SECURITIES INDUSTRY COUNCIL

("SIC" OR THE "COUNCIL")

PUBLIC STATEMENT ON OSIM INTERNATIONAL LTD

Background

On 7 March 2016, Credit Suisse (Singapore) Limited ("CS") announced, for and on behalf of Vision Three Pte Ltd (the "Offeror"), a voluntary unconditional cash offer (the "Offer") for OSIM International Ltd ("OSIM"), at an offer price of $1.32 per share (the "Offer Price").

2 On 31 March 2016, OSIM shareholders approved a final dividend of $0.02 per share (the "Final Dividend"). The books closure date in respect of the Final Dividend was 6 April 2016 ("Books Closure Date"), and the date on which the shares started trading ex-dividend was 4 April 2016 ("Ex-Dividend Date"). This was due to the SGX settlement period of T+3 trading days (with "T" being the date on which trades were executed).

3 Under the terms of the Offer, OSIM shares were to be acquired fully paid up, free from all encumbrances, and together with any rights and entitlements. On this basis, the Offer Price would be adjusted for any dividends declared, depending on whether the Offeror acquired the rights to dividend.

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4 On 5 April 2016, before the market opened, the Offeror announced an increase in the offer price to $1.39 on a cum-dividend basis (and therefore $1.37 on an ex-dividend basis) (the "Final Offer Price"). The Offeror also stated that it will not further revise the Final Offer Price (the "No Increase Statement"). When the market opened, the Offeror, through a CS affiliated entity acting on the Offeror's instructions, purchased a total of 16,984,200 shares (representing 2.29% of the issued share capital of OSIM) at prices ranging from $1.38 to $1.39 (the "Purchases").

5 Given that OSIM shares had been trading ex-dividend since 4 April 2016, the Purchases on 5 April 2016 should not have been made above $1.37 based on the Final Offer Price, since the shares would be acquired ex-dividend. Under Rule 21.1 of the Singapore Code on Take-overs and Mergers (the "Code"), if an offeror buys shares in the offeree company at above the offer price, it must increase its offer to not less than the highest price paid for shares so acquired. As a result of the Purchases, the Offeror was obliged under Rule 21.1 of the Code to increase the offer price to $1.41 on a cum-dividend basis and $1.39 on an ex-dividend basis.

6 The Offeror, through its legal adviser, Morgan Lewis Stamford LLC ("MLS"), had applied to the Council for a waiver from Rule 21.1 of the Code. Having regard to General Principle 3 on equality of treatment[1], the Council declined to grant the waiver, as doing so would mean certain shareholders would receive a higher price from the Offeror for their OSIM shares as compared to others[2]. Consequently, the Offeror increased the offer price to $1.41 on a cum-dividend basis and to $1.39 on an ex-dividend basis. This represented an additional consideration of up to $4.7 million to be paid to shareholders who tendered their shares in acceptance of the revised offer. The Offeror also paid approximately $100,000 to compensate all shareholders who had sold their shares below $1.39 on 5 April 2016, regardless of whether they sold their shares to the Offeror or to third parties.

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Note 3 on Rule 20.1

7 Note 3 on Rule 20.1 of the Code states that an offeror must not place itself in a position where it would be required to revise its offer if it has made a no increase statement. As the Purchases by the Offeror put it in a position to

[1] General Principle 3 states that an offeror must treat all shareholders of the same class in an offeree company equally.
[2] Shareholders who had sold their shares to the Offeror at between $1.38 and $1.39 on 5 April 2016 would also have received the Final Dividend.

have to set aside its No Increase Statement and increase its offer, the Offeror appears to have breached Note 3 on Rule 20.1 of the Code.

8 The primary responsibility for ensuring compliance with the Code rests with the parties to a take-over or merger and their advisers, which in this case were CS and MLS[3].

