RS 2005/2 Issued on 5 August 2005

THE PANEL ON TAKEOVERS AND MERGERS

DEALINGS IN DERIVATIVES AND OPTIONS

STATEMENT BY THE CODE COMMITTEE OF THE PANEL FOLLOWING THE EXTERNAL CONSULTATION PROCESSES ON DISCLOSURE ISSUES IN PCP 2005/1 AND PCP 2005/2

SECTION A
INTRODUCTION

1. Introduction

1.1 On 7 January 2005, the Code Committee of the Takeover Panel (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. Part C of PCP 2005/1 dealt with dealings in derivatives and options by parties to an offer and persons whose interests fall into the 30% to 50% band (the "Control Issues").

1.2 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". Section B of PCP 2005/2 proposed amendments to the Takeover Code (the "Code") in connection with the disclosure of dealings by market participants during an offer period. Section C proposed Code amendments in connection with the details to be included in offer announcements, announcements of acceptance levels and offer documentation. Section D proposed amendments to Rules 16 (special deals with favourable conditions) and 20.1 (equality of information).

1.3 The purpose of this Response Statement is to provide details of the Code Committee's response to the external consultation processes on the issues in Part B of PCP 2005/1 and in PCP 2005/2 (the "Disclosure Issues").

1.4 In this Response Statement, the Code Committee refers to a person who enters into a derivative contract written by another person as an "investor" and to a person who writes a derivative contract as a "counterparty".

2. Responses to PCPs 2005/1 and 2005/2

2.1 Eighteen responses to PCP 2005/1 were received. Thirteen of the respondents submitted their comments on a non-confidential basis.

2.2 Nine responses to PCP 2005/2 were received. Six of the respondents submitted their comments on a non-confidential basis.

2.3 A list of the non-confidential respondents to PCPs 2005/1 and 2005/2 can be found at Appendix C.

3. Amendments to the Code, implementation date and review

3.1 Appendix A sets out the provisions of the Code which have been introduced or amended as a result of the consultation exercises in relation to the Disclosure Issues.

3.2 As stated in paragraph 3.2 of PCP 2005/2, the Code Committee is aware that the rule changes relating to the Disclosure Issues will require market participants to adjust their dealing and reporting systems. A number of respondents to PCP 2005/2 welcomed the proposal to delay the implementation of the rule changes for a period of three months. All the amendments to the Code introduced as a result of this Response Statement will therefore take effect on 7 November. Amended pages of the Code will be published on the date that the Code amendments come into effect.

3.3 The Code Committee recognises that the rule changes relating to the Disclosure Issues and the anticipated changes relating to the Control Issues may have significant implications for market participants. In view of this, the Code Committee believes that it will be appropriate to undertake a review of the operation of the new regulatory environment in June 2007. The conclusions of that review will be published.

4. New Disclosure Forms

4.1 Appendix B sets out the new specimen disclosure forms (the "Disclosure Forms") which are now available on the Panel's website (www.thetakeoverpanel.org.uk). The new Disclosure Forms should be used with effect from the date on which the amendments introduced as a result of this Response Statement take effect (see paragraph 3.2 above). Until that time, disclosures should follow the format of the existing forms, which will continue to be available on the Panel's website in the meantime.

4.2 The new Disclosure Forms also reflect the adoption of certain changes to Rule 8.3(a) and to Notes 5(a) and 7 on Rule 8 relating to "composite disclosure" which were proposed in PCP 2004/3. Composite disclosure is discussed at paragraphs 13.41 and 13.42 below.

4.3 In the case of doubt regarding the Disclosure Forms, please contact the Market Surveillance Unit of the Panel on 020 7638 0129.

SECTION B
PCP 2005/1 - OUTLINE PROPOSALS RELATING TO THE DISCLOSURE ISSUES

5. Rationale for requiring the disclosure of dealings in derivatives and options

Q1. Do you agree in principle that the Code and the SARs should apply to dealings in derivatives and options?

5.1 Paragraph 5.1 of PCP 2005/1 listed the three reasons which, the Code Committee believes, support an increase in the disclosure of dealings in derivatives referenced to and options in respect of relevant securities. These were, in summary, as follows:

(a) that persons with long derivative or option positions may, through the securities which are generally held as a hedge by their counterparties, exercise a significant degree of de facto control over the securities to which the derivative is referenced or which are subject to the option;

(b) that persons dealing in derivatives and options may be dealing with a view to assisting one of the parties to the offer, with the result that they should be considered to be acting in concert with that party; and

(c) that the disclosure of dealings in derivatives and options would enable shareholders to understand better the forces at work in the market and, in particular, the reasons why the prices of offeror or offeree company securities may be moving in a particular direction.

5.2 All respondents agreed that, in principle, the Code should apply to dealings in derivatives and options. However, the enthusiasm with which the respondents agreed with the question varied, some respondents strongly supporting the proposition, others doing so more reluctantly or disagreeing as to the specific manner in which the Code should apply to such instruments.

(a) Detrimental effect on the UK financial market

5.3 In particular, the latter respondents referred to in paragraph 5.2 argued that:

- due to the potential loss of anonymity, the proposals would limit the involvement of risk arbitrage firms in takeover situations, thereby reducing market liquidity; and

- the proposed regime would impose more onerous obligations to disclose derivative and option dealings and positions than in other jurisdictions, making takeovers subject to the Code less attractive transactions in respect of which to carry out merger arbitrage dealings than takeovers subject to other regulations.

5.4 The Code Committee recognises that a number of regulatory requirements may have the effect of reducing market liquidity but believes that any potential loss of liquidity needs to be weighed against other considerations. In addition, the Code Committee believes that the current absence of a requirement to disclose dealings in derivatives, such as CFDs, is only one of the elements which attract investors to such instruments.

5.5 As a separate point, two respondents suggested that the Code Committee's proposals might be driven in part by a wish to limit the activities of persons dealing in derivatives and related instruments. This is not correct. The Code Committee believes that where a person's interests in securities in the form of derivatives or options are material, any dealings by such a person should be disclosed.

(b) The SARs

5.6 Two respondents did not agree that the Rules Governing Substantial Acquisitions of Shares (the "SARs") should be extended to dealings in cash-

settled derivatives and noted, in particular, the potential difficulties of aggregating and monitoring derivatives positions in order to avoid a breach of SAR 1. The Code Committee notes this concern and is continuing to consider the implications of its proposals for the SARs.

6. What derivative and option instruments should be subject to the new dealing disclosure regime?

Q2. Do you agree that the new regime should require the disclosure of dealings in all derivatives referenced to, and options in respect of, shares in an offeree company and, where appropriate, the offeror?

6.1 A large majority of the respondents who specifically addressed the issue agreed with the proposition that the new regime should extend to dealings in all derivative and option instruments. A number of respondents emphasised the need to avoid framing the regime in terms which could easily be capable of circumvention.

(a) De facto control

6.2 One respondent was of the opinion that hedge funds with CFD interests frequently seek to take an active role in corporate matters and, in effect, control the securities held by their counterparties to hedge their financial exposure under the derivative contracts. As a result, the respondent was of the view that such persons acted in the same way as if they were shareholders.

6.3 On the other hand, some respondents disputed the Code Committee's observation that a person with a long derivative or option position may exercise a significant degree of de facto control over the securities to which his derivative is referenced or in respect of which he holds the option. The latter respondents questioned the benefit of requiring the disclosure of derivative and option positions in circumstances where no such control had passed. In support of this position, the respondents argued, in particular, that:

- a holder of a derivative often has a purely economic interest in the price of the securities to which it is referenced and such a person often has no interest in influencing the outcome of a bid;

- standard derivative documentation makes clear that investors have no interest in the underlying hedge securities;

- a number of counterparties have policies of not taking instructions from derivative investors; and

- a counterparty may hedge its position with a balancing derivative, rather than with the underlying securities.

These respondents believed that the Code should be concerned only with those situations where control over securities is specifically sought by an investor entering into a derivative or option instrument or where the investor has a right to acquire the underlying securities on closing out the derivative. These respondents drew a distinction between "controlling CFDs" and "purely economic CFDs".

6.4 One of the respondents referred to in paragraph 6.3 suggested that, instead of the approach proposed by the Code Committee:

- the Code should impose a prohibition on a holder of hedge securities acting at the direction of a derivative or option investor, unless that investor has publicly disclosed his derivative or option position; and

- the disclosure of derivatives and options should only be required where the investor dealt with the purpose of changing or influencing the control of the issuer of the securities to which the derivative or option relates.

6.5 The Code Committee has considered these proposals but believes them to be unworkable in practice.

6.6 First, the Code Committee believes that, notwithstanding the contractual arrangements between them, a counterparty will usually know the derivative investor's likely wishes and therefore it would be naïve to assume that the counterparty (who has no economic interest in any hedge securities it holds but who does have an ongoing client relationship with the investor) will act without having some regard to those wishes. In addition, as indicated in paragraph 3.3 of PCP 2005/1, the Code Committee understands that it is frequently the expectation of a long derivative investor, notwithstanding the terms of the documentation, that his counterparty will ensure that the securities to which the derivative is referenced are available to be voted by the counterparty and/or sold to the investor on closing out the contract. If the counterparty does not hold any such securities (because, for example, its book is balanced by an offsetting short derivative), the investor would normally expect the counterparty to acquire the necessary securities, even if that resulted in a cost to the counterparty.

6.7 Secondly, the Code Committee believes that it would not be practicable either to seek to control the relationship between the counterparty and the investor or to require disclosure on the basis of the purpose of a dealing. With regard to the latter, there would inevitably be concerns that an understanding may exist between the investor and the counterparty yet such an understanding would be extremely difficult to prove.

6.8 Another of the respondents referred to in paragraph 6.3 above believed that the existing provisions of the Code were, or could be made to be, sufficiently broad to deal with the issue of a derivative investor exerting control over the securities to which the derivative relates and that priority should be given to improving the monitoring and enforcement of those provisions.

6.9 A third respondent referred to in paragraph 6.3 above believed that only a relatively small proportion of derivative investors sought to control the securities to which their derivatives were referenced and that full disclosure by all investors might lead to an unhelpfully large volume of disclosures. In its

subsequent response to PCP 2005/2, the respondent went on to state its belief that much trading of derivatives during offers constitutes speculation by investors who have no interest in "influencing" the outcome of a bid but who hope to profit from share price movements. The respondent argued that such "hopes" of investors, or their hopes that a vote will go a certain way, should not be of concern to the Panel. The Code Committee disagrees with the view that the comments it made in paragraph 5.2 of PCP 2005/2 were "no more than an observation that people hope for investments to go well" and that this should not be of concern to the Panel.

6.10 The Code Committee:

(a) believes that to draw a distinction between holders of "controlling CFDs" and holders of "purely economic CFDs", particularly in a market where CFDs are written "over the counter", would be over-simplistic in the context of a takeover where the price of a takeover stock is determined by the outcome, or the likely outcome, of the bid and where an interest in the price of a takeover stock is, therefore, an interest in the outcome of the bid. By way of example, the Code does not currently exempt from its disclosure obligations shareholders who claim simply to have an "economic" interest in the value of their investment;

(b) understands that the Panel continues to encounter situations where holders of long derivative positions behave as if they were shareholders and, more importantly, situations where investment bank counterparties enquire of investors with long derivative positions as to their preferences in terms of bid outcomes in order that the counterparties may take those preferences into account;

(c) believes that it would not be practicable for the Panel to review each derivative or option position individually to examine the degree of control being exercised and that disclosure rules must be framed in clear terms which can be applied universally across the market; and

(d) believes, therefore, that the current provisions of the Code are insufficient to address the issues to which dealings in derivatives and options give rise.

(b) Other issues

6.11 One respondent, whilst agreeing that more regulation of trading in derivatives and options was required, did not believe that these instruments should be treated in the same manner as shares. The respondent suggested various alternative solutions to the issues identified by the Code Committee, including a prohibition on any communication between a derivative investor and its counterparty in relation to voting or other "corporate actions" and a requirement for a shareholder who had recently acquired shares from its counterparty upon closing out a derivative to obtain the consent of the Panel before undertaking certain actions in relation to those shares. The same respondent, together with certain others, suggested that during an offer period there should be a restriction on an investor closing out a derivative position and acquiring the underlying securities from its counterparty.

