

Enforcement Actions

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18 October 2004

The Takeovers Executive of the SFC Sanctions GP NanoTechnology Group Limited and its Directors for Breach of Takeovers Code

The SFC announces today that the following disciplinary action has been taken against GP Nano and its directors:

1. The Takeovers and Mergers Executive (Executive) has imposed an order denying Mr Fung Chiu and Mr Lian En Sheng direct or indirect access to the securities markets (**Cold Shoulder Order**) for a period of 24 months commencing on 19 October 2004.
2. The Executive publicly censures GP Nano, Mr Fung Chiu, Mr Ong Hong Hoon, Mr Lian En Sheng, Mr Chow Chun Kwong, Mr Chiang Chi Kin, Stephen, Mr Siu Siu Ling, Robert and Mr Feng Hui Liu.

GP Nano and the directors accept they have breached the Code and have agreed to the disciplinary action taken against each of them under section 12.3 of the Introduction to the Code.

The background to this matter is that on 20 August 2003, Right Field Holdings Limited announced a voluntary conditional cash offer for the shares in GP Nano, a company listed on the Growth Enterprise Market of the Stock Exchange of Hong Kong. It posted an offer document to shareholders on 10 September 2003.

Despite repeated requests by the Executive to do so, GP Nano and its directors never issued an offeree circular to shareholders in response to the offer. Their failure to issue a circular amounts to a serious breach of a fundamental rule of the Takeovers Code (Rule 8.4).

GP Nano has explained that the failure to issue the circular was due primarily to the action of Mr Fung and Mr Lian, the Chairman and an executive director of GP Nano, who objected to the issue of the circular in view of the financial difficulties faced by the company, the resources and effort involved and the fact that the directors considered the offer to be unsolicited and unappealing. The Executive does not accept that any of these are sufficient reason not to issue a circular to offeree shareholders and neither should have the directors who were presented with this view.

The purpose of Rule 8.4 is to provide shareholders with sufficient information, advice and time to reach an informed decision during a takeover offer. GP Nano's and the directors' failure to despatch the circular within the time prescribed in Rule 8.4 and its subsequent decision not to despatch the circular at all, prejudiced the interests of shareholders of GP Nano as well as the investing public. Shareholders of GP Nano had not been provided with GP Nano's corporate and financial information (as required by the Takeovers Code), the board recommendation and advice of the independent financial adviser with respect to the offer. Shareholders were therefore unable to reach a properly informed decision on the offer as envisaged by the Code.

The Executive is imposing more severe sanctions on Mr Fung and Mr Lian to reflect the fact that they initiated and led the company's decision not to issue the circular. It appears that, up to the time when Mr Fung and Mr Lian made their objections known, the remaining directors

genuinely intended to issue the circular. The sanctions against those directors reflect their role in the breach and the fact that they collectively and individually failed to take any action to ensure that the circular was issued in compliance with Rule 8.4 nor did they consult the Executive.

The Executive would like to remind practitioners that the obligation to issue a circular in response to an offer under Rule 8.4 rests on a company through its directors. Whilst the Takeovers Code recognises that the detailed supervision of any document may be delegated to a committee of the board (as was the case in GP Nano) this does not mean that the remaining directors are absolved from their obligations and duties under the Code including the obligation to issue a circular to shareholders. If there is any doubt about the application of the Code the Executive should be consulted at the earliest opportunity.

The Executive reserves the right to take appropriate disciplinary measures against Mr Kwong Chun Kau who has not been contactable since the announcement of the offer in August 2003.

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SECURITIES AND FUTURES COMMISSION

**Order pursuant to section 12 of the Introduction to the Hong Kong
Codes on Takeovers and Mergers and Share Repurchases**

Mr Fung Chiu and Mr Lian En Sheng

The Executive Director of the Corporate Finance Division of the SFC ("Executive Director") hereby **REQUIRES** that all licensed corporations, licensed representatives and registered institutions within the meaning of the Securities and Futures Ordinance (Cap. 571) and relevant individuals within the meaning of section 20(10) of the Banking Ordinance (Cap. 155) shall not, without the prior consent of the Executive in writing:

- act or continue to act directly or indirectly in their capacity as licensed corporations, licensed representatives, registered institutions or relevant individuals for Mr Fung Chiu and Mr Lian En Sheng or any corporation controlled by either of them (as defined in the Hong Kong Codes on Takeovers and Mergers and Share Repurchases); or
- knowingly assist directly or indirectly in a breach of this Order;

during the period commencing on 19 October 2004 and ending on 18 October 2006.

BY ORDER

A handwritten signature in black ink, appearing to read 'Ashley Alder', written over a horizontal line.

Ashley Alder
Executive Director

18 October 2004