Events leading up to the Purchases

9 On 4 April 2016, the Offeror held discussions with its advisers in relation to increasing the Offer Price. The Offeror also discussed purchasing OSIM Shares from the open market with CS. Following these discussions, the Offeror decided to increase the Offer Price to $1.39 (on a cum-dividend basis) and $1.37 (on an ex-dividend basis), with the intention that there would be no further price revisions. It was also decided that the Offeror would purchase OSIM shares in the open market once the market opened following the announcement of the Final Offer Price on 5 April 2016.

10 In order to avoid triggering the need to increase the Final Offer Price under the Code, CS was aware that market purchases could not be made at a price that was higher than the Final Offer Price. It therefore sought advice from MLS as to the price(s) at which the Offeror could make market purchases following the announcement of the Final Offer Price and the No Increase Statement. On 4 April 2016, MLS sent an email to CS advising that the Offeror should pay $1.39 up to the close of trading on 6 April 2016, being the Books Closure Date, and $1.37 from 7 April 2016 onwards (the "Advice"). On 5 April 2016 morning, CS asked the Offeror to confirm a buy order to acquire OSIM shares at a price of up to $1.39 on 5 April 2016. The Offeror confirmed the buy order. The Purchases were then made by a CS affiliated entity in accordance with the Offeror's instructions. MLS and CS were both not aware that OSIM shares started trading ex-dividend on 4 April 2016, the day before the

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[3] Section 3 of the Introduction of the Code.

Purchases were made. This was despite the fact that the Ex-Dividend Date had been publicly announced on 15 March 2016.

The Advice

11 The Advice was inaccurate in the context of the question posed by CS to MLS. As the question was one of market purchases, the relevant date should have been the Ex-Dividend Date, instead of the Books Closure Date which was the relevant date for settlement of acceptances.

Hearing

12 In accordance with the Code[4], the SIC convened a hearing to inquire into whether the Offeror had breached Note 3 on Rule 20.1 of the Code, and following from that, whether each adviser had failed in its responsibility to ensure that the Offeror complied with the Code. A hearing committee comprising the following members was appointed by the Council:

(a) Mr. J Y Pillay (Chairman);

(b) Mr. Karam Butalia;

(c) Mr. Rahul Goswamy;

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(d) Mr. Olivier Lim; and

(e) Mr. Paul Yuen.

13 In this connection, summonses were issued to each of the parties to produce documents and give evidence at the hearing. Prior to the hearing, all parties also made written submissions to the hearing committee.

[4] Section 2 of the Introduction of the Code.

Findings and decisions

14 After considering all the information and evidence made available to it as well as oral and written representations made, the hearing committee's findings and decision are as follows.

The Offeror

15 The Offeror was found to have breached Note 3 on Rule 20.1 of the Code as the Purchases had put it in a position to have to set aside its No Increase Statement.

16 The obligation to comply with Note 3 on Rule 20.1 of the Code rested primarily on the Offeror. In this instance, the hearing committee noted that the Offeror had relied on the advice of its advisers in making the Purchases and such reliance was reasonable in the circumstances. The hearing committee considered that the Offeror had promptly taken steps to inform its advisers to rectify the situation upon realisation that the Purchases were erroneously made above $1.39 (on a cum-dividend basis). The Offeror had also complied with the Council's direction to increase its offer price to $1.41 (on a cum-dividend basis) as a result of the breach, which resulted in an additional cost of $4.7 million. In addition, the Offeror had compensated all shareholders who had sold their shares below $1.39 on 5 April 2016, regardless of whether they sold their shares to the Offeror or to third parties, to ensure that no parties were prejudiced as a result of the breach[5].

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17 Taking into account the foregoing, the hearing committee takes no further action against the Offeror.

[5] All shareholders who sold below $1.39 were paid the difference between $1.39 and the price at which they sold their shares.

The advisers to the Offeror

18 As advisers to the Offeror, MLS and CS had collective responsibility to ensure that the Offeror complied with the Code.