6.12 The Code Committee does not believe that a prohibition on communication of the type suggested would be capable of proper monitoring or enforcement in circumstances where a derivative investor and its counterparty are likely to be in regular contact in relation to a variety of issues. Nor is the Code Committee attracted by the proposed restrictions on a derivative investor's actions in view of the fact that the approach which the Code adopts towards dealings during an offer period is a permissive one, focussing on their disclosure and their consequences rather than prohibiting them altogether.

6.13 Another respondent agreed that the new regime should not be limited to CFDs but expressed concern at the potential volume and lack of intelligibility of the information which might be disclosed under the extended regime. However, the respondent recognised the difficulties of identifying objective criteria, other than size, by which disclosures could be limited.

6.14 A third respondent expressed concerns in relation to derivatives referenced to the prices of baskets of securities, namely that, on the one hand, such derivatives might inappropriately fall within the disclosure net while, on the other hand, such baskets might be used as a device to avoid disclosure. The Code Committee notes that the Note on the definition of "derivative" provides that the Panel will not normally regard a derivative which is referenced to a basket or index of securities, including securities which are "relevant securities" for the purposes of the Code, as connected with an offer if, at the time of the dealing, the relevant securities in the basket or index represent less than 1% of the class in issue and, in addition, less than 20% of the value of the securities in the basket or index. The Code Committee is not proposing to amend the Code's treatment of derivatives referenced to a basket or index of securities.

6.15 A fourth respondent questioned whether it was sufficiently clear whether or not the definition of "derivative" captured spread bets. For the avoidance of doubt, the Code Committee confirms that the definition of "derivative" does capture spread bets.

6.16 In the light of the above, the Code Committee continues to believe that the Code should require that all material dealings in derivatives referenced to and options in respect of relevant securities of an offeree company and, where appropriate, the offeror, should be disclosed.

7. In what circumstances should a disclosure obligation be triggered?

Q3. Do you agree that the disclosure obligation should arise at the 1% level?

7.1 In paragraph 7.2 of PCP 2005/1, the Code Committee proposed that, consistent with the current Rule 8.3(a), a disclosure obligation should arise where a person has a long position of 1% or more in any class of relevant security of the offeree company (or, in the case of a securities exchange offer, of the offeror) or where a person comes to have such an interest as a result of a dealing.

7.2 Most respondents agreed that the disclosure obligation should arise at the 1% level.

7.3 Two respondents believed that setting the level at 1% would act as a deterrent on merger arbitrage dealings above that level, leading to a loss of market liquidity. These respondents, together with a third respondent, believed that 3% would be a more appropriate level.

7.4 A fourth respondent agreed that 1% was the appropriate level for options and physically settled derivatives but proposed a higher level in relation to cash-settled derivatives, as discussed under Question 5 below.

7.5 A fifth respondent believed that, as is currently provided in Note 7 on Rule 8, the disclosure of long derivative positions should only be required where the holder of the derivative also holds 1% or more of the class of securities to which the derivative is referenced. In the alternative, the respondent believed that the 1% trigger should be by reference to "controlling CFDs" (see paragraph 6.3 above).

7.6 The Code Committee continues to believe that the disclosure obligation should arise at the 1% level. The 1% threshold is well established in the context of takeovers and market participants have not called for it to be raised as regards dealings in shares.

Q4. Do you agree that a disclosure obligation should arise only where a person has a long position of 1% or more and not also if a person only has a short position of 1% or more?

7.7 Most respondents agreed, either implicitly or explicitly, and some subject to their other comments, that the disclosure obligation should be triggered only where a person holds or acquires a long position in respect of securities of 1% or more.

7.8 However, a significant minority of the respondents who addressed the issue believed that persons with material short only positions should be required to make dealing disclosures. One such respondent, whilst acknowledging that the ownership of shares and the attached voting rights is what is ultimately relevant to the outcome of a bid, believed that both long and short positions were relevant to "the operation of the market in corporate control" and should therefore be treated similarly for disclosure purposes. The majority of the respondents who were in favour of the disclosure of short only positions believed that such a requirement should be introduced immediately whilst one such respondent believed that the Code Committee should move towards such a position over time.

7.9 On the other hand, one respondent expressed concern in relation to any disclosure of short positions, even in circumstances where a person had a gross long position of 1% or more.

7.10 The Code Committee recognises that there are arguments in favour of and against requiring a person with a significant short position, but no long position, to disclose his dealings in relevant securities. The Code Committee recognises that the counterparty of an investor with a short derivative or option position is likely to borrow and then sell the securities to which the derivative or option relates and, as a result, will not hold any hedge securities over which the investor will be able to exercise de facto control. The Code Committee's first reason for amending the disclosure rules is therefore not relevant to a person with only a short position.

7.11 On balance, therefore, the Code Committee believes that Rule 8.3 should not be amended to require a person with a significant short position, but no long position, to disclose his dealings in relevant securities. However, as mentioned in paragraph 6.4 of PCP 2005/2, the Code Committee intends to keep under review whether a disclosure obligation should also be triggered where a person has only a short position in relevant securities.

Q5. Do you agree that all physical long positions, call options, long derivative positions and written put options should be aggregated in establishing whether a person has a long position of 1% or more?

7.12 Most respondents agreed that the interests listed in Question 5 should be aggregated in order to establish whether a person has a long position of 1% or more.

7.13 Consistent with their other responses, two respondents believed that interests should only count towards a person's long position where he has "actual" control of the securities in question. One of these respondents, together with a third respondent, argued that many CFDs and other financial instruments may be written over the same underlying securities and that, contrary to the Code Committee's stated aim of achieving greater market transparency, requiring disclosure of all such instruments by all investors would be likely to give a distorted picture of where effective control of a company was held, owing to the disclosure of derivatives referenced to notional percentages which might be equal in aggregate to a multiple of a company's issued share capital.

7.14 One of the respondents referred to in paragraph 7.13 drew a distinction between (a) derivatives, where there is likely to be a one-to-one relationship between the derivative position and the number of underlying securities held as a hedge, and (b) options, where the relationship between the option position and the number of underlying securities held as a hedge is likely to vary over time. The respondent also questioned whether both call options and written put options should always count towards a person's long position.

7.15 Two further respondents suggested that shares and derivatives should be aggregated separately. One such respondent went on to propose separate disclosure thresholds in relation to each class of relevant security by reference to three "buckets" comprising (a) the security itself (with a suggested disclosure threshold of 1%), (b) physically settled derivatives (1%), and (c) cash-settled derivatives (3%).

7.16 The Code Committee acknowledged the issue of disclosures relating to notional percentages equal in aggregate to a multiple of a company's issued share capital in paragraph 6.30 of PCP 2005/2 which stated as follows:

"The Code Committee recognises that disclosures of interests may therefore refer to relevant securities which add up to in excess of 100% of the class of relevant securities issued by the company in question. This is an inevitable consequence of both the holder of a derivative or option and a hedging counterparty having an interest in the same class of relevant securities. However, certain organisations will benefit from the exemption from disclosure under Rule 8.3(d) …, which is likely significantly to reduce the instances of "multiple" disclosure.".

7.17 The Code Committee also recognises that, while CFDs are normally hedged on a "delta-one" basis, the correlation between the size of an option position and the number of underlying securities held as a hedge will change over the life of the option. Whilst it acknowledges that the holder of an out of the money call option will not be able to exert any influence or control over securities to the extent that its counterparty does not hold such securities as a hedge, the Code Committee continues to believe that it is not possible to frame an effective disclosure regime without dealings in all derivative and option instruments being caught.

7.18 The Code Committee has considered the proposal of disclosure by reference to product-type "buckets" referred to in paragraph 7.15 above. However, the Code Committee believes that:

(a) to differentiate between physical securities, options and derivatives in the manner suggested would be inconsistent with the philosophy underlying its proposals;

(b) it would be inappropriate to raise the disclosure threshold for any one product type; and

(c) such a system would be unnecessarily complicated.

Q6. Do you agree that the 1% disclosure level should be triggered by reference to a person's gross long position?

7.19 In paragraph 7.8 of PCP 2005/1, the Code Committee proposed that the disclosure obligation should be triggered by reference to a person's gross long position, on the basis that the person should be treated as having control of the securities in which he has that long position, even if he has a shorter net economic position. In addition, if the trigger were to be calculated on a net basis, a person could easily avoid incurring a disclosure obligation by taking out a significantly out of the money short position.

7.20 All but one of the respondents who addressed this issue agreed that the disclosure obligation should be triggered by reference to a person's gross long position. The respondent who disagreed believed that short positions should be taken into account and the disclosure obligation triggered by reference to a person's net position.

7.21 A number of respondents reiterated their view that it was important for a person's long and short positions to be disclosed once the disclosure obligation has been triggered, in order that the person's full net position can be understood. The Code Committee agrees with this view, as mentioned in paragraph 7.4 of PCP 2005/1.

7.22 One respondent, whilst agreeing with the question, was concerned to avoid voluminous disclosures being made during bids as a result of derivative and option transactions. The respondent cited the disclosure of the dynamic hedging of option positions as an example and suggested that there might be a case for requiring disclosure only of net long positions of 1% or more if voluminous disclosures were a concern.

7.23 Another respondent, whilst supporting the Code Committee's conclusions and understanding the scope for influence and control in respect of securities to

which a long position relates, suggested that a person might only have the potential to control the securities which were the subject of the net position. The respondent raised the question of whether positions which can "genuinely" be offset against each other could be disclosed on a netted basis.

7.24 The Code Committee continues to believe that the disclosure obligation should normally be triggered by reference to a person's gross long position. However, having considered the matter further, the Code Committee believes that, in establishing whether a person has a disclosure obligation, the Panel will normally allow certain positions to be netted against each other, for example, if each of the following conditions is met:

(a) the offsetting positions are in respect of the same class of relevant security;

(b) the offsetting positions are in respect of the same investment product;

(c) save for the number of securities in question, the terms of the offsetting positions are the same, e.g. as to strike price and, if appropriate, exercise period; and

(d) the counterparty to the offsetting positions is the same in each case.

7.25 Therefore, if an investor has taken out both long and short CFDs with the same counterparty, the Code Committee would expect the Panel to allow such positions to be offset against each other and for a disclosure obligation to be triggered only in the event that there was a net long position of 1% or more, in the same way that purchases and sales of shares are offset in determining whether a person has a physical holding of 1% or more of a class of relevant security. However, the Code Committee does not believe that it would be appropriate for an investor to be allowed to net long and short positions with different counterparties, on the basis that the influence which he may have over the securities held by the counterparty to his long position will not be offset by the short position with a separate counterparty.

Q7. Do you agree that events which should trigger a disclosure obligation should be set out in the Code and should be those set out above?

7.26 In paragraph 7.9 of PCP 2005/1, the Code Committee stated that it believed that the events which should trigger a disclosure obligation in relation to derivatives and options should be as follows:

(a) in respect of derivatives, the acquisition of, disposal of, entering into of, closing out of, exercise (by either party) of any rights under or variation of the terms of the derivative; and

(b) in respect of options, the taking, granting, acquisition, disposal, exercising or variation of the terms of the option.

7.27 All but one of the respondents who addressed this issue agreed with the Code Committee's proposals. The other respondent believed that variations of the terms of a derivative would be difficult to monitor and should not therefore require disclosure.

7.28 One respondent, whilst agreeing with the proposal, queried whether the variations of an option or derivative which trigger a disclosure obligation should be limited to variations which affect the number of securities in which a person was interested. The Code Committee recognises that certain variations of the terms of a derivative or option may not, of themselves, warrant disclosure. The Code Committee understands that the Panel will normally require a variation of the terms of a derivative or option to be disclosed only if the term being varied was itself required to be disclosed.

8. What information should be disclosed in respect of the dealing?

Q8. Do you agree that the rules should require that all information material to the transaction should be disclosed as set out above?

