

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2008/3

Minor and consequential amendments to the Code

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 29 July 2008, in accordance with the Appendices to this instrument.

In the Appendices, underlining indicates new text and striking through indicates deleted text.

Made by Lindsay Tomlinson, Chairman, acting on behalf of the Code Committee.

15 July 2008

APPENDIX A

Rule 2.8

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

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NOTES ON RULE 2.8

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3. Concert parties

~~Where a statement to which Rule 2.8 applies is made otherwise than following a time limit being imposed under Rule 2.4(b), the restrictions imposed by Rule 2.8 will not normally apply also to any a person acting in concert with the person making the statement to which the Rule applies unless provided it is made clear in the statement, or at the time the statement is made, that ~~any~~ such person acting in concert is continuing to consider making an offer for the offeree company.~~

The restrictions imposed by Rule 2.8 will, however, normally apply to any person acting in concert with the person making the statement to which the Rule applies if the statement is made following a time limit being imposed under Rule 2.4(b).

APPENDIX B

Rule 2.4

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

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NOTES ON RULE 2.4

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8. Consequences of subsequent acquisitions of interests in shares

The acquisition of an interest in offeree company shares by a publicly announced potential offeror (whether named or not) or any person acting in concert with it may require immediate announcement by the potential offeror pursuant to the Note on Rule 7.1.

Rule 6

6.1 ACQUISITIONS BEFORE A RULE 2.5 ANNOUNCEMENT

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... in respect of that acquisition.

In the case of paragraph (b), an immediate announcement may be required in accordance with the Note on Rule 7.1.

6.2 ACQUISITIONS AFTER A RULE 2.5 ANNOUNCEMENT

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(b) Immediately after the acquisition, the offeror must announce that a revised offer will be made in accordance with this Rule (see also Rule 32). Whenever practicable, the announcement should also state the nature of the interest, the number of shares concerned and the price paid.

Rule 7.1

7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED

The acquisition of an interest in offeree company shares by an offeror or any person acting in concert with it may give rise to an obligation under Rule 6 (~~requirement to increase offer~~minimum level of consideration), Rule 9 (mandatory offer) or Rule 11 (nature of consideration to be

offered). Immediately after such an acquisition, an appropriate announcement must be made by the offeror. Whenever practicable, the announcement should also state the nature of the interest, the number of shares concerned and the price paid.

Rule 9.1

9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

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NOTES ON RULE 9.1

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9. Triggering Rule 9 during an offer period*

If it is proposed to incur an obligation under this Rule during the course of a non-mandatory offer, the Panel must be consulted in advance. Once such an obligation is incurred, an offer in compliance with this Rule must be announced immediately. If the cash is dependent upon a securities exchange, Note 3 on Rule 9.3 will be relevant. (See also Rule 7.1.)

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Rule 9.5

9.5 CONSIDERATION TO BE OFFERED

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(b) If, after an announcement of an offer made under Rule 9 for a class of share capital and before the offer closes for acceptance, the offeror or any person acting in concert with it acquires any interest in shares of that class at above the offer price, it shall increase its offer for that class to not less than the highest price paid for the interest in shares so acquired. Immediately after the acquisition, an appropriate announcement must be made in accordance with Rule 7.1.

Rule 11.1

11.1 WHEN A CASH OFFER IS REQUIRED

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NOTES ON RULE 11.1

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6. *Revision*

If an obligation under this Rule arises during the course of an offer period and a revision of the offer is necessary, an immediate announcement must be made by the offeror in accordance with Rule 7.1 (but see Rule 32).

The Note on Rule 7.1 may also be relevant to acquisitions by potential offerors.

APPENDIX C

Rule 7.2

7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS

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NOTES ON RULE 7.2

1. *Dealings prior to a concert party relationship arising*

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(c) *Rule 9 will, however, be relevant if the aggregate number of shares in which any person and all persons controlling#, controlled by or under the same ~~control#~~ control as that person (including any exempt fund manager or exempt principal trader) are interested carry 30% or more of the voting rights of a company. ...*

...

Rule 9.1

9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

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NOTES ON RULE 9.1

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16. *Aggregation of ~~holdings~~ interests across a group and recognised intermediaries*

Rule 9 will be relevant if the aggregate number of shares in which any person and all persons controlling#, controlled by or under the same ~~control#~~ control as that person (including any exempt fund manager or exempt principal trader) are interested carry 30% or more of the voting rights of a company. ...

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APPENDIX D

Rule 8

**RULE 8. DISCLOSURE OF DEALINGS DURING
THE OFFER PERIOD; ALSO
INDEMNITY AND OTHER ARRANGEMENTS**

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NOTES ON RULE 8

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5. *Details to be included in disclosures (public or private)*

(a) *Public disclosure (Rules 8.1(a), 8.1(b)(i) and 8.3)*

(i) *Disclosure forms*

Specimen disclosure forms are available on the Panel's website (www.thetakeoverpanel.org.uk) or may be obtained from the Panel. Public disclosures should follow the format of those forms. Where a disclosure is made pursuant to Rule 8.1(a) or (b)(i), it is not necessary to disclose the same information pursuant to Rule 8.3.

