



PCP8 Issued on 4 December 2001

THE PANEL ON TAKEOVERS AND MERGERS

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

**AGGREGATION OF DEALINGS REQUIRING
DISCLOSURE**

**REVISION PROPOSALS RELATING TO NOTE 4
ON RULE 24.3 OF THE TAKEOVER CODE**

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

The Code Committee is therefore inviting comments on this Consultation Paper. Comments should reach the Code Committee by **14 January 2002**.

Comments may be sent by email to:

consultation@disclosure.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee
The Panel on Takeovers and Mergers
P.O. Box No. 226
The Stock Exchange Building
London
EC2P 2JX

Telephone: 020 7382 9026

Fax: 020 7638 1554

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

1. Introduction

- 1.1 Generally speaking, the Panel adopts a permissive approach towards dealing in shares and other financial instruments. Where appropriate, instead of imposing a general prohibition on dealings in offeror and offeree securities during offer periods, the Code emphasis is on disclosure of dealing so as to ensure market transparency.

- 1.2 Rules 24.3 and 25.3 of the Code require relevant holdings and dealings by the parties to an offer and certain categories of person associated with such parties to be disclosed in the offer documentation. Dealings which take place in the 12 months prior to the offer period and during it (up to the latest practicable date prior to the posting of the offer documentation) must be disclosed and those dealings which take place during the offer period are also required to be disclosed publicly in accordance with the provisions of Rule 8 of the Code.
- 1.3 Listing a large number of transactions may not serve a useful purpose and so Note 4 on Rule 24.3 (which applies equally to Rule 25.3) permits "*some measure of aggregation of dealings by a person provided that no significant dealings are thereby concealed.*" The Note, which outlines the extent of the permitted aggregation, is set out below.

"4. Aggregation

There may be cases where no useful purpose would be served by listing a large number of transactions. In such cases the Panel will accept in documents some measure of aggregation of dealings by a person provided that no significant dealings are thereby concealed. The following approach is normally acceptable:

(i) for dealings during the offer period and the month prior to its commencement there should be no aggregation;

(ii) for dealings in the two months prior to that period, all purchases and all sales in that period can be aggregated; and

(iii) for dealings in the nine months prior to that period, purchases and sales can be aggregated on a quarterly basis.

Purchases and sales should not be netted off and the highest and lowest prices should be stated. A full list of all dealings should be sent to the Panel and should be made available for inspection."

2. Issue

2.1 The Panel has been made aware that, in relation to dealings which take place in the month preceding and during the offer period, in respect of which Note 4 does not permit aggregation, some parties regard the extent of dealing disclosure in the offer documentation as excessive. The Panel recognises that where either the proprietary trading and discretionary fund management arms of the financial adviser/broker advising either the offeror or the offeree do not have Panel exempt status or where the offeror or the offeree is itself a financial services group with subsidiaries whose business includes dealing in securities on behalf of clients on a discretionary basis, the lists of dealings are, in the absence of any aggregation provisions, on occasion lengthy.

3. Proposal

3.1 The Code Committee is of the opinion that the value of the dealing information being disclosed would not normally be reduced by permitting further aggregation. At present the lists of dealings can be long and often comprise numerous small trades which, individually, do not give a particularly informative overall picture.

3.2 The Code Committee therefore proposes to amend Note 4 on Rule 24.3 so that dealings during the offer period and dealings in the month prior to the offer period commencing may be separately aggregated, subject to the existing requirement that no significant dealings are thereby concealed. For the sake of simplicity it is proposed to amend the Note further so that dealings in each of the three months prior to the offer period commencing are aggregated on a monthly basis. Dealings in the second and third months prior to the offer period commencing are currently disclosed together. Dealings in the nine months prior to the offer period commencing will continue to be aggregated on a quarterly basis.

3.3 The Code Committee is, however, concerned to ensure that the Executive is in a position to evaluate whether the aggregation of such dealings is appropriate given the concern that aggregation should not lead to significant dealings being concealed. The Code Committee is, therefore, also proposing to clarify the wording of the Note so that the full list of dealings, together with a draft of the proposed aggregated disclosure, must be sent to the Panel for its approval in advance of the posting of the offer documentation.

3.4 The proposed revised wording of Note 4 on Rule 24.3 is set out below.

"4. Aggregation

There may be cases where no useful purpose would be served by listing a large number of transactions. In such cases the Panel will accept in documents some measure of aggregation of dealings by a person provided that no significant dealings are thereby concealed. The following approach is normally acceptable:

(i) for dealings during the offer period ~~and the month prior to its commencement there should be no aggregation~~, all purchases and all sales can be aggregated;

(ii) for dealings in the ~~two~~ three months prior to that period, all purchases and all sales in that period can be aggregated on a monthly basis; and

(iii) for dealings in the nine months prior to that period, purchases and sales can be aggregated on a quarterly basis.

Purchases and sales should not be netted off and the highest and lowest prices should be stated. A full list of all dealings, together with a draft of the proposed aggregated disclosure, should be sent to the Panel, for its approval, in advance of the posting of the offer documentation and the full list of dealings should be made available for inspection."

4 The Effect of the Proposed Amendments

4.1 The Code Committee believes that certain parties to offers and those categories of person associated with them whose dealings require disclosure are likely to find that their disclosure obligations in offer documentation may be reduced significantly as a result of these changes, but that the information available to interested parties will not be materially different from that available at present. The Code Committee also believes, given the proposed increase in permitted aggregation, that it is unlikely that there will be any adverse cost implications of the above proposals.

Q.1 Do you agree with the proposal to increase the extent of aggregation of dealings disclosed in offer documentation and to amend the wording of Note 4 on Rule 24.3?