8.1 In paragraph 8.1 of PCP 2005/1, the Code Committee stated its belief that, when the disclosure of dealings in derivatives and options is required, the rules should require that all information material to the transaction should be disclosed, as follows:

"… In the case of a derivative, this should include as a minimum the number of securities to which the derivative is referenced, the closing out date (if any) and the reference price, together with a description of the derivative instrument itself; in the case of an option, this should include as a minimum the number of shares under option, the exercise date(s), the exercise price, any option money paid and a description of the option instrument. …".

8.2 In addition, the Code Committee stated its belief that, if the disclosure obligation were to lie with the holder of the derivative or option, it would not be necessary for the identity of the counterparty also to be disclosed.

8.3 All but one of the respondents who addressed this issue were supportive of the Code Committee's proposals. The respondent who disagreed believed that the information which the Code Committee proposed should be disclosed, particularly pricing information, was too wide and would be prejudicial to the legitimate business interests of hedge funds.

8.4 Two further respondents, whilst generally agreeing with the proposals, believed that the identity of the counterparty to a derivative or option was information which was material to the transaction and should therefore be disclosed. On the other hand, a fourth respondent explicitly stated its belief that the identity of counterparties should not be required to be disclosed as such a requirement would adversely affect market-makers and other trading intermediaries.

8.5 The fourth respondent referred to in paragraph 8.4, whilst agreeing with the proposed approach, had concerns about the potential costs and complexity for holders of derivatives in monitoring and managing the disclosure of their positions.

8.6 A fifth respondent, whilst welcoming the proposals, believed that the requirement to disclose the material information described should only apply to positions arising during the offer period and should not apply to positions which had been opened prior to the offer period.

8.7 As stated in paragraph 8.1 of PCP 2005/1, the Code Committee continues to believe (a) that the information referred to in paragraph 8.1 above is material and should be disclosed, and (b) that the identity of an investor's counterparty is not material information requiring disclosure.

8.8 As mentioned in paragraph 8.4 of PCP 2005/1, the Code Committee acknowledges that a consequence of a wider disclosure obligation may be a more complicated regime. It does not, however, consider this to be a reason to abandon the objective of informing shareholders and the market properly of material dealings in relevant securities. Nevertheless, as mentioned in paragraph 3.2 above, the Code Committee recognises that market participants will need time to adjust their dealings and reporting systems and is therefore delaying implementation of the rule changes as described in that paragraph.

8.9 In relation to the disclosure of open positions, the Code Committee notes that the Disclosure Forms set out in Appendix B of this Response Statement will continue to provide for the disclosure of the details of a person's open option and derivative positions but understands that the Panel will no longer require details of individual open CFD positions to be disclosed, provided that the terms of the open CFDs are the same in all material respects.

9. At what point in time should a person's interest be evaluated and by what time should the disclosure be made?

Q9. Do you agree that a person should be required to evaluate his position at a fixed point in time and that this should be midnight (London time) each day?

9.1 All respondents who addressed this issue were supportive of the proposal that there be a single point in time by reference to which a person should be required to evaluate whether his interest was above or below the disclosure threshold and that this time should be midnight (London time) each day.

Q10. Do you agree that the disclosure of dealings in derivatives and options should be required to be made by 12 noon (London time) on the business day following the date of the dealing?

9.2 Whilst a number of the respondents who addressed this issue agreed with the Code Committee's proposal, others believed that the proposed timescale for the disclosure of dealings in derivatives and options was too short and should be extended. Some of the latter respondents cited geographical reasons for an extension whilst others highlighted practical considerations.

9.3 As noted in paragraph 10.3 of PCP 2005/2, two respondents were concerned about the position of market participants in the US. These respondents respectively suggested 2.30 pm and 4.00 pm on the business day following the date of the dealing as preferable deadlines.

9.4 Two further respondents, whilst acknowledging that the disclosure of dealings in instruments other than derivatives and options was clearly feasible by 12 noon on the business day following the date of the dealing (the current deadline for Rule 8 disclosures), nonetheless believed that more time might be required for the disclosure of more complex derivative and option positions. One of these respondents suggested the close of business on the third business day after the date of the dealing as the deadline for such disclosures. Three further respondents believed that the timescale for the disclosure of derivatives proposed by the Code Committee would be difficult to comply with in practice, two of them noting that the standard practice is for short form trade confirmations to be sent by the counterparty to the investor within three days of the trade date, with the complete confirmation setting out all details following later.

9.5 The Code Committee notes the timescale for the issue of short form derivative trade confirmations but does not consider that a derivative investor will need to await the receipt of a trade confirmation in order to be aware of, and therefore to be in a position to disclose, his derivative transactions. Having taken account of the comments above, the Code Committee concluded and therefore proposed, in paragraph 10.4 of PCP 2005/2, that the deadline for public disclosures made pursuant to Rule 8.3 should be extended to 3.30 pm (London time) on the business day following the date of the dealing.

10. Should there be a de minimis exemption from disclosure?

Q11. Do you agree that the benefits of a de minimis exemption from disclosure are outweighed by its likely complexity and the costs of its implementation?

10.1 In paragraph 10.4 of PCP 2005/1, the Code Committee concluded that, on balance, the attractions of a de minimis exemption from disclosure were outweighed by its complexity and the likely costs to market participants of implementing the systems to apply it.

10.2 Most respondents who addressed this issue agreed that there should not be a de minimis exemption, although some gave different reasons to those forwarded by the Code Committee. However, three respondents believed that a de minimis exemption would be beneficial, despite the likely complexity.

10.3 The Code Committee continues to believe that a de minimis exemption is not justified and no such proposal was made in PCP 2005/2.

11. Who should be required to disclose any dealings in derivatives and options?

Q12. Do you agree that the obligation to disclose dealings in derivatives and options should lie with the investor (i.e. the derivative or option holder)?

11.1 Most respondents who addressed this issue agreed that the disclosure obligation should lie with the investor. Two respondents believed that the disclosure obligation should lie with the counterparty rather than the investor, and one respondent believed that disclosures should be made by both the investor and the counterparty.

11.2 The latter respondent further believed that transparency and compliance concerns led to the conclusion that the investor and the counterparty should identify each other in their respective disclosures, although it acknowledged that an investor might not wish his counterparty to know the volume of business that he was undertaking with other counterparties.

11.3 The Code Committee continues to believe that the disclosure obligation should lie with the investor for the reasons given in paragraph 11.1 of PCP 2005/1, namely:

(a) it is generally the investor which will be the driving force behind the transaction;

(b) it is the influence which the investor has in practice over any hedge shares which is the primary justification for extending the disclosure regime as proposed. Accordingly, it is logical that the investor should be subject to the disclosure obligation;

(c) only the investor knows his full position in respect of a company's shares. A long CFD holder may, for example, have a number of positions in respect of a single class of share with a number of different counterparties; and

(d) it is consistent with what is currently required under Rule 8.

Q13. Do you agree that the proprietary trading desk of an investment bank should not benefit from the exemption in Rule 8.3(d)?

11.4 All respondents who gave a view on this question agreed that the exemption from disclosure for market-makers and principal traders under Rule 8.3(d) should not be available to the proprietary trading desk (or the equivalent trading operation) of an investment bank.

11.5 As mentioned in paragraph 12.3 of PCP 2005/2, the Panel is currently 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 be exempt from the obligations in Rule 8.3 to disclose dealings in relevant securities. The Code Committee will also be considering whether or not changes should be proposed to the current criteria for exemption from disclosure.

12. SAR 3

Q14. Do you agree that SAR 3 and Note 3 on SAR 5 should be amended to require the disclosure of dealings in derivatives?

12.1 Most respondents to this question agreed that SAR 3 and Note 3 on SAR 5 should be amended in this way. As indicated in paragraph 5.6 above, two respondents did not agree that the SARs should be amended in this way.

12.2 As mentioned in paragraph 5.6 above, the Code Committee is continuing to consider the implications of its proposals for the SARs. The Code Committee intends to put forward proposals in relation to the SARs in due course.

SECTION C

PCP 2005/2 – DETAILED PROPOSALS RELATING TO THE DISCLOSURE ISSUES

13. Disclosure of dealings by market participants

Q.1 Do you agree with the proposed amendments set out in Section B above?

13.1 The respondents generally agreed with the amendments proposed in Section B of PCP 2005/2, subject to a number of comments which are discussed below and, in some cases, to points which they had raised in response to PCP 2005/1.

(a) "Interests in securities"

13.2 In paragraph 6.14 of PCP 2005/2, the Code Committee set out its proposed new definition of "interests in securities".

13.3 One respondent suggested minor changes in order to ensure that the first substantive paragraph of the definition of "interests in securities" was consistent with the paragraphs which follow, and was not too broad. The suggested amendments, which the Code Committee accepts and has adopted, were as follows:

"A person who has~~, or may have,~~ 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.".

13.4 Other than as set out in paragraph 13.3, the Code Committee has adopted the new definition of "interests in securities" as proposed in paragraph 6.14 of PCP 2005/2.

(b) "Derivative"

13.5 In paragraph 6.19 of PCP 2005/2, the Code Committee proposed the amendment of the definition of "derivative" so as to bring it into line with the definition of "interests in securities" and with the terminology generally used by market participants. The Code Committee has adopted the amendment as proposed.

13.6 Separately, the Code Committee notes that, following the adoption of the new definitions of "relevant securities", "interests in securities" and "dealings" in this Response Statement, a derivative will no longer comprise a relevant security (although the position which arises as a result of a long derivative dealing will comprise an interest in the securities to which the derivative is referenced). Since a derivative will not be a relevant security, it will no longer be appropriate to refer to "dealings" in derivatives. The Code Committee has therefore amended the second sentence of the Note on the definition of "derivative" (which will otherwise remain unchanged) as follows:

"*However, it is not the intention of the Code to restrict transactions ~~dealings~~ in, or require disclosure of, derivatives which are not connected with an offer or potential offer.*".

(c) Rule 8.3(a), Rule 8.3(b) and Rule 8.3(c)

13.7 In paragraphs 6.20 and 6.21 of PCP 2005/2, the Code Committee proposed to amend Rules 8.3(a), (b) and (c) as a consequence of the proposed introduction of the new definition of "interests in securities".

13.8 In paragraph 6.9 of PCP 2005/2, the Code Committee stated that it continued to believe that the relevant percentage level at which the disclosure obligation should arise should be 1%. In paragraph 6.4 of PCP 2005/2, the Code Committee stated that it continued to believe that the disclosure obligation under Rule 8.3 should be triggered only where a person has or acquires a long position in respect of relevant securities of the relevant level and not where a person has only a short position. Accordingly, the amendments to the relevant

part of Rule 8.3(a) proposed by the Code Committee in paragraph 6.20 of PCP 2005/2 were as follows:

"… **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** …".

13.9 Two respondents stated, as they had in their responses to PCP 2005/1, their belief that disclosures should be required whenever a person has a position of 1% or more, whether long or short. Another respondent agreed that, for the time being, the disclosure obligation should not fall on a person who has a short only position but welcomed the Code Committee's commitment to keep this under review (see paragraph 7.11 above) and hoped that, in time, the Code would require the disclosure of large short positions.

13.10 Three respondents specifically welcomed the fact that the "composite disclosure" regime (see paragraphs 13.41 and 13.42 below) will require a person who has crossed the disclosure threshold to disclose his short positions in any class of relevant securities of the company concerned following a dealing.

13.11 One respondent proposed that the level at which the disclosure obligation arises should be increased from 1% to 3% (or at least to 2%), pending the Code Committee's review referred to in paragraph 3.3 above. The respondent - who also repeated the suggestion in its response to PCP 2005/1 that there should be separate disclosure thresholds by reference to three "buckets" of product type (see paragraph 7.15 above) - believed that, in any event, setting the disclosure level for derivatives at 3% (in circumstances where a person owns or controls less than 1% of the relevant security itself) would catch those investors "who would be a meaningful factor in terms of directly influencing the outcome of a bid". The respondent acknowledged that an increase in the disclosure level would result in less transparency but believed that little benefit would be lost, and that cost savings would be made, by making such an increase, noting that all but 11 of the 112 formal offers in the year ended

31 March 2005 had been recommended and that the large majority of bids had not been competitive.

13.12 As indicated in paragraph 7.18 above, the Code Committee does not believe that it would be appropriate for there to be separate disclosure thresholds for different product types, particularly where investors may often invest in CFDs as a substitute for investing in shares. Nor does the Code Committee believe that there is any reason to change the overall disclosure threshold from 1% at this time. The Code Committee has considered whether it would be possible to raise the disclosure threshold for certain bids, for example, those which are both recommended and non-competitive, but has concluded that such a regime would not be practicable.