CS

19 Prior to carrying out the Purchases, CS had sought advice from the Offeror's legal adviser on the price at which the Offeror is able to make market purchases and acted on that advice. As financial adviser to the Offeror, CS was expected to be conversant with the price at which market purchases could be made in compliance with the Code. This was fundamental knowledge that a financial adviser undertaking Code-related work was expected to have been able to determine. In this instance, given that OSIM shares were already trading ex-dividend since 4 April 2016, this would have had implications on the purchase price. CS, as financial adviser, was expected to have been cognisant of the Ex-Dividend Date and to have taken it into account when making the Purchases.

20 The hearing committee acknowledged that CS was entitled to seek advice from MLS. Nonetheless, it was also of the view that as financial adviser to the Offeror, CS should have exercised due care and independent judgement in relying on the Advice in making the Purchases. In particular, the reference to "Books Closure Date" in the Advice should have put CS on notice that the Advice was erroneous, given that the relevant date for market purchases should have been the Ex-Dividend Date. As financial adviser to the Offeror, CS should have been alert to the erroneous use of the dates in the context of market purchases and exercised independent judgement when making the Purchases and/or sought further clarifications from MLS before making the Purchases.

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21 The Purchases made by CS resulted in the Offeror revising its offer after it had made a no increase statement, putting the Offeror in breach of Note 3 on

Rule 20.1 of the Code. On this basis, CS had failed in its responsibility to ensure that the Offeror complied with Note 3 on Rule 20.1 of the Code.

MLS

22 The question as to what price the Offeror could make market purchases was not solely a financial and/or operational issue that only the Offeror's financial adviser was responsible for determining. As the legal adviser to the Offeror, MLS was responsible for advising the Offeror on any legal, compliance and regulatory issues relating to the Offer and the Code. As this case has clearly demonstrated, an incorrect price paid by the Offeror for market purchases might result in a breach of the Code and/or trigger certain obligations under the Code. These were Code-related issues which were clearly within the responsibility of the legal adviser.

23 In rendering the Advice, MLS failed to take into account whether OSIM shares had started trading ex-dividend, and the implications on the price at which market purchases could be made. Instead, MLS erroneously took reference from the Books Closure Date, which was not relevant for the purpose of determining the maximum price for market purchases.

24 Legal advisers are expected to perform the necessary due diligence and checks prior to providing any advice in connection with take-overs. Legal advisers should also assume responsibility for any advice that has been rendered. In this case, the erroneous Advice had contributed to the Purchases being made in breach of the Code. On this basis, MLS had failed in its responsibility as legal adviser to the Offeror to ensure that the Offeror complied with Note 3 on Rule 20.1 of the Code.

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25 As professional advisers to the Offeror, CS and MLS shared collective responsibility in ensuring that the Offeror's open market purchases were made in compliance with the Code. However, both parties failed to do so which led to

the Offeror's breach of Note 3 on Rule 20.1 of the Code. On this basis, the hearing committee was of the view that both advisers have fallen short of the standard expected under the Code and found that both CS and MLS had breached the Code.

26 However, the hearing committee has decided not to take any further action against CS and MLS on account of the following:

(a) the impact to OSIM shareholders was mitigated by the subsequent actions undertaken by the Offeror to compensate shareholders who sold their OSIM shares on the market on 5 April 2016. Hence, OSIM shareholders did not suffer a loss as a result of the Offeror's breach of the Code;

(b) both CS and MLS took prompt action to stop the Purchases, approach the Council and mitigate the extent of the breach; and

(c) both CS and MLS have since taken steps to improve their internal processes and controls to prevent a similar incident from re-occurring.

Conclusion

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27 The SIC reminds all advisers of the critical role they play in working together to ensure their clients comply with the Code. Advisers are therefore collectively responsible in discharging their role in the interests of their clients. Advisers need to be vigilant and exercise due care at all times in ensuring that their clients comply with the Code. To this end, they are expected to be conversant not only with the requirements of the Code, but also with how these requirements are applied in practice.

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