

PCP 2005/3 Issued on 2 November 2005

THE PANEL ON TAKEOVERS AND MERGERS

**CONSULTATION PAPER ISSUED BY
THE CODE COMMITTEE OF THE PANEL**

DEALINGS IN DERIVATIVES AND OPTIONS

**DETAILED PROPOSALS RELATING TO
AMENDMENTS PROPOSED TO BE MADE TO
THE TAKEOVER CODE
PART 2: CONTROL ISSUES**

Before it introduces or amends any Rules of the Takeover Code (the “Code”) or the Rules Governing Substantial Acquisitions of Shares (the “SARs”), the Code Committee of the Takeover Panel (the “Code Committee”) is normally required under its consultation procedures to publish the proposed Rules and amendments for public consultation and to consider the responses arising from the public consultation process.

The Code Committee is therefore inviting comments on this Public Consultation Paper (“PCP”) by 27 January 2006. Comments may be given by any of the means set out below.

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It is the Code Committee’s policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

SECTION A
INTRODUCTION

1. PCPs 2005/1 to 4

(a) PCP 2005/1

1.1 On 7 January, the Code Committee published a Public Consultation Paper (“PCP 2005/1”) entitled “Dealings in Derivatives and Options – outline proposals relating to amendments proposed to be made to the Takeover Code and the SARs”. Part B of PCP 2005/1 dealt with the disclosure of dealings in derivatives and options (the “Disclosure Issues”). Part C of PCP 2005/1 dealt with the implications which should arise where (a) parties to an offer or persons acting in concert with them, or (b) persons whose interests (together with the interests of persons acting in concert with them) fall into the 30% to 50% band, deal in derivatives referenced to, or options in respect of, relevant securities of the offeree company (the “Control Issues”).

1.2 In paragraph 1.2 of PCP 2005/1, the Code Committee stated that it intended to consult on detailed rule changes in the light of the responses received.

1.3 Eighteen responses were received to PCP 2005/1. The Code Committee has considered those responses and has reviewed the proposals set out in PCP 2005/1 accordingly. Copies of those responses to PCP 2005/1 which are available for public inspection may be obtained from the Panel.

(b) PCP 2005/2

1.4 On 13 May, the Code Committee published a Public Consultation Paper (“PCP 2005/2”) entitled “Dealings in Derivatives and Options – detailed proposals relating to amendments proposed to be made to the Takeover Code. Part 1: Disclosure Issues”.

1.5 On 5 August, the Code Committee issued a Response Statement (“RS 2005/2”) which provided details of the Code Committee’s response to the external consultation processes on the Disclosure Issues dealt with in Part B of PCP 2005/1 and in PCP 2005/2. The key changes to the Code adopted by the Code Committee in RS 2005/2 and to be implemented on 7 November were, in summary, as follows:

- (a) the introduction of a new definition of “interests in securities”, pursuant to which a person who has, or may have, long economic exposure to changes in the price of securities will be treated as interested in those securities. The new definition of “interests in securities” provides as follows:

“Interests in securities

This definition and its Notes apply equally to references to interests in shares and interests in relevant securities.

A person who has long economic exposure, whether absolute or conditional, to changes in the price of securities will be treated as interested in those securities. A person who only has a short position in securities will not be treated as interested in those securities.

In particular, a person will be treated as having an interest in securities if:-

- (1) he owns them;
- (2) he has the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to them or has general control of them;
- (3) by virtue of any agreement to purchase, option or derivative he:
 - (a) has the right or option to acquire them or call for their delivery; or
 - (b) is under an obligation to take delivery of them,

whether the right, option or obligation is conditional or absolute and whether it is in the money or otherwise; or

- (4) he is party to any derivative:
 - (a) whose value is determined by reference to their price; and

(b) which results, or may result, in his having a long position in them.”.

Eight Notes on the definition of “interests in securities” were also introduced;

- (b) the introduction of a new definition of “dealings”, setting out the actions which trigger an obligation to make a disclosure under Rules 8.1, 8.2 and 8.3, as follows:

“Dealings

A dealing includes the following:-

- (a) the acquisition or disposal of securities;
- (b) the taking, granting, acquisition, disposal, entering into, closing out, termination, exercise (by either party) or variation of an option (including a traded option contract) in respect of any securities;
- (c) subscribing or agreeing to subscribe for securities;
- (d) the exercise or conversion, whether in respect of new or existing securities, of any securities carrying conversion or subscription rights;
- (e) the acquisition of, disposal of, entering into, closing out, exercise (by either party) of any rights under, or variation of, a derivative referenced, directly or indirectly, to securities;
- (f) entering into, terminating or varying the terms of any agreement to purchase or sell securities; and
- (g) any other action resulting, or which may result, in an increase or decrease in the number of securities in which a person is interested or in respect of which he has a short position.”;

- (c) the amendment of Rule 8.3(a) as follows:

“During an offer period, if a person, whether or not an associate, is interested ~~owns or controls (directly or indirectly)~~ in 1% or more of any class of relevant securities of an offeror or of the offeree company or as a result of any transaction will be interested in ~~so own or control~~ 1% or more, dealings in such ~~any relevant~~ securities of that company by such person (or any other person through whom the interest ~~ownership or control~~ is derived) must be publicly disclosed in accordance with Notes 3, 4 and 5.”; and

(d) various consequential amendments to the definitions of “associate”, “derivative”, “irrevocable commitments and letters of intent” and “relevant securities” (previously defined in Note 2 on Rule 8), and to Note 1 on Rule 2.10, Rules 8.3(b) and (c), certain of the Notes on Rule 8, and Rules 38.2 and 38.5.

1.6 This PCP is written as if the amendments to the Code adopted in RS 2005/2, and which will come into effect on 7 November, had already been implemented. Until new pages of the Code are published on 7 November, the amended provisions may be found in Appendix A to RS 2005/2.

(c) ***PCP 2005/3***

1.7 In paragraph 1.6 of PCP 2005/2, the Code Committee stated that it wished to consider further a number of points relating to the Control Issues and that it had therefore decided to delay further consultation on those issues. The Code Committee has now completed its further consideration of those points. The purpose of this PCP is therefore to propose rule changes in respect of the Control Issues and to invite comments on them.

1.8 In the light of responses received to PCP 2005/1, the Code Committee has concluded that there is no reason to alter its overall approach with respect to the Control Issues and the principal measures which were proposed in that PCP in relation to the provisions of the Code. It has, however, made certain adjustments to the proposals outlined in PCP 2005/1, particularly in relation to Rule 9.3. The principal amendments proposed in relation to the Control Issues are set out in Section B below with some additional amendments being proposed in Section E below.

1.9 In addition, the Code Committee is proposing:

(a) to introduce a new status for certain trading desks, to be known as “recognised intermediary” status, pursuant to which the interests in shares by virtue of

derivatives or options of a desk acting in that capacity will not be taken into account in determining the overall interests, for the purpose of Rule 9.1, of the group of which the desk forms part. The Code Committee is also proposing that recognised intermediary status should be used as the status for determining the applicability of the exception from disclosure in Rule 8.3(d). These proposals are set out in Section C below and a summary of the proposed application of recognised intermediary status is set out in Appendix B to this PCP; and

- (b) to amend the dealing disclosure requirements under Rule 38.5 for trading desks of connected exempt principal traders which do not benefit from recognised intermediary status. These proposals are set out in Section D below and the proposed new disclosure forms are set out in Appendix C to this PCP.

(d) PCP 2005/4

- 1.10 PCP 2005/1 proposed that the SARs should also be amended so as to apply to dealings in derivatives and options. Paragraph 1.7 of PCP 2005/2 stated that the Code Committee would address points relating to the SARs in this PCP.
- 1.11 In the event, the Code Committee has today published a further Public Consultation Paper (“PCP 2005/4”) entitled “Proposed Abolition of The Rules Governing Substantial Acquisitions of Shares”, in which it is proposing the abolition of the SARs and certain amendments to the Code (including the deletion of Note 2 on Rule 5.1). The SARs are, therefore, not discussed further in this PCP and the proposed amendments to the Code set out in Appendix A to this PCP assume that the SARs will be abolished and that the amendments to the Code set out in PCP 2005/4 are adopted as proposed.

2. Implementation date and review

- 2.1 As mentioned above, the rule changes relating to the Disclosure Issues set out in RS 2005/2 are to be implemented on 7 November, approximately three months after the publication of RS 2005/2.
- 2.2 The Code Committee believes that, assuming that market participants have adjusted their dealings and reporting systems to take account of the rule changes relating to the Disclosure Issues, the further adjustments required in relation to the Control Issues rule changes will not be excessive. Therefore, unlike the Disclosure Issues rule changes, the Code Committee believes that it will not be necessary for there to be any delay in the implementation of the final Control Issues rule changes once adopted, but would welcome comments on this issue.
- 2.3 As noted in paragraph 3.3 of RS 2005/2, the Code Committee recognises that the rule changes relating to the Disclosure Issues and proposed rule changes relating to the Control Issues may have significant implications for market participants. In view of this, the Code Committee will be undertaking a review of the operation of the new regulatory environment in June 2007. The conclusions of this review will be published.

SECTION B
DEALINGS IN DERIVATIVES AND OPTIONS BY PARTIES TO AN OFFER
AND PERSONS WHOSE INTERESTS FALL INTO THE 30% TO 50% BAND

3. The Control Issues

3.1 Paragraph 13 of PCP 2005/1 described the current application of Rules 5, 6, 9, 11, 16 and 20.1 to derivative and option transactions.

3.2 Paragraph 14 of PCP 2005/1 described two possible ways in which those Rules could be amended to apply to dealings in derivatives and options, namely the “narrow approach” and the “broad approach”.

3.3 In the event, the Code Committee decided to deal with the amendments to Rules 16 and 20.1 in Section D of PCP 2005/2. Those Rules are therefore not discussed further in this PCP.

(a) The narrow approach

3.4 As described in paragraph 14.2 of PCP 2005/1, the key focus of the narrow approach would be the prevention of the use of derivatives and options as a means of accumulating a long position in shares in excess of the relevant thresholds prescribed under Rule 5.1. The means by which this could be achieved were described to be, in summary, as follows:

(a) by regarding long derivatives referenced to shares carrying voting rights in a company as equivalent to “rights over shares” for the purpose of Rule 5.1;

(b) by amending the second paragraph of Note 11 on Rule 9.1 to apply also to dealings in long derivatives referenced to shares and by listing the factors to be taken into account in determining whether effective control over shares to which a derivative was referenced, or which were subject to an option, had passed; and

- (c) by amending Rules 6 and 11 to provide that where (i) an offeror or a person acting in concert with it enters into a derivative referenced to, or an option in respect of, shares in the offeree company during the relevant period, and (ii) effective control over those shares has passed, Rules 6 and 11 would be triggered at the time that such effective control passed, by reference to the price paid to acquire such effective control.

(b) ***The broad approach***

3.5 As described in paragraph 14.6 of PCP 2005/1, under the broad approach, all long derivative and option transactions would, in effect, be treated as dealings in the underlying securities for the purposes of the Code. The means by which this could be achieved were described in paragraph 14.7 of PCP 2005/1 to be, in summary, as follows:

- (a) by amending Rule 5.1 in the same way as proposed for the narrow approach;
- (b) by amending Rule 9.1 so that the thresholds for the triggering of an obligation to make a mandatory cash offer would take into account the aggregate number of shares carrying voting rights, call options and written put options in respect of such shares and long derivatives referenced to such shares. In addition, paragraph 14.7 of PCP 2005/1 envisaged the amendment of the first paragraph of Note 11 on Rule 9.1 so as to refer only to options to subscribe for new shares (and not to options to acquire existing shares) and the deletion of the second paragraph of Note 11 on Rule 9.1 (which would become redundant); and
- (c) by amending Rules 6, 9.5 and 11 so as to address the issue of the price at which an offer should be made in one of the two alternative ways described in paragraph 14.7(b)(iii) of PCP 2005/1 (see paragraph 6 below).

(c) ***Conclusion***

3.6 In paragraph 14.10 of PCP 2005/1, the Code Committee stated that it believed that, having regard to all the points set out in paragraph 14 of PCP 2005/1, the broad approach was the preferable course of action.

3.7 Having reviewed the responses to PCP 2005/1, the Code Committee continues to believe the broad approach to be preferable to the narrow approach. The reasons remain those set out in paragraph 14.8 of PCP 2005/1, namely that:

(a) a mandatory bid obligation would be triggered where a person acquired an aggregate long position in shares, options and long derivatives of 30% or more and there would be no requirement for the Panel to prove that actual control over any hedge shares had passed from the counterparty to the person concerned;

(b) dealings in long derivatives and options would be treated in a consistent manner across all rules of the Code, namely as equivalent to dealings in the underlying shares; and

(c) whilst this regime might be considered to be tough, it would only apply to offerors, potential offerors and persons with substantial interests (and, in each case, persons acting in concert with them) who chose to deal in knowledge of the consequences. If such persons were in any doubt as to the consequences of their dealings, they could consult with the Panel in advance of dealing.

4. The broad approach: interests in shares and other securities

4.1 As mentioned in paragraph 1.5 above, one of the key changes to the Code introduced by RS 2005/2 was the introduction of a new definition of “interests in securities”. The definition of “interests in securities” provides that a person will be treated as interested in securities when he has long economic exposure, whether absolute or conditional, to changes in the price of those securities,

including, broadly, where such exposure arises by virtue of the ownership or control of those securities or by virtue of a derivative or option.

- 4.2 As mentioned in paragraph 3.5 above, the key elements of the broad approach are that:
- (a) the thresholds for the triggering of a mandatory offer obligation pursuant to Rule 9.1, which are currently determined by reference to holdings of shares carrying voting rights, should be broadened so as to take into account other interests in shares carrying voting rights; and
 - (b) the thresholds for the restrictions on acquisitions imposed by Rule 5.1, which are currently determined by reference to holdings of shares and rights over shares carrying voting rights, should be broadened so as to take into account long derivatives referenced to such shares.
- 4.3 The Code Committee is therefore proposing that the key elements of the broad approach described in paragraph 3.5 above be implemented by applying the definition of “interests in securities” to each of Rules 9.1 and 5.1, subject to certain adjustments to the definition of “interests in securities” proposed in paragraph 4.13(b) below.
- 4.4 As a consequence of the proposed changes to Rules 9.1 and 5.1, the Code Committee is also proposing that:
- (a) various references to “shares” or “securities” in other provisions of the Code be amended so as to refer to “interests in shares” or “interests in securities” (as appropriate); and
 - (b) certain terminology currently used in the Code be amended so as to reflect those amendments. For example, that references to a “purchase” of shares be amended, where appropriate, so as to refer to an “acquisition” of an interest in shares.

4.5 The Code Committee notes that the preamble to the definition of “interests in securities” already provides that the definition and its Notes apply equally to references to “interests in shares” and “interests in relevant securities”.

(a) **Rule 9.1**

4.6 In the light of the above, the Code Committee is proposing:

(a) to amend Rule 9.1 as follows:

“9.1 WHEN IT IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

Except with the consent of the Panel, when:-

(a) any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which held or acquired by persons acting in concert with him are interested) carry 30% or more of the voting rights of a company; or

(b) any person ~~who~~, together with persons acting in concert with him, is interested in shares which in the aggregate carry holds not less than 30% but not more than 50% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with him, acquires additional an interest in any other shares which increases his the percentage of the shares carrying voting rights in which he is interested,

such person shall extend offers, on the basis set out in Rules 9.3, 9.4 and 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any class of voting non-equity share capital in which such person or persons acting in concert with him are interested~~hold shares~~. Offers for different classes of equity share capital must be comparable; the Panel should be consulted in advance in such cases.”; and

(b) to delete the second paragraph of Note 11 on Rule 9.1 and to amend the first paragraph of the Note as follows:

“11. *Convertible securities, warrants and options*

In general, the acquisition of ~~convertible securities~~ convertible into, warrants in respect of, or options or other rights to subscribe for, new shares does not

give rise to an obligation under this Rule to make a general offer but the exercise of any conversion or subscription rights or options will be considered to be an acquisition of an interest in shares for the purpose of the Rule.”.

4.7 See paragraph 5 below regarding the reference in Rule 9.1(b) to a person and persons acting in concert with him not “holding” more than 50% of the voting rights of a company.

(b) *Rule 5 and the definitions of “rights over shares” and “interests in securities”*

4.8 As mentioned in paragraph 4.2(b) above, the thresholds for the restrictions on acquisitions imposed by Rule 5.1 are currently determined by reference to a person’s aggregate holdings of shares and rights over shares carrying voting rights. “Rights over shares” are currently defined as follows:

“Rights over shares

Rights over shares include any rights acquired by a person by virtue of an agreement to purchase shares or an option to acquire shares or an irrevocable commitment to accept an offer to be made by him or an agreement to acquire voting rights or general control of them. A futures contract or covered warrant for which exercise includes the possibility of delivery of the underlying securities is treated as an option.”.

4.9 As indicated in paragraph 1.5(a) above, both an agreement to purchase shares and an option to acquire existing shares fall within paragraph (3) of the definition of “interests in securities” introduced by RS 2005/2. However, although an irrevocable commitment to accept an offer falls within the definition of “rights over shares”, it does not fall within the definition of “interests in securities” introduced by RS 2005/2. This is because irrevocable commitments are not taken into account in establishing whether a person has a long position of, or in excess of, 1% of the class of relevant security in question for the purpose of Rule 8.3 (as amended by RS 2005/2).

4.10 Similarly, except where general control of voting rights passes, irrevocable commitments to accept an offer are not taken into account in establishing

whether a person has triggered an obligation to make a mandatory offer pursuant to Rule 9.1.

4.11 The Code Committee believes that the Code should continue to treat an irrevocable commitment to accept an offer under which general control of voting rights does not pass in the same way as at present, i.e. that it should continue to be taken into account for the purposes of the restrictions imposed by Rule 5 but not for the purposes of the requirements of Rule 9. The Code Committee considers that this could be achieved by (a) adding a new paragraph (5) to the definition of “interests in securities”, pursuant to which irrevocable commitments would be treated as “interests in shares” for the purposes of Rule 5 only, and (b) deleting the current definition of “rights over shares”.

4.12 In addition, the Code Committee considers that the fact that irrevocable commitments will be treated as interests in shares for the purposes of Rule 5 only should be explicitly referred to in a preamble to Rule 5.

4.13 The Code Committee is therefore proposing:

- (a) to delete the definition of “rights over shares” from the Code;
- (b) to introduce an additional paragraph (5) to the definition of “interests in securities”, as follows:

“In particular, a person will be treated as having an interest in securities if:-

...

(5) in the case of Rule 5 only, he has received an irrevocable commitment in respect of them.”;

- (c) to introduce a new preamble to Rule 5 as follows:

“NB For the purposes of this Rule 5 only, the number of shares in which a person will be treated as having an interest includes any shares in respect of

which he has received an irrevocable commitment (see paragraph (5) of the definition of interests in securities).”;

- (d) to amend Rule 5.1 as follows:

“5.1 RESTRICTIONS

Except as permitted by Rule 5.2:-

(a) when a person (which for the purpose of Rule 5 includes any persons acting in concert with him) is interested in shares ~~holds shares or rights over shares~~ which in the aggregate carry less than 30% of the voting rights of a company, he may not acquire any an interest in any other shares carrying voting rights in that company ~~or any rights over such shares~~ which, when aggregated with the shares in which he is already interested ~~or rights over shares which he already holds~~, would carry 30% or more of the voting rights; and

(b) when a person is interested in shares ~~or rights over shares~~ which in the aggregate carry 30% or more of the voting rights of a company but does not hold shares which carry more than 50% of the voting rights, he may not acquire any an interest in any other shares carrying voting rights in that company ~~or any rights over such shares~~. ...”; and

- (e) to make consequential amendments to Rule 5.3 and Note 1 thereon, and to delete the second sentence of Note 2 on Rule 5.2, all as set out in Appendix A to this PCP.

- 4.14 See paragraph 5 below regarding the reference in Rule 5.1(b) to a person and persons acting in concert with him not “holding” more than 50% of the voting rights of a company. See paragraph 8 below regarding Rules 5.2 and 5.4.

- (c) *Notes on “interests in securities”*

- (i) *Variations and other acquisitions*

- 4.15 As mentioned in paragraph 4.4 above and paragraph 4.25(b) below, the Code Committee is proposing to amend a number of the provisions of the Code so that, following such amendments, the Code will include various references to “acquisitions” of interests in shares or other securities. In view of this, the

Code Committee believes that it should be made clear in the Code that a reference to a person acquiring an interest in shares or other securities includes any transaction or dealing which results in an increase in the number of securities in which the person is treated as interested. For example, the Code Committee believes that a person should not be able to enter into a derivative referenced to one share and then to vary it so that it becomes referenced to, say, 1,000 shares, but then to claim that he has not acquired any further interests in shares.

4.16 The Code Committee is therefore proposing:

- (a) to introduce a Note 9(a) on the definition of “interests in securities”, as follows:

“9. *Acquisitions of interests in securities*

(a) *References to a person acquiring an interest in securities include any transaction or dealing (including the variation of the terms of an option in respect of, or derivative referenced to, securities) which results in an increase in the number of securities (including, where relevant, securities which have been assented to an offer) in which the person is treated as interested.*”; and

- (b) to delete the definition of “purchases or other acquisitions of shares” (which would become redundant).

- (ii) *Irrevocable commitments*

4.17 Paragraphs (2) and (3) of the definition of “interests in securities” state that a person will be treated as having an interest in securities if:

“(2) he has the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to them or has general control of them;” or

“(3) by virtue of any agreement to purchase, option or derivative he:

- (a) has the right or option to acquire them or call for their delivery;
or

(b) is under an obligation to take delivery of them,

whether the right, option or obligation is conditional or absolute and whether it is in the money or otherwise”.

4.18 If paragraph (5) of the definition of “interests in securities” is adopted as proposed in paragraph 4.13(b) above, then, in the case of Rule 5 only, a person will be treated as having an interest in securities if he has received an irrevocable commitment in respect of them.