13.13 The Code Committee has therefore adopted the amendments to that part of Rule 8.3(a) which sets out the circumstances in which an obligation to disclose dealings in relevant securities during an offer period is triggered as proposed in paragraph 6.20 of PCP 2005/2.

13.14 In paragraph 6.21 of PCP 2005/2, the Code Committee proposed the amendment of Rule 8.3(b) as follows:

"**(b) Where two or more persons act pursuant to an agreement or understanding, whether formal or informal, to acquire ~~or control~~ an interest in relevant securities, they will be deemed to be a single person for the purpose of this Rule.**".

13.15 One respondent believed that the amended Rule 8.3(b) would be so wide as to capture the investor and the counterparty in any derivative transaction, contrary to what it understood to be the Code Committee's intention. The Code Committee believes that this is an incorrect interpretation of Rule 8.3(b) and that it is clearly not the purpose of Rule 8.3(b) to capture all derivative transactions. The Code Committee understands that the Panel will continue to interpret Rule 8.3(b) narrowly, as it has to date.

13.16 The Code Committee has therefore adopted the amendments to Rules 8.3(b) and (c) as proposed in paragraph 6.21 of PCP 2005/2.

(d) "Relevant securities"

13.17 In paragraphs 6.22 to 6.24 of PCP 2005/2, the Code Committee proposed the deletion of the definition of "relevant securities" from the first paragraph of Note 2 on Rule 8 and the introduction of a new definition of "relevant securities" into the Definitions Section. The Code Committee has adopted the changes as proposed.

(e) Notes on "interests in securities"

13.18 In paragraphs 6.27 to 6.46 of PCP 2005/2, the Code Committee proposed the introduction of Notes 1 to 8 on the new definition of "interests in securities".

13.19 Most respondents either supported or did not comment on Notes 2 ("interests of two or more persons"), 3 ("number of securities concerned"), 6 ("proxies and corporate representatives") and 8 ("Companies Act 1985") which the Code Committee has therefore adopted as proposed in the relevant paragraphs of PCP 2005/2.

(i) Gross interests

13.20 In paragraph 6.27 of PCP 2005/2, the Code Committee proposed the introduction of Note 1 on the definition of "interests in securities". The Code Committee explained in paragraph 6.27 of PCP 2005/2 that it continued to consider that the trigger for a disclosure obligation under Rule 8.3 should be by reference to a person's aggregate gross interests and that there should be no "netting" of short positions.

13.21 In view of the Code Committee's conclusion, set out in paragraph 7.24 above, that netting might be possible in certain circumstances, the Code Committee has adopted Note 1 on the definition of "interests in securities" in a slightly

different form from that proposed in paragraph 6.27 of PCP 2005/2, as follows:

"*1. Gross interests*

The number of securities in which a person is treated as having an interest is normally the gross number, aggregating the number of securities falling under each of paragraphs (1) to (4) above. If an interest in securities falls within more than one paragraph, the person shall be treated as interested in the highest number determined under the relevant paragraphs.

If each of the following conditions is met, the Panel will normally allow offsetting positions to be netted off against each other:

(a) the offsetting positions are in respect of the same class of relevant security;

(b) the offsetting positions are in respect of the same investment product;

(c) save for the number of securities in question, the terms of the offsetting positions are the same, e.g. as to strike price and, if appropriate, exercise period; and

(d) the counterparty to the offsetting positions is the same in each case.".

(ii) Securities borrowing and lending

13.22 In paragraph 6.38 of PCP 2005/2, the Code Committee proposed the introduction of Note 4 on the definition of "interests in securities". As explained in paragraph 6.37 of PCP 2005/2, the Code Committee considers that the Panel's current practice that a person will normally be regarded as interested in any securities which he has lent, but not normally in any securities which he has borrowed, should, for the time being at least, be codified.

13.23 All but one of the respondents noted that the Code Committee had not yet reached a final conclusion as to whether or not the Code should require the disclosure of borrowing and lending transactions and the majority offered views as to whether or not (a) a person should be treated as interested in securities which he has either borrowed or lent, and (b) the borrowing or lending of securities should be regarded as a "dealing" for the purposes of the

Code. In addition, one respondent urged the Code Committee to consider the possibility of prohibiting securities borrowing for the purpose of voting.

13.24 The Code Committee acknowledges these responses which it will take into account when it comes to reconsider the issue of securities borrowing and lending.

13.25 One respondent suggested that, in any event, the treatment of borrowed securities which had been on-lent should be clarified. In other words, would a person who had borrowed securities and then on-lent them (a) be treated as interested in them since they were "lent" securities, or (b) be treated as not interested in them since they were "borrowed" securities?

13.26 The Code Committee believes that a person should not be treated as interested in securities which he has borrowed and on-lent and accepts that this should be clarified. The Code Committee has therefore adopted Note 4 on the definition of "interests in securities" in a slightly different form from that proposed in paragraph 6.38 of PCP 2005/2, as follows:

"*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 will not normally be treated as interested in any securities which he has borrowed. If a person has on-lent securities which he has borrowed, he will not normally be treated as interested in those securities.".

13.27 The same respondent sought clarification as to whether equities repurchase (repo) transactions would be treated in the same way as securities borrowing and lending transactions. The Code Committee understands that repo transactions will normally be so treated by the Panel. So, for example, a person who has transferred securities to another person pursuant to a standard repo transaction will be treated as continuing to have an interest in those securities and the person to whom the securities have been transferred will not be treated as interested in them.

(iii) New securities

13.28 In paragraph 6.40 of PCP 2005/2, the Code Committee proposed the introduction of Note 5 on the definition of "interests in securities". As explained in paragraph 6.39 of PCP 2005/2, Note 5 confirms that whilst a security of the offeree company or an offeror carrying conversion or subscription rights into another class of relevant security will itself be a relevant security, such a security will not give rise to an "interest" in the new security which does not yet exist and which will only be issued upon conversion or exercise.

13.29 Two respondents sought further clarification of the treatment of warrants and other rights to subscribe. For the avoidance of doubt, a warrant (i.e. a warrant to subscribe for new securities) or other right to subscribe for relevant securities will not, of itself, give rise to an interest in the class of relevant securities which will be issued upon exercise of the warrant or other right to subscribe. This is because it is only possible for a person to have an interest in securities which are already in existence and over which he may therefore be able to exercise control.

13.30 For example, if a person purchases a warrant to subscribe for new ordinary shares in an offeree company, he will then be interested in those warrants (which, in accordance with paragraph (d) of the definition of "relevant securities", will themselves be relevant securities), but will not be interested in the ordinary shares (which have not yet been issued by the offeree company). Assuming that the person has no other interests in relevant securities of the offeree company, the person will trigger a dealing disclosure obligation if the warrants which he has purchased represent 1% or more of that class of warrant. Upon the exercise of those warrants (which will also be a dealing requiring disclosure), the person will become interested in the ordinary shares which are issued by the offeree company (and will cease to be interested in the warrants exercised).

13.31 On the other hand, where a person has rights to subscribe for ordinary shares in an offeree company which are not themselves securities (for example, rights contained within a bilateral agreement with an offeree company), these will not give rise to an interest in securities. However, if the person triggers a dealing disclosure obligation under Rule 8.3(a), for example, if he is interested in 1% or more of any class of relevant security of the offeree company and deals in any relevant securities of the offeree company, he will be required to disclose details of those rights to subscribe in accordance with paragraph (v) of Note 5 on Rule 8. In addition, upon exercise of the rights to subscribe, the person will become interested in the ordinary shares which are issued by the offeree company.

13.32 In order to clarify further the points discussed in paragraphs 13.28 to 13.31 above, the Code Committee has adopted Note 5 on the definition of "interests in securities" in a slightly different form from that proposed in paragraph 6.40 of PCP 2005/2, as follows:

"*5. New ~~securities~~ shares*

Where a person holds ~~S~~securities convertible into, or warrants or options in respect of, ~~or other rights to subscribe for,~~ new ~~securities~~ shares, he will be treated as interested in those securities, warrants or options but will not ~~give rise, until conversion or exercise, to an~~ be treated as interest~~ed~~ in the new shares ~~securities~~ which may be issued upon conversion or exercise~~, although the holder will be treated as interested in the class of convertible securities, warrants, options or other rights in question~~. However, the acquisition of new ~~securities~~ shares on conversion or exercise of any convertible securities, warrants~~,~~ or options ~~or other rights~~ will be treated as an acquisition of an interest in ~~such~~ the new ~~securities~~ shares which are then issued.".

(iv) Security interests

13.33 In paragraph 6.44 of PCP 2005/2, the Code Committee proposed the introduction of Note 7 on the definition of "interests in securities". As explained in paragraph 6.43 of PCP 2005/2, Note 7 makes clear that the taking of security over shares or other securities by a bank in the normal course of its business will not normally be treated as an acquisition of an "interest" in those shares or other securities.

13.34 One respondent sought clarification that a person to whom title to shares was transferred under a title transfer collateral arrangement would similarly not be treated as interested in such shares. The Code Committee understands that the Panel would not normally treat such a person as being interested in such shares.

13.35 The Code Committee has therefore adopted Note 7 on the definition of "interests in securities" as proposed in paragraph 6.44 of PCP 2005/2.

(f) "Dealings"

13.36 In paragraphs 7.1 to 7.5 of PCP 2005/2, the Code Committee proposed the introduction of a new definition of "dealings" and various related amendments to the Code. Most respondents either supported or did not comment on the proposals.

13.37 One respondent questioned whether the acceptance of an offer would fall within paragraph (g) of the definition of "dealings" as this might eventually result in a decrease in the number of securities in which the accepting shareholder was interested. For the avoidance of doubt, the Code Committee confirms that it is not intended that the acceptance of an offer should be caught by the definition of "dealings".

13.38 In addition, the Code Committee believes that the definition of "dealing" should catch transactions which result in a person who only has a short position in a particular class of relevant security increasing or decreasing that short position. The disclosure of such a transaction will be required following the introduction of "composite disclosure" (see paragraph 13.41 below), but only where the person has an aggregate gross long position of 1% or more in respect of another class of relevant securities of the company in question (see paragraph 7.4 of PCP 2005/1).

13.39 The Code Committee has therefore adopted paragraph (g) of the definition of "dealings" in a slightly different form from that proposed in paragraph 7.5 of PCP 2005/2, as follows:

"**Dealings**

A dealing includes the following:-

…

(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.".

13.40 Other than as mentioned in paragraph 13.41, the Code Committee has:

(a) deleted the second paragraph of Note 2 on Rule 8;

(b) adopted the new definition of "dealings";

(c) moved the third paragraph of Note 2 on Rule 8 to Note 5(a) on Rule 8 and amended the heading of Note 2 on Rule 8 accordingly;

(d) deleted Note 7 on Rule 8;

(e) made consequential amendments to paragraph (i) of Rule 38.5; and

(f) introduced a new Note 1 on Rule 38.5 and renumbered the existing Notes 1 to 3 on Rule 38.5 accordingly,

as proposed in paragraph 7.5 of PCP 2005/2.

(g) "Composite disclosure"

13.41 In paragraph 7.10 of PCP 2005/2, the Code Committee proposed that Rule 8.3(a) should be amended so that the dealing disclosure obligation on a person who has triggered the 1% disclosure level would be as follows:

"**8.3 DEALINGS BY <u>PERSONS WITH INTERESTS IN SECURITIES REPRESENTING</u> 1% <u>OR MORE</u>~~SHAREHOLDERS~~**

(a) During an offer period, … dealings in ~~such~~ <u>any relevant</u> securities of that company by such person (or any other person through whom <u>the interest</u> ~~ownership or control~~ is derived) must be publicly disclosed in accordance with Notes 3, 4 and 5.".

