



SUMMARY OF CHANGES MADE TO THE TAKEOVER CODE ON 7 NOVEMBER 2005

From 7 November, changes to the Takeover Code have required increased disclosure of dealings in derivatives and options. This note summarises some of the relevant provisions and should be read in conjunction with PCP 2005/2 and RS 2005/2 issued by the Code Committee of the Takeover Panel which are available on the Panel's website at www.thetakeoverpanel.org.uk. New pages of the Code were issued on 7 November and the updated Code is available on the Panel's website.

New disclosure requirements: Rule 8.3 of the Code has been amended to provide that during an "offer period", persons "interested" in 1% or more of any class of "relevant securities" of an offeree company or, unless the offer is solely cash, an offeror company must publicly disclose their "dealings" in any relevant securities of that company.

"Offer period": The Disclosure Table on the Panel's website lists all offeree companies in an offer period and all offerors and named potential offerors.

"Interests in securities": A new definition provides that 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. In particular, a person

will be treated as having an interest in securities if:

- (1) he owns them;
- (2) he controls them;
- (3) he has a call option or written put option in respect of them; or
- (4) he has a long derivative referenced to them.

"Relevant securities": A new definition of relevant securities has been introduced. Under Rule 2.10 of the Code, the offeree company and, if appropriate, the offeror must announce details of all classes of relevant securities in issue, together with the number of such securities in issue and the ISIN of each class. These details can now be found on the Disclosure Table on the Panel's website.

"Dealings": A new definition provides that a dealing includes any action which results 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, including:

- (a) acquiring or disposing of securities;
- (b) taking, granting, acquiring, disposing of, entering into, closing out, terminating, exercising or varying an option in respect of securities;
- (c) subscribing or agreeing to subscribe

- for securities;
- (d) exercising or converting any securities carrying conversion or subscription rights;
- (e) acquiring, disposing of, entering into, closing out, exercising any rights under or varying a derivative referenced to securities; and
- (f) entering into, terminating or varying the terms of any agreement to purchase or sell securities.

Gross interests and netting: The number of securities in which a person is treated as having an interest is the aggregate gross number. However, 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; and
- (d) the counterparty to the offsetting positions is the same in each case.

Time for calculating interests: A disclosure of dealings is only required under Rule 8.3 if the person is interested in 1% or more of any class of relevant securities at midnight (London time) on the date of the dealing or was so interested at midnight on the previous business day. The new rules include anti-avoidance

provisions in relation to “bed and breakfasting” arrangements.

Time for disclosure: Public disclosure required by Rule 8.3 must be made no later than 3.30 pm (London time) on the business day following the date of the transaction.

Disclosure forms: Specimen disclosure forms can be found on the Panel’s website. Disclosures under Rule 8.3 should be made on Form 8.3. Where the person disclosing has a number of open CFD positions and the terms of the open CFDs are the same in all material respects, details of the aggregate long and aggregate short positions only need be given. In other cases, full details of open option positions and open derivative positions should be given on a Supplemental Form 8. Notes on certain forms can also be found on the Panel’s website. Full details of the information to be included in public disclosures are set out in Note 5(a) on Rule 8.

Disclosure method: Forms should be sent to a Regulatory Information Service electronically or by fax, copied by e-mail or fax to the Panel (Note 4 on Rule 8).

Contacts: The Panel’s Market Surveillance Unit is available for consultation in relation to the Code’s dealing disclosure requirements on 020 7638 0129.