4.19 The Code Committee believes that the receipt of an irrevocable commitment should not be treated as an acquisition of an interest in the securities to which it relates by virtue of the irrevocable commitment being regarded as an “agreement to purchase” falling under paragraph (3) of the definition of “interests in securities”. For the avoidance of doubt, if an irrevocable commitment passes general control of the voting rights attached to the securities to the offeror, it will be treated as interested in those securities by virtue of paragraph (2) of the definition of “interests in securities”.

4.20 In the light of the above, the Code Committee is proposing to introduce a Note 9(b) on the definition of “interests in securities”, as follows:

“(b) A person will not be treated as acquiring an interest in securities which are the subject of an irrevocable commitment received by him as a result only of paragraph (3) of the definition of interests in securities.”

(iii) *Conditional share sale and purchase agreements and options*

4.21 The Code Committee understands that, in the context of a “public to private” transaction (such as a management buy-out or similar transaction), it is customary, for tax reasons, for management shareholders to enter into a conditional sale and purchase agreement or option with the offeror whereby they will exchange their shares in the offeree company for securities in an offeror vehicle company, rather than assent their shares to the cash offer and re-invest the proceeds in the securities of the offeror vehicle company. The Code Committee considers that, provided that:

- (a) the sale and purchase agreement or option is conditional upon the offer becoming or being declared wholly unconditional; and
- (b) general control of the voting rights attached to the shares to which the agreement or option relates does not pass to the offeror at an earlier time,

an offeror's entering into such an agreement or option should not normally be treated as an acquisition of an interest in such shares, other than for the purposes of Rule 5.

4.22 The Code Committee believes that an offeror intending to enter into a conditional sale and purchase agreement or option in the course of an offer should be obliged to consult the Panel in order that the consequences of so doing may be clarified.

4.23 The Code Committee is therefore proposing to introduce a Note 9(c) on the definition of "interests in securities", as follows:

"(c) The Panel should be consulted if an offeror or any person acting in concert with it proposes to enter into a conditional share sale and purchase agreement or option in the context of the offer."

(d) Other provisions

4.24 In addition to the amendments specifically referred to elsewhere in this PCP, a large number of minor changes to the Code will be required in order to implement the broad approach. All of the changes which the Code Committee is proposing to make to the Code as a result of the matters dealt with in this PCP are set out in Appendix A to this PCP.

4.25 The minor changes required include the following:

- (a) the amendment of various references to "shareholdings", "shares", "securities", "holdings" and "percentage holdings" (or similar words or

phrases) so as to refer to “interests in shares/securities”, “shares/securities in which a person is interested” and “percentages” (or similar words or phrases).

The provisions of the Code in which such references occur include the following: the definition of “acting in concert” and Note 4 thereon; the definition of “treasury shares”; Rule 2.2(b); Rules 2.8(a) and (b); Note 3 on Rule 3.2; Note 5 (to be renumbered as Note 3) on Rule 5.1; Note 2 on Rule 5.3; Notes 3 (second sentence) and 6 on Rule 7.2; Notes 9, 10 and 18 on Rule 9.1; the Note on Rule 9.2; Rule 9.3(b) and Note 2 on Rule 9.3; Note 2 on Rule 9.4; Rule 9.5(a) and Notes 1, 2(b) and 2(c) on Rule 9.5; Note 5 on Rule 11.2; Rule 19.5 and Notes 2 and 4 thereon; Note 4 on Rule 32.1; Rule 35.1(b); Rule 36.1; Note 1 on Rule 36; Rule 37.1 and Notes 1, 3, 5(a) and 7 thereon; and Section 1(a) of Appendix 1.

In addition, the Code Committee is proposing to amend Note 4 on the definition of “interests in securities” so as to make clear that a person will continue to be treated as interested in securities which he has borrowed in the circumstances set out in Note 18 on Rule 9.1, as set out in Appendix A to this PCP;

- (b) the amendment of various references to “purchases” of shares or other securities (or similar words or phrases) so as to refer to “acquisitions” of interests in such shares or securities (or similar words or phrases).

The provisions of the Code in which such references occur include the following: Rules 6.1 and 6.2 and Notes 1, 2, 3 and 6 on Rule 6; Rule 7.1 and the Note thereon; Rule 7.2 and Note 4(a) thereon; Rule 7.3; Note 3 on Rule 9.1; Note 3 on Rule 9.5; Rules 11.1(a) and (b) and Notes 2, 3, 4, 5, 10 and 12 on Rule 11.1; Rule 11.2 and Notes 1, 3, 6 and 7 thereon; the Note on Rule 11.3; Note 2 on Rule 32.1; Rule 36.3; Notes 2 and 5(b) on Rule 37.1; Rule 37.2; Section 3 of Appendix 1; and Sections 6 and 7 of Appendix 2.

In addition, the Code Committee is proposing:

- (i) to amend the definition of “cash purchases” so as to become a definition of “cash acquisitions” and to amend the definition accordingly, as set out in Appendix A to this PCP; and
 - (ii) to amend the heading to Note 6 on Rule 9.1, and to introduce a new final paragraph to that Note, in order to make clear that the Note is applicable to acquisitions of all types of interests in shares and not only to purchases of shares, as set out in Appendix A to this PCP;
- (c) the amendment of references to a “controlling shareholder” (or similar words or phrases) so as to refer to a “controller” (or similar words or phrases).

The provisions of the Code in which such references occur are as follows: the first sentence of Note 1 on Rule 3.1; the second paragraph of Note 5 on Rule 9.1; the third paragraph of Note 11 on Rule 9.1; the third paragraph of Note 1 of the Notes on Dispensations from Rule 9; and Sections 1(b), 4, 6 and 7 of Appendix 1;

- (d) the amendment of references to a person “exercising” votes (or similar words or phrases) so as also to refer to a person “procuring the exercise” of votes (or similar words or phrases).

The provisions of the Code in which such references occur are as follows: the second paragraph of Note 5 on Rule 9.1; paragraph (ii) of Note 3(a) on Rule 9.3; and Rule 9.7;

- (e) the amendment of Note 9 (to be renumbered as Note 7) on Rule 5.1, and the introduction of a new Note 13 on Rule 9.1, in relation to the receipt of gifts, as set out in Appendix A to this PCP;
- (f) the amendment of paragraph (c) of Note 6 on Rule 9.1 as follows:

~~“(c) If the parties negotiate options over the retained shares, it may be more difficult for them to satisfy the Panel that a significant degree of control~~

~~is absent. On the other hand, where~~ Where the retained shares are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms), a ~~correspondingly~~ greater element of independence may be presumed.”;

- (g) the amendment of the heading and the first sentence of Rule 9.6 as follows:

“9.6 OBLIGATIONS OF DIRECTORS SELLING SHARES

When directors (and their close relatives and related trusts) sell shares to a person purchaser (or enter into options, derivatives or other transactions) as a result of which that person the purchaser is required to make an offer under this Rule, the directors must ensure that as a condition of the sale (or other relevant transaction) the person purchaser undertakes to fulfil his obligations under the Rule. ...”; and

- (h) the amendment of each of Rules 2.8(c) and 35.1(c) as follows:

“(c) acquire any interest in, or procure an irrevocable commitment in respect of, shares of the offeree company or any rights over such shares if the shares and rights over shares held by any in which such person, together with any persons acting in concert with him, would be interested and the shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;”.

- 4.26 In addition, the Code Committee is proposing:

- (a) to amend Note 2 on Rule 9.1 to make clear that supporters of a board control-seeking proposal need not be shareholders of the company in question, as set out in Appendix A to this PCP; and
- (b) to amend Rule 36.5 to make clear that the “over 50%” approval requirement applies to over 50% of the voting rights held by shareholders who are “independent” of the offeror and persons acting in concert with it, rather than to over 50% of the voting rights not held by the offeror concert party, as set out in Appendix A to this PCP.

- Q.1 Do you agree with the proposed amendments in order to implement the broad approach as described in paragraph 4 above?**

5. The acceptance condition and the 30% to 50% band

(a) *The acceptance condition under Rules 9.3 and 10*

5.1 Rule 9.3(a) provides as follows:

“9.3 CONDITIONS AND CONSENTS

Except with the consent of the Panel (see Note 3):-

(a) offers made under this Rule must be conditional only upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding shares carrying more than 50% of the voting rights”.

5.2 In relation to the changes expected to be made as a result of the broad approach, paragraph 14.7(b)(ii) of PCP 2005/1 stated as follows:

“Rule 9.3: since the person concerned would be presumed to have de facto control over the shares to which the derivative was referenced or which were the subject of the option, those shares would count towards satisfaction of the Rule 9.3 acceptance condition. As with the narrow approach, this would be the case even if the counterparty did not hold such shares as a hedge”.

5.3 As indicated in paragraph 3.5 above, the key element of the broad approach is that interests in shares of a company arising by virtue of derivatives and options should count towards the 30% “control” threshold and that the acquisition of an interest in shares as a result of a transaction involving such instruments should have the effect of triggering the mandatory bid obligation under Rule 9.1 where a relevant threshold is crossed.

5.4 It would arguably, therefore, (as referred to in 14.7(b)(ii) of PCP 2005/1) be consistent, were Rule 9.3(a) (and, possibly, Rule 10) also to be amended to take account of interests in shares arising by virtue of derivatives and options. This would allow a bid to become or be declared unconditional as to

acceptances by counting shares which are the subject of derivatives and options, as well as shares owned or the subject of acceptances.

5.5 On the other hand, the current requirement in each of Rule 10 and Rule 9.3(a) that an offer, whether voluntary or mandatory, should be subject to an acceptance condition requiring an offeror to acquire shares carrying over 50% of a company's voting rights (and not including any other interests in shares) provides the following safeguards:

- (a) it ensures that a bidder is only able (or, in the case of a mandatory bid, required) to acquire a public company in circumstances where it will have statutory control of the company (or, in the case of a mandatory bid, where it and its concert parties will together have statutory control);
- (b) it ensures that, even in a competitive situation, there can only be one winning bidder; and
- (c) it enables offeree company shareholders to accept an offer in the firm knowledge that their acceptances will only crystallise in the event that statutory control of the company passes.

5.6 Moreover, a person currently has freedom to acquire further shares in a company without restriction under Rule 5 and without incurring a mandatory offer obligation under Rule 9 if he holds shares carrying more than 50% of the voting rights of a company, that is, if he has statutory control of the company. If either or both of Rule 9.3(a) and Rule 10 were amended to take into account interests in shares arising by virtue of derivatives and options, then, to be consistent, such interests ought also to be relevant in determining whether a person should have "buying freedom" under Rules 5 and 9. However, if such interests were to be taken into account for these purposes, there might be occasions when a person would have such buying freedom in circumstances where he, together with his concert parties, did not have statutory control of the company.

5.7 Having considered the arguments in favour of and against the various possible options, the Code Committee has concluded that the principles (a) that offers should only become or be declared unconditional as to acceptances in circumstances where statutory control has passed, and (b) that buying freedom should exist only in such circumstances (see paragraph 5.8 below), should be preserved. Accordingly, whilst the Code Committee believes that Rule 9.1 should be amended (as set out in paragraph 4.6(a) above) so as to be triggered, where relevant, as a result of acquiring interests in shares by virtue of derivatives and options, it also believes that Rules 9.3(a) and 10 should remain unchanged, so that interests in shares arising by virtue of derivatives and options will not count towards satisfaction of an offeror's acceptance condition.

Q.2 Do you agree with the Code Committee's conclusions regarding the acceptance condition under Rules 9.3(a) and 10? In particular, do you agree that only shares, and not interests in shares arising by virtue of derivatives and options, should be taken into account under Rule 9.3(a)?

(b) *The 30% to 50% band*

5.8 In the light of the conclusions reached in paragraph 5.7 above, the Code Committee considers that the provisions of the Code which refer to the upper limits of the bands to which Rules 9.1 or 5.1 apply (i.e. those above which "buying freedom" will exist) should reflect the fact that these bands will, if the proposals are adopted, range between:

- (a) interests in shares which in aggregate carry 30% of the voting rights of a company (bearing in mind the different meanings which will be attributed to the term "interests in shares" in relation to each of Rule 9.1 and Rule 5.1); and
- (b) holdings of shares which carry more than 50% of the voting rights of a company (i.e. not "interests in" shares which carry more than 50% of such voting rights).

The relevant provisions include the following: the definitions of “control” and “offer period”; Rule 2.2(f); Rule 2.8(a); Rule 5.1(b); Note 1 on Rule 5.1 (no amendment required); Note 6 (which will become Note 4) on Rule 5.1; Note 1(c) on Rule 7.2; Rule 9.1(b); Notes 1, 4, 5 (first paragraph), 6 (first paragraph), 7, 8, 11 (fourth and fifth paragraphs), 12 and 17 on Rule 9.1; Note 1 on Rule 9.3 (no amendment required); Note 1 on Rule 9.4; Notes 1, 2, 4, 5 (no amendment required) and 6 of the Notes on Dispensations from Rule 9; Rule 35.1(a); Rule 35.2; the first part of Rule 35.3 (no amendment required); Rule 36.2; Note 2 on Rule 36.3; Rule 36.4; Rule 36.6; Rule 36.8; Note 4 on Rule 37.1; and Section 4(c) of Appendix 1.

- 5.9 The amendments proposed by the Code Committee in order to effect the change to the 30% to 50% bands are set out in Appendix A to this PCP.

Q.3 Do you agree with the Code Committee’s conclusions and proposals regarding the 30% to 50% bands?

6. The price at which an offer is required to be made: Rules 6, 9.5 and 11

- 6.1 In paragraph 14.7(b)(iii) of PCP 2005/1, the Code Committee stated that it believed that there were two alternative ways of addressing the issue of the price at which the offer should be made under the broad approach, namely “Option 1” and “Option 2”.
- 6.2 Under Option 1, Rule 9.5 would be amended to provide that where the offeror, or a person acting in concert with it, had entered into long derivatives referenced to, or options in respect of, shares in the offeree company during the offer period or in the 12 months prior to its commencement, it would be treated as having purchased shares at the highest derivative reference price or option exercise price (plus any option money paid), as appropriate. This would be the case regardless of whether, or how, the counterparty had hedged its position.

- 6.3 Under Option 2, Rule 9.5 would be amended to provide that where the offeror, or a person acting in concert with it, had entered into long derivatives referenced to, or options in respect of, shares in the offeree company during the offer period or in the 12 months prior to its commencement, the mandatory offer should be made at the highest price at which the counterparty had acquired hedge shares during this period. If the counterparty had not hedged its position by acquiring the underlying shares (because, for example, it had an offsetting short derivative), the counterparty would be treated as having purchased shares at the prevailing market price at the time that the offeror (or member of its concert party) had entered into the derivative or option.
- 6.4 Under each of Options 1 and 2, Rules 6 and 11 would be amended in the same way as Rule 9.5, save that the relevant time period would be three months in the case of Rule 6.
- 6.5 At the end of paragraph 14.7(b)(iii) of PCP 2005/1, the Code Committee stated that, taking into account the points referred to in that paragraph, it preferred Option 1.
- 6.6 The Code Committee continues to believe that Option 1 is preferable. However, the Code Committee considers that where a derivative reference price is calculated as the average price of a number of separate acquisitions of interests in securities by the derivative holder's counterparty in order to hedge its position, the relevant price should be the highest price at which such acquisitions were actually made by the counterparty (and at which the sellers of those securities therefore obtained an exit from the offeree company).
- 6.7 In addition, where such an acquisition could be relevant under Rules 6, 9.5 or 11, the Code Committee believes that the Panel should be consulted where it is proposed to acquire the voting rights attaching to shares, or general control of such voting rights, in order that the price at which any offer should be made may be established.

6.8 The Code Committee is therefore proposing to amend Note 2(a) on Rule 9.5 and the final paragraph of Note 2 on Rule 9.5 as follows:

“2. *Calculation of the price*

(a) ~~In calculating the price paid, The price paid for any acquisition of an interest in shares will be determined as follows:~~

(i) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, his broker acting in an agency capacity) and the vendor (or principal trader) is struck;

(ii) in the case of an option, the price paid will be treated as the amount payable on exercise of the option together with any amount payable by the option-holder on entering into the option; and

(iii) in the case of a derivative, the price paid will normally be treated as the reference price of the underlying securities together with any fee payable on entering into the derivative. However, if the reference price is calculated as the average price of a number of acquisitions by the counterparty of interests in underlying securities, the price paid will normally be determined to be the highest price at which such acquisitions are actually made.

Any stamp duty and broker’s commission payable should be excluded.

...

The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them, and in the circumstances described in (b) and (c) above.”.

6.9 In addition, the Code Committee is proposing:

- (a) to make equivalent amendments to Note 4 on Rule 6 and Note 1 on Rule 11.1, as set out in Appendix A to this PCP;
- (b) to amend Rules 35.3 and 35.4 in line with the amendments it is proposing to Rules 6, 9.5 and 11, so as to restrict the acquisition of interests in shares on more favourable terms than those made available under the offer, as set out in Appendix A to this PCP;

- (c) to introduce a new second sentence to Note 4 on Rule 9.5 as follows:

“Where the offeror or any person acting in concert with it has acquired any interest in shares to which this Note may be relevant other than by purchasing shares, the Panel should be consulted.”; and

- (d) to introduce an equivalent sentence to that proposed in paragraph (c) above to each of Note 5 on Rule 6 and Note 9 on Rule 11.1, as set out in Appendix A to this PCP.

Q.4 Do you agree with the proposed amendments in relation to the price at which an offer is required to be made as described in paragraph 6 above?

7. Changes in the nature of a person’s interest

- 7.1 Note 13 on Rule 9.1 provides as follows:

“13. Acquisition or control of voting rights

If voting rights, or general control of them, as distinct from the shares themselves are acquired, the Panel will deem this to be the acquisition of the relevant shares for the purpose of this Rule. This will not normally apply in the case of a bank taking security over shares in the normal course of its business (see also Note 2 of the Notes on Dispensations from Rule 9).”

- 7.2 Note 3 on Rule 5.1 provides as follows:

“3. Options over existing shares

The exercise of options over existing shares is not restricted by this Rule or Rule 5.3.”

- 7.3 The Code Committee believes that Note 13 on Rule 9.1 should be deleted following the changes to the provisions of the Code introduced by RS 2005/2 and proposed in this PCP. The first sentence of the Note will become redundant as a result of the implementation of the broad approach. The second sentence of the Note has, in effect, been moved to Note 7 on the

definition of “interests in securities” introduced by RS 2005/2, which provides as follows:

“7. *Security interests*

A bank taking security over shares or other securities in the normal course of its business will not normally be considered to be interested in those shares or securities.”.

- 7.4 Similarly, the Code Committee believes that Note 3 on Rule 5.1 should be deleted since the Note that is currently Note 7 on Rule 5.1 will make clear that the restrictions in Rule 5 do not apply to an acquisition of an interest in shares which would not increase the percentage of the shares carrying voting rights in which a person is interested. However, the Code Committee believes that, for the avoidance of doubt, Note 7 (which, assuming that Note 2 on Rule 5.1 is also deleted as proposed in PCP 2005/4, would become Note 5) should mention the exercise of options over existing shares as an additional example of such an acquisition. This is because a person will acquire an interest in the shares in question when the option is taken so that the exercise of the option - and the consequent acquisition of the shares - therefore results only in a change in the nature of the person’s interest.
- 7.5 In addition, the Code Committee believes that an acquisition of shares by a person who had an interest in them which pre-existed the relevant time period should not normally be relevant for the purpose of determining the price to be paid by an offeror pursuant to Note 2 on Rule 9.5, Note 4 on Rule 6 or Note 1 on Rule 11.1, provided that the shares are acquired on the terms of the instrument by virtue of which the interest arises, for example at the option exercise price or derivative reference price. Where the shares are, or may be, acquired on different terms, however, for example where the exercise price of an option is subsequently varied, the Code Committee believes that the new terms should be taken into account for the purpose of determining the terms to be offered to shareholders pursuant to Rule 6, 9.5 or 11 (as appropriate).

7.6 Similarly, the Code Committee believes that it should also be made clear in the Code that, for the purpose of Rule 9.1, a person will not normally be treated as having acquired an interest in shares just because the nature of his interest has changed (for example where a person acquires shares on exercise of an option over existing shares). However, the Code Committee does not believe that such a person should be able to avoid a mandatory bid obligation simply by virtue of the changes being proposed to the Code to implement the broad approach. For example, if a person holding 29% of a company in shares were to acquire an option over another shareholder's 5% stake, he would not currently be obliged to make a bid under Rule 9.1 (but would be if the broad approach had been implemented). If he were to exercise the option after the broad approach had been implemented, he would not (as stated in the first sentence of this paragraph) then be obliged to bid (but would have been under the existing Rule 9.1). The Code Committee believes that the Code should therefore be amended to provide that, inter alia, the exercise of an option which pre-dates the implementation of the broad approach should trigger a mandatory bid.

7.7 In the light of the above, the Code Committee is proposing:

- (a) to delete the current Note 13 on Rule 9.1;
- (b) to delete Note 3 on Rule 5.1 (and to renumber the current Notes 4 to 9 on Rule 5.1);
- (c) to amend the current Note 7 on Rule 5.1 (which, following the deletion of Notes 2 and 3 on Rule 5.1, would become Note 5) as set out in Appendix A to this PCP;
- (d) to introduce a new final paragraph to Note 2(a) on Rule 9.5 as follows:

“Where a person acquired an interest in shares more than 12 months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, during the offer period or within 12 months prior to its commencement, the person acquires the relevant shares at the option

exercise price, the derivative reference price or the price provided for in the agreement to purchase, then no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, where the shares are acquired at a different price, or if the relevant price is varied, the adjusted terms will be relevant for the purpose of determining the terms to be offered to holders of shares of the same class. The Panel should be consulted in such cases.”;

- (e) to introduce a new final paragraph, in equivalent terms to that proposed in paragraph (d) above, to each of Note 4 on Rule 6 and Note 1 on Rule 11.1, as set out in Appendix A to this PCP; and
- (f) to introduce a new Note 19 on Rule 9.1 as follows:

“19. Changes in the nature of a person’s interest

For the purpose of this Rule 9.1, a person will not normally be treated as having acquired an interest in shares as a result only of a transaction under which the number of shares in which he is interested under the different paragraphs of the definition of interests in securities changes but the aggregate number of shares in which he is interested following the transaction remains the same (for example, where the person acquires shares on exercise of a call option). However, a person who became interested in any shares by virtue of paragraph (3) or paragraph (4) of the definition of interests in securities as a result of such interests first becoming relevant for the purpose of this Rule 9.1 will normally be treated as having acquired an interest in shares if, as a result of any transaction, he subsequently becomes interested in such shares by virtue of paragraph (1) or paragraph (2) of the definition of interests in securities. The Panel should be consulted in all such cases to establish whether, in the circumstances, any obligation arises under this Rule.”.

