

THE TAKEOVER PANEL

CODE AMENDMENTS TO RULES CONCERNING ACCEPTANCES AND OFFEROR PURCHASES OF SHARES

The Panel has today introduced amendments to the City Code on Take-overs and Mergers to clarify the treatment of certain acceptances and purchases of shares in determining whether the minimum acceptance condition in an offer has been satisfied. The purpose of these amendments is to guard against problems which may result from short sales of shares of the offeree company.

In future offerors will only be permitted to count acceptances towards fulfilling an acceptance condition if (a) they are from registered shareholders; (b) they are endorsed by The Stock Exchange to the effect that the acceptors are entitled to become registered holders; or (c) they are accompanied by registrars' certification. This amendment does not represent a change from existing best practice, but it makes it clear that acceptances backed only by contract notes should not count towards the acceptance target.

Purchases by the offeror will in future be subject to similar substantiation to ensure that shares which may have been sold short are not included in calculating whether the acceptance condition is satisfied. This will mean that offerors will only be allowed to count such purchases towards fulfilling their acceptance condition if (a) the shares are already registered in the name of the offeror or its nominee; (b) there is written confirmation from The Stock Exchange that shares have been apportioned to the offeror or a vendor with whom the offeror has a contract; (c) the purchases are evidenced by a certified transfer; or (d) an executed transfer and relevant certificates

have been delivered to the offeror. This is a change from the present position, where offerors have been able to include shares they have agreed to acquire through The Stock Exchange account system but which have not been delivered.

The amendments to Rule 10, and consequential amendments to other Rules, are attached and take effect immediately. Where this would produce difficulties for current offers, however, the Panel should be consulted. New pages for the City Code will be issued shortly.

NOTE FOR EDITORS

Rule 10 of the City Code requires that an offer may not become unconditional as to acceptances unless the offeror has acquired or agreed to acquire shares carrying over 50% of the target company's voting rights.

There has in the past been concern that short sales, either directly to the offeror or to potential acceptors or vendors to the offeror, could lead to a situation where an offer became unconditional while existing shareholders holding over 50% of the voting rights had neither accepted the offer nor sold their shares. The present amendments are designed to reduce substantially this possibility.

26 March 1986

AMENDMENTS TO THE CODE

RULE 9.3

Amend Note 2 on Rule 9.3 to read as follows:-

"2. Acceptance Condition

Notes 2-5 on Rule 10 also apply to offers under this Rule."

RULE 10

Add as Notes 4 and 5 on Rule 10 the following:-"

4. Incomplete Acceptances

Notwithstanding any right which an offeror may have reserved to treat acceptances as valid even though not complete in all respects or not accompanied by the relevant certificates or other documents of title, such acceptances must not be counted towards fulfilling an acceptance condition unless they are:-

- (a) from a registered shareholder (up to the amount of the registered holding); or
- (b) endorsed on behalf of The Stock Exchange to the effect that documents of title covering the relevant number of shares have been delivered to The Stock Exchange and that the acceptor is unconditionally entitled to become the registered holder of those shares; or
- (c) certified by the offeree company's registrars or The Stock Exchange.

5. Purchases

Purchases of shares by an offeror may be counted towards fulfilling an acceptance condition only if:-

- (a) the shares are registered in the name of the offeror or its nominee on the offeree company's register of members; or
- (b) there is confirmation from The Stock Exchange in writing (for instance, a Talisman stock note) that documents of title covering the relevant number of shares have