13.42 Most respondents who specifically addressed the issue supported the changes which the Code Committee has therefore adopted as proposed.

(h) The information to be disclosed in respect of a dealing

13.43 In paragraph 8.2 of PCP 2005/2, the Code Committee proposed various amendments to Note 5 on Rule 8 which the Code Committee has adopted as proposed.

13.44 Two respondents believed that a person making a disclosure should not be required to disclose the entire trading history of his long and short positions by having to provide a breakdown of the relevant positions. The Code Committee recognises that the disclosure forms adopted by the Panel as a result of the amendments in RS 2004/3 required details of all open derivative and option positions to be disclosed. However, as mentioned in paragraph 8.9 above, although the Disclosure Forms set out in Appendix B of this Response Statement will continue to provide for the disclosure of the details of a person's open option and derivative positions, the Code Committee understands that the Panel will no longer require details of individual open CFD positions to be disclosed where the terms of the open CFDs are the same in all material respects.

(i) The time at which a person's interest should be evaluated

13.45 In paragraph 9.4 of PCP 2005/2, the Code Committee proposed the introduction of a new Note 7 on Rule 8, paragraphs (a) and (b) of which provided that a person should evaluate what his disclosable interests are, and

whether they are above or below 1%, at midnight (London time) at the end of each day. The Code Committee has adopted paragraphs (a) and (b) of the new Note 7 on Rule 8 as proposed.

13.46 In paragraph 9.3 of PCP 2005/2, the Code Committee stated that it believed that a person should be treated as interested in relevant securities if, despite not actually having such an interest, he has entered into an agreement, arrangement or understanding as a result of which he can, or might be expected to be able to, acquire such an interest (so-called "bed and breakfasting"). This issue was addressed in paragraph (c) of the proposed Note 7 on Rule 8 proposed in paragraph 9.4 of PCP 2005/2.

13.47 One respondent, whilst understanding the Code Committee's reasons for proposing an anti-avoidance provision in relation to "bed and breakfasting" arrangements, believed that the drafting of the proposed paragraph (c) of the new Note 7 on Rule 8 was too broad. Having reconsidered the proposed wording, the Code Committee agrees with the respondent and has therefore adopted paragraph (c) of the new Note 7 on Rule 8 in a slightly different form from that proposed in paragraph 9.4 of PCP 2005/2, as follows:

"*(c) A person will be treated as interested in relevant securities for the purposes of this Note 7 and Rule 8 if, ~~notwithstanding that he does not have~~ he has disposed of an interest in ~~the~~ relevant securities ~~concerned at~~ before midnight on the date in question, but there exists an~~y~~ agreement, arrangement or understanding, formal or informal, of any nature (but not itself amounting to an interest in the securities ~~concerned~~) as a result of which he is entitled, or would expect to be able, to acquire ~~such~~ an interest in the securities concerned (or equivalent securities) thereafter.*".

(j) The time by which disclosures should be made

13.48 In paragraph 10.5 of PCP 2005/2, the Code Committee proposed to amend Note 3 on Rule 8 so as to extend the deadline for disclosures made pursuant to Rule 8.3 to 3.30 pm (London time) on the business day following the date of the dealing. This proposal was a modification of the Code Committee's previous view, expressed in paragraph 9.3 of PCP 2005/1, that the deadline for

publishing all Rule 8 disclosures should remain at 12 noon (London time) on the business day following the date of the dealing.

13.49 All five respondents who specifically addressed the issue welcomed the Code Committee's modified proposal, although one believed that the 3.30 pm deadline allowed "more than enough time". One respondent believed that the 3.30 pm deadline would still be too tight and, together with another respondent, believed that this would particularly be the case following the first trading day of an offer period.

13.50 The Code Committee continues to believe that the appropriate deadline for public disclosures made pursuant to Rule 8.3 is 3.30 pm (London time) on the business day following the date of the dealing and has therefore adopted the amendments to Note 3 on Rule 8 as proposed in paragraph 10.5 of PCP 2005/2, save that the reference to Rule 8.4 has been amended so as to refer only to Rule 8.4(a).

13.51 In the event that market participants experience major difficulty in meeting the deadlines provided in Note 3 on Rule 8 in a particular situation, they are advised to seek an extension of the deadline from the Panel's Market Surveillance Unit.

(k) Other minor amendments

13.52 The Code Committee has adopted the various minor amendments to the Code proposed in paragraphs 13.2 and 13.3 of PCP 2005/2, namely:

(a) the amendment of the first sentence of Note 8 on Rule 8;

(b) the amendment of the second sentence of the second paragraph of Note 9 on Rule 8;

(c) the amendment of Note 14 on Rule 8;

(d) the amendment of the first substantive paragraph of the definition of "associate";

(e) the amendment of the definition of "irrevocable commitments and letters of intent";

(f) the deletion of the current Note 1 on Rule 2.10 and the introduction of a new Note 1 on Rule 2.10; and

(g) the deletion of the words "(as defined in Rule 8)" in each of Rules 38.2 and 38.5.

14. Details to be included in offer announcements, announcements of acceptance levels and offer documentation

(a) Amendments proposed in Section C of PCP 2005/2

Q.2 Do you agree with the proposed amendments set out in Section C above?

14.1 In Section C of PCP 2005/2, it was proposed to amend Rules 2.5, 17.1, 24.3 and 25.3 so as:

(a) to take account of the amendments proposed in Section B of PCP 2005/2, including the proposed introduction of the new definitions of "interests in securities" and "relevant securities"; and

(b) to make the details of the interests in securities and short positions required to be disclosed under those Rules the same as the details required to be disclosed under paragraph (v) of Note 5(a) on Rule 8 following a dealing to which Rule 8.1 applies.

14.2 In paragraph 15.6 of PCP 2005/2, it was proposed to make various additional amendments to Rule 17.1 and to Note 6 thereon and, as a consequence, to delete Note 7 on Rule 17.1.

14.3 In paragraph 16.6 of PCP 2005/2, it was proposed to make various amendments to Rule 26(j), Rule 27.1(b) and paragraph 4(i) of Appendix 1 as a consequence of the proposed amendments to Rules 24.3 and 25.3.

14.4 In paragraph 17.2 of PCP 2005/2, it was proposed to make various additional amendments to Rules 24 and 25 as a consequence of the amendments proposed in Section B of the PCP.

14.5 All respondents who addressed the amendments proposed in Section C of PCP 2005/2 agreed with the proposals. However, one respondent suggested that the announcement required under Rule 17.1 of the total number of shares which the offeror may count towards the satisfaction of its acceptance condition should also require the relevant percentages to be stated. The Code Committee accepts this suggestion.

14.6 The Code Committee has therefore:

(a) adopted the amendments to Rule 2.5 as proposed in paragraph 14.4 of PCP 2005/2;

(b) adopted the final paragraph of Rule 17.1 in a slightly different form from that proposed in paragraph 15.6 of PCP 2005/2, as follows:

"**Any announcement made pursuant to this Rule must include a prominent statement of the total numbers of shares which the offeror may count towards the satisfaction of its acceptance condition and must specify the percentages of each class of relevant securities represented by these figures. The Panel should be consulted if the offeror wishes to make any other statement about acceptance levels in any announcement made pursuant to this Rule.**";

(c) adopted the other amendments to Rule 17.1 and Note 6 thereon, and deleted Note 7 on Rule 17.1, as proposed in paragraph 15.6 of PCP 2005/2;

(d) (i) adopted the amendments to Rules 24.3(a), (b) and (c);

(ii) deleted Notes 1, 2 and 6 on Rule 24.3; and

(iii) save as set out in paragraph 14.9(e) below, adopted the amendments to Notes 3, 4 and 5 on Rule 24.3 (which, following the deletion of Notes 1 and 2, have been renumbered as Notes 1, 2 and 3),

as proposed in paragraph 16.4 of PCP 2005/2;

(e) adopted the amendments to Rules 25.3(a), (b) and (c) and to Notes 1 and 2 on Rule 25.3 as proposed in paragraph 16.5 of PCP 2005/2;

(f) adopted the amendments to Rule 26(j), Rule 27.1(b) and paragraph 4(i) of Appendix 1 as proposed in paragraph 16.6 of PCP 2005/2; and

(g) adopted the amendments to paragraph (viii) of Rule 24.2(d) and to Rules 24.5, 24.8 and 25.6 as proposed in paragraph 17.2 of PCP 2005/2.

(b) Disclosure of securities borrowing and lending positions

14.7 In addition to the amendments proposed in Section C of PCP 2005/2, one respondent believed that Rules 2.5, 17.1, 24.3 and 25.3 should be amended so as to require details of any securities borrowed or lent by the offeror and persons acting in concert with the offeror (or, in the case of Rule 25.3, by the offeree company or persons acting in concert with the directors of the offeree company) to be disclosed in order to facilitate a full understanding of the extent to which the voting rights attached to the relevant securities of the parties to the offer are currently controlled by such persons. The Code Committee agrees with this suggestion since, as noted in paragraph 27.5 of RS 2004/3, "a borrowing/lending transaction on current standard market terms involves the transfer of title in the borrowed/lent securities and, accordingly, the transfer from the lender to the borrower of any voting rights attached to those securities".

14.8 In addition, the Code Committee believes that Note 1 on Rule 4.6 should be amended so as normally to require disclosure by persons to whom Rule 4.6 applies of the redelivery of borrowed securities which have been recalled or the accepting of the redelivery of lent relevant securities which have not been recalled. Such disclosure is not currently required since Note 1 on Rule 4.6 provides that these events are not normally treated as taking action to unwind a securities borrowing or lending transaction.

14.9 In view of the matters set out in paragraphs 14.7 and 14.8 above, the Code Committee has decided:

(a) to introduce a new paragraph (v) of Rule 2.5(b) as follows (and to renumber the current paragraphs (v) to (viii) as paragraphs (vi) to (ix)):

"**(v) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold;**";

(b) to adopt an amended Note 2 on Rule 2.5 in a slightly different form from that proposed in paragraph 14.4 of PCP 2005/2, as follows:

"*2. Interests of a group of which an adviser is a member*

It is accepted that, for reasons of secrecy, it would not be prudent to make enquiries so as to include in an announcement details of any relevant securities of the offeree company in which other parts of an adviser's group are interested or have ~~a~~ short positions or borrowings (see (5) of "acting in concert" in Definitions Section). In such circumstances, details should be obtained as soon as possible after the announcement has been made and the Panel consulted. If the interests, ~~or~~ short positions or borrowings are significant, a further announcement may be required.";

(c) to introduce a new paragraph (d) of Rule 17.1 as follows:

"**(d) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold,**";

(d) to introduce a new paragraph (iv) of Rule 24.3(a) as follows:

"**(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.**";

(e) to amend Note 3 on Rule 24.3 (which has been renumbered as Note 1) as follows:

"*1. Directors*

In the case of directors, the disclosure should include details of all interests, ~~and~~ short positions and borrowings of any other person whose interests in shares the director would be required to disclose pursuant to Parts VI and X of the Companies Act 1985 and related regulations.";

(f) to introduce a new paragraph (iv) of Rule 25.3(a) as follows (and to renumber the current paragraph (viii) as paragraph (v)):

"**(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeree company or any person acting in concert with the directors of the offeree company has borrowed or lent, save for any borrowed shares which have been either on-lent or sold;**"; and

(g) to introduce a new second sentence of Note 1 on Rule 4.6 as follows:

"*1. Return of borrowed relevant securities*

The redelivery by a borrower of relevant securities (or equivalent securities) which have been recalled, or the accepting by a lender of the redelivery of relevant securities (or equivalent securities) which have not been recalled, in each case in accordance with an existing securities borrowing or lending agreement, will not normally be treated as taking action to unwind a securities borrowing or lending transaction. However, the Panel will normally require the redelivery or the accepting of the redelivery of such relevant securities to be disclosed.".