Q.5 Do you agree with the proposed amendments in relation to changes in the nature of a person’s interest as described in paragraph 7 above?

8. The “single shareholder” exception under Rule 5.2(a)

- 8.1 As indicated in Rule 5.1 itself, a number of exceptions to the restrictions in Rule 5.1 are set out in Rule 5.2. The first of these exceptions is the “single shareholder” exception in Rule 5.2(a). Rule 5.2(a) provides as follows:

“5.2 EXCEPTIONS TO RESTRICTIONS

The restrictions in Rule 5.1 do not apply to an acquisition of shares carrying voting rights in a company, or rights over such shares, by a person:-

(a) at any time from a single shareholder if it is the only such acquisition within any period of 7 days (see also Rules 5.3 and 5.4). This exception will not apply when the person has announced a firm intention to make an offer and the posting of the offer is not subject to a pre-condition”.

8.2 Note 1 on Rule 5.2 sets out a definition of “single shareholder”; Rule 5.3 and the Notes thereon set out the consequences of acquisitions from a single shareholder; and Rule 5.4 and the Note thereon set out the disclosure required following an acquisition from a single shareholder.

8.3 As stated in paragraph 31.2 of PCP 2004/3, it has been the Panel’s policy to apply the single shareholder exception narrowly and the Code Committee believes that the acquisitions permitted by the exception should not be broadened beyond the acquisitions currently permitted by Rule 5.2(a). In other words, the Code Committee believes that:

- (a) an acquisition of an interest in shares should only be permitted from a single person who holds shares in an offeree company (and not from a person whose interests in shares arise only for reasons other than by virtue of his holding shares); and
- (b) the single shareholder exception should not apply to an acquisition of an interest in shares by virtue of a derivative (but that it should continue to apply to the acquisition of other interests in shares, including by virtue of an option or an irrevocable commitment). The Code Committee notes that, in any event, a derivative will normally be entered into with a principal trader and that, as set out in Note 1 on Rule 5.2, a principal trader will not normally be considered to be a single shareholder for the purpose of Rule 5.2(a).

8.4 In addition, the Code Committee believes that, consistent with the amendments to various provisions of the Code introduced by paragraphs 14 to 16 of RS 2005/2, the details of the interests and short positions which should be required to be disclosed in announcements made pursuant to Rule 5.4 should be the same as the details which are required to be disclosed under paragraph (v) of Note 5(a) on Rule 8 following a dealing to which Rule 8.1 applies.

8.5 In the light of the above, the Code Committee is therefore proposing

(a) to amend Rule 5.2(a) as follows:

“5.2 EXCEPTIONS TO RESTRICTIONS

The restrictions in Rule 5.1 do not apply to an acquisition of an interest in shares carrying voting rights in a company, or rights over such shares, by a person:-

(a) at any time from a single shareholder if it is the only such acquisition within any period of 7 days (see also Rules 5.3 and 5.4). This exception will not apply:

(i) to an acquisition of an interest in shares as a result of the acquisition, entering into, or variation of, a derivative; or

(ii) when the person has announced a firm intention to make an offer and the posting of the offer is not subject to a pre-condition”;

(b) to amend the first sentence of Note 1 on Rule 5.2 as follows:

“1. Single shareholder

For the purpose of Rule 5.2(a), a number of shareholders ~~wishing to dispose of their shares or rights over their shares~~ will be regarded as a single shareholder only if they are all members of the same family or of a group of companies which is regarded as one for disclosure purposes under Section 203(2) to (4) of the Companies Act 1985. ...”; and

(c) to amend Rule 5.4 as follows:

**“5.4 ACQUISITIONS FROM A SINGLE SHAREHOLDER -
DISCLOSURE**

~~A person who makes an acquisition of~~ **acquires an interest in shares carrying voting rights in a company, or rights over such shares, from a single shareholder permitted by Rule 5.2(a) must notify that acquisition and his consequent total holding of shares and rights over shares to the company, a RIS and the Panel, not later than 12 noon on the business day following the date of the acquisition, of details of:**

(a) that acquisition; and

(b) any shares of the company in which he 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 Note 5(a) on Rule 8). Similar details of any short position (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. The notification must distinguish between shares and rights over shares, specifying the nature of any rights concerned and giving the relevant numbers and the resulting holding in each case.”.

Q.6 Do you agree with the proposed amendments in relation to the single shareholder exception?

SECTION C
RECOGNISED INTERMEDIARIES

9. The rationale for recognised intermediary status

- 9.1 The Code Committee understands that within the trading operations of a number of investment banks and other securities houses there are desks whose business is the provision of dealing services to clients (i.e. not proprietary dealing) and which deal as principal to fulfil client orders, to respond to a client's requests to trade or to hedge positions arising out of these activities. The Code Committee understands that such "client-serving" desks may sometimes have significant long interests (when calculated on an aggregate gross basis) in the shares of companies subject to the Code. On occasion, these positions, once derivative and option positions are taken into account, are in respect of more than 30% of a company's shares carrying voting rights. The Code Committee understands that the net economic position of the investment bank or securities house will normally be reduced to some extent as a result of offsetting positions. However, on the basis that the four criteria set out in Note 1 on the definition of "interests in securities" would frequently not be satisfied in respect of offsetting positions (for example, because they are with different counterparties), an obligation to make a mandatory offer under Rule 9.1 (as amended on the basis set out in Section B above) would be triggered in such circumstances.
- 9.2 The Code Committee does not consider that it is appropriate for such organisations to be required to make a mandatory offer in the circumstances referred to in paragraph 9.1 above. This is on the basis that (and provided that), inter alia, (a) the desk is a client-serving desk and it is acting in that capacity, (b) the 30% threshold was only breached after taking into account the desk's long derivative and option positions (calculated on an aggregate gross basis) which were generated as a result of the investment decisions taken by its clients, and (c) the desk is appropriately authorised and permitted by the Financial Services Authority (or its relevant regulator overseas) to conduct such derivative and option business as principal.

- 9.3 One way in which the potential Rule 9 consequences referred to above could be avoided would be for the relevant investment banks and securities houses to put in place systems to monitor the aggregate number of shares carrying voting rights (and percentage of voting rights) in which such desks were interested to ensure that, when aggregated with the organisation's other proprietary and discretionary interests in such shares, the 30% threshold was not breached in respect of any individual company. However, the Code Committee does not believe that the benefit which would result from requiring the relevant investment banks and securities houses to incur the costs of putting such systems in place is justified given that the desks' dealings and positions are the product of their clients', and not their own, investment decisions. Moreover, if derivative and option positions were to count towards the Rule 9 threshold, it would restrict the ability of investment banks and securities houses to meet their clients' needs, to the detriment of market liquidity. As a result, the Code Committee believes that a limited exception for such client-serving activities, subject to the constraints outlined below, is justified.
- 9.4 In the light of the above, the Code Committee proposes to allow trading desks which trade as principal for client-serving purposes to apply to the Panel to be granted a new status, to be known as "recognised intermediary" status. When a desk is granted this status, and provided that it is acting in that capacity and that the status has not fallen away (see paragraph 12.3 below), its interests in shares as a result of positions in derivatives or options will not be taken into account in establishing whether it (or the organisation of which it forms part) is interested in 30% or more of a company's shares carrying voting rights. However, in accordance with the existing provisions of the Code, shares which the desk owns or controls (i.e. those within paragraphs (1) or (2) of the definition of "interests in securities"), and acquisitions or disposals of such interests in shares, will be relevant for these purposes.
- 9.5 Thus, for the purposes of Note 17 on Rule 9.1 (as proposed to be amended in accordance with the broad approach), shares owned or controlled by a

recognised intermediary would always be taken into account in calculating whether the aggregate number of shares in which an investment bank or securities house is interested carry 30% or more of the voting rights of a company. However, as stated in paragraph 9.4 above, the recognised intermediary's other interests in shares, i.e. as a result of positions in derivatives or options, would not be relevant for the purpose of that calculation.

- 9.6 Where the recognised intermediary is, or is part of, an exempt principal trader connected with an offeror or the offeree company, the position under the Code would remain unchanged. That is to say, provided that the recognised intermediary's exempt status had not fallen away, its interests and dealings in relevant securities (including by virtue of derivatives and options) would not be treated as interests of or dealings by a person acting in concert with the corporate advisory client with which it was connected. However, its interests and dealings in relevant securities would be subject to Rule 38. If, however, the recognised intermediary's exempt status had fallen away, its interests and dealings (including by virtue of derivatives and options) would, in accordance with Rules 7.2(a) and (b) respectively, be treated as interests of and dealings by a person acting in concert with the offeror or with the directors of the offeree company with which it was connected, as appropriate, including for the purpose of Rule 9.1.
- 9.7 Although a number of the features of recognised intermediary status will be similar to certain of the features of exempt status which may be granted by the Panel to principal traders and fund managers (see paragraph 12 below), the proposed recognised intermediary regime will be entirely separate from the exempt regime. As was the case with the introduction of exempt status (see, for example, paragraph 1 of PCP 2004/3), the proposal to afford a dispensation from the provisions of the Code to recognised intermediaries in relation to their positions in derivatives and options is a pragmatic solution. However, for the reasons given in paragraph 9.3 above, the Code Committee believes that the introduction of the recognised intermediary regime for the client-serving desks of investment banks and securities houses is justified.

9.8 The Code Committee notes that the recognised intermediary status regime will be one of the matters to be considered in its review of the operation of the new regulatory environment in June 2007, as referred to in paragraph 2.3 above.

9.9 A summary of the proposed application of recognised intermediary status is set out in Appendix B to this PCP.

Q.7 Do you agree that it is not appropriate for investment banks and securities houses to be required to make a mandatory bid in the circumstances described above and, if so, do you agree with the introduction of the concept of recognised intermediary status?

10. The availability of recognised intermediary status

10.1 The Code Committee believes that, in determining whether a desk should be granted recognised intermediary status, the Panel will need to be satisfied as to each of the following matters in respect of the desk in question:

- (a) that the entity to which the desk belongs has been authorised by the FSA with permission (without material limitation) to deal as principal in UK equities or in derivatives or options referenced to or in respect of such equities. Where it is based overseas, the entity must have been granted equivalent authorisation and permission by its home state regulator to deal in UK equities or in derivatives or options referenced to or in respect of such equities;
- (b) that (i) the desk's business is the provision of dealing services to clients, and not proprietary dealing, and (ii) it deals as principal to fulfil client orders, to respond to a client's requests to trade, or to hedge positions arising out of these activities;
- (c) that neither the desk nor the entity of which it forms part is an investment company – i.e. its object is not to invest funds wholly or mainly in securities

(including derivatives or options) with the object of spreading investment risk and/or managing its portfolio for the benefit of its shareholders or investors;

- (d) that neither the desk nor the entity of which it forms part is an investment manager – i.e. it is not a person who, acting predominantly on behalf of clients, manages investments in a portfolio on a discretionary or non-discretionary basis;
- (e) that neither the desk nor the entity of which it forms part is primarily an investment adviser – i.e. it is not a person a significant part of whose business is to advise clients on the merits of their buying or selling equities, derivatives, options or other securities;
- (f) that the Panel is satisfied that the entity of which the desk forms part is suitable for recognised intermediary status having regard to all the circumstances, including (i) its connection with any other person, (ii) the need to ensure that its recognised intermediary activities will not be carried on with the purpose of assisting an offeror or the offeree company or any of their respective associates, and (iii) the need to ensure its recognised intermediary activities are distinct from its proprietary trading (and other) activities;
- (g) that neither the desk nor the entity of which it forms part is a collective investment scheme (within the meaning of the Financial Services and Markets Act 2000) or other investment fund or the operator (as so defined) of such a scheme or fund;
- (h) that if the desk or the entity of which it forms part is, or is part of, a wider organisation, or is associated with any other person, the Panel is satisfied that its links with the rest of that organisation or with such person are not likely adversely to influence the Panel's supervision of its activities or its compliance with the Code; and
- (i) that if the desk or the entity of which it forms part is, or is part of, a wider organisation, or is associated with any other person, which deals as principal

on a proprietary basis or carries out investment company, investment management, investment advisory or collective investment or other investment fund functions, the Panel is satisfied as to the functional separation of their respective activities.

Q.8 Do you agree with the criteria by reference to which it is proposed that the grant of recognised intermediary status should be determined? Are there any other matters which should be taken into account?

11. Rule 8.3(d)

11.1 The Code Committee believes that a further, and equally important, benefit which could be derived from the introduction of recognised intermediary status is that it could be used as the status for determining whether the exception from disclosure in respect of interests and dealings in relevant securities in Rule 8.3(d) should be available to all or part of the trading operations of an investment bank or securities house – i.e. such that the exception would only apply to that part, or to those parts, of an investment bank or securities house to which recognised intermediary status had been granted and provided that it was, or they were, acting in that capacity (and that the status had not fallen away). The proposed introduction of recognised intermediary status would be a development of the Code's long-standing disclosure exception for recognised market-makers and other intermediaries.

11.2 Prior to 1987, Rule 8.3 obliged persons to disclose publicly, on an accelerated basis, any notifications of interests in shares which they were required to make under the Companies Act. Since market-makers were exempt from those Companies Act requirements, they were not obliged to disclose dealings under Rule 8.3. In 1987, Rule 8.3 was amended so as to apply to persons who owned or controlled 1% or more of any class of relevant security and Rule 8.3(d) provided an exception from the Rule for recognised market-makers acting in that capacity. At the time of the introduction of the Stock Exchange Electronic Trading Service order book in 1997, the Panel decided that the Rule 8.3(d) exception should then be available in respect of order

book stocks to principal traders who were recognised market-makers in any security prior to that time. The exception would, however, also be available to new market participants who could demonstrate to the Panel's satisfaction that their activities would provide sufficient investor benefits to justify the exception.

11.3 In the past, as indicated above, the Panel has accepted the argument that an exemption from disclosure is likely to increase the preparedness of market-makers and other intermediaries to take on large orders and, accordingly, that it assists such persons in the servicing of their clients' needs. The Code Committee also accepts this argument and believes that the disclosure rules should strike an appropriate balance between, on the one hand, giving market-makers and other intermediaries sufficient freedom to execute client orders and, on the other, ensuring that shareholders are provided with information about dealings which may be significant to them. The proposed recognised intermediary status has been designed with the aim of achieving that balance.

11.4 Following the changes to the Code adopted in RS 2005/2, the relevant paragraphs of Rule 8.3 provide as follows:

“8.3 DEALING BY PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE

(a) During an offer period, if a person, whether or not an associate, is interested (directly or indirectly) in 1% or more of any class of relevant securities of an offeror or of the offeree company or as a result of any transaction will be interested in 1% or more, dealings in any relevant securities of that company by such person (or any other person through whom the interest is derived) must be publicly disclosed in accordance with Notes 3, 4 and 5.

...

(d) Rule 8.3 does not apply to principal traders acting in that capacity (see Note 9 below).”.

11.5 The definition of “principal trader” is as follows:

“A principal trader is a person who:

- (1) is registered as a market-maker with the Stock Exchange, or is accepted by the Panel as a market-maker; or
- (2) is a Stock Exchange member firm dealing as principal in order book securities.”.

- 11.6 The principal traders to which Rule 8.3(d) applies are specified in the first paragraph of Note 9 on Rule 8, which provides as follows:

“Except with the consent of the Panel, the exception in relation to principal traders for Rule 8.3(d) is only available to principal traders who were recognised market-makers in any security prior to the introduction of the Stock Exchange Electronic Trading Service.”.

- 11.7 As the Code is currently drafted, therefore, except with the consent of the Panel, the parts of the principal trading operations of an investment bank or securities house to which the disclosure exception in Rule 8.3(d) may currently be available are limited to the principal traders specified in the first paragraph of Note 9 on Rule 8. The limitations of Rule 8.3(d) were reiterated in the first sentence of paragraph 11.3 of PCP 2005/1 which stated as follows:

“An important proviso to the continued application of the Rule 8.3(d) exemption ... is that the Code Committee believes that it should not be available to the proprietary trading desk (or the equivalent trading operation) of an investment bank – i.e. the desk, if there is one, within an investment bank which invests (and puts at risk) the bank’s own capital.”.

- 11.8 In paragraph 12.3 of PCP 2005/2, the Code Committee stated that the Panel was undertaking a review of the principal trading activities of all relevant investment banks and securities houses with a view to clarifying which trading desks should benefit from the exception in the current Rule 8.3(d) and should therefore not be subject to the obligation in Rule 8.3 to disclose dealings in relevant securities. In paragraph 11.5 of RS 2005/2, the Code Committee stated that it would be considering whether or not changes should be proposed to the current criteria by reference to which the availability of this exception is determined.

- 11.9 This review of principal trading activities has now taken place and the Panel is nearing the completion of its determinations as to which parts of the trading operations of investment banks and securities houses should, from 7 November, benefit from the exception from disclosure in Rule 8.3(d) (i.e. their client-serving desks) and which parts of their trading operations should be subject to the disclosure requirements contained in Rule 8.3(a) (i.e. their proprietary trading and other non-client-serving desks). From 7 November, the date on which the changes set out in RS 2005/2 are to be implemented, the latter will be required to comply with Rules 8.3(a) to (c).
- 11.10 Assuming recognised intermediary status is introduced, the Code Committee believes that, in the future, that status should determine whether a trading desk should benefit from the exception from disclosure in Rule 8.3(d).
- 11.11 The review of principal trading activities referred to above was carried out by the Panel prior to the proposal for the introduction of recognised intermediary status. The Code Committee notes that if those trading operations in an investment bank or a securities house which, from 7 November, will benefit from the exception contained in Rule 8.3(d) wish to benefit from recognised intermediary status, they will have to apply to the Panel to be granted such status. If recognised intermediary status is introduced, the Panel will be contacting the relevant investment banks and securities houses to discuss the procedure for obtaining recognised intermediary status.
- 11.12 In addition, the Code Committee understands that the trading desks of a number of entities which do not currently benefit from the exception in Rule 8.3(d) may be capable of satisfying the criteria set out in paragraph 10.1 above. The Code Committee believes that such a trading desk should also be eligible for recognised intermediary status, even if the entity of which it forms part does not fall within the definition of “principal trader” – for example, if it is not registered as a market-maker with the London Stock Exchange or is not a London Stock Exchange member firm dealing as principal in order book securities.

11.13 The Code Committee therefore believes (a) that a new definition of “recognised intermediary” should be introduced into the definitions section of the Code, (b) that the reference to “principal traders” in Rule 8.3(d) should be replaced with a reference to “recognised intermediaries”, and (c) that the first paragraph of Note 9 on Rule 8 should be deleted.

Q.9 Do you agree that recognised intermediary status should also be used as the basis for determining whether the exception from disclosure in Rule 8.3(d) should be available?

Q.10 Do you agree that the trading desks which may be eligible for recognised intermediary status should not be limited to trading desks which form part of a principal trader (as defined in the Code)?

12. Further features of recognised intermediary status

12.1 As mentioned in paragraph 9.7 above, recognised intermediary status will be entirely separate from exempt status for principal traders and fund managers granted by the Panel. As explained in paragraph 1.6 of PCP 2004/3, the effect of a principal trader or fund manager having exempt status is that the presumption of concertedness that would normally apply under paragraph (5) of the definition of “acting in concert” where the corporate finance or broking division of the group of which it forms part is acting for an offeror or the offeree company is rebutted.

12.2 Although recognised intermediary status will be separate from exempt status, the Code Committee proposes that a number of features of the recognised intermediary regime will be similar to the exempt regime. For example, the Code Committee proposes:

(a) that desks which wish to be granted recognised intermediary status must apply to the Panel;

- (b) that the Panel may require that the desk comply with certain requirements as a condition of granting the status;
- (c) that recognised intermediary status will be relevant only for the purposes of the Code, and specifically in order to determine the desks which benefit from the dispensations referred to in paragraphs 9.4 and 11.1 above, provided that they are acting in their capacity as recognised intermediaries and that their recognised intermediary status has not fallen away;
- (d) that where a recognised intermediary is not acting in that capacity, any dealings by it will be subject to the provisions of the Code as normal – in other words, the dispensations afforded by recognised intermediary status will not apply; and
- (e) that any dealings carried out by a recognised intermediary for the purpose of avoiding the usual application of the Code to such dealings will constitute a serious disciplinary matter and could lead to the withdrawal of recognised intermediary status.

12.3 In relation to paragraph 12.2(c) above, the Code Committee believes that recognised intermediary status should fall away in the following circumstances:

- (a) where the recognised intermediary is a principal trader connected with the offeror or the offeree company (for example, if the offer is being made by the principal trader's group or funds controlled by the group), the Code Committee believes that, by analogy with exempt status, the dispensation referred to in paragraph 9.4 above (i.e. that its interests as a result of positions in derivatives or options will not be taken into account in establishing whether it, or the group of which it forms part, is interested in 30% or more of a company's shares carrying voting rights) should not apply after the time at which the principal trader is presumed to be acting in concert with an offeror or potential offeror pursuant to Rule 7.2(a) or with the directors of the offeree company pursuant to Rule 7.2(b). Consistent with Rule 7.2(c), the Code

Committee believes that where the recognised intermediary is, or is part of, an exempt principal trader which is connected for the sole reason that it is controlled by, controls or is under the same control as a connected adviser, recognised intermediary status should not fall away; and

- (b) where the recognised intermediary is an associate of the offeror or the offeree company, the Code Committee believes that the dispensation referred to in paragraph 11.1 above (i.e. the exception from disclosure in respect of interests and dealings in relevant securities under Rule 8.3(d)) should not apply after the commencement of the offer period or, in the case of an associate of an offeror, after the identity of the offeror is publicly announced. The Code Committee believes that, as is currently the case, dealings by such associates should be disclosed under Rule 8.1, subject to dealings by exempt principal traders being disclosed under Rule 38.5 (see also paragraphs 14.5 to 14.11 below).