(ii) *Information to be included*

A public disclosure of dealings must include the following information:—

(a)(i) *the total of the relevant securities in question of an offeror or of the offeree company in which the dealing took place;*

(b)(ii) *the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed);*

(c)(iii) *the identity of the associate or other person dealing and, if different, the owner or controller of the interest;*

(d)(iv) *if the dealing is by an associate, an explanation of how that status arises;*

(e)(v) *details of any relevant securities of the offeree company or an offeror (as the case may be) in which the associate or other person disclosing has an interest or in respect of which he has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see also below and Note 7(b)). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to*

require another person to purchase or take delivery, must also be disclosed; and

~~(f)(vi)~~ if relevant, details of any arrangements required by Note 6 below.

(iii) Related dealings

For the avoidance of doubt, when a person transacts two or more separate but related dealings executed at or around the same time (for example, the entering into of a derivative referenced to relevant securities and the acquisition of such securities for the purposes of hedging), the disclosure must include the required information in relation to each such dealing so executed.

(iv) Owner or controller details

For the purpose of disclosing identity the owner or controller of the interest must be specified, in addition to the person dealing. The naming of nominees or vehicle companies is insufficient. The Panel may require additional information to be disclosed when it appears to be appropriate, for example to identify other persons who have an interest in the securities in question. However, in the case of disclosure of dealings by fund managers on behalf of discretionary clients, the clients need not be named.

(v) Specially cum or ex dividend acquisitions

Where an offeror or any person acting in concert with it acquires any interest in offeree company securities on a specially cum or specially ex dividend basis, details of that fact should also be disclosed.

(vi) Percentage calculations and subscription for new securities

Percentages should be calculated by reference to the numbers of relevant securities given in a company's latest announcement required by Rule 2.10. In the case of a disclosure relating to a right to subscribe, or subscription, for new securities, the Panel should be consulted regarding the appropriate number of relevant securities to be used in calculating the relevant percentage.

(vii) Options, derivatives etc.

In the case of agreements to purchase or sell, rights to subscribe, options or derivatives, full details should be given so that the nature of the interest, position or dealing can be fully understood. For options this should include a description of the options concerned, the number of securities under option, the exercise period (or in the case of exercise, the exercise date), the exercise price and any option money paid or received. For derivatives this should include, at least, a description of the derivatives concerned, the number of reference securities to which they relate (when relevant), the maturity date (or if applicable the closing out date) and the reference price (and any fee payable on entering into the derivative).

In addition, if there exists any agreement, arrangement or understanding, formal or informal, between the person dealing and any other person relating to the voting rights of any relevant securities under option or relating to the voting rights or future acquisition or disposal of any relevant securities to which a derivative is referenced (as the case may be), full details of such agreement, arrangement or understanding, identifying the relevant securities in question, must be included in the disclosure. If there are no such agreements, arrangements or understandings, this fact should be stated. Where such an agreement, arrangement or understanding is entered into at a later date than the derivative or option to which it relates, it will be regarded as a dealing in relevant securities.

(viii) Futures contracts and covered warrants

For the purpose of the disclosure of dealings, a futures contract or covered warrant for which exercise includes the possibility of delivery of the underlying securities is treated as an option. A futures contract or covered warrant which does not include the possibility of delivery of the underlying securities is treated as a derivative.

(ix) Transfers in and out

If, following a public disclosure made under Rule 8, interests in relevant securities are transferred into or out of a person's management, a reference to the transfer must be included in the next public disclosure made by that person under Rule 8.

(x) Associates

If an associate is an associate for more than one reason, all the reasons must be specified.

(xi) Connected exempt fund managers

A disclosure by an exempt fund manager must specify the name of the offeror or the offeree company with which it is connected and the nature of the connection.

(xii) Securities borrowing and lending

Where a disclosure of a securities borrowing or lending transaction is made pursuant to Note 3 on Rule 4.6, all relevant details should be given.

Where a person to whom Rule 4.6 applies discloses a dealing in relevant securities and has previously borrowed relevant securities from, or lent such securities to, another person, the disclosure must be made in a form agreed by the Panel.

APPENDIX E**Rule 29.1****29.1 VALUATIONS TO BE REPORTED ON IF GIVEN IN CONNECTION WITH AN OFFER**

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(c) In connection with an offer

In certain cases offer documents or defence circulars will include statements of assets reproducing directors' estimates of asset values published with the company's accounts in accordance with Schedule 7 Part II of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008~~Companies Act 1985~~. ...