(c) Borrowed shares and the acceptance condition

14.10 Rule 24.6 requires that the offer document must incorporate language which appropriately reflects certain provisions of the Code, including Notes 4 to 7 on

Rule 10. Note 1 on Rule 24.6 provides that a suitable cross reference to Notes 4 to 6 on Rule 10 is regarded as being sufficient appropriately to reflect those Notes but that cross references to other provisions of the Code are not permitted.

14.11 Note 8 on Rule 10, which was proposed in paragraph 27.20 of PCP 2004/3 and adopted in paragraph 27.25 of RS 2004/3, states as follows:

"8. Borrowed shares

Except with the consent of the Panel, shares which have been borrowed by the offeror may not be counted towards fulfilling an acceptance condition.".

14.12 Having considered the application of Note 8 on Rule 10 since the publication of RS 2004/3, the Code Committee believes that Rule 24.6 should specifically require offer documents appropriately to reflect Note 8 on Rule 10. The Code Committee believes that incorporation by cross reference would be sufficient for this purpose.

14.13 In addition, the Code Committee believes that a number of minor amendments are required to Notes 5, 6 and 7 on Rule 10 and to Appendix 4 (the Receiving Agents' Code of Practice). In relation to the amendments to Appendix 4, the Code Committee is consulting with the Confederation of British Industry, the British Bankers' Association and the Institute of Chartered Secretaries and Administrators, in consultation with whom the Code of Practice is drawn up.

14.14 In the light of the above, and subject to any comments from the bodies referred to in paragraph 14.13 above, the Code Committee has:

(a) amended Rule 24.6 and Note 1 thereon as follows:

"**24.6 INCORPORATION OF OBLIGATIONS AND RIGHTS**

The offer document must incorporate language which appropriately reflects Notes 4 ~~7~~8 on Rule 10 and those parts of Rules 13.4(a), 13.5 (if applicable), 17 and 31-34 which impose timing obligations or confer rights

or impose restrictions on offerors, offeree companies or shareholders of the offeree companies."; and

"*1. Incorporation by reference*

A suitable cross reference to Notes 4-6 and Note 8 on Rule 10 is regarded as being sufficient appropriately to reflect those Notes but cross references to other provisions of the Code are not permitted.";

(b) amended Notes 5, 6 and 7 on Rule 10 as follows:

"*5. Purchases*

NB Attention is drawn to Note 6 below which will be relevant if an acceptance condition is to be fulfilled before the final closing date, and also to Note 8 below which will be relevant if the offeror has borrowed any offeree company shares.

…

6. Offers becoming or being declared unconditional as to acceptances before the final closing date

In determining whether an acceptance condition has been fulfilled before the final closing date, all acceptances and purchases that comply with the requirements of Notes 4 and 5 on Rule 10 may be counted, other than those which fall within paragraph (c)(iii) of Note 4 or Note 8.

7. Offeror's receiving agent's certificate

Before an offer may become or be declared unconditional as to acceptances, the offeror's receiving agent must have issued a certificate to the offeror or its financial adviser which states the number of acceptances which have been received which comply with Note 4 on Rule 10 and the number of shares otherwise acquired, whether before or during an offer period, which comply with Note 5 on Rule 10 and, in each case, if appropriate, Note 6 on Rule 10, but which do not fall within Note 8 on Rule 10.

…"; and

(c) amended NB 1 and Section 5 of Appendix 4 as follows:

"*NB 1 This Appendix should be read in conjunction with Rules 9.3 and 10 and, in particular, Notes 4 - ~~7~~8 on Rule 10.*"; and

"**5 COUNTING OF PURCHASES**

The offeror's receiving agent must ensure that all purchases counted as valid meet the requirements (subject to Note 8 on Rule 10) set out in Note 5 on Rule 10 and, if appropriate, Note 6 on Rule 10.".

15. Other provisions

Q.3 Do you agree with the proposed amendments set out in Section D above?

(a) Rule 16: special deals with favourable conditions

15.1 In paragraph 18 of PCP 2005/2, it was proposed to add a new second paragraph to Rule 16 and to amend Notes 1 to 3 on Rule 16 so as to make clear:

(a) that dealings and arrangements with persons with long derivative or option positions referenced to or in respect of shares are subject to Rule 16 in the same way as shareholders; and

(b) that there is no requirement for an offeror to extend an offer or any arrangement which would otherwise fall within Rule 16 to persons who are not shareholders of the offeree company but who have another interest in the shares in the offeree company.

15.2 All respondents who addressed the proposed amendments agreed with the proposals. The Code Committee has therefore adopted the amendments to Rule 16 and Notes 1, 2 and 3 thereon as proposed in paragraph 18.3 of PCP 2005/2.

(b) Rule 20: equality of information

15.3 In paragraph 18 of PCP 2005/2, it was proposed to amend Note 3 on Rule 20.1 so as to make clear that Rule 20.1 applies to information given to persons with long derivative and option positions referenced to or in respect of shares, as well as to information given to shareholders.

15.4 All respondents who addressed the proposed amendments agreed with the proposals. The Code Committee has therefore adopted the amendments to Note 3 on Rule 20.1 as proposed in paragraph 19.2 of PCP 2005/2.

APPENDIX A

Amendments to the Code

DEFINITIONS

Associate

…

It is not practicable to define associate in terms which would cover all the different relationships which may exist in an offer. The term associate is intended to cover all persons (whether or not acting in concert) who directly or indirectly are interested or deal in relevant securities of an offeror or the offeree company in an offer and who have an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer.

…

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.

Derivative

Derivative includes any financial product whose value in whole or in part is determined directly or indirectly by reference to the price of an underlying security.

NOTE ON DEFINITION OF DERIVATIVE

The term "derivative" is intentionally widely defined to encompass all types of derivative transactions. However, it is not the intention of the Code to restrict transactions in, or require disclosure of, derivatives which are not connected with an offer or potential offer. …

…

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.

NOTES ON INTERESTS IN SECURITIES

1. Gross interests

The number of securities in which a person is treated as having an interest is normally the gross number, aggregating the number of securities falling under each of paragraphs (1) to (4) above. If an interest in securities falls within more than one paragraph, the person shall be treated as interested in the highest number determined under the relevant paragraphs.

If each of the following conditions is met, the Panel will normally allow offsetting positions to be netted off against each other:

(a) the offsetting positions are in respect of the same class of relevant security;

(b) the offsetting positions are in respect of the same investment product;

(c) save for the number of securities in question, the terms of the offsetting positions are the same, e.g. as to strike price and, if appropriate, exercise period; and

(d) the counterparty to the offsetting positions is the same in each case.

2. Interests of two or more persons

As a result of the way in which interests in securities are categorised, two or more persons may be treated as interested in the same securities. For example, where a shareholder grants a call option to another person, the shareholder will be interested in the shares the subject of the option as a result of paragraph (1) of the definition of interests in securities, and the option holder will be interested in those shares as a result of paragraph (3) of the definition.

3. Number of securities concerned

(a) Where the number of securities the subject of an agreement to purchase, option or derivative is not fixed, a person will normally be treated as interested in the maximum possible number of securities.

(b) Where the value of any derivative is determined by reference to the price of a number of securities multiplied by a particular factor, a person will be treated as interested in the number of reference securities multiplied by the relevant factor.

(c) Where a derivative is not referenced to any stated number (or maximum number) of securities, a person will normally be treated as interested in the gross number of securities to changes in the price of which he has, or may have, economic exposure.

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 will not normally be treated as interested in any securities which he has borrowed. If a person has on-lent securities which he has borrowed, he will not normally be treated as interested in those securities.

5. New shares

Where a person holds securities convertible into, or warrants or options in respect of, new shares, he will be treated as interested in those securities, warrants or options but will not be treated as interested in the new shares which may be issued upon conversion or exercise. However, the acquisition of new shares on conversion or exercise of any convertible securities, warrants or options will be treated as an acquisition of an interest in the new shares which are then issued.

6. Proxies and corporate representatives

A person will not be treated as having an interest in securities by reason only that he has been appointed as a proxy to vote at a specified general or class meeting of the company concerned, or has been authorised by a corporation to act as its representative at any general or class meeting or meetings.

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.

8. Companies Act 1985

This definition applies only in respect of the relevant provisions of the Code. Separate provisions dealing with "interests in shares" are contained in the Companies Act 1985. Any Panel view expressed in relation to interests in securities can only relate to the Code and should not be taken as guidance on the interpretation of such statutory provisions.

Irrevocable commitments and letters of intent

Irrevocable commitments and letters of intent include irrevocable commitments and letters of intent to accept or not to accept (or to procure that any other person accept or not accept) an offer and also irrevocable commitments and letters of intent to vote (or to procure that any other person vote) in favour of or against a resolution of an offeror or the offeree company in the context of the offer.

…

Relevant securities

Relevant securities include:-

(a) securities of the offeree company which are being offered for or which carry voting rights;

(b) equity share capital of the offeree company and an offeror;

(c) securities of an offeror which carry substantially the same rights as any to be issued as consideration for the offer; and

(d) securities of the offeree company and an offeror carrying conversion or subscription rights into any of the foregoing.

Rule 2.5

2.5 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

…

(b) When a firm intention to make an offer is announced, the announcement must state:-

…

(iii) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it 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 2 below and Note 5(a) on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(iv) details of any relevant securities of the offeree company in respect of which the offeror or any of its associates has procured an irrevocable commitment or a letter of intent (see Note 14 on Rule 8);

(v) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold;

(vi) all conditions (including normal conditions relating to acceptances, listing and increase of capital) to which the offer or the posting of it is subject;

(vii) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result;

(viii) details of any arrangement of the kind referred to in Note 6(b) on Rule 8; and

(ix) a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).

…

NOTES ON RULE 2.5

…

2. Interests of a group of which an adviser is a member

It is accepted that, for reasons of secrecy, it would not be prudent to make enquiries so as to include in an announcement details of any relevant securities of the offeree company in which other parts of an adviser's group are interested or have short positions or borrowings (see (5) of "acting in concert" in Definitions Section). In such circumstances, details should be obtained as soon as possible after the announcement has been made and the Panel consulted. If the interests, short positions or borrowings are significant, a further announcement may be required.

Rule 2.10

2.10 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

…

NOTES ON RULE 2.10

1. Options to subscribe

For the purposes of this Rule, options to subscribe for new securities in the offeree company or an offeror are not treated as a class of relevant securities.

Rule 4.6

4.6 RESTRICTION ON SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND CERTAIN OTHER PARTIES

…

NOTES ON RULE 4.6

1. Return of borrowed relevant securities

The redelivery by a borrower of relevant securities (or equivalent securities) which have been recalled, or the accepting by a lender of the redelivery of relevant securities (or equivalent securities) which have not been recalled, in each case in accordance with an existing securities borrowing or lending agreement, will not normally be treated as taking action to unwind a securities borrowing or lending transaction. However, the Panel will normally require the redelivery or the accepting of the redelivery of such relevant securities to be disclosed.

…

Rule 8

8.3 DEALINGS 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.

(b) Where two or more persons act pursuant to an agreement or understanding, whether formal or informal, to acquire an interest in relevant securities, they will be deemed to be a single person for the purpose of this Rule.

(c) If a person manages investment accounts on a discretionary basis, he, and not the person on whose behalf the relevant securities (or interests in relevant securities) are managed, will be treated for the purpose of this Rule as interested in the relevant securities concerned. Except with the consent of the Panel, where more than one discretionary investment management operation is conducted in the same group, the interests in relevant securities of all such operations will be treated for the purpose of

this Rule as those of a single person and must be aggregated (see Note 8 below).

…

NOTES ON RULE 8

…

2. Dealings in relevant securities of the offeror

Where it has been announced that an offer or possible offer is, or is likely to be, solely in cash, there is no requirement to disclose dealings in relevant securities of the offeror.

3. Timing of disclosure

Both public and private disclosure required by Rules 8.1, 8.2 and 8.4(a) must be made no later than 12 noon on the business day following the date of the transaction.

Public disclosure required by Rule 8.3 must be made no later than 3.30 pm on the business day following the date of the transaction.