- 12.4 The Code Committee has considered whether one of the features of recognised intermediary status should be the imposition of limits on the size of the positions which a recognised intermediary desk can take in relevant securities of an offeror or offeree company, such that the disclosure of dealings would be required in the event that such limits were to be exceeded. The Code Committee is not proposing that such limits should be one of the features of recognised intermediary status at this stage. However, it intends to keep this issue under review and does not rule out the introduction of such limits, or other additional features, at a future date.

Q.11 Do you agree with the proposed features of recognised intermediary status referred to above?

13. Proposed amendments

- 13.1 In the light of the above, the Code Committee proposes to make the following amendments to the Code:

- (a) to introduce a new definition of “recognised intermediary” as follows:

“Recognised intermediary

A recognised intermediary is that part of the trading operations of a bank or securities house which is accepted by the Panel as a recognised intermediary for the purposes of the Code and is acting in its capacity as such.

NOTES ON RECOGNISED INTERMEDIARY

1. If any part of the trading operations of a bank or securities house wishes to be accepted by the Panel as a recognised intermediary, it must apply to the Panel to be granted such status and it will have to comply with any requirements imposed by the Panel as a condition of its granting such status.

2. Recognised intermediary status is relevant only for the purposes of Note 17 on Rule 9.1, Note 1(c) on Rule 7.2 and Rule 8.3(d). As a result, subject to Note 3 below, a recognised intermediary will not be treated, for the purpose of Rule 9.1, as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities, nor will any dealings by it in relevant securities during an offer period be required to be publicly disclosed under Rules 8.3(a) to (c).

3. Where a recognised intermediary is, or forms part of, a principal trader connected either with an offeror or potential offeror or with the offeree company, the recognised intermediary will not benefit from the dispensations afforded by Note 17 on Rule 9.1 and Note 1(c) on Rule 7.2 after the time at which the principal trader is presumed to be acting in concert with either the offeror or potential offeror or with the directors of the offeree company (as the case may be) in accordance with Rule 7.2(a) and Rule 7.2(b) respectively.

Where a recognised intermediary is, or forms part of, an associate of the offeree company, it will not benefit from the exception from disclosure afforded by Rule 8.3(d) after the commencement of the offer period. Where a recognised intermediary is an associate of an offeror or potential offeror, it will not benefit from the exception from disclosure afforded by Rule 8.3(d) after the identity of the offeror or potential offeror of which it is an associate is publicly announced. After such time, dealings should be disclosed under Rule 8.1(a) or, if the recognised intermediary is, or forms part of, an exempt principal trader whose exempt status has not fallen away, Rule 38.5(a).

For the avoidance of doubt, where a recognised intermediary is, or forms part of, an exempt principal trader, its recognised intermediary status will fall away only if its exempt status falls away.

4. Any dealings by a recognised intermediary which is not acting in that capacity will not benefit from the dispensations afforded by Note 17 on Rule 9.1, Note 1(c) on Rule 7.2 and Rule 8.3(d) with the result that all

dealings by it will be subject to the provisions of the Code as if those dispensations did not apply.

5. Any dealings carried out by a recognised intermediary for the purpose of avoiding the usual application of the Code to such dealings will constitute a serious breach of the Code. If the Panel determines that a recognised intermediary has carried out such dealings, it will be prepared to rule, inter alia, that recognised intermediary status should be withdrawn for such period of time as the Panel may consider appropriate in the circumstances.”;

- (b) to amend Note 17 on Rule 9.1 as follows (and to make equivalent amendments to Note 1(c) on Rule 7.2, as set out in Appendix A to this PCP):

“17. Aggregation of holdings across a group and recognised intermediaries

Rule 9 will be relevant if the aggregate ~~number holdings~~ of shares in which of all persons under the same control# (including any exempt fund manager or exempt principal trader) are interested carry 30% or more of the voting rights of a company. However, provided that recognised intermediary status has not fallen away (see Note 3 on the definition of recognised intermediary), a recognised intermediary acting in that capacity will not be treated as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities for these purposes.

~~Notwithstanding this, if~~ If such a group of persons includes a principal trader and the ~~group’s~~ aggregate ~~number holding~~ of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period and the ~~holding of number of shares which~~ the principal trader holds does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.

#See Note at end of Definitions Section.”;

- (c) to amend Rule 8.3(d) as follows:

“(d) Rules 8.3(a) to (c) does not apply to ~~principal traders~~ recognised intermediaries acting in that capacity (see Note 9 below).”; and

- (d) to amend Note 9 on Rule 8 as follows:

“9. ~~Principal traders~~ Recognised intermediaries

~~Except with the consent of the Panel, the exception in relation to principal traders for Rule 8.3(d) is only available to principal traders who were recognised market makers in any security prior to the introduction of the Stock Exchange Electronic Trading Service.~~

The exception in relation to ~~principal traders~~ recognised intermediaries must not be used to avoid or delay disclosure of dealings. For example, purchases of relevant securities by a ~~principal trader~~ recognised intermediary backed by a firm commitment by a person to purchase the relevant securities from the ~~principal trader~~ recognised intermediary will be regarded as purchases by that person. A commitment may effectively be firm even if not legally binding, for example because of market practice. Such arrangements, therefore, should not be entered into unless appropriate disclosures are to be made. In addition, if such an arrangement is entered into with an offeror or a person acting in concert with the offeror, it might mean that the ~~principal trader~~ recognised intermediary is acting in concert with the offeror and normal concert party consequences might follow (such as the application of Rules 4, 5, 6, 7, 9, 11 and 24 and disclosure of dealings by the ~~principal trader~~ recognised intermediary under Rule 8.1).

Exempt principal traders connected with an offeror or the offeree company should, subject to the above, disclose dealings in the manner set out in Rule 38.5. Recognised intermediaries which are associates of the offeror or the offeree company and to which exempt status is not applicable should disclose dealings under Rule 8.1.”.

Q.12 Do you agree with the proposed amendments to the Code referred to above to take account of the introduction of recognised intermediary status?

SECTION D**RULE 38****14. Dealings by exempt principal traders**

14.1 Paragraph 11.2 of PCP 2005/1 stated as follows:

“... [T]he Code Committee believes that the exemption from disclosure for market-makers and principal traders under Rule 8.3(d) should continue to apply. As a result, save as set out below, organisations which qualify for this exemption should continue to be able to provide liquidity and to write derivative and option business and hedge any positions thereby incurred without being required to disclose either the derivative transaction or the hedging transaction publicly under Rule 8.3. However, if the market-maker or principal trader is connected to the offeror or offeree company, then it will be presumed to be acting in concert with that party unless it benefits from exempt status. Accordingly, in each case, the usual consequences under the Code will apply – that is to say, if the principal trader benefits from exempt status, the restrictions and requirements of Rule 38 will apply and, if it does not, any dealings by it will be treated as dealings by a person acting in concert with the party with which it is connected. ...”.

(a) Rules 38.1 to 38.4

14.2 The Code Committee continues to believe that, following the adoption of the changes proposed in this PCP, Rule 38 should continue to apply as at present, save for the amendments to Rule 38.5 proposed in paragraph 14.10 below.

14.3 Therefore if, for example, an exempt principal trader (“EPT”) connected with an offeror holds offeree company relevant securities in order to hedge a derivative or option contract to which it is party, then those securities would continue to be subject to the restrictions in Rule 38. In particular, the hedge securities could neither be assented to the offer until it was unconditional as to acceptances nor voted in the context of the offer, on account of Rules 38.3 and

38.4 respectively. Similarly, if the offeror or any person acting in concert with it proposes to enter into a transaction with a person who has a synthetic position in relevant securities, care should be taken to ensure that the relevant securities in question do not in fact originate from an EPT connected with the offeror, since dealing as principal with such an EPT would breach Rule 38.2.

- 14.4 The Code Committee considers that it would be prudent to retain the restrictions in Rule 38 in respect of dealings and actions by connected EPTs to hedge their exposure to derivatives and options which they have written and is therefore proposing not to make any amendments to Rules 38.1 to 38.4.

Q.13 Do you agree with the Code Committee’s proposal not to amend Rules 38.1 to 38.4?

(b) Rule 38.5

- 14.5 In principle, any part of an organisation’s principal trading operations may apply for exempt status. This was confirmed in paragraph 1.5 of RS 2004/3 which also stated as follows:

“... The grant of exempt status is dependent on a number of factors, but the principal factor to which the Panel has regard is the ability of the relevant part of the principal trading operations to demonstrate its independence from the corporate finance operations within its organisation. It is no longer a requirement for that part of the principal trading operations to demonstrate that its trading activities provide market liquidity.”.

- 14.6 Rule 38.5 specifies the details which must be disclosed when an EPT deals in relevant securities during an offer period. Rule 38.5 provides as follows:

“38.5 DISCLOSURE OF DEALINGS

Dealings in relevant securities during the offer period by an exempt principal trader connected with an offeror or the offeree company should be aggregated and disclosed to a RIS and the Panel not later than 12 noon

on the business day following the date of the transactions, stating the following details:

- (i) total acquisitions and disposals;**
- (ii) the highest and lowest prices paid and received; and**
- (iii) whether the connection is with an offeror or the offeree company.**

In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5 on Rule 8).”.

14.7 Note 4 on Rule 38.5 cross-refers to Note 9 on Rule 8, the final paragraph of which confirms that an EPT should disclose dealings in the manner set out in Rule 38.5.

14.8 The Code Committee understands that one issue that arose in the course of the Panel’s review of the principal trading activities of investment banks and securities houses described in paragraph 11.8 above is the question of what details should be disclosed under Rule 38.5 when a trading desk of a connected EPT deals in relevant securities but does not benefit from the exception from disclosure in Rule 8.3(d). This is illustrated by the following two examples involving a proprietary trading desk of bank X which holds 1% of a class of relevant securities of offeree company Z and which has been granted EPT status but does not benefit from the exception under Rule 8.3(d):

Example 1

The corporate finance division of X is acting as financial adviser to offeror Y on its offer for Z. X is therefore connected with Y. If X’s proprietary trading desk deals in relevant securities of Z, it is required to disclose summary details of the dealings as an EPT under the current Rule 38.5 but is not required to disclose any details of its positions in relevant securities of Z following the dealings (as it would had it been disclosing under Note 5(a) on Rule 8).

Example 2

X has no connection with either party in relation to Y’s offer for Z. X’s EPT status therefore has no relevance to that offer. If X’s proprietary trading desk

deals in relevant securities of Z, it is required to disclose full details of the dealings under Rule 8.3(a) and Note 5(a) on Rule 8, including full details of its positions in relevant securities of Z following the dealings.

14.9 The Code Committee considers that a proprietary trading desk should not be subject to a less onerous disclosure obligation where it is connected with a party to an offer (as in Example 1) than where it is not so connected (as in Example 2). The reason why Rule 38.5, when it was introduced, did not require an EPT to disclose details of its positions in relevant securities was to protect the intermediary function of the EPT. However, this reason does not apply to the proprietary trading desk of an EPT. Accordingly, the Code Committee believes that all details required pursuant to Note 5(a) on Rule 8 should be disclosed where a trading desk of a connected EPT does not benefit from the exception under Rule 8.3(d), i.e. if the trading desk does not have “recognised intermediary” status (see Section C above).

14.10 The Code Committee is therefore proposing:

(a) to amend Rule 38.5 as follows:

“38.5 DISCLOSURE OF DEALINGS

Dealings in relevant securities during the offer period by an exempt principal trader connected with an offeror or the offeree company should be aggregated and disclosed to a RIS and the Panel not later than 12 noon on the business day following the date of the transactions, stating the following details:

(a) if the relevant trading desk is a recognised intermediary:

(i) total acquisitions and disposals; and

(ii) the highest and lowest prices paid and received; and

~~(iii) whether the connection is with an offeror or the offeree company~~

(b) if the relevant trading desk is not a recognised intermediary, the details required under Note 5(a) on Rule 8.

In each case, it should be stated whether the connection is with an offeror or the offeree company. In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5 on Rule 8).”; and

- (b) to delete Note 3 on Rule 38.5, which would become superfluous.

14.11 As a result of the proposed changes to the disclosures required under Rule 38.5:

- (a) the current Form 38.5 will become Form 38.5(a); and
- (b) a new Form 38.5(b) and a new Supplemental Form 38.5(b) will be introduced.

14.12 A summary of the proposed application of recognised intermediary status is set out in Appendix B to this PCP. The three forms referred to in paragraph 14.11 above, and the Notes on Forms 38.5(a) and 38.5(b), are set out in Appendix C to this PCP.

Q.14 Do you agree with the proposed amendments to Rule 38.5?

Q.15 Do you have any comments on Form 38.5(a), Form 38.5(b) or Supplemental Form 38.5(b)?

SECTION E
OTHER PROVISIONS

15. Rule 4, Rule 7.2(b) and Note 5 on Rule 7.2

15.1 In paragraph 20 of PCP 2005/2, the Code Committee stated that it would address points relating to Rule 4 in this PCP.

15.2 Rule 4.1(a) refers to “**dealings ... in securities of the offeree company (including options and derivatives in respect of or referenced to such securities)**”. Similar references to such dealings occur in Notes 4 and 5 on Rules 4.1 and 4.2, Rules 4.4(i) and (ii), and Rule 7.2(b).

15.3 Paragraphs (b) and (e) of the new definition of “dealings” introduced by RS 2005/2 provide that a dealing includes the following:

“(b) the taking, granting, acquisition, disposal, entering into, closing out, termination, exercise (by either party) or variation of an option (including a traded option contract) in respect of any securities”; and

“(e) the acquisition of, disposal of, entering into, closing out, exercise (by either party) of any rights under, or variation of, a derivative referenced, directly or indirectly, to securities”.

15.4 The Code Committee therefore believes that the references to options and derivatives in each of Rule 4.1(a), Notes 4 and 5 on Rules 4.1 and 4.2, Rules 4.4(i) and (ii), and Rule 7.2(b) are redundant and is proposing to amend those provisions, as set out in Appendix A to this PCP.

15.5 Similarly:

(a) Note 3 on Rules 4.1 and 4.2 refers to circumstances “*whereby offeree company securities are purchased (which would include entering into options in respect of or derivatives referenced to securities of the offeree company)*”; and

(b) Note 5 on Rule 7.2 refers to circumstances where “*relevant securities in the offeree company (including options in respect of and derivatives referenced to such relevant securities) held by the offeror or potential offeror and persons acting in concert with it ... carry or relate to in aggregate 30% or more of the voting rights of the offeree company*”.

15.6 In the light of the amendments proposed in paragraph 4.25(a) above, and since the definition of “interests in securities” introduced by RS 2005/2 includes interests arising by virtue of options or derivatives, the Code Committee believes that the references to options and derivatives in Note 3 on Rules 4.1 and 4.2 and in Note 5 on Rule 7.2 are redundant and is therefore proposing to amend those Notes as set out in Appendix A to this PCP.

15.7 In addition, as a consequence of the amendments proposed elsewhere in this PCP, the Code Committee is proposing to amend Rules 4.2(a) and (b) and Notes 2 and 6 on Rules 4.1 and 4.2, as set out in Appendix A to this PCP.

Q.16 Do you agree with the proposed amendments to Rules 4 and 7.2?

SECTION F
COST/BENEFIT IMPLICATIONS

The Code Committee believes that the reforms proposed in this PCP should benefit market participants by ensuring that the Code's requirements relating to the passing of control may not be avoided through the use of derivatives and options, and should not lead to material new costs for the market. Indeed, the new "recognised intermediary" status outlined in Section C above is being introduced specifically to ensure that the reforms do not place an unnecessary burden on market participants. Further, the Code Committee considers that, by establishing this status as the criterion for eligibility for the exception from disclosure under Rule 8.3(d), existing Panel practice will be clarified to the benefit of those concerned.

APPENDIX A
Proposed amendments to the Code

DEFINITIONS

Acting in concert

...

Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition by any of them of interests in shares in a company, to obtain or consolidate control (as defined below) of that company.

...

(5) a connected adviser with its client and, if its client is acting in concert with an offeror or with the directors of the offeree company, with that offeror or with those directors respectively, in each case in respect of the interests in shares shareholdings of that adviser and persons controlling[#], controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or an exempt principal trader); and

...

NOTES ON ACTING IN CONCERT

...

4. *Standstill agreements*

Agreements between a company, or the directors of a company, and a person shareholder which restrict that person the shareholder or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing the number of shares in which he or they are interested shareholdings, may be relevant for the purpose of this definition. In cases of doubt, the Panel should be consulted.

...

Cash ~~purchases~~ acquisitions

~~Purchases~~ Acquisitions for cash include contracts or arrangements where the consideration consists of a debt instrument capable of being redeemed in less than 3 years.

...

Control

Control means an interest, or interests, in a holding, or aggregate holdings, of shares carrying in aggregate 30% or more of the voting rights (as defined below) of a company, irrespective of whether such interest or interests give the holding or holdings gives de facto control.

...

Interests in securities

...

In particular, a person will be treated as having an interest in securities if:-

...

(4) ... and

(5) in the case of Rule 5 only, he has received an irrevocable commitment in respect of them.

NOTES ON INTERESTS IN SECURITIES

...

4. *Securities borrowing and lending*

If a person has borrowed or lent securities, he will normally be treated as interested in any securities which he has lent but (except in the circumstances set out in Note 18 on Rule 9.1) will not normally be treated as interested in any securities which he has borrowed.

...

9. Acquisitions of interests in securities

(a) References to a person acquiring an interest in securities include any transaction or dealing (including the variation of the terms of an option in respect of, or derivative referenced to, securities) which results in an increase in the number of securities (including, where relevant, securities which have been assented to an offer) in which the person is treated as interested.

(b) A person will not be treated as acquiring an interest in securities which are the subject of an irrevocable commitment received by him as a result only of paragraph (3) of the definition of interests in securities.

(c) The Panel should be consulted if an offeror or any person acting in concert with it proposes to enter into a conditional share sale and purchase agreement or option in the context of the offer.

...

Offer period

Offer period means the period from the time when an announcement is made of a proposed or possible offer (with or without terms) until the first closing date or, if this is later, the date when the offer becomes or is declared unconditional as to acceptances or lapses. An announcement that ~~a holding an interest, or aggregate holdings interests, of~~ in shares carrying in aggregate 30% or more of the voting rights of a company is for sale or that the board of a company is seeking potential offerors will be treated as the announcement of a possible offer. (See also Rule 12.2 regarding competition reference periods.)

...

~~Purchases or other acquisitions of shares~~

~~Purchases or other acquisitions of shares, where relevant, include purchases of shares assented to an offer.~~

Recognised intermediary

A recognised intermediary is that part of the trading operations of a bank or securities house which is accepted by the Panel as a recognised intermediary for the purposes of the Code and is acting in its capacity as such.

NOTES ON RECOGNISED INTERMEDIARY

1. If any part of the trading operations of a bank or securities house wishes to be accepted by the Panel as a recognised intermediary, it must apply to the Panel to be granted such status and it will have to comply with any requirements imposed by the Panel as a condition of its granting such status.

2. Recognised intermediary status is relevant only for the purposes of Note 17 on Rule 9.1, Note 1(c) on Rule 7.2 and Rule 8.3(d). As a result, subject to Note 3 below, a recognised intermediary will not be treated, for the purpose of Rule 9.1, as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities, nor will any dealings by it in relevant securities during an offer period be required to be publicly disclosed under Rules 8.3(a) to (c).

3. Where a recognised intermediary is, or forms part of, a principal trader connected either with an offeror or potential offeror or with the offeree company, the recognised intermediary will not benefit from the dispensations afforded by Note 17 on Rule 9.1 and Note 1(c) on Rule 7.2 after the time at which the principal trader is presumed to be acting in concert with either the offeror or potential offeror or with the directors of the offeree company (as the case may be) in accordance with Rule 7.2(a) and Rule 7.2(b) respectively.

Where a recognised intermediary is, or forms part of, an associate of the offeree company, it will not benefit from the exception from disclosure afforded by Rule 8.3(d) after the commencement of the offer period. Where a recognised intermediary is an associate of an offeror or potential offeror, it will not benefit from the exception from disclosure afforded by Rule 8.3(d) after the identity of the offeror or potential offeror of which it is an associate is publicly announced. After such time, dealings should be disclosed under Rule 8.1(a) or, if the recognised intermediary is, or forms part of, an exempt principal trader whose exempt status has not fallen away, Rule 38.5(a).

For the avoidance of doubt, where a recognised intermediary is, or forms part of, an exempt principal trader, its recognised intermediary status will fall away only if its exempt status falls away.

4. Any dealings by a recognised intermediary which is not acting in that capacity will not benefit from the dispensations afforded by Note 17 on Rule 9.1, Note 1(c) on Rule 7.2 and Rule 8.3(d) with the result that all dealings by it will be subject to the provisions of the Code as if those dispensations did not apply.

5. Any dealings carried out by a recognised intermediary for the purpose of avoiding the usual application of the Code to such dealings will constitute a serious breach of the Code. If the Panel determines that a recognised intermediary has carried out such dealings, it will be prepared to rule, inter alia, that recognised intermediary status should be withdrawn for such period of time as the Panel may consider appropriate in the circumstances.

...

~~Rights over shares~~

~~Rights over shares include any rights acquired by a person by virtue of an agreement to purchase shares or an option to acquire shares or an irrevocable commitment to accept an offer to be made by him or an agreement to acquire voting rights or general control of them. A futures contract or covered warrant for which exercise includes the possibility of delivery of the underlying securities is treated as an option.~~

...

Treasury shares

All ~~percentage holdings~~ percentages of voting rights, share capital and relevant securities are to be calculated by reference to the relevant percentage held and in issue outside treasury. A transfer or sale of shares by a company from treasury will normally be treated in the same way as an issue of new shares.

...

Rule 2.2

2.2 WHEN AN ANNOUNCEMENT IS REQUIRED

...

(b) immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Rule 9. The announcement that an obligation has been incurred should not be delayed while full information is being obtained; additional information can be the subject of a later supplementary announcement;

...

(f) when a purchaser is being sought for an interest~~holding~~, or interests~~aggregate holdings~~, of in shares carrying in aggregate 30% or more of the voting rights of a company or when the board of a company is seeking one or more potential offerors, and:

...

Rule 2.8

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

...

