSFM in this respect.

If there is any doubt about the application of the Takeovers Code, the Executive should be consulted at the earliest opportunity.

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