PRACTICE STATEMENT NO 12

RULE 9 AND THE INTERESTS IN SHARES OF CLIENTS WHOSE FUNDS ARE MANAGED ON A DISCRETIONARY BASIS

The definition of "acting in concert" in the Code provides, inter alia, that:

> "… the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:
>
> …
>
> (4) a fund manager (including an exempt fund manager) with any investment company, unit trust or other person whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;".

The Executive wishes to make clear that it interprets this presumption to mean that funds managed on a discretionary basis by a fund management organisation will be treated for the purposes of the Code as controlled by the fund management organisation and not by the person(s) on whose behalf the funds are managed. Therefore, the fund management organisation, and not its clients, will be treated as interested in any shares and other interests in shares managed by the fund management organisation on a discretionary basis. As a result, the Executive will aggregate shares which the fund management organisation manages on behalf of its clients on a discretionary basis with shares and interests in shares in which the fund management organisation and other persons under the same control as it are interested for their own account in assessing whether, for example, an obligation to make a mandatory offer under Rule 9.1 of the Code has been triggered.

In the light of the above, and in view also of Note 16 on Rule 9.1, where a fund management organisation launches an investment trust or investment company and wishes to subscribe for shares in the company as principal or on behalf of its discretionary clients, or if it may subscribe for shares pursuant to underwriting arrangements, it should have regard to the Code and, in particular, to the following points:

(a) Rule 9.1 will be relevant if the aggregate number of shares in which all persons under the same control as the fund management organisation are interested (including any interests in shares arising as a result of the application of presumption (4)) carry 30% or more of the voting rights of the company. The Executive considers that it would be good practice for the aggregate percentage interest to be disclosed prominently in the prospectus or other public offering documentation making clear:

(i) if the aggregate number of shares in which the fund management organisation and all persons under the same control as it are interested (including any interests in shares arising as a result of the application of presumption (4)) carry 30% or more of the voting rights of the company, but such persons do not together hold shares carrying 50% of the voting rights of the company, that any acquisitions of additional interests in shares carrying voting rights will trigger an obligation to make a mandatory offer under Rule 9.1; and

(ii) if the aggregate number of shares carrying voting rights held by the fund management organisation and all persons under the same control as it (including any shares treated as being held by the fund management organisation as a result of the application of presumption (4)) represents more than 50% of the voting rights of the company, that the fund management organisation and persons under the same control as it will normally be able to acquire further interests in shares of the company carrying voting rights without incurring an obligation to make a mandatory offer under Rule 9.1;

(b) if the number of shares to be issued to the fund management organisation may vary depending on, for example, investor demand, the maximum aggregate percentage interest should be disclosed in the prospectus or public offering documentation;

(c) if (i) the fund management organisation and persons under the same control as it include a principal trader, and (ii) the aggregate number of shares in the company in which they are interested approaches or exceeds 30% of the voting rights, the principal trader may, with the Panel's prior consent, continue to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company; and

(d) if the fund management organisation or any persons under the same control as it hold options, warrants or other rights to subscribe for shares carrying voting rights in the company, or securities convertible into such shares, which on exercise or conversion (as appropriate) would otherwise result in a mandatory offer obligation being triggered, no such obligation will normally arise provided that the terms are fully disclosed in the prospectus or other public offering documentation (the text of the proposed disclosure having been cleared with the Executive before publication).

PRACTICE STATEMENT NO 12 *CONTINUED*

The Executive should be consulted in cases of doubt.

Practice Statements are issued by the Panel Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Takeover Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

4 August 2005
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