(a) announce an offer or possible offer for the offeree company (including a partial offer which would result in the offeror being interested in ~~holding~~ shares carrying 30% or more of the voting rights of the offeree company);

(b) acquire any interest in shares of the offeree company if any such person would thereby become obliged under Rule 9 to make an offer;

(c) acquire any interest in, or procure an irrevocable commitment in respect of, shares of the offeree company ~~or any rights over such shares if the shares and rights over shares held by any in which~~ such person, together with any persons acting in concert with him, would be interested and the shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;

...

Rule 3.1**3.1 BOARD OF THE OFFEREE COMPANY**

...

NOTES ON RULE 3.1

1. Management buy-outs and offers by ~~controllersecontrolling~~
~~shareholders~~

The requirement for competent independent advice is of particular importance in cases where the offer is a management buy-out or similar transaction or is being made by the existing controller or group of controllersecontrolling shareholder or group of shareholders. ...

...

Rule 3.2**3.2 BOARD OF AN OFFEROR COMPANY**

...

NOTES ON RULE 3.2

...

3. *Conflicts of interest*

A conflict of interest will exist, for instance, when there are significant cross-shareholdings between an offeror and the offeree company, when there are a number of directors common to both companies or when a person has ~~is~~ a substantial interest ~~shareholder~~ in both companies.

Rule 4

**SECTION E. ~~DEALINGS AND RESTRICTIONS ON~~ DEALINGS THE
ACQUISITION OF
SHARES AND RIGHTS OVER SHARES**

RULE 4

...

4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR

(a) No dealings of any kind in securities of the offeree company ~~(including options and derivatives in respect of or referenced to such securities)~~ by any person, not being the offeror, who is privy to confidential price-sensitive information concerning an offer or contemplated offer may take place between the time when there is reason to suppose that an approach or an offer is contemplated and the announcement of the approach or offer or of the termination of the discussions.

...

4.2 RESTRICTION ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES

(a) During an offer period, the offeror and persons acting in concert with it must not sell any securities in the offeree company except with the prior consent of the Panel and following 24 hours public notice that such sales might be made. The Panel will not give consent for sales where a mandatory offer under Rule 9 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it may acquire an interest in any securities of the offeree company ~~make further purchases~~ and only in exceptional circumstances will the Panel permit the offer to be revised. The Panel should be consulted whenever the offeror or a person acting in concert with it proposes to enter into or close out any type of transaction which may result in securities in the offeree company being sold during the offer period either by that party or by the counterparty to the transaction.

(b) During an offer period, the offeror and persons acting in concert with it must not acquire an interest in any securities of ~~purchase any securities in~~ the offeree company through any anonymous order book system, or through any other means, unless, in either case, it can be established that the seller, or other party to the transaction in question, is not an exempt principal trader connected with the offeror. In the case of dealings through an inter-dealer broker or other similar intermediary, “seller” includes the person who has transferred the securities to the intermediary as well as the intermediary itself.

...

NOTES ON RULES 4.1 and 4.2

...

2. *Consortium offers and joint offerors*

...

The Panel must be consulted before any acquisitions of interests in ~~purchases of~~ offeree company securities are made by members or potential members of a consortium. If there are existing interests in ~~holdings of~~ such securities, it will be necessary to satisfy the Panel that they were acquired before the consortium was formed or contemplated.

It will not normally be acceptable for members of a consortium to acquire interests in ~~purchase such~~ offeree company securities unless there are, for example, when a consortium company is to be the offeror, appropriate arrangements to ensure that such acquisitions ~~purchases~~ are made proportionate to members' interests in the consortium company or under arrangements which give no profit to the party making the acquisition ~~purchaser~~. The Panel will also be concerned to ensure that the purposes of the Code are not avoided through characterising persons acting in concert as joint offerors.

3. No-profit arrangements

Arrangements made by a potential offeror with a person acting in concert with it, whereby interests in offeree company securities are acquired ~~purchased~~ (~~which would include entering into options in respect of or derivatives referenced to securities of the offeree company~~) by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. ...

4. When an offer will not proceed

If, after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, the discussions are terminated or the offeror decides not to proceed with an offer, no dealings in securities (~~including options and derivatives in respect of or referenced to such securities~~) of the offeree company or, where relevant, the offeror, by the offeror or by any person privy to this information may take place prior to an announcement of the position.

5. No dealing contrary to published advice

Directors and financial advisers to a company who have interests in ~~own~~ securities in that company must not deal in such securities (~~including options and derivatives in respect of or referenced to such securities~~) contrary to any advice they have given to shareholders, or to any advice with which it can reasonably be assumed that they were associated, without giving sufficient public notice of their intentions together with an appropriate explanation.

6. Discretionary fund managers and principal traders

~~Sales of~~ Dealings in securities of the offeree company by non-exempt discretionary fund managers and principal traders which are connected with the offeror will be treated in accordance with Rule 7.2.

...

4.4 DEALINGS IN OFFEREE SECURITIES BY CERTAIN OFFEREE COMPANY ASSOCIATES

...

(i) either for its own account or on behalf of discretionary clients ~~purchase~~ acquire any interest in offeree company shares ~~or deal in derivatives referenced to, or options in respect of, such shares; or~~

(ii) make any loan to a person to assist him in ~~making~~ acquiring any such interest ~~purchases or carrying out any such dealings~~ save for lending in the ordinary course of business and on normal commercial terms to persons with which they have an established customer relationship; or

...

Rule 5

RULE 5. TIMING RESTRICTIONS ON ACQUISITIONS

NB For the purposes of this Rule 5 only, the number of shares in which a person will be treated as having an interest includes any shares in respect of which he has received an irrevocable commitment (see paragraph (5) of the definition of interests in securities).

5.1 RESTRICTIONS

Except as permitted by Rule 5.2:-

(a) when a person (which for the purpose of Rule 5 includes any persons acting in concert with him) is interested in shares ~~holds shares or rights over shares~~ which in the aggregate carry less than 30% of the voting rights of a company, he may not acquire ~~any~~ an interest in any other shares carrying voting rights in that company ~~or any rights over such shares~~ which, when aggregated with the shares in which he is already interested ~~or rights over shares which he already holds~~, would carry 30% or more of the voting rights; and

(b) when a person is interested in shares ~~or rights over shares~~ which in the aggregate carry 30% or more of the voting rights of a company but does not hold shares which carry more than 50% of the voting rights, he may not acquire ~~any~~ an interest in any other shares carrying voting rights in that company ~~or any rights over such shares~~. See Note 75.

NOTES ON RULE 5.1

[The Code Committee has today published PCP 2005/4 which proposes, amongst other matters, the deletion of Note 2 on Rule 5.1. If the proposals set out in PCP 2005/4 are not adopted or are modified, the relevant Notes on Rule 5.1 will be renumbered accordingly.]

...

~~3. — Options over existing shares~~

~~The exercise of options over existing shares is not restricted by this Rule or Rule 5.3.~~

~~42.~~

~~53. Allotted but unissued shares~~

~~When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. This Rule may apply to the acquisition of an interest in such shares as it would in the case of an acquisition of an interest in registered shares.~~

~~64. “Whitewashes”~~

~~This Rule does not prohibit a person from obtaining a holding of an interest in shares carrying 30% or more of the voting rights in accordance with Note 1 of the Notes on Dispensations from Rule 9.~~

~~75. Maintenance of the percentage holding of the shares in which a person is interested~~

~~The restrictions in this Rule do not apply to an acquisition of an interest in shares or rights over shares which would not increase the percentage of the shares carrying voting rights in which held by that person is interested, e.g. if a shareholder takes up his entitlement under a fully underwritten rights issue or if a person acquires shares on exercise of a call option.~~

~~86. ...~~

~~97. Gifts~~

~~The restrictions imposed by this Rule do not apply to the receipt of gifts. If a person receives a gift of shares or an interest in shares which takes his holding of shares carrying voting rights ~~the aggregate number of shares carrying voting rights in which he is interested~~ to 30% or more, he must consult the Panel. Such a person would not normally be required to make an~~

offer under Rule 9 but would (after receipt of the gift) be subject to Rule 5.1(b) and Rule 9.1(b).

5.2 EXCEPTIONS TO RESTRICTIONS

The restrictions in Rule 5.1 do not apply to an acquisition of an interest in shares carrying voting rights in a company, or rights over such shares, by a person:-

(a) at any time from a single shareholder if it is the only such acquisition within any period of 7 days (see also Rules 5.3 and 5.4). This exception will not apply:

(i) to an acquisition of an interest in shares as a result of the acquisition, entering into, or variation of, a derivative; or

(ii) when the person has announced a firm intention to make an offer and the posting of the offer is not subject to a pre-condition; or

...

NOTES ON RULE 5.2

1. Single shareholder

For the purpose of Rule 5.2(a), a number of shareholders ~~wishing to dispose of their shares or rights over their shares~~ will be regarded as a single shareholder only if they are all members of the same family or of a group of companies which is regarded as one for disclosure purposes under Section 203(2) to (4) of the Companies Act 1985. ...

2. Rule 9

An acquisition permitted by Rule 5.2 may result in an obligation to make an offer under Rule 9, in which case an immediate announcement of such an offer must be made. ~~Where the acquisition is of rights over shares, the provisions of Notes 11 and 13 on Rule 9.1 may be relevant and the Panel should be consulted in cases of doubt.~~

...

5.3 ACQUISITIONS FROM A SINGLE SHAREHOLDER - CONSEQUENCES

A person who ~~makes an acquisition~~ acquires an interest in shares from a single shareholder permitted by ~~paragraph (a) of Rule 5.2(a)~~ may not ~~make any further acquisitions of~~ acquire an interest in any other shares carrying voting rights in a company, ~~or rights over such shares~~, except in the circumstances set out in Rule 5.2(b), (c), (d) and (e). If that person

makes an offer for the company which subsequently lapses, this restriction will cease to apply.

NOTES ON RULE 5.3

1. *If a person's interests are ~~holding is reduced~~*

A person who is restricted by this Rule from making further acquisitions will cease to be so restricted if ~~his aggregate holdings of shares and rights over shares~~ the aggregate number of shares carrying voting rights in which he is interested falls below 30% (in which case he will become subject to Rule 5.1(a)).

2. *Rights or scrip issues and "whitewashes"*

The restrictions imposed by this Rule do not prevent a person from receiving his entitlement of shares through a rights or scrip issue as long as he does not increase ~~his the~~ percentage of the shares carrying voting rights in which he is interested. Nor do they prevent a person from acquiring further interests in shares in accordance with the Notes on Dispensations from Rule 9.

5.4 ACQUISITIONS FROM A SINGLE SHAREHOLDER - DISCLOSURE

A person who ~~makes an acquisition of~~ acquires an interest in shares carrying voting rights in a company, or rights over such shares, from a single shareholder permitted by Rule 5.2(a) must notify ~~that acquisition and his consequent total holding of shares and rights over shares to the company, a RIS and the Panel~~, not later than 12 noon on the business day following the date of the acquisition, of details of:

(a) that acquisition; and

(b) any shares of the company in which he 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 Note 5(a) on Rule 8). Similar details of any short position (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. The notification must distinguish between shares and rights over shares, specifying the nature of any rights concerned and giving the relevant numbers and the resulting holding in each case.

...

Rule 6

**RULE 6. ~~ACQUISITIONS PURCHASES~~-RESULTING IN AN
OBLIGATION TO OFFER A MINIMUM LEVEL OF
CONSIDERATION**

**6.1 ~~ACQUISITIONS PURCHASES~~ BEFORE A RULE 2.5
ANNOUNCEMENT**

Except with the consent of the Panel in cases falling under (a) or (b), when an offeror or any person acting in concert with it has acquired an interest in purchased shares in the offeree company:-

...

(b) during the period, if any, between the commencement of the offer period and an announcement made by the offeror purchaser in accordance with Rule 2.5; or

...

the offer to the holders of shares ~~shareholders~~ of the same class shall not be on less favourable terms.

If a ~~purchase of~~ an acquisition of an interest in shares in the offeree company has given rise to an obligation under Rule 11, compliance with that Rule will normally be regarded as satisfying any ~~obligations~~ obligation under this Rule in respect of ~~that acquisition~~ those purchases.

**6.2 ~~ACQUISITIONS PURCHASES~~ AFTER A RULE 2.5
ANNOUNCEMENT**

(a) If, after an announcement made in accordance with Rule 2.5 and before the offer closes for acceptance, an offeror or any person acting in concert with it acquires any interest in ~~purchases~~ shares at above the offer price (being the then current value of the offer), it shall increase its offer to not less than the highest price paid for the interest in shares so acquired.

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

(c) ~~Purchases of~~ Acquisitions of interests in shares in the offeree company may also give rise to an obligation under Rule 11. Where an obligation is incurred under Rule 11 by reason of any such acquisition ~~purchases~~, compliance with that Rule will normally be regarded as satisfying any obligation ~~obligations~~ under this Rule in respect of ~~that acquisition~~ those purchases.

NOTES ON RULE 6

1. *Adjusted terms*

...

(a) *whether the relevant acquisition purchase was made on terms then prevailing in the market;*

(b) *changes in the market price of the shares since the relevant acquisition purchase;*

(c) *the size and timing of the relevant acquisition purchase;*

...

(e) *whether interests in shares have been acquired purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and*

...

2. *Acquisitions Purchases prior to the three month period*

The discretion given to the Panel in Rule 6.1(c) will not normally be exercised unless the vendors, or other parties to the transactions giving rise to the interests, are directors of, or other persons closely connected with, the offeror or the offeree company.

3. *No less favourable terms*

For the purpose of Rule 6.1, except where Rule 9 (mandatory offer) or Rule 11.1 (requirement for cash offer) applies, it will not be necessary to make a cash offer available even if interests in shares have been acquired purchased for cash. However, any securities offered as consideration must, at the date of the announcement of the firm intention to make the offer, have a value at least equal to the highest relevant purchase price paid. If, during the period ending when the market closes on the first business day after the announcement, the value is not maintained, the Panel will be concerned to ensure that the offeror acted with all reasonable care in determining the consideration.

...

4. *Purchase Highest price paid*

For the purpose of this Rule, the price at which shares are purchased paid for an acquisition of an interest in shares will be determined as follows:

(a) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, his broker acting in an agency capacity) and the vendor (or principal trader) is struck;

(b) in the case of an option, the price paid will be treated as the amount payable on exercise of the option together with any amount payable by the option-holder on entering into the option; and

(c) in the case of a derivative, the price paid will normally be treated as the reference price of the underlying securities together with any fee payable on entering into the derivative. However, if the reference price is calculated as the average price of a number of acquisitions by the counterparty of interests in underlying securities, the price paid will normally be determined to be the highest price at which such acquisitions are actually made.

Any stamp duty and broker's commission payable should be excluded. Stamp duty and broker's commission payable by the purchaser are not regarded as part of the purchase price.

The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them.

Where a person acquired an interest in shares more than three months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, during the offer period or within the three month period prior to its commencement, the person acquires the relevant shares at the option exercise price, the derivative reference price or the price provided for in the agreement to purchase, then no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, where the shares are acquired at a different price, or if the relevant price is varied, the adjusted terms will be relevant for the purpose of determining the terms to be offered to holders of shares of the same class. The Panel should be consulted in such cases.

5. Cum dividend

When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, purchases in the market or otherwise by an offeror or any person acting in concert with it may be made at prices up to the net cum dividend equivalent of the offer value without necessitating any revision of the offer. Where the offeror or any person acting in concert with it proposes to acquire an interest in shares in reliance on this Note other than by purchasing shares, the Panel should be consulted.

6. Convertible securities, warrants and options

Acquisitions of ~~Purchases of convertible securities~~ convertible into, warrants in respect of, or options or other ~~subscription~~ rights to subscribe for, new shares will normally only be relevant to this Rule if they are converted or

exercised (as applicable). Such ~~acquisitions purchases~~ will then be treated as if they were ~~acquisitions purchases~~ of the underlying shares at a price calculated by reference to the ~~acquisition purchase~~ price and the relevant conversion or exercise terms. In any case of doubt, the Panel should be consulted.

...

Rule 7.1

7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED

The acquisition of an interest in ~~Purchases of~~ offeree company shares by an offeror or any person acting in concert with it may give rise to an obligation ~~obligations~~ under Rule 6 (requirement to increase offer), Rule 9 (mandatory offer) or Rule 11 (nature of consideration to be offered). Immediately after such an acquisition ~~a purchase~~, an appropriate announcement must be made. Whenever practicable, the announcement should also state the nature of the interest, the number of shares concerned ~~purchased~~ and the price paid.

NOTE ON RULE 7.1

Potential offerors

The requirement of this Rule to make an immediate announcement applies to any publicly announced potential offeror (whether named or not) either where a public indication of the level of its probable offer has been made and the potential offeror or any person acting in concert with it acquires an interest in ~~buys~~ shares above that level or where there already exists an offer from a third party and the potential offeror or any person acting in concert with it acquires an interest in shares ~~buys~~ at above the level of that offer. Disclosure will also be required in accordance with Rule 8.1.

Rule 7.2

7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS

...

(a) Discretionary fund managers and principal traders who, in either case, are connected with an offeror or potential offeror, will not normally be presumed to be acting in concert with that person until its identity as an offeror or potential offeror is publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected.

Rules 5, 6, 9, 11 and 36 will then be relevant to acquisitions of interests in purchases of offeree company securities and Rule 4.2 to sales of offeree company securities by such persons. Rule 4.6 will also be relevant to securities borrowing and lending transactions.

(b) Similarly, discretionary fund managers and principal traders who, in either case, are connected with the offeree company, will not normally be presumed to be acting in concert with the directors of the offeree company until the commencement of the offer period or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company and that it was connected with the offeree company. Rules 4.4, 5 and 9 may then be relevant to purchases of acquisitions of interests in offeree company securities and Rule 4.4 will be relevant to purchases of offeree company shares and dealings in derivatives referenced to, or options in respect of, such shares. Rule 4.6 will also be relevant to securities borrowing and lending transactions.

...

NOTES ON RULE 7.2

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

...

(c) *Rule 9 will, however, be relevant if the aggregate number holdings of shares in which of all persons under the same control# (including any exempt fund manager or exempt principal trader) are interested carry 30% or more of the voting rights of a company. However, provided that recognised intermediary status has not fallen away (see Note 3 on the definition of recognised intermediary), a recognised intermediary acting in that capacity will not be treated as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities for these purposes.*

~~Notwithstanding this, if~~ If such a group of persons includes a principal trader and the group's aggregate number holding of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire interests in further shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period and the holding of number of shares which the principal trader holds does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.

...

3. *Dealings by principal traders*

After a principal trader is presumed to be acting in concert by virtue of Rules 7.2(a) or (b), it may stand down from its dealing activities. In such circumstances, with the prior consent of the Panel, the principal trader may reduce its interest in ~~holding of~~ offeree company securities or offeror securities, or may acquire interests in such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 4.2, 4.4, 5, 6, 9, 11 and 36, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally, pursuant to Rule 4.6, consent to connected principal traders taking action to unwind a securities borrowing or lending transaction in such circumstances. The Panel will not normally require such dealings to be disclosed under Rules 4.6, 8.1(a), 24.3 or 25.3. Any such dealings must take place within a time period agreed in advance by the Panel.

4. Dealings by discretionary fund managers

(a) After a discretionary fund manager is presumed to be acting in concert with an offeror or potential offeror by virtue of Rule 7.2(a), any acquisition by it of any interest in ~~purchases by it of~~ offeree company securities will normally be relevant for Rules 5, 6, 9, 11 and 36. Similarly, any acquisition of any interest in ~~purchases of~~ offeree company securities by a discretionary fund manager after it is presumed to be acting in concert by virtue of Rule 7.2(b) will not normally be permitted by virtue of Rule 4.4(i). However, with the prior consent of the Panel, a discretionary fund manager connected with either the offeree company or an offeror or potential offeror will normally be permitted to acquire an interest in ~~purchase of~~ offeree company securities, with a view to reducing any short position, without such acquisitions ~~purchases~~ being relevant for the purposes of Rules 4.4(i), 5, 6, 9, 11 and 36, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally, pursuant to Rule 4.6, consent to connected discretionary fund managers taking action to unwind securities borrowing transactions in such circumstances. Any such acquisitions ~~purchases~~ or unwinding arrangements must take place within a time period agreed in advance by the Panel and should be disclosed pursuant to Rule 8.1(b)(i) or Note 3 on Rule 4.6, as appropriate.

...

5. Rule 9

The Panel should be consulted if, once the identity of the offeror or potential offeror is publicly known, it becomes apparent that the number of shares in which relevant securities in the offeree company (including options in respect of and derivatives referenced to such relevant securities) held by the offeror or potential offeror and persons acting in concert with it, including any connected discretionary fund managers and principal traders to which Rule 7.2(a) applies, are interested carry ~~or relate to~~ in aggregate 30% or more of the voting rights of the offeree company.

6. Disclosure of dealings in offer documentation

~~Holdings of Interests in relevant securities and dealings (whether before or after the presumptions in Rules 7.2(a) and (b) apply) by connected discretionary fund managers and principal traders (unless exempt) must be disclosed in any offer document in accordance with Rule 24.3 and in any offeree board circular in accordance with Rule 25.3, as the case may be. This will not apply in respect of a dealing that has been permitted by Note 3 above and has not been required to be disclosed.~~

...

Rule 7.3

7.3 PARTIAL OFFERS AND “WHITEWASHES”

~~Purchases of~~ **The acquisition of an interest in offeree company shares by an offeror or any person acting in concert with it may result in the Panel refusing to exercise its discretion to permit a partial offer or to grant a dispensation under Note 1 of the Notes on Dispensations from Rule 9.**

Rule 8

8.3 DEALINGS BY PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE

...

(d) Rules 8.3(a) to (c) does not apply to principal traders recognised intermediaries acting in that capacity (see Note 9 below).

...

NOTES ON RULE 8

...

