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SFC publicly censures Fu Kwan for breach of the Takeovers Code

11 Jun 2020

The Securities and Futures Commission (SFC) has publicly censured Fu Kwan, the chairman of Macrolink Capital Holdings Limited (Note 1), for acquiring the company's shares within six months after the close of an offer at prices above the offer price in breach of Rule 31.3 of the Code on Takeovers and Mergers (Takeovers Code) (Note 2).

On 1 August 2018, Macrolink Group Limited, as the offeror, made an unconditional mandatory general offer in cash for the shares of Macrolink Capital at an offer price of \$0.6217 per share. Upon the close of the offer on 22 August 2018, the offeror and its concert parties held 67.85% of Macrolink Capital's shares.

On 8 and 9 November 2018, within the six-month period after the close of the offer, Fu made a series of on-market acquisitions of 3,990,000 shares of Macrolink Capital at prices above the offer price, ranging from \$0.63 to \$0.72 per share. Fu is a director of the offeror and therefore a person acting in concert with the offeror.

Fu submitted that the breach was not intentional. He accepted that he breached the Takeovers Code and agreed to the current disciplinary action taken against him.

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

The [Executive Statement](#) can be found in the "[Listings & takeovers – Takeovers & mergers – Decisions & statements – Executive decisions and statements](#)" section of the SFC website.

End

Notes:

1. Macrolink Capital Holdings Limited, formerly known as Junefield Department Store Group Limited, is listed on the Main Board of The Stock Exchange of Hong Kong Limited.
2. Rule 31.3 of the Takeovers Code prohibits an offeror and its concert parties from buying shares at prices higher than the offer price within six months after the end of the offer period except with the consent of the Takeovers Executive (ie, the Executive Director of the SFC's Corporate Finance Division or his delegate).

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Takeovers Executive of the SFC publicly censures Fu Kwan in relation to share acquisitions prohibited under the Code on Takeovers and Mergers

Public censure of Fu Kwan

1. The Executive publicly censures Mr Fu Kwan (**Mr Fu**) for acquiring shares in Macrolink Capital Holdings Limited (formerly known as Junefield Department Store Group Limited, the “**Company**”) within six months after the close of an offer (**Restriction Period**) at prices above the offer price in breach of Rule 31.3 of the Code on Takeovers and Mergers (**Takeovers Code**) (Note).

Background

2. On 1 August 2018, Macrolink Group Limited (formerly known as Macrolink International Holdings Limited, the “**Offeror**”) made an unconditional mandatory general offer in cash for the Company’s shares at \$0.6217 per share. The offer closed on 22 August 2018. The Offeror is beneficially owned as to approximately 42.06% by Truly Industry Investment Company Limited, which in turn is 70%-owned by Mr Fu. Mr Fu is a director of the Offeror and has been the Company’s chairman since 1 August 2018. Mr Fu is a person acting in concert with the Offeror. Upon the close of the offer, the Offeror and its concert parties held 67.85% of the Company’s shares.
3. On 8 and 9 November 2018, during the Restriction Period, Mr Fu made a series of on-market acquisitions of a total of 3,990,000 Company shares at prices ranging from \$0.63 to \$0.72 per share (**Acquisitions**).

Breach of Rule 31.3 of the Takeovers Code

4. Rule 31.3 of the Takeovers Code prohibited the Offeror and parties acting in concert with it from buying the Company’s shares at prices higher than the offer price of \$0.6217 per share during the Restriction Period. The Acquisitions were made at prices higher than \$0.6217 and hence in breach of Rule 31.3.
5. Memoranda with respect to the restriction under Rule 31.3 were circulated to the representatives of the Offeror by the Offeror’s legal counsel on 16 April 2018 (just after the commencement of the offer period) and its financial adviser on 24 August 2018 (two days after the close of the offer).
6. Mr Fu claimed that the memoranda were not drawn to his attention and that he had not been alerted to the requirement under Rule 31.3 of the Takeovers Code. In addition, despite having consulted the other directors of the Offeror, he had not been informed of or alerted to the said requirements immediately prior to making the Acquisitions.
7. The matter was reported to the Executive by the Offeror. Mr Fu admitted that the breach was due to his inadvertent oversight and was not intentional. Mr Fu has apologised for the breach and has undertaken to take all necessary steps to ensure future compliance with all rules and regulations including the Takeovers Code.
8. The Executive considers the breach in this case to be serious and merits the present disciplinary action. The Executive expects persons who are actively engaged in the securities market to comply with the Takeovers Code which

includes seeking professional advice as and when needed. Mr Fu's conduct in this matter amounts to a disregard of the Takeovers Code.

9. Mr Fu accepted that he 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.
10. 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 six-month period after the close of an offer, and thus ensures that all shareholders of the offeree company are treated even-handedly.
11. 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 was unconditional at the time of publication of the offer document or became or was declared unconditional after the publication of the offer document, 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 later of the date of the offer document or the date the offer became, or was declared, unconditional."*

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