…

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

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

…

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

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

…

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

…

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

under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be disclosed; and

[Previous paragraph (vii) has been renumbered as paragraph (vi).]

…

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

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

…

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

…

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

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

…

(b) Private disclosure (Rules 8.1(b)(ii) and 8.2)

…

A private disclosure under Rule 8.2 must include the identity of the associate dealing, the total of relevant securities in which the dealing took place and the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). A specimen disclosure form is available on the Panel's website (www.thetakeoverpanel.org.uk) or may be obtained from the Panel. Rule 8.2 disclosures should follow that format. In the case of dealings in options or derivatives the same information as specified in Note 5(a) is required.

…

7. Time for calculating a person's interests

(a) Under Rule 8.3, a disclosure of dealings is not required unless the person dealing is interested in 1% or more of any class of relevant securities at midnight on the date of the dealing or was so interested at midnight on the previous business day.

(b) For the purposes of Note 5, the interests and short positions to be disclosed are those existing or outstanding at midnight on the date of the dealing in question.

(c) A person will be treated as interested in relevant securities for the purposes of this Note 7 and Rule 8 if, he has disposed of an interest in relevant securities before midnight on the date in question, but there exists an agreement, arrangement or understanding, formal or informal, of any nature (but not itself amounting to an interest in the securities) as a result of which he is entitled, or would expect to be able, to acquire an interest in the securities concerned (or equivalent securities) thereafter.

8. Discretionary fund managers

The principle normally applied by the Panel is that where the investment decision is made by a discretionary fund manager, he, and not the person on whose behalf the fund is managed, will be treated as interested in, and having dealt in, the relevant securities concerned. …

…

9. Principal traders

…

… For example, a dealing in relevant securities by a principal trader, backed by a firm commitment by a person to purchase the relevant securities from the principal trader, will be regarded as a dealing by that person. …

…

14. Irrevocable commitments and letters of intent

A disclosure of the procuring of an irrevocable commitment or a letter of intent must provide full details of the nature of the commitment or letter including:

(a) the number of relevant securities of each class to which the irrevocable commitment or letter of intent relates;

…

Rule 10

RULE 10. THE ACCEPTANCE CONDITION

…

NOTES ON RULE 10

…

5. Purchases

NB Attention is drawn to Note 6 below which will be relevant if an acceptance condition is to be fulfilled before the final closing date, and also to Note 8 below which will be relevant if the offeror has borrowed any offeree company shares.

…

6. Offers becoming or being declared unconditional as to acceptances before the final closing date

In determining whether an acceptance condition has been fulfilled before the final closing date, all acceptances and purchases that comply with the requirements of Notes 4 and 5 on Rule 10 may be counted, other than those which fall within paragraph (c)(iii) of Note 4 or Note 8.

7. Offeror's receiving agent's certificate

Before an offer may become or be declared unconditional as to acceptances, the offeror's receiving agent must have issued a certificate to the offeror or its financial adviser which states the number of acceptances which have been received which comply with Note 4 on Rule 10 and the number of shares otherwise acquired, whether before or during an offer period, which comply with Note 5 on Rule 10 and, in each case, if appropriate, Note 6 on Rule 10, but which do not fall within Note 8 on Rule 10.

…

Rule 16

RULE 16. SPECIAL DEALS WITH FAVOURABLE CONDITIONS

…

An arrangement made with a person who, while not a shareholder, is interested in shares carrying voting rights in the offeree company will also be prohibited by this Rule if favourable conditions are attached which are not being extended to the shareholders. For the avoidance of doubt, there is no requirement to extend an offer or any arrangement which would otherwise be prohibited by this Rule to any person who is interested in shares, but is not a shareholder.

…

NOTES ON RULE 16

1. Top-ups and other arrangements

…

Arrangements made by an offeror with a person acting in concert with it, whereby an interest in offeree company shares is acquired 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. …

2. Offeree company shareholders' approval of certain transactions - eg disposal of offeree company assets

In some cases, certain assets of the offeree company may be of no interest to the offeror. There is a possibility if a person interested in shares in the offeree company seeks to acquire the assets in question that the terms of the transaction will be such as to confer a special benefit on him; in any event, the arrangement is not capable of being extended to all shareholders. …

…

3. Finders' fees

This Rule also covers cases where a person interested in shares in an offeree company is to be remunerated for the part that he has played in promoting the offer. The Panel will normally consent to such remuneration, provided that the interest in shares is not substantial and it can be demonstrated that a person who had performed the same services, but had not at the same time been interested in offeree company shares, would have been entitled to receive no less remuneration.

…

Rule 17.1

17.1 TIMING AND CONTENTS

By 8.00 am at the latest on the business day following the day on which an offer is due to expire, or becomes or is declared unconditional as to acceptances, or is revised or extended, an offeror must make an appropriate announcement. The announcement must state:-

(a) the number of shares for which acceptances of the offer have been received, specifying the extent to which acceptances have been received from persons acting in concert with the offeror or in respect of shares which were subject to an irrevocable commitment or a letter of intent procured by the offeror or any of its associates;

(b) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it 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 positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(c) details of any relevant securities of the offeree company in respect of which the offeror or any of its associates has an outstanding irrevocable commitment or letter of intent (see Note 14 on Rule 8); and

(d) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold,

and must specify the percentages of each class of relevant securities represented by these figures. (See also Rule 31.2.)

Any announcement made pursuant to this Rule must include a prominent statement of the total numbers of shares which the offeror may count towards the satisfaction of its acceptance condition and must specify the percentages of each class of relevant securities represented by these figures. The Panel should be consulted if the offeror wishes to make any other statement about acceptance levels in any announcement made pursuant to this Rule.

NOTES ON RULE 17.1

…

6. Incomplete acceptances and offeror purchases

Acceptances not complete in all respects and purchases must only be included in the statement required under this Rule of the total number of shares which the offeror may count towards the satisfaction of its acceptance condition where they could be counted towards fulfilling an acceptance condition under Notes 4, 5 and 6 on Rule 10.

[Previous Note 7 has been deleted.]

Rule 20.1

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS

…

NOTES ON RULE 20.1

…

3. Meetings

Meetings of representatives of the offeror or the offeree company or their respective advisers with shareholders of, or other persons interested in the securities of, either the offeror or the offeree company or with analysts, brokers or others engaged in investment management or advice may take place prior to or during the offer period, provided that no material new information is forthcoming, no significant new opinions are expressed and the following provisions are observed. …

…

The above provisions apply to all such meetings held prior to or during an offer period wherever they take place and even if with only one person or firm, unless the meetings take place by chance. Meetings with employees in their capacity as such (rather than in their capacity as shareholders) are not normally covered by this Note, although the Panel should be consulted if any employees are interested in a significant number of shares.

Rule 24.2

24.2 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER

…

(d) the offer document (including, where relevant, any revised offer document) must include:

…

(viii) details of any irrevocable commitment or letter of intent which the offeror or any of its associates has procured in relation to relevant securities of the offeree company (or, if appropriate, the offeror) (see Note 14 on Rule 8);

…

Rule 24.3

24.3 INTERESTS AND DEALINGS

(a) The offer document must state:

(i) details of any relevant securities of the offeree company in which the offeror has an interest or in respect of which he has a right to subscribe, specifying the nature of the interests or rights concerned (see Note 5(a) on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(ii) the same details as in (i) above in relation to each of:

(a) **the directors of the offeror;**

(b) **any other person acting in concert with the offeror; and**

(c) **any person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 6 on Rule 8;**

(iii) in the case of a securities exchange offer, the same details as in (i) above in respect of any relevant securities of the offeror in relation to each of the persons listed in (ii) above; and

(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

(b) If, in the case of any of the persons referred to in Rule 24.3(a), there are no interests or short positions to be disclosed, this fact should be stated. This will not apply to category (a)(ii)*(c)* if there are no such arrangements.

(c) If any person referred to in Rule 24.3(a) has dealt in any relevant securities of the offeree company (or, in the case of a securities exchange offer only, of the offeror) during the period beginning 12 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates, must be stated (see Note 5(a) on Rule 8). If no such dealings have taken place, this fact should be stated.

…

NOTES ON RULE 24.3

[Previous Notes 1, 2 and 6 have been deleted.]

1. Directors

In the case of directors, the disclosure should include details of all interests, short positions and borrowings of any other person whose interests in shares the director would be required to disclose pursuant to Parts VI and X of the Companies Act 1985 and related regulations.

2. 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 each type of dealing by a person provided that no significant dealings are thereby concealed. The following approach is normally acceptable:

> *(i) for dealings during the offer period, all acquisitions and all disposals can be aggregated;*
>
> *(ii) for dealings in the three months prior to that period, all acquisitions and all disposals in that period can be aggregated on a monthly basis; and*
>
> *(iii) for dealings in the nine months prior to that period, acquisitions and disposals can be aggregated on a quarterly basis.*

Acquisitions and disposals should not be netted off, the highest and lowest prices should be stated and the disclosure should distinguish between the different categories of interests in relevant securities and short positions. 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.

3. Discretionary fund managers and principal traders

Interests in relevant securities and short positions of non-exempt discretionary fund managers and principal traders which are connected with the offeror and their dealings since the date 12 months prior to the offer period will need to be disclosed under Rules 24.3(a)(ii)(b) *and 24.3(c) respectively.*

Rule 24.5

24.5 SPECIAL ARRANGEMENTS

Unless otherwise agreed with the Panel, the offer document must contain a statement as to whether or not any agreement, arrangement or understanding (including any compensation arrangement) exists between the offeror or any person acting in concert with it and any of the directors, recent directors, shareholders or recent shareholders of the offeree company, or any person interested or recently interested in shares of the offeree company, having any connection with or dependence upon the offer, and full particulars of any such agreement, arrangement or understanding.

Rule 24.6

24.6 INCORPORATION OF OBLIGATIONS AND RIGHTS

The offer document must incorporate language which appropriately reflects Notes 4-8 on Rule 10 and those parts of Rules 13.4(a), 13.5 (if applicable), 17 and 31-34 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of the offeree companies.

NOTES ON RULE 24.6

1. Incorporation by reference

A suitable cross reference to Notes 4-6 and Note 8 on Rule 10 is regarded as being sufficient appropriately to reflect those Notes but cross references to other provisions of the Code are not permitted.

…

Rule 24.8

24.8 ULTIMATE OWNER OF SECURITIES ACQUIRED

Unless otherwise agreed with the Panel, the offer document must contain a statement as to whether or not any securities acquired in pursuance of the offer will be transferred to any other persons, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all interests in the securities of the offeree company held by such persons, or a statement that no such interests are held.

Rule 25.3

25.3 INTERESTS AND DEALINGS

(a) The first major circular from the offeree board advising shareholders on an offer (whether recommending acceptance or rejection of the offer) must state:-

(i) details of any relevant securities of the offeror in which the offeree company or any of the directors of the offeree company has an interest or in respect of which it or 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 positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(ii) the same details as in (i) above in respect of any relevant securities of the offeree company in relation to each of:

(a) **the directors of the offeree company;**

(b) **any company which is an associate of the offeree company by virtue of paragraph (1) of the definition of associate;**

(c) **any pension fund of the offeree company or of a company which is an associate of the offeree company by virtue of paragraph (1) of the definition of associate;**

(d) **any employee benefit trust of the offeree company or of a company which is an associate of the offeree company by virtue of paragraph (1) of the definition of associate;**

(e) **any connected adviser to the offeree company, to a company which is an associate of the offeree company by**

virtue of paragraph (1) of the definition of associate or to a person acting in concert with the directors of the offeree company;

(f) **any person controlling#, controlled by or under the same control as any connected adviser falling within *(e)* above (except for an exempt principal trader or an exempt fund manager); and**

(g) **any person who has an arrangement of the kind referred to in Note 6 on Rule 8 with the offeree company or with any person who is an associate of the offeree company by virtue of paragraphs (1), (2), (3) or (4) of the definition of associate;**

(iii) in the case of a securities exchange offer, the same details as in (i) above in respect of any relevant securities of the offeror in relation to each of the persons listed in (ii)*(b)* to *(g)* above;

(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeree company or any person acting in concert with the directors of the offeree company has borrowed or lent, save for any borrowed shares which have been either on-lent or sold; and

(v) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or reject the offer.