9. Principal traders Recognised intermediaries

~~Except with the consent of the Panel, the exception in relation to principal traders for Rule 8.3(d) is only available to principal traders who were recognised market makers in any security prior to the introduction of the Stock Exchange Electronic Trading Service.~~

The exception in relation to principal traders recognised intermediaries must not be used to avoid or delay disclosure of dealings. For example, purchases of relevant securities by a principal trader recognised intermediary backed by a firm commitment by a person to purchase the relevant securities from the principal trader recognised intermediary will be regarded as purchases by

that person. A commitment may effectively be firm even if not legally binding, for example because of market practice. Such arrangements, therefore, should not be entered into unless appropriate disclosures are to be made. In addition, if such an arrangement is entered into with an offeror or a person acting in concert with the offeror, it might mean that the ~~principal trader-recognised intermediary~~ is acting in concert with the offeror and normal concert party consequences might follow (such as the application of Rules 4, 5, 6, 7, 9, 11 and 24 and disclosure of dealings by the ~~principal trader-recognised intermediary~~ under Rule 8.1).

Exempt principal traders connected with an offeror or the offeree company should, subject to the above, disclose dealings in the manner set out in Rule 38.5. Recognised intermediaries which are associates of the offeror or the offeree company and to which exempt status is not applicable should disclose dealings under Rule 8.1.

Rule 9.1

9.1 WHEN IT IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

Except with the consent of the Panel, when:-

(a) any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which held or acquired by persons acting in concert with him are interested) carry 30% or more of the voting rights of a company; or

(b) any person ~~who~~, together with persons acting in concert with him, is interested in shares which in the aggregate carry holds not less than 30% but not more than 50% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with him, acquires ~~additional an~~ interest in any other shares which increases his the percentage of the shares carrying voting rights in which he is interested,

such person shall extend offers, on the basis set out in Rules 9.3, 9.4 and 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any class of voting non-equity share capital in which such person or persons acting in concert with him are interested hold shares. Offers for different classes of equity share capital must be comparable; the Panel should be consulted in advance in such cases.

...

NOTES ON RULE 9.1

...

1. ~~Shareholders coming~~ Coming together to act in concert

Acting in concert requires the co-operation of two or more parties. When a party has acquired an interest in shares without the knowledge of other persons with whom he ~~shareholders or potential shareholders but~~ subsequently comes together with other shareholders to co-operate as a group to obtain or consolidate control of a company, and their existing shareholdings ~~the shares in which they are interested at the time of coming together~~ carry amount to 30% or more of the voting rights in that company, the Panel will not normally require a general offer to be made under this Rule. Such parties having once come together, however, the provisions of the Rule will apply so that:

(a) if the shares in which they are interested together carry combined shareholdings amount to less than 30% of the voting rights in that company, an obligation to make an offer will arise if any member of that group acquires an interest in any further shares so that the shares in which they are interested total shareholdings reach together carry 30% or more of such voting rights; or

(b) if the shares in which they are interested together carry combined shareholdings amount to between 30% or more of the voting rights in that company and they do not hold shares carrying more than 50% of the voting rights in that company, no member of that group may acquire an interest in any other shares carrying voting rights in that company which would increase the total percentage shareholding of the group without incurring a similar obligation.

...

2. Collective shareholder action

... Such parties will be presumed to have come into concert once an agreement or understanding is reached between them in respect of a board control-seeking proposal with the result that subsequent acquisitions of interests in purchases of shares by any member of the group could give rise to an offer obligation.

In determining whether a proposal is board control-seeking, the Panel will have regard to a number of factors, including the following:

(a) the relationship between any of the proposed directors and any of the shareholders proposing or supporting them or their supporters. Relevant factors in this regard will include:

(i) whether there is or has been any prior relationship between any of the activist shareholders, or their supporters, and any of the proposed directors;

(ii) *whether there are any agreements, arrangements or understandings between any of the activist shareholders, or their supporters, and any of the proposed directors with regard to their proposed appointment; and*

(iii) *whether any of the proposed directors will be remunerated in any way by any of the activist shareholders, or their supporters, as a result of or following their appointment.*

If, on this analysis, there is no relationship between any of the proposed directors and any of the activist shareholders or their supporters, or if any such relationship is insignificant, the proposal will not be considered to be board control-seeking such that the parties will not be presumed to be acting in concert and it will not be necessary for the factors set out at paragraphs (b) to (f) below to be considered. If, however, such a relationship does exist which is not insignificant, the proposal may be considered to be board control-seeking, depending on the application of the factors set out at paragraph (b) below or, if appropriate, paragraphs (b) to (f) below;

...

(e) *whether any of the activist shareholders, or any of their supporters, will benefit, either directly or indirectly, as a result of the implementation of the proposal other than through its interest in holding ~~of shares~~ in the company; and*

(f) *the relationship between the proposed directors and the existing directors and/or the relationship between the existing directors and the activist shareholders or their supporters.*

In respect of a proposal to replace some or all of the directors and the investment manager of an investment trust company, the relationship between the proposed new investment manager and any of the activist shareholders, or their supporters, will also be relevant to the analysis of the factors set out at paragraph (a) above and, if appropriate, paragraphs (c) to (f) above.

In determining whether it is appropriate for such parties to be held no longer to be acting in concert, the Panel will take account of a number of factors, including the following:

...

(c) *whether there is any evidence of an ongoing struggle between the activist shareholders, or their supporters, and the board of the company;*

...

(e) *the relationship between the activist shareholders, or their supporters, and the proposed/new directors.*

3. Directors of a company

Directors of a company will be presumed to be acting in concert during an offer period or when they have reason to believe that a bona fide offer might be imminent. The normal provisions of this Rule will apply in these circumstances. At other times, directors of a company are not presumed to be acting in concert in relation to control of the company of which they are directors. Subject to the constraints imposed by the Rules, ~~and in particular to the normal application of this Rule to the holdings which each controls,~~ directors are, so far as the Code is concerned, free to deal in the shares of their company. The Panel reserves the right, however, to examine situations closely should the actions of the directors suggest that they may be acting in concert.

If ~~any persons shareholders~~ who have indicated their support for the offeree company's directors against an offer thereafter ~~buy~~ acquire an interest in shares to frustrate the offer, the Panel would consider their position in relation to the directors. The directors of companies defending against an offer, their supporters or their advisers, should consult the Panel before acquiring an interest in ~~the purchase of any shares~~ which might lead to the incurring of an obligation under this Rule.

...

4. Acquisition of interests in shares by members of a group acting in concert

While the Panel accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the membership of such groups may change at any time. This being the case, there will be circumstances when the acquisition of an interest in shares by one member of a group acting in concert from another member will result in the acquirer of the interest in shares having an obligation to make an offer. Whenever ~~the holdings~~ a group acting in concert is interested in shares which together carry total 30% or more of the voting rights in a company and as a result of an acquisition of an interest in shares from another member of the group a single member comes to be interested in shares carrying hold 30% or more or, if already interested in shares carrying holding over 30%, acquires an interest in any other shares carrying voting rights ~~increases his percentage holding~~, the factors which the Panel will take into account in considering whether to waive the obligation to make an offer include:-

(a) *whether the leader of the group or the member with the largest individual shareholding interest in shares has changed and whether the balance between the ~~shareholdings~~ interests in the group has changed significantly;*

(b) *the price paid for the interest in shares acquired; and*

...

When the group is interested in shares carrying ~~holds between 30% or more of the voting rights in a company but does not hold shares carrying more than and 50% of such voting rights,~~ an offer obligation will arise if an interest in any other shares carrying voting rights is acquired ~~there are any acquisitions from non-members of the group.~~ When the group holds shares carrying over 50% of the voting rights in a company, no obligations normally arise from acquisitions by any member of the group. However, subject to considerations similar to those set out in the previous paragraph, the Panel may regard as giving rise to an obligation to make an offer the acquisition by a single member of the group of an interest in shares sufficient to increase the shares carrying voting rights in which he is interested ~~his holding to 30% or more or,~~ if he is already interested in ~~holds 30% or more,~~ which increases the ~~his~~ percentage ~~shareholding of shares carrying voting rights in which he is interested.~~

For the purpose of calculating the highest price paid in the event of an offer under this Rule, the prices paid for an interest in shares acquired by one member ~~transferred between members~~ of a group acting in concert from another may be relevant where, for example, all shares or interests in shares held within a group are ~~acquired by~~ transferred to that member making the offer or where prices paid between members are materially above the market price.

5. Employee Benefit Trusts

The Panel must be consulted in advance of any proposed acquisition of an interest in ~~new or existing~~ shares if the aggregate number of shares in which ~~holdings of the directors, any other shareholders~~ persons acting, or presumed to be acting, in concert with any of the directors and the trustees of an employee benefit trust (“EBT”) are interested will, as a result of the acquisition, equal or exceed ~~carry~~ 30% or more of the voting rights or, if already exceeding ~~carrying~~ 30% or more, will increase further. The Panel must also be consulted in any case where a shareholder person (or group of shareholders persons acting, or presumed to be acting, in concert) holds is interested in shares carrying 30% or more (but does not hold shares carrying more than 50%) of the voting rights and it is proposed that an EBT acquires an interest in any other shares.

The mere establishment and operation of an EBT will not by itself give rise to a presumption that the trustees are acting in concert with the directors and/or a controller ~~controlling shareholder~~ (or group of shareholders persons acting, or presumed to be acting in concert). The Panel will, however, consider all relevant factors including: the identities of the trustees; the composition of any remuneration committee; the nature of the funding arrangements; the percentage of the issued share capital in which ~~held by the EBT is interested;~~ the number of shares held to satisfy awards made to directors; the number of shares in which the EBT is interested ~~held in excess of those required to satisfy existing awards;~~ the prices at which, method by which and persons from whom any interests in existing shares have been or are to be acquired; the

established policy or practice of the trustees as regards decisions to acquire interests in shares or to exercise, or procure the exercise of, votes in respect of shares ~~held by~~ in which the EBT is interested; whether or not the directors themselves are presumed to be in concert; and the nature of any relationship existing between a controller ~~controlling shareholder~~ (or group of ~~shareholders~~ persons acting, or presumed to be acting in concert) and both the directors and the trustees. Its consideration of these factors may lead the Panel to conclude that the trustees are acting in concert with the directors and/or a controller controlling shareholder (or group).

...

6. Vendor of part only of a shareholding an interest in shares

Shareholders sometimes wish to sell part only of their shareholdings or a purchaser may be prepared to purchase part only of a shareholding. This arises particularly where a purchaser wishes to acquire shares carrying just under 30% of the voting rights in a company, thereby avoiding an obligation under this Rule to make a general offer. ...

...

(c) ~~If the parties negotiate options over the retained shares, it may be more difficult for them to satisfy the Panel that a significant degree of control is absent. On the other hand, where~~ Where the retained shares are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms), a ~~correspondingly~~ greater element of independence may be presumed.

...

Similar considerations will arise where the vendor remains interested in shares but without itself owning any of such shares, or where the acquisition is not of the shares themselves but of another type of interest in shares.

7. Placings and other arrangements

When a ~~purchaser~~ person is to acquire an interest in shares which will result in his ~~holding~~ being interested in shares carrying 30% or more of the voting rights of a company, the Panel will consider waiving the requirements of this Rule if firm arrangements are made for the number of shares carrying voting rights in which he is interested to be reduced ~~placing of sufficient shares to reduce the holding~~ to below 30% prior to the acquisition (for example, by a placing of shares) or, in certain exceptional circumstances, if an undertaking is given to make such a reduction ~~placing~~ within a very short period after the acquisition. In all such cases, the Panel must be consulted in advance. The Panel will be concerned to ensure that none of the persons with whom the acquirer enters into transactions in order to reduce his interests ~~places~~ is acting in concert with the acquirer ~~purchaser~~; for example, an obligation under this Rule will not be avoided by placing ~~the~~ shares with a number of

persons having a common link, such as the discretionary clients of a fund manager who would be connected with the acquirer purchaser if he were an offeror (unless, in such circumstances, the fund manager would have exempt status).

8. The chain principle

Occasionally, a person or group of persons acting in concert acquiring shares resulting in a holding of over 50% of the voting rights of a company (which need not be a company to which the Code applies) will thereby acquire or consolidate control, as defined in the Code, of a second company because the first company itself ~~holds~~ is interested, either directly or indirectly through intermediate companies, in a controlling block of shares in the second company, or holds is interested in shares which, when aggregated with those which already held by the person or group is already interested in, secure or consolidate control of the second company. The Panel will not normally require an offer to be made under this Rule in these circumstances unless either:-

(a) the interest in shares which the first company has ~~shareholding~~ in the second company is significant in relation to the first company. In assessing this, the Panel will take into account a number of factors including, as appropriate, the assets and profits of the respective companies. Relative values of 50% or more will normally be regarded as significant; or

...

9. Preference shares with voting rights

An offer for preference shares with voting rights is required under this Rule if the offeror or persons acting in concert with it ~~hold~~ are interested in any such preference shares, since the voting rights attaching to such shares will be taken into account in determining whether an obligation to make an offer arises. The Panel's prior approval of the terms of the offer for the preference shares must be obtained.

10. Triggering Rule 9 during an offer period

...

Subject to Note 3 on Rule 9.3, where no change in the consideration is involved it will be sufficient, following the announcement, simply to notify offeree company shareholders in writing of the new ~~total shareholding number~~ of shares in which the offeror and persons acting in concert with it are interested, of the fact that the acceptance condition (in the form required by Rule 9.3) is the only condition remaining and of the period for which the offer will remain open following posting of the document.

...

11. *Convertible securities, warrants and options*

In general, the acquisition of ~~convertible securities~~ convertible into, warrants in respect of, or options or other rights to subscribe for, new shares does not give rise to an obligation under this Rule to make a general offer but the exercise of any conversion or subscription rights or options will be considered to be an acquisition of an interest in shares for the purpose of the Rule.

~~The taking of an option will, however, normally be regarded as constituting the acquisition of shares giving rise to such an obligation where the relationship and arrangements between the two parties concerned are such that effective control over those shares has passed to the taker of the option.~~

The Panel will not normally require an offer to be made following the exercise of conversion or subscription rights provided that the issue of convertible securities, or rights to subscribe for new shares carrying voting rights, to the person exercising the rights is approved by a vote of independent shareholders in general meeting in the manner described in Note 1 of the Notes on Dispensations from Rule 9. However, if the potential controller proposes to acquire any interest in ~~controlling shareholders propose to purchase or subscribe for~~ further voting shares following the relevant meeting, the Panel should be consulted to establish the number of shares to which the waiver will be deemed to apply.

Where securities with conversion or subscription rights were issued at a time when no offer obligation on exercise of such rights would arise (eg if they were issued before the existence of the Rules of the Code relating to such obligations) and no independent shareholders' approval was obtained, the Panel will consider the case on its merits and will have regard, inter alia, to the votes cast on any relevant resolution, the number of shares concerned ~~size of shareholding involved~~ and the attitude of the board of the company. It is always open to the holder of such rights to dispose of sufficient rights so that, on exercise, the shares in which he would be interested ~~his shareholding~~ would together carry ~~amount to~~ less than 30% of the voting rights in the company. In circumstances where such rights could not be transferred prior to exercise, the Panel would consider waiving the offer obligation arising upon an exercise of rights provided there was an undertaking to reduce the number of shares carrying voting rights in which he would be interested to sell, within a reasonable period of time, sufficient shares to reduce the shareholding below 30% within a reasonable time.

Any holder of conversion or subscription rights who intends to exercise such rights and so to be interested in shares carrying ~~hold~~ 30% or more of the voting rights of a company should consult the Panel before doing so to determine whether an offer obligation would arise under the Rule and if so at what price (see also Note 2(c) on Rule 9.5).

...

12. *The reduction or dilution of a shareholding*

If a ~~person shareholder~~ or a group of ~~shareholders~~ ~~persons~~ acting in concert ~~interested in shares carrying is holding~~ more than 30% of the voting rights of a company reduces its interest but not sells shares but without reducing the ~~holding~~ to less than 30%, such ~~shareholder or shareholders~~ person or persons may subsequently acquire an interest in further shares without incurring an obligation to make a general offer subject to both of the following limitations:

(a) *the total number of shares in which interests may be acquired under this Note in any period of 12 months must not exceed 1% of the voting share capital for the time being (and, in determining the number of shares in which interests have been acquired in any such 12 month period, any reductions in the number of shares in which the person or group is interested ~~sales of shares~~ may not be netted off against ~~purchases or other acquisitions~~); and*

(b) *the percentage of shares in which ~~holding of~~ the relevant ~~person shareholder~~ or group of ~~persons shareholders~~ acting in concert is interested following ~~resulting from any acquisition of shares under this Note~~ must not exceed the highest percentage of shares in which ~~holding of~~ such ~~person shareholder~~ or group of ~~persons shareholders~~ was interested in the previous 12 months.*

Both these restrictions apply, and must be tested, at the time of any ~~purchase acquisition~~ proposed under this Note, and by reference to the position which would result immediately upon implementation of the proposed ~~purchase acquisition~~. On each such occasion, the test must take account of the total issued voting share capital at the relevant time, and total number of shares ~~purchases~~ and highest percentage concerned ~~holding~~ during the immediately preceding twelve months. As a result, it will not be permitted to increase percentage ~~holdings~~ interests progressively from one year to another.

The Panel will regard ~~the a~~ reduction of the percentage of shares in which the person or group is interested as a result of ~~holdings by~~ dilution following the issue of new shares as also being relevant ~~equivalent to sales~~ for these purposes. Accordingly, dilution of an interest in shares carrying voting rights ~~a holding~~ of more than 30% will give rise to the ability to acquire an interest in further shares on the basis set out in this Note provided that the total percentage of shares carrying voting rights in which the person or group is interested ~~shareholding~~ has not been reduced below 30% and subject to the limits stipulated above.

If a shareholding has remained above 50% of the voting rights of a company, or is restored to more than 50% by acquisitions permitted under this Note, further ~~purchases~~ acquisitions are unrestricted by the Rule. Otherwise, a percentage interest in shares carrying voting rights ~~shareholding~~ of more than 30% which is reduced or diluted may not be restored to its original level without giving rise to an obligation to make a general offer except as permitted under this Note. However, nothing in this Note affects or restricts subscriptions for new shares approved by independent shareholders in the

manner outlined in Note 1 of the Notes on Dispensations from Rule 9. Additionally, in the case of dilution following the issue of new shares, the Panel will also consider waiving the requirements of the Rule if an arrangement can be made whereby shareholders approve, in the manner outlined in Note 1 of the Notes on Dispensations from Rule 9, the restoration of a diluted percentage interest holding by ~~purchases~~ acquisitions from those to whom new shares are issued.

~~13. Acquisition or control of voting rights~~

~~If voting rights, or general control of them, as distinct from the shares themselves are acquired, the Panel will deem this to be the acquisition of the relevant shares for the purpose of this Rule. This will not normally apply in the case of a bank taking security over shares in the normal course of its business (see also Note 2 of the Notes on Dispensations from Rule 9).~~

13. Gifts

If a person receives a gift of shares or an interest in shares which takes the aggregate number of shares carrying voting rights in which he is interested to 30% or more, he must consult the Panel. Such a person would not normally be required to make an offer under Rule 9 but would (after receipt of the gift) be subject to Rule 5.1(b) and Rule 9.1(b).

...

17. Aggregation of holdings across a group and recognised intermediaries

Rule 9 will be relevant if the aggregate ~~number holdings~~ of shares in which of all persons under the same control[#] (including any exempt fund manager or exempt principal trader) are interested carry 30% or more of the voting rights of a company. However, provided that recognised intermediary status has not fallen away (see Note 3 on the definition of recognised intermediary), a recognised intermediary acting in that capacity will not be treated as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities for these purposes.

~~Notwithstanding this, if~~ If such a group of persons includes a principal trader and the group's aggregate number holding of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period and the ~~holding of~~ number of shares which the principal trader holds does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.

[#]See Note at end of Definitions Section.

18. Borrowed or lent shares

For the purpose of this Rule, if a person has borrowed or lent shares he will be treated as holding the voting rights in respect of such shares save for any borrowed shares which he has either on-lent or sold. A person must consult the Panel before acquiring or borrowing shares which, when taken together with shares in which he or any person acting in concert with him is already interested, and shares already held, borrowed or lent by him or any person acting in concert with him, would result in this Rule being triggered. In such circumstances, the Panel will then decide, inter alia, how the borrowed or lent shares should be treated for the purpose of the acceptance condition.

19. Changes in the nature of a person's interest

For the purpose of this Rule 9.1, a person will not normally be treated as having acquired an interest in shares as a result only of a transaction under which the number of shares in which he is interested under the different paragraphs of the definition of interests in securities changes but the aggregate number of shares in which he is interested following the transaction remains the same (for example, where the person acquires shares on exercise of a call option). However, a person who became interested in any shares by virtue of paragraph (3) or paragraph (4) of the definition of interests in securities as a result of such interests first becoming relevant for the purpose of this Rule 9.1 will normally be treated as having acquired an interest in shares if, as a result of any transaction, he subsequently becomes interested in such shares by virtue of paragraph (1) or paragraph (2) of the definition of interests in securities. The Panel should be consulted in all such cases to establish whether, in the circumstances, any obligation arises under this Rule.

Rule 9.2

9.2 OBLIGATIONS OF OTHER PERSONS

...

NOTE ON RULE 9.2

Prime responsibility

The prime responsibility for making an offer under this Rule normally attaches to the person who makes the acquisition which imposes the obligation to make an offer. If such person is not a principal member of the group acting in concert, the obligation to make an offer may attach to the principal member or members and, in exceptional circumstances, to other members of the group acting in concert. This could include a member of the group who at the time when the obligation arises does not have any interest in ~~hold any~~ shares. In this context, the Panel will not normally regard the underwriter of a mandatory offer, by virtue of his underwriting alone, as being a member of a group acting in concert and, therefore, responsible for making the offer (but see Note 2 on the definition of acting in concert).

An agreement between a ~~person shareholder~~ and a bank under which the ~~person shareholder~~ borrows money for the acquisition of shares or an interest in shares which gives rise to an obligation under the Rule will not of itself fall within the above.

Rule 9.3

9.3 CONDITIONS AND CONSENTS

...

(b) no acquisition of any interest in shares which would give rise to a requirement for an offer under this Rule may be made if the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements.

NOTES ON RULE 9.3

...

2. *Acceptance condition*

...

In the event that an offer under Rule 9 lapses because a purchase may not be counted as a result of Note 5 on Rule 10 and subsequently the purchase is completed, the Panel should be consulted. It will require appropriate action to be taken such as the making of a new offer or the reduction of the percentage of shares in which the offeror and persons acting in concert with it are interested~~offeror's holding~~.

3. *When dispensations may be granted*

...

(a) ...

(ii) until posting of the offer document in respect of that new offer, the offeror and persons acting in concert with it will not exercise, or procure the exercise of, more than 29.9% of the voting rights of the offeree company.

...

Rule 9.4

9.4 THE COMPETITION COMMISSION AND THE EUROPEAN COMMISSION

...

NOTES ON RULE 9.4

1. *If an offer lapses pursuant to Rule 12.1(a) or (b)*

If an offer under Rule 9 lapses pursuant to Rule 12.1(a) or (b), the obligation under the Rule does not lapse and, accordingly, if thereafter the merger is allowed, the offer must be reinstated on the same terms and at not less than the same price as soon as practicable. If the merger is prohibited, the offer cannot be made and the Panel will consider whether, if there is no order to such effect, to require the offeror to reduce the percentage of shares carrying voting rights in which it and persons acting in concert with it are interested ~~its holding~~ to below 30% or to its original level before the obligation to offer was incurred, if this was 30% or more. The Panel would normally expect an offeror whose offer has lapsed pursuant to Rule 12.1(a) or (b) to proceed with all due diligence before the Competition Commission or the European Commission. However, if, with the consent of the Panel and within a limited period, an offeror reduces the percentage of shares carrying voting rights in which it and persons acting in concert with it are interested ~~sells to unconnected parties within a limited period sufficient shares to reduce its holding~~ to below 30%, or to its original level before the obligation to offer was incurred if that was 30% or more, the Panel will regard the obligation as having lapsed.

2. *Further acquisitions*

While the Competition Commission or the European Commission is considering the case (following a reference or initiation of proceedings) where an obligation to make an offer under this Rule has been incurred, the offeror or persons acting in concert with it may not acquire any interest in further shares in the offeree company.

Rule 9.5

9.5 CONSIDERATION TO BE OFFERED

(a) **Offers made under this Rule must, in respect of each class of share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class during the offer period and within 12 months prior to its commencement. The cash offer or the cash alternative must remain open after the offer has become or is declared unconditional as to acceptances for not less than 14 days after**

the date on which it would otherwise have expired (see Rule 31.4). The Panel should be consulted where there is more than one class of share capital involved.

...

NOTES ON RULE 9.5

1. Nature of consideration

When an interest in shares ~~has~~ ~~have~~ been acquired for a consideration other than cash, the offer must nevertheless be in cash or be accompanied by a cash alternative of at least equal value, which must be determined by an independent valuation.

2. Calculation of the price

(a) ~~In calculating the price paid,~~ The price paid for any acquisition of an interest in shares will be determined as follows:

(i) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, his broker acting in an agency capacity) and the vendor (or principal trader) is struck;

(ii) in the case of an option, the price paid will be treated as the amount payable on exercise of the option together with any amount payable by the option-holder on entering into the option; and

(iii) in the case of a derivative, the price paid will normally be treated as the reference price of the underlying securities together with any fee payable on entering into the derivative. However, if the reference price is calculated as the average price of a number of acquisitions by the counterparty of interests in underlying securities, the price paid will normally be determined to be the highest price at which such acquisitions are actually made.

Any stamp duty and broker's commission payable should be excluded.

Where a person acquired an interest in shares more than 12 months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, during the offer period or within 12 months prior to its commencement, the person acquires the relevant shares at the option exercise price, the derivative reference price or the price provided for in the agreement to purchase, then no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, where the shares are acquired at a different price, or if the relevant price is varied, the adjusted terms will be relevant for the purpose of determining the terms to be offered to holders of shares of the same class. The Panel should be consulted in such cases.

(b) *If any interest in shares has ~~have~~ been acquired in exchange for listed securities, the price will normally be established by reference to the middle market price of the listed securities at the time of the acquisition.*

(c) *If any interest in shares has ~~have~~ been acquired by the conversion or exercise (as applicable) of ~~convertible securities~~ convertible into, warrants in respect of, or options or other subscription rights to subscribe for new shares, the price will normally be established by reference to the middle market price of the shares in question at the close of business on the day on which the relevant notice was submitted. If, however, the convertible securities, warrants, options or subscription rights were acquired during the offer period or within 12 months prior to its commencement, they will be treated as if they were purchases of the underlying shares at a price calculated by reference to the acquisition ~~purchase~~ price and the relevant conversion or exercise terms.*

The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them, and in the circumstances described in (b) and (c) above.

3. Dispensation from highest price

Factors which the Panel might take into account when considering an application for an adjusted price include:-

(a) *the size and timing of the relevant acquisitions ~~purchases~~;*

...

(c) *whether interests in shares had been acquired ~~purchased~~ at high prices from directors or other persons closely connected with the offeror or the offeree company; and*

(d) *the number of shares in which interests have been acquired ~~purchased~~ in the preceding 12 months.*

4. Cum dividend

When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, the offeror, in establishing the level of the cash offer, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled. Where the offeror or any person acting in concert with it has acquired any interest in shares to which this Note may be relevant other than by purchasing shares, the Panel should be consulted.

Rule 9.6

9.6 OBLIGATIONS OF DIRECTORS SELLING SHARES

When directors (and their close relatives and related trusts) sell shares to a person purchaser—(or enter into options, derivatives or other transactions) as a result of which that person the purchaser is required to make an offer under this Rule, the directors must ensure that as a condition of the sale (or other relevant transaction) the person purchaser undertakes to fulfil his obligations under the Rule. In addition, except with the consent of the Panel, such directors should not resign from the board until the first closing date of the offer or the date when the offer becomes or is declared wholly unconditional, whichever is the later.

Rule 9.7

9.7 RESTRICTIONS ON EXERCISE OF CONTROL BY AN OFFEROR

Except with the consent of the Panel, no nominee of an offeror or persons acting in concert with it may be appointed to the board of the offeree company, nor may an offeror and persons acting in concert with it exercise, or procure the exercise of, the votes attaching to any shares held in the offeree company until the offer document has been posted.

NOTES ON DISPENSATIONS FROM RULE 9

1. *Vote of independent shareholders on the issue of new securities (“Whitewash”)*

...

The appropriate provisions of the Code apply to whitewash proposals. Full details of the potential number and percentage of shares in which the person or group of persons acting in concert might become interested (together with details of the different interests concerned) ~~shareholding~~ must be disclosed in the document sent to shareholders relating to the issue of the new securities, which must also include competent independent advice on the proposals the shareholders are being asked to approve, together with a statement that the Panel has agreed to waive any consequent obligation under this Rule to make a general offer. The resolution must be made the subject of a poll. The Panel must be consulted and a proof document submitted at an early stage.

When a person or group of persons acting in concert may, as a result of such arrangements, come to ~~control~~ hold shares carrying more than 50% of the voting rights of the company, specific and prominent reference to the possibility must be contained in the document and to the fact that the person or group controlling shareholders will be able to acquire interests in further shares exercise their control and increase their overall shareholding without incurring any further obligation under Rule 9 to make a general offer.

...

Notwithstanding the fact that the issue of new securities is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:-

(a) the Panel will not normally waive an obligation under this Rule if the person to whom the new securities are to be issued or any persons acting in concert with him have acquired any interest in ~~purchased~~ shares in the company in the 12 months prior to the posting to shareholders of the circular relating to the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;

(b) a waiver will be invalidated if any acquisitions of interests in shares ~~purchases~~ are made in the period between the posting of the circular to shareholders and the shareholders' meeting.

...

2. Enforcement of security for a loan

Where shares or other securities are ~~a shareholding in a company~~ is charged as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a general offer under this Rule, the Panel will normally waive the requirement provided that the security was not given at a time when the lender had reason to believe that enforcement was likely. In any case where arrangements are to be made involving a transfer of voting rights to the lender, but which do not amount to enforcement of the security, the Panel will wish to be convinced that such arrangements are necessary to preserve the lender's security and will also take into account the proviso above. When, following enforcement, a lender wishes to sell all or part of a shareholding, the provisions of this Rule apply to the purchaser. Although a receiver, liquidator or administrator of a company is not required to make an offer when he acquires an interest in shares carrying ~~takes control of a holding of 30% or more of voting rights in~~ another company, the provisions of the Rule apply to a purchaser from such a person.

...

4. Inadvertent mistake

If, due to an inadvertent mistake, a person incurs an obligation to make an offer under this Rule, the Panel will not normally require an offer if sufficient shares are sold within a limited period to persons unconnected with him (or the percentage of shares carrying voting rights in which the person, together with persons acting in concert with him, is interested is otherwise reduced to below 30% in a manner satisfactory to the Panel).

...

6. *Enfranchisement of non-voting shares*

There is no requirement to make a general offer under this Rule if a person interested in ~~holder of non-voting shares~~ becomes upon enfranchisement of those shares interested in shares carrying ~~a holder of 30%~~ or more of the voting rights of a company, except where shares or interests in shares have been ~~acquired purchased~~ at a time when the ~~person purchaser~~ had reason to believe that enfranchisement would take place.

Rule 11.1

11.1 WHEN A CASH OFFER IS REQUIRED

Except with the consent of the Panel in cases falling under (a) or (b), a cash offer is required where:-

(a) the shares of any class under offer in the offeree company in which interests are ~~acquired purchased~~ for cash (but see Note 5) by an offeror and any person acting in concert with it during the offer period and within 12 months prior to its commencement carry 10% or more of the voting rights currently exercisable at a class meeting of that class, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class acquired during the offer period and within 12 months prior to its commencement; or

(b) subject to paragraph (a) above, any interest in shares of any class under offer in the offeree company is ~~acquired are purchased~~ for cash (but see Note 5) by an offeror or any person acting in concert with it during the offer period, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class acquired during the offer period; or

...

NOTES ON RULE 11.1

1. *Price*

For the purpose of this Rule, the price paid for any acquisition of an interest in shares will be determined as follows:

(a) in the case of a purchase of shares, the price paid is the price at which the bargain between the purchaser (or, where applicable, his broker acting in an agency capacity) and the vendor (or principal trader) is struck;

(b) in the case of an option, the price paid will be treated as the amount payable on exercise of the option together with any amount payable by the option-holder on entering into the option; and

(c) in the case of a derivative, the price paid will normally be treated as the reference price of the underlying securities together with any fee payable on entering into the derivative. However, if the reference price is calculated as the average price of a number of acquisitions by the counterparty of interests in underlying securities, the price paid will normally be determined to be the highest price at which such acquisitions are actually made.

~~In calculating the price paid, Any stamp duty and broker's commission payable should be excluded.~~

The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them.

Where a person acquired an interest in shares more than 12 months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, during the offer period or within 12 months prior to its commencement, the person acquires the relevant shares at the option exercise price, the derivative reference price or the price provided for in the agreement to purchase, then no obligation under this Rule will normally arise as a result of the acquisition of those shares. However, where the shares are acquired at a different price, or if the relevant price is varied, the adjusted terms will be relevant for the purpose of determining the terms to be offered to holders of shares of the same class. The Panel should be consulted in such cases.

2. Gross acquisitions ~~purchases~~

~~The Panel would normally regard Rule 11.1(a) as applying to the gross number purchases of shares in which interests are acquired over the relevant period, and would not allow the deduction of any shares~~ Shares sold over that period or which are the subject of any short position should not normally be deducted. However, in exceptional circumstances and with the consent of the Panel, shares sold some considerable time before the beginning of the offer period (or shares which are the subject of any short position entered into some considerable time before the beginning of the offer period) may be deducted.

3. When the obligation is satisfied

The obligation to make cash available under this Rule will be considered to have been met if, at the time the acquisition purchase was made, a cash offer or cash alternative at a price per share not less than that required by this Rule was open for acceptance, even if that offer or alternative closes for acceptance immediately thereafter.

4. Equality of treatment

The discretion given to the Panel in Rule 11.1(c) ~~to require cash to be made available in certain cases where less than 10% has been purchased in the previous 12 months~~ will not normally be exercised unless the vendors or other parties to the transactions giving rise to the interests are directors of, or other persons closely connected with, the offeror or the offeree company. In such cases, relatively small acquisitions purchases could be relevant.

Rule 11.1(c) may also be relevant when interests in shares carrying 10% or more of the voting rights of a class have ~~has~~ been acquired in the previous 12 months for a mixture of securities and cash. The Panel should be consulted in all relevant cases.

5. Acquisitions for securities

For the purpose of this Rule, interests in shares acquired by an offeror and any person acting in concert with it in exchange for securities, either during or in the 12 months preceding the commencement of the offer period, will normally be deemed to be acquisitions purchases for cash on the basis of the value of the securities at the time of the purchase. However, if the vendor of the offeree company shares or other party to the transaction giving rise to the interest is required to hold the securities received or receivable in exchange until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, no obligation under Rule 11.1 will be incurred.

...

9. Cum dividend

When accepting shareholders are entitled under the offer to retain a dividend declared or forecast by the offeree company but not yet paid, the offeror, in establishing the level of the cash offer, may deduct from the highest price paid the net dividend to which offeree company shareholders are entitled. Where the offeror or any person acting in concert with it has acquired any interest in shares to which this Note may be relevant other than by purchasing shares, the Panel should be consulted.

10. Convertible securities, warrants and options

Acquisitions of ~~Purchases of convertible~~ securities convertible into, warrants in respect of, or options or other ~~subscription~~ rights to subscribe for, new shares will normally only be relevant to this Rule if they are converted or exercised (as applicable). Such acquisitions purchases will then be treated as if they were acquisitions purchases of the underlying shares at a price calculated by reference to the acquisition purchase price and the relevant conversion or exercise terms. In any case of doubt, the Panel should be consulted.

...

12. Competition reference period

If an offer is announced in accordance with Note (a)(iii) on Rule 35.1, any ~~purchases of acquisitions of interests in~~ offeree company shares for cash during the competition reference period will be deemed to be acquisitions ~~purchases~~ during the new offer period for the purposes of Rule 11.1(b).

Rule 11.2

11.2 WHEN A SECURITIES OFFER IS REQUIRED

Where interests in shares ~~purchases~~ of any class of the offeree company shares carrying 10% or more of the voting rights currently exercisable at a class meeting of that class have been acquired ~~made~~ by an offeror and any person acting in concert with it in exchange for securities in the three months prior to the commencement of and during the offer period, such securities will normally be required to be offered to all other holders of shares of that class.

Unless the vendor or other party to the transaction giving rise to the interest is required to hold the securities received or receivable until either the offer has lapsed or the offer consideration has been posted to accepting shareholders, an obligation to make an offer in cash or to provide a cash alternative will also arise under Rule 11.1.

NOTES ON RULE 11.2

1. Basis on which securities are to be offered

Any securities required to be offered pursuant to this Rule must be offered on the basis of the same number of consideration securities received or receivable by the vendor or other party to the transaction giving rise to the interest for each offeree company share rather than on the basis of securities equivalent to the value of the securities received or receivable by the vendor or such other party at the time of the relevant purchase. Where there has been more than one relevant ~~acquisition~~ purchase, offeror securities must be offered on the basis of the greater or greatest number of consideration securities received or receivable for each offeree company share.

2. Equality of treatment

The Panel may require securities to be offered on the same basis to all other holders of shares of that class even though the amount purchased is less than 10% or the purchase took place more than three months prior to the commencement of the offer period. However, this discretion will not, normally, be exercised unless the vendors of the relevant shares or other parties to the transactions giving rise to the interests are directors of, or other persons closely connected with, the offeror or the offeree company.

3. Vendor placings

Shares acquired in exchange for securities will normally be deemed to be acquisitions ~~purchases~~ for cash for the purposes of this Rule if an offeror or any of its associates arranges the immediate placing of such consideration securities for cash, in which case no obligation to make a securities offer under this Rule will arise.

...

5. *Acquisitions for a mixture of cash and securities*

The Panel should be consulted where interests in shares carrying 10% or more of the voting rights of a class have ~~has been~~ acquired during the offer period and within 12 months prior to its commencement for a mixture of securities and cash.

6. *Acquisitions ~~Purchases~~ in exchange for securities to which selling restrictions are attached*

Where an offeror and any person acting in concert with it has acquired interests in shares carrying ~~purchased~~ 10% or more of the voting rights of any class of shares in the offeree company during the offer period and within 12 months prior to its commencement and the consideration received or receivable by the vendor or other party to the transaction giving rise to the interest includes shares to which selling restrictions of the kind set out in the second sentence of Rule 11.2 are attached, the Panel should be consulted.

7. *Applicability of the Notes on Rule 11.1 to Rule 11.2*

...

In addition, if an offer is announced in accordance with Note (a)(iii) on Rule 35.1, any ~~purchases of~~ acquisitions of interests in offeree company shares for securities during the competition reference period will be deemed to be acquisitions ~~purchases~~ during the new offer period for the purposes of this Rule.

Rule 11.3

11.3 DISPENSATION FROM HIGHEST PRICE

...

NOTE ON RULE 11.3

Relevant factors

Factors which the Panel might take into account when considering an application for an adjusted price include:-

- (a) *the size and timing of the relevant acquisitions~~purchases~~;*
- (b) *the attitude of the ~~offeree~~ board of the offeree company;*
- (c) *whether interests in shares had ~~have been acquired~~ purchased at high prices from directors or other persons closely connected with the offeror or the offeree company; and*
- (d) *the number of shares in which interests have been acquired ~~purchased~~ in the preceding 12 months.*

Rule 19.5

19.5 TELEPHONE CAMPAIGNS

Except with the consent of the Panel, campaigns in which shareholders or other persons interested in shares are contacted by telephone may be conducted only by staff of the financial adviser who are fully conversant with the requirements of, and their responsibilities under, the Code. Only previously published information which remains accurate, and is not misleading at the time it is quoted, may be used in telephone campaigns. Shareholders and other persons interested in shares must not be put under pressure and must be encouraged to consult their professional advisers.

NOTES ON RULE 19.5

...

2. *New information*

If, in spite of this Rule, new information is given to some shareholders or other persons interested in shares, such information must immediately be made generally available ~~to shareholders~~ in the manner described in Note 3 on Rule 20.1.

...

4. *Statutory and other regulatory provisions*

...

Any view expressed by the Panel in relation to the telephoning of shareholders or other persons interested in shares can only relate to the Code and must not be taken to extend to any other regulatory requirement, for example the provisions of the FSMA or the FSA's conduct of business rules.

Rule 32.1**32.1 OFFER OPEN FOR 14 DAYS AFTER REVISION**

...

NOTES ON RULE 32.1

...

2. *When revision is required*

An offeror will normally be required to revise its offer if it, or any person acting in concert with it, acquires an interest in ~~purchases~~ shares at above the offer price (see Rule 6) or it becomes obliged to make an offer in accordance with Rule 11 or to make a cash offer, or to increase an existing cash offer, under Rule 9.

...

4. *Triggering Rule 9*

When an offeror, which is making a voluntary offer either in cash or with a cash alternative, acquires an interest in shares ~~makes an acquisition~~ which causes it to have to extend a mandatory offer under Rule 9 at no higher price than the existing cash offer, the change in the nature of the offer will not be viewed as a revision (and will thus not be precluded by an earlier no increase statement), even if the offeror is obliged to waive any outstanding condition, but such an acquisition can only be made if the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is posted.

Rule 35**RULE 35****35.1 DELAY OF 12 MONTHS**

...

(a) announce an offer or possible offer for the offeree company (including a partial offer which could result in the offeror being interested in holding shares carrying 30% or more of the voting rights of the offeree company);

(b) acquire any interest in shares of the offeree company if the offeror or any such person would thereby become obliged under Rule 9 to make an offer;

(c) acquire any interest in, or procure an irrevocable commitment in respect of, shares of the offeree company or any rights over such shares if the shares and rights over shares held by any in which such person, together with any persons acting in concert with him, would be interested and the shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;

...

35.2 PARTIAL OFFERS

The restrictions in Rule 35.1 will also apply following a partial offer:-

(a) for which could result in the offeror being interested in shares carrying not less than 30% but not holding shares carrying and not more than 50% of the voting rights of the offeree company whether or not the offer has become or been declared wholly unconditional. When such an offer has become or been declared wholly unconditional, the period of 12 months runs from that date; and

...

The restrictions in Rule 35.1 will not normally apply following a partial offer which could only result in the offeror being interested in shares carrying a holding of less than 30% of the voting rights of the offeree company.

...

35.3 DELAY OF 6 MONTHS BEFORE ACQUISITIONS ABOVE THE OFFER VALUE

Except with the consent of the Panel, if a person, together with any person acting in concert with him, holds shares carrying 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 of the closure of any previous offer made by him to the shareholders of that company which became or was declared wholly unconditional, make a second offer to, ~~or acquire shares from,~~ any shareholder in that company, or acquire any interest in shares in that company, on more favourable better terms than those made available under the previous offer (see also Rule 6.2(a)). For this purpose the value of a securities exchange offer shall be calculated as at the date the offer closed. In addition, special deals with favourable conditions attached may not be entered into during this 6 months period (see also Rule 16).

35.4 RESTRICTIONS ON DEALINGS BY A COMPETING OFFEROR WHOSE OFFER HAS LAPSED

Except with the consent of the Panel, where an offer has been one of two or more competing offers and has lapsed, neither that offeror, nor any person acting in concert with that offeror, may acquire any interest in shares in the offeree company on more favourable terms better than those made available under its lapsed offer until each of the competing offers has either been declared unconditional in all respects or has itself lapsed. For these purposes, the value of the lapsed offer shall be calculated as at the day the offer lapsed.

Rule 36

RULE 36

36.1 PANEL'S CONSENT REQUIRED

The Panel's consent is required for any partial offer. In the case of an offer which could not result in the offeror being interested in holding shares carrying 30% or more of the voting rights of a company, consent will normally be granted.

36.2 BUYING BEFORE THE OFFER

In the case of an offer which could result in the offeror being interested in holding shares carrying 30% or more but holding less than 100% of the voting rights of a company, such consent will not normally be granted if the offeror or persons acting in concert with it have acquired, selectively or in significant numbers, interests in shares in the offeree company during the 12 months preceding the application for consent or if interests in shares have been acquired purchased at any time after the partial offer was reasonably in contemplation.