(b) If, in the case of any of the persons referred to in Rule 25.3(a), there are no interests or short positions to be disclosed, this fact should be stated. This will not apply to category (a)(ii)*(g)* if there are no such arrangements.

(c) If any person referred to in Rule 25.3(a)(i) has dealt in any relevant securities of the offeree company or the offeror during the offer period and ending with the latest practicable date prior to the posting of the circular, the details, including dates, must be stated (see Note 5(a) on Rule 8). If any person referred to in Rule 25.3(a)(ii)*(b)* to *(g)* has dealt in relevant securities of the offeree company (or, in the case of a securities exchange offer only, the offeror) during the same period, similar details must be stated. In all cases, if no such dealings have taken place this fact should be stated.

…

NOTES ON RULE 25.3

…

1. When directors resign

When, as part of the transaction leading to an offer being made, some or all of the directors of the offeree company resign, this Rule applies to them in the usual way.

2. Pension funds

Rule 25.3(a)(ii)(c) *does not apply in respect of any pension funds which are managed under an agreement or arrangement with an independent third party in the terms set out in Note 6 on the definition of acting in concert.*

Rule 25.6

25.6 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

The first major circular from the offeree board advising shareholders on an offer must contain:-

…

(b) details of any irrevocable commitment or letter of intent which the offeree company or any of its associates has procured in relation to relevant securities of the offeree company (or, if appropriate, the offeror) (see Note 14 on Rule 8).

Rule 26

RULE 26. DOCUMENTS TO BE ON DISPLAY

…

(j) where the Panel has given consent to aggregation of dealings, a full list of all dealings (Note 2 on Rule 24.3);

…

Rule 27.1

27.1 MATERIAL CHANGES

… **In particular, the following matters must be updated:**

…

(b) interests and dealings (Rules 24.3 and 25.3);

…

Rule 38.2

38.2 DEALINGS BETWEEN OFFERORS AND CONNECTED EXEMPT PRINCIPAL TRADERS

An offeror and any person acting in concert with it must not deal as principal with an exempt principal trader connected with the offeror in relevant securities of the offeree company during the offer period. It will generally be for the advisers to the offeror to ensure compliance with this Rule rather than the principal trader. …

…

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:

(i) total acquisitions and disposals;

…

NOTES ON RULE 38.5

1. Dealings and relevant securities

See the definitions of dealings and relevant securities in the Definitions Section.

[Previous Notes 1 to 3 have been renumbered as Notes 2 to 4.]

Appendix 1

APPENDIX 1

WHITEWASH GUIDANCE NOTE

…

4 CIRCULAR TO SHAREHOLDERS

…

(i) Rules 24.3 and 25.3 (disclosure of interests and dealings). …**;**

…

Appendix 4

APPENDIX 4

RECEIVING AGENTS' CODE OF PRACTICE

NB 1 This Appendix should be read in conjunction with Rules 9.3 and 10 and, in particular, Notes 4 - 8 on Rule 10.

…

5 COUNTING OF PURCHASES

The offeror's receiving agent must ensure that all purchases counted as valid meet the requirements (subject to Note 8 on Rule 10) set out in Note 5 on Rule 10 and, if appropriate, Note 6 on Rule 10.

APPENDIX B

New Disclosure Forms

See following pages

FORM 8.1

DEALINGS BY OFFERORS, OFFEREE COMPANIES OR THEIR ASSOCIATES FOR THEMSELVES OR FOR DISCRETIONARY CLIENTS
(Rules 8.1(a) and (b)(i) of the City Code on Takeovers and Mergers)

1. KEY INFORMATION

Name of person dealing (Note 1)	
Company dealt in	
Class of relevant security to which the dealings being disclosed relate (Note 2)	
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 3)

	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 3)

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 3)

Class of relevant security:	**Details**

3. DEALINGS (Note 4)

(a) Purchases and sales

Purchase/sale	**Number of securities**	**Price per unit** (Note 5)

(b) Derivatives transactions (other than options)

Product name, e.g. CFD	**Long/short** (Note 6)	**Number of securities** (Note 7)	**Price per unit** (Note 5)

(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 7)	**Exercise price**	**Type, e.g. American, European etc.**	**Expiry date**	**Option money paid/received per unit** (Note 5)

(ii) Exercising

Product name, e.g. call option	**Number of securities**	**Exercise price per unit** (Note 5)

(d) Other dealings (including new securities) (Note 4)

Nature of transaction (Note 8)	**Details**	**Price per unit (if applicable)** (Note 5)

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 8 attached? (Note 9) **YES/NO**

Date of disclosure	
Contact name	
Telephone number	
Name of offeree/offeror with which associated	
Specify category and nature of associate status (Note 10)	

Notes

The Notes on Form 8.1 can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk

NOTES ON FORM 8.1

1. *Specify the owner or controller of the interest in addition to the person dealing. The naming of nominees or vehicle companies is insufficient. In the case of disclosure of dealings by fund managers on behalf of discretionary clients, the clients need not be named.*

2. *See the definition of "relevant securities" in the Definitions Section of the Code.*

3. *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.*

4. *See the definition of "dealings" in the Definitions Section of the Code.*

5. *For all prices and other monetary amounts, the currency must be stated.*

6. *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.*

7. *See Note 3 on the definition of "interests in securities" in the Definitions Section of the Code.*

8. *State type of dealing, e.g. "subscription", "conversion", "exercise" etc.*

9. *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 8 should be completed.*

10. *See the definition of "associate" in the Definitions Section of the Code.*

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

FORM 8.1(b)(ii)

DEALINGS BY CONNECTED EXEMPT FUND MANAGERS ON BEHALF OF DISCRETIONARY CLIENTS
(Rule 8.1(b)(ii) of the City Code on Takeovers and Mergers)

1. KEY INFORMATION

Name of exempt fund manager	
Company dealt in	
Class of relevant security to which the dealings being disclosed relate [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 [2]

	Long		**Short**	
	Number	**(%)**	**Number**	**(%)**
(1) Relevant securities [3]				
(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 [2]

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

(c) Rights to subscribe [3]

Class of relevant security:	**Details**

3. DEALINGS [4]

(a) Purchases and sales

Purchase/sale	Number of securities	Price per unit [5]

(b) Derivatives transactions (other than options)

Product name, e.g. CFD	Long/short [6]	Number of securities [7]	Price per unit [5]

(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 [7]	Exercise price	Type, e.g. American, European etc.	Expiry date	Option money paid/received per unit [5]

(ii) Exercising

Product name, e.g. call option	Number of securities	Exercise price per unit [5]

(d) Other dealings (including new securities) [4]

Nature of transaction [7]	Details	Price per unit (if applicable) [5]

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 8 attached? [9] YES/NO

Date of disclosure	
Contact name	
Telephone number	
Name of offeree/offeror with which connected	
Nature of connection [10]	

Notes

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. *Where relevant securities are held within a fund in respect of which seed capital represents 10% or more of the funds under management, specify the percentage of seed capital in addition to the amount of stock held within that fund.*

4. *See the definition of "dealings" in the Definitions Section of the Code.*

5. *For all prices and other monetary amounts, the currency must be stated.*

6. *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.*

7. *See Note 3 on the definition of "interests in securities" in the Definitions Section of the Code.*

8. *State type of dealing, e.g. "subscription", "conversion", "exercise" etc.*

9. *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 8 should be completed.*

10. *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 Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

FORM 8.2

DEALINGS BY OFFERORS, OFFEREE COMPANIES OR THEIR ASSOCIATES FOR NON-DISCRETIONARY CLIENTS
(Rule 8.2 of the City Code on Takeovers and Mergers)

1. KEY INFORMATION

Name of entity dealing	
Company dealt in	
Class of relevant security to which the dealings being disclosed relate [1]	
Date of dealing	

2. DEALINGS [2]

(a) Purchases and sales

Purchase/sale	**Number of securities**	**Price per unit** [3]

(b) Derivatives transactions (other than options)

Product name, e.g. CFD	**Long/short** [4]	**Number of securities** [5]	**Price per unit** [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** [5]	**Exercise price**	**Type, e.g. American, European etc.**	**Expiry date**	**Option money paid/received per unit** [3]

(ii) Exercising

Product name, e.g. call option	**Number of securities**	**Exercise price per unit** [3]

Date of disclosure	
Contact name	
Telephone number	
Name of offeree/offeror with which associated	
Specify category and nature of associate status [6]	

Notes

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 "associate" in the Definitions Section of the Code.*

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

FORM 8.3

DEALINGS BY PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE (Rule 8.3 of the City Code on Takeovers and Mergers)

1. KEY INFORMATION

Name of person dealing (Note 1)	
Company dealt in	
Class of relevant security to which the dealings being disclosed relate (Note 2)	
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 3)

	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 3)

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 3)

Class of relevant security:	**Details**

3. DEALINGS (Note 4)

(a) Purchases and sales

Purchase/sale	**Number of securities**	**Price per unit** (Note 5)

(b) Derivatives transactions (other than options)

Product name, e.g. CFD	**Long/short** (Note 6)	**Number of securities** (Note 7)	**Price per unit** (Note 5)

(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 7)	**Exercise price**	**Type, e.g. American, European etc.**	**Expiry date**	**Option money paid/received per unit** (Note 5)

(ii) Exercising

Product name, e.g. call option	**Number of securities**	**Exercise price per unit** (Note 5)

(d) Other dealings (including new securities) (Note 4)

Nature of transaction (Note 8)	**Details**	**Price per unit (if applicable)** (Note 5)

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 8 attached? (Note 9) **YES/NO**

Date of disclosure	
Contact name	
Telephone number	
If a connected EFM, name of offeree/offeror with which connected	
If a connected EFM, state nature of connection (Note 10)	

Notes

The Notes on Form 8.3 can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk

NOTES ON FORM 8.3

1. *Specify the owner or controller of the interest in addition to the person dealing. The naming of nominees or vehicle companies is insufficient. In the case of disclosure of dealings by fund managers on behalf of discretionary clients, the clients need not be named.*

2. *See the definition of "relevant securities" in the Definitions Section of the Code.*

3. *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.*

4. *See the definition of "dealings" in the Definitions Section of the Code.*

5. *For all prices and other monetary amounts, the currency must be stated.*

6. *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.*

7. *See Note 3 on the definition of "interests in securities" in the Definitions Section of the Code.*

8. *State type of dealing, e.g. "subscription", "conversion", "exercise" etc.*

9. *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 8 should be completed.*

10. *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 Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

SUPPLEMENTAL FORM 8

DETAILS OF OPEN POSITIONS
(This form should be attached to Form 8.1, Form 8.1(b)(ii) or Form 8.3, as appropriate)

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 Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk

FORM 38.5

DEALINGS BY CONNECTED EXEMPT PRINCIPAL TRADERS
(Rule 38.5 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 paid 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

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.

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 can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk

NOTES ON FORM 38.5

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 Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

APPENDIX C

Non-confidential respondents

Respondents to PCP 2005/1

1. Alternative Investment Management Association (AIMA)
2. Association of British Insurers (ABI)
3. Hermes Pensions Management Ltd
4. Insinger de Beaufort
5. Institute of Chartered Accountants in England & Wales, Corporate Finance Faculty
6. International Swaps and Derivatives Association, Inc. (ISDA)
7. Investment Management Association (IMA)
8. Legal & General Investments
9. London Investment Banking Association (LIBA)
10. Managed Funds Association (MFA)
11. National Association of Pension Funds (NAPF)
12. Professor Andrew Weiss
13. Takeovers Joint Working Party of the City of London Law Society Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law

Respondents to PCP 2005/2

1. Association of British Insurers (ABI)

2. Barclays Global Investors Limited

3. Hermes Pensions Management Ltd

4. International Swaps and Derivatives Association, Inc. (ISDA)

5. Investment Management Association (IMA)

6. London Investment Banking Association (LIBA)

7. The National Association of Pension Funds (NAPF)