36.3 ~~BUYING ACQUISITIONS DURING AND AFTER THE OFFER~~

The offeror and persons acting in concert with it may not acquire any interest in purchase shares in the offeree company during the offer period. In addition, in the case of a successful partial offer, neither the offeror, nor any person who acted in concert with the offeror in the course of the partial offer, nor any person who is subsequently acting in concert with any of them, may, except with the consent of the Panel, acquire any interest in purchase such shares during a period of 12 months after the end of the offer period.

NOTES ON RULE 36.3

...

2. *Partial offer resulting in an interest of less than 30%*

The consent of the Panel will normally be granted for acquisitions of interests in shares ~~share purchases~~ within 12 months of the end of the offer period when a partial offer has resulted in the offeror being interested in shares ~~a holding~~ carrying less than 30% of the voting rights of a company.

...

36.4 OFFER FOR BETWEEN 30% AND 50%

When an offer is made which could result in the offeror being interested in holding shares carrying not less than 30% but not holding shares carrying and not more than 50% of the voting rights of a company, the precise number of shares offered for must be stated and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number.

36.5 OFFER FOR 30% OR MORE REQUIRES 50% APPROVAL

Any offer which could result in the offeror being interested in holding shares carrying 30% or more of the voting rights of a company must normally be conditional, not only on the specified number of acceptances being received, but also on approval of the offer, normally signified by means of a separate box on the form of acceptance, being given in respect of over 50% of the voting rights held by shareholders who are independent of holding over 50% of the voting rights not held by the offeror and persons acting in concert with it. This requirement may on occasion be waived if over 50% of the voting rights of the offeree company are held by one shareholder.

36.6 WARNING ABOUT CONTROL POSITION

In the case of a partial offer which could result in the offeror holding shares carrying over 50% of the voting rights of the offeree company, the offer document must contain specific and prominent reference to this and to the fact that, if the offer succeeds, the offeror will be free, subject to Rule 36.3, to acquire further interests in shares without incurring any obligation under Rule 9 to make a general offer.

...

36.8 COMPARABLE OFFER

When an offer is made for a company with more than one class of equity share capital which could result in the offeror being interested in holding shares carrying 30% or more of the voting rights, a comparable offer must be made for each class.

NOTES ON RULE 36

1. *Allotted but unissued shares*

When shares of a company carrying voting rights have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. It is likely that such shares, and the acquisition of an interest in such shares, will be taken into account for the purpose of this Rule.

...

Rule 37.1

37.1 POSSIBLE REQUIREMENT TO MAKE A MANDATORY OFFER

When a company redeems or purchases its own voting shares, any resulting increase in the percentage of shares carrying voting rights in which a person held by a shareholder or group of persons shareholders acting in concert is interested will be treated as an acquisition for the purpose of Rule 9. Subject to prior consultation, the Panel will normally waive any resulting obligation to make a general offer if there is a vote of independent shareholders and a procedure on the lines of that set out in Appendix 1 is followed.

NOTES ON RULE 37.1

1. *Persons Shareholders who will not be required to make a mandatory offer*

A person shareholder who comes to exceed the limits in Rule 9.1 in consequence of a company's redemption or purchase of its own shares will not normally incur an obligation to make a mandatory offer unless that person shareholder is a director, or the relationship of the person shareholder with any one or more of the directors is such that the person shareholder is, or is presumed to be, acting in concert with any of the directors. A person shareholder who has appointed a representative to the board of the company, and investment managers of investment trusts, will be treated for these purposes as a director. ...

2. *Acquisitions of interests in shares ~~Purchases~~ preceding a redemption or purchase*

The exception in Note 1 will not apply, and an obligation to make a mandatory offer may therefore be imposed, if a person shareholder (or any relevant member of a group of persons shareholders acting in concert) has acquired an interest in purchased shares at a time when he had reason to believe that such a redemption or purchase of its own shares by the company would take place. This Note will not normally be relevant unless the relevant person shareholder has knowledge that a redemption or purchase for which requisite shareholder

authority exists is being, or is likely to be, implemented (whether in whole or in part).

3. Situations where a mandatory obligation may arise

Where the directors are aware that a company's redemption or purchase of its own shares would otherwise give rise to an obligation for a person shareholder (or group of persons shareholders acting in concert) to make a mandatory offer, the board of directors should ensure that an appropriate resolution to approve a waiver of this obligation is put to independent shareholders prior to implementation of the relevant redemption or purchase and as a pre-condition to its implementation. Additionally, each individual director should draw the attention of the board at the time any redemption or purchase of the company's own shares is proposed, and whenever shareholders' authority for any such redemption or purchase is to be sought, to interests in shares shareholdings of parties acting in concert, or presumed to be acting in concert, with that director.

4. Prior consultation

The Panel must be consulted in advance in any case where Rule 9 might be relevant. This will include any case where a person shareholder or group of persons shareholders acting in concert is interested in shares carrying holds 30% or more but does not hold shares carrying more than 50% of the voting rights of a company, or may become interested in ~~come to hold~~ 30% or more on full implementation of the proposed redemption or purchase of own shares. In addition, the Panel should always be consulted if the aggregate interests in shares holdings of the directors and any other persons shareholders acting in concert, or presumed to be acting in concert, with any of the directors amount to 30% or more, or may be increased to 30% or more on full implementation of the proposed redemption or purchase of own shares.

5. Disqualifying transactions

Notwithstanding that the redemption or purchase of voting shares is made conditional upon the prior approval of a majority of the shareholders independent of the transaction at a general meeting of the company:

(a) the Panel will not normally waive an obligation under Rule 9 if the relevant person shareholder, or any member of the relevant group of persons shareholders acting in concert, has acquired an interest in shares in the knowledge that the company intended to seek permission from its shareholders to redeem or purchase its own shares; and

(b) a waiver will be invalidated if any acquisitions purchases are made by the relevant person shareholder, or by any member of the relevant group of persons shareholders acting in concert, in the period between the posting of the circular to shareholders and the shareholders' meeting.

...

7. *Responsibility for making an offer*

If an obligation arises under this Rule for a general offer to be made and a dispensation is not granted, the prime responsibility for making an offer will normally attach to the ~~person shareholder~~ who obtains or consolidates control as a result of the redemption or purchase of its own shares by the company. Where control is obtained or consolidated by a group of persons acting in concert, the prime responsibility will normally attach to the principal member or members of the group acting in concert. In exceptional cases, responsibility for making an offer may attach to one or more directors if, in the view of the Panel, there has been a failure by the board as a whole, or by any one or more individual directors, to address satisfactorily the implications of a redemption or purchase by the company of its own shares in relation to interests in shares shareholdings of directors or parties acting in concert with one or more of the directors.

...

Rule 37.2

37.2 LIMITATION ON SUBSEQUENT ACQUISITIONS ~~OF SHARES~~

Subsequent to the redemption or purchase by a company of its own voting shares, all persons shareholders will be subject, in acquiring further interests in making acquisitions of shares in the company, to the provisions of Rule 9.1.

...

Rule 38.5

38.5 DISCLOSURE OF DEALINGS

Dealings in relevant securities during the offer period by an exempt principal trader connected with an offeror or the offeree company should be aggregated and disclosed to a RIS and the Panel not later than 12 noon on the business day following the date of the transactions, stating the following details:

- (a) if the relevant trading desk is a recognised intermediary:**
- (i) total acquisitions and disposals; and**
 - (ii) the highest and lowest prices paid and received; and**
 - ~~(iii) whether the connection is with an offeror or the offeree company~~**

(b) if the relevant trading desk is not a recognised intermediary, the details required under Note 5(a) on Rule 8.

In each case, it should be stated whether the connection is with an offeror or the offeree company. In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5 on Rule 8).

NOTES ON RULE 38.5

...

3. — *Rule 8*

See Note 9 on Rule 8.

Appendix 1

APPENDIX 1

WHITEWASH GUIDANCE NOTE

...

1 INTRODUCTION

(a) This note sets out the procedures to be followed if the Panel is to be asked to waive the obligation to make a general offer under Rule 9 which would otherwise arise where, as a result of the issue of new securities as consideration for an acquisition or a cash injection or in fulfilment of obligations under an agreement to underwrite the issue of new securities, a person or group of persons acting in concert acquires an interest, or interests, in shares to an extent which would normally give rise to an obligation to make a general offer.

(b) Where the word “offeror” is used in a particular Rule, it should be taken in the context of a whitewash as a reference to the potential controllersecontrolling—shareholders. Similarly, the phrase “offeree company” should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.

...

3 DISQUALIFYING TRANSACTIONS

...

(a) the Panel will not normally waive an obligation under Rule 9 if the person to whom the new securities are to be issued or any person acting in concert with him has acquired any interest in ~~purchased~~-shares in the company in the 12 months prior to the posting to shareholders of the circular relating to the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;

(b) a waiver will be invalidated if any ~~purchases~~-acquisitions of interests in shares are made in the period between the posting of the circular to shareholders and the shareholders' meeting.

4 CIRCULAR TO SHAREHOLDERS

...

(b) full details of the maximum potential controlling shareholding position:

(i) where this is dependent upon the outcome of underwriting arrangements, it should be assumed that the potential ~~controlling shareholders~~-controllers will, in addition to any other entitlement, take up their full underwriting participation; and

(ii) where convertible securities, options or securities with subscription rights are to be issued, the potential ~~controlling shareholding~~-controller must be indicated on the assumption that only the ~~controlling shareholders~~-controllers will convert or exercise the subscription rights, and will do so in full and at the earliest opportunity (the date of which must also be given);

(c) where the maximum potential shareholding resulting from the proposed transaction will exceed 50% of the voting rights of the company, specific and prominent reference to this possibility and to the fact that, subject to Section 7 below, the potential ~~controlling shareholders~~-controllers may ~~increase their shareholding~~-acquire further interests in shares without incurring any further obligation under Rule 9 to make a general offer;

(d) in cases where the potential controlling ~~shareholding~~-position will be held by more than one person, the identity of the potential ~~controlling shareholders~~-controllers and their individual potential ~~shareholdings~~-interests in shares in addition to the information required under (i) below;

...

6 ANNOUNCEMENTS FOLLOWING SHAREHOLDERS' APPROVAL

(a) Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of offeree company shares ~~to~~ in which the potential controlling shareholders have become entitled controllers are, or are entitled to be, interested as a result. The announcement must be published in accordance with the requirements of Rule 2.9.

(b) Where the final controlling ~~shareholding position~~ is dependent on the results of underwriting, the offeree company must make an announcement following the issue of the new securities stating the number and percentage of shares in which the controllers are interested held by the controlling shareholders at that time.

(c) Where convertible securities, options or securities with subscription rights are to be issued:-

(i) the announcement of the potential controlling ~~shareholding position~~ must be made on the basis of the assumptions described in Section 4(b) above;

(ii) following each issue of new securities a further announcement must be made confirming the number and percentage of shares ~~held by~~ in which the controllers are interested the controlling shareholders at that time; and

...

7 SUBSEQUENT ACQUISITIONS BY POTENTIAL CONTROLLERS-CONTROLLING SHAREHOLDERS

Immediately following approval of the proposals at the shareholders' meeting, the potential ~~controlling shareholders controllers~~ will be free to acquire additional shares further interests in shares of in the offeree company, subject to the provisions of Rules 5 and 9.

Where shareholders approve the issue of convertible securities, or the issue of warrants or the grant of options to subscribe for new shares where no immediate voting rights are obtained, the Panel will view the approval as sanctioning maximum conversion or subscription at the earliest possible moment without the necessity for the making of an offer under Rule 9. However, if the potential ~~controlling shareholders controllers~~ propose to acquire further interests in purchase or subscribe for further voting shares following the relevant meeting, the Panel should be consulted to establish the number of shares to which the waiver will be deemed to apply.

...

Appendix 2

APPENDIX 2

FORMULA OFFERS GUIDANCE NOTE

...

6 RULE 6

Since in a formula offer the current value of the offer is only determinable by reference to the value, at any relevant time, of the assets to which the formula is related, an offeror can only be confident that purchase acquisitions of interests in shares during an offer are in conformity with Rule 6 if it is able to calculate the price which would have been payable on the basis of the formula at the time of the ~~purchase~~acquisitions. Where such calculation is possible and the ~~purchase~~price paid exceeds the formula price so calculated, it follows that the ~~purchase~~acquisitions will have been made on the basis of an improved formula and the offeror will, therefore, be required to increase the offer by making the improved formula generally available.

Calculation of the formula price at the time of a ~~purchase~~an acquisition will only be possible if there is co-operation from the board of the offeree company. It is not acceptable for the procedure set out in the previous paragraph to be applied on the basis of estimated net asset values, eg those contained in brokers' circulars. Where there is no co-operation from the board of the offeree company, therefore, the offeror will not be able to use this procedure and any ~~purchase~~acquisitions which fall to be taken into account for the purposes of Rule 6 will create an obligation to pay at least the same price to all accepting shareholders. Where there are alternative offers, however, the offeror may choose which of the alternatives should be subject to the minimum price.

7 RULES 9 AND 11

Rules 9 and 11 apply equally to formula offers; thus, if appropriate, the cash offer must contain a term guaranteeing a minimum price under the offer at the highest cash price paid in respect of the share purchase acquisitions of interests in shares to which the Rules apply.

APPENDIX B
Summary of the proposed application of recognised intermediary (“RI”) status

	CONNECTED EXEMPT PRINCIPAL TRADER (“EPT”) DESKS House is connected. EPT status is relevant and has not fallen away (i.e. sole reason for being connected is that the group includes a connected adviser)		ASSOCIATE/CONNECTED “NON-EXEMPT” DESKS House is associate/connected. EPT status not relevant because: (a) desk does not have EPT status; or (b) EPT status has fallen away (i.e. connection is other than solely advisory)		NON-ASSOCIATE/ NON-CONNECTED DESKS House is independent. Rule 8.1/EPT status irrelevant	
	RI DESKS	NON-RI DESKS	RI DESKS AND NON-RI DESKS		RI DESKS	NON-RI DESKS
Disclosure of dealings/ interests	R38.5(a) total dealings, no interests (if acting in RI capacity)	R38.5(b) all dealings/ interests	R8.1 all dealings/ interests		R8.3(d) i.e. exempt from disclosure (if acting in RI capacity)	R8.3(a) all dealings/ interests if long 1%+
Aggregation of interests for disclosure purposes	N/A since no disclosure of interests	All non-RI EPT desks aggregate, subject to normal dispensations	All associate “non-exempt” desks aggregate, subject to normal dispensations		N/A since exempt from disclosure	All non-RI desks aggregate, subject to normal dispensations
Share, derivative & option acquisitions relevant for offeror concert party under RR5, 6, 9 & 11?	NO desk not presumed to be acting in concert with offeror because EPT		YES once presumed to be acting in concert with offeror under R7.2 (or otherwise in concert)		N/A if desk is not acting in concert with offeror	
Derivative & option (“D&O”) interests relevant for house under N17 on R9.1/N1(c) on R7.2?	NO (if acting in RI capacity)	YES	YES i.e. house aggregates all shares and D&O interests (excluding D&O interests of EPT RI desks)		NO (if acting in RI capacity)	YES
Shares relevant for house under N17 on R9.1/ N1(c) on R7.2?	YES				YES	

APPENDIX C
Proposed new Disclosure Forms

See following pages

**DEALINGS BY CONNECTED EXEMPT PRINCIPAL TRADERS
WITH RECOGNISED INTERMEDIARY STATUS
(Rule 38.5(a) of the City Code on Takeovers and Mergers)**

1. KEY INFORMATION

Name of exempt principal trader	
Company dealt in	
Class of relevant security to which the dealings being disclosed relate (Note 1)	
Date of dealing	

2. DEALINGS (Note 2)

(a) Purchases and sales

Total number of securities purchased	Highest price paid (Note 3)	Lowest price paid (Note 3)

Total number of securities sold	Highest price received (Note 3)	Lowest price received (Note 3)

(b) Derivatives transactions (other than options)

Product name, e.g. CFD	Long/short (Note 4)	Number of securities (Note 5)	Price per unit (Note 3)

(c) Options transactions in respect of existing securities

(i) Writing, selling, purchasing or varying

Product name, e.g. call option	Writing, selling, purchasing, varying etc.	Number of securities to which the option relates (Note 5)	Exercise price	Type, e.g. American, European etc.	Expiry date	Option money paid/received per unit (Note 3)

(ii) Exercising

Product name, e.g. call option	Number of securities	Exercise price per unit (Note 3)

3. OTHER INFORMATION

Agreements, arrangements or understandings relating to options or derivatives

<p>Full details of any agreement, arrangement or understanding between the person disclosing and any other person relating to the voting rights of any relevant securities under any option referred to on this form or relating to the voting rights or future acquisition or disposal of any relevant securities to which any derivative referred to on this form is referenced. If none, this should be stated.</p>

Date of disclosure	
Contact name	
Telephone number	
Name of offeree/offeror with which connected	
Nature of connection (Note 6)	

Notes

The Notes on Form 38.5(a) can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk

NOTES ON FORM 38.5(a)

1. *See the definition of “relevant securities” in the Definitions Section of the Code.*
2. *See the definition of “dealings” in the Definitions Section of the Code.*
3. *For all prices and other monetary amounts, the currency must be stated.*
4. *If a long position has been increased or a short position reduced as a result of the dealing, write “long”.
If a short position has been increased or a long position reduced as a result of the dealing, write “short”.
If the dealing has not resulted in a long or short position being increased or reduced, give details of the variation or other dealing.*
5. *See Note 3 on the definition of “interests in securities” in the Definitions Section of the Code.*
6. *See the definition of “connected fund managers and principal traders” in the Definitions Section of the Code.*

For details of the Code’s dealing disclosure requirements, see Rules 8 and 38.5 and their Notes which can be viewed on the Takeover Panel’s website at www.thetakeoverpanel.org.uk.

**DEALINGS BY CONNECTED EXEMPT PRINCIPAL TRADERS
WITHOUT RECOGNISED INTERMEDIARY STATUS
(Rule 38.5(b) of the City Code on Takeovers and Mergers)**

1. KEY INFORMATION

Name of exempt principal trader	
Company dealt in	
Class of relevant security to which the dealings being disclosed relate (Note 1)	
Date of dealing	

2. INTERESTS, SHORT POSITIONS AND RIGHTS TO SUBSCRIBE

(a) Interests and short positions (following dealing) in the class of relevant security dealt in (Note 2)

	Long		Short	
	Number	(%)	Number	(%)
(1) Relevant securities				
(2) Derivatives (other than options)				
(3) Options and agreements to purchase/sell				
Total				

(b) Interests and short positions in relevant securities of the company, other than the class dealt in (Note 2)

Class of relevant security:	Long		Short	
	Number	(%)	Number	(%)
(1) Relevant securities				
(2) Derivatives (other than options)				
(3) Options and agreements to purchase/sell				
Total				

(c) Rights to subscribe (Note 2)

Class of relevant security:	Details

3. DEALINGS (Note 3)

(a) Purchases and sales

Purchase/sale	Number of securities	Price per unit (Note 4)

(b) Derivatives transactions (other than options)

Product name, e.g. CFD	Long/short (Note 5)	Number of securities (Note 6)	Price per unit (Note 4)

(c) Options transactions in respect of existing securities

(i) Writing, selling, purchasing or varying

Product name, e.g. call option	Writing, selling, purchasing, varying etc.	Number of securities to which the option relates (Note 6)	Exercise price	Type, e.g. American, European etc.	Expiry date	Option money paid/received per unit (Note 4)

(ii) Exercising

Product name, e.g. call option	Number of securities	Exercise price per unit (Note 4)

(d) Other dealings (including new securities) (Note 3)

Nature of transaction (Note 7)	Details	Price per unit (if applicable) (Note 4)

4. OTHER INFORMATION

Agreements, arrangements or understandings relating to options or derivatives

Full details of any agreement, arrangement or understanding between the person disclosing and any other person relating to the voting rights of any relevant securities under any option referred to on this form or relating to the voting rights or future acquisition or disposal of any relevant securities to which any derivative referred to on this form is referenced. If none, this should be stated.

Is a Supplemental Form 38.5(b) attached? (Note 8)

YES/NO

Date of disclosure	
Contact name	
Telephone number	
Name of offeree/offeree with which connected	
Nature of connection (Note 9)	

Notes

The Notes on Form 38.5(b) can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk

NOTES ON FORM 38.5(b)

1. *See the definition of “relevant securities” in the Definitions Section of the Code.*
2. *See Note 5 on Rule 8 and the definition of “interests in securities” in the Definitions Section of the Code. Rights to subscribe for new shares should be disclosed separately from interests and short positions in existing securities. Rights to subscribe include directors’ and other executive options.*
3. *See the definition of “dealings” in the Definitions Section of the Code.*
4. *For all prices and other monetary amounts, the currency must be stated.*
5. *If a long position has been increased or a short position reduced as a result of the dealing, write “long”. If a short position has been increased or a long position reduced as a result of the dealing, write “short”. If the dealing has not resulted in a long or short position being increased or reduced, give details of the variation or other dealing.*
6. *See Note 3 on the definition of “interests in securities” in the Definitions Section of the Code.*
7. *State type of dealing, e.g. “subscription”, “conversion”, “exercise” etc.*
8. *Where there are open option positions or open derivative positions (other than CFDs), or where there is an agreement to purchase or to sell, Supplemental Form 38.5(b) should be completed.*
9. *See the definition of “connected fund managers and principal traders” in the Definitions Section of the Code.*

For details of the Code’s dealing disclosure requirements, see Rules 8 and 38.5 and their Notes which can be viewed on the Takeover Panel’s website at www.thetakeoverpanel.org.uk.

SUPPLEMENTAL FORM 38.5(b)

DETAILS OF OPEN POSITIONS
(This form should be attached to Form 38.5(b))

OPEN POSITIONS (Note 1)

Product name, e.g. call option	Written or purchased	Number of securities to which the option or derivative relates	Exercise price (Note 2)	Type, e.g. American, European etc.	Expiry date

Notes

- 1. Where there are open option positions or open derivative positions (except for CFDs), full details should be given. Full details of any existing agreements to purchase or to sell should also be given on this form.*
- 2. For all prices and other monetary amounts, the currency must be stated.*

For details of the Code's dealing disclosure requirements, see Rules 8 and 38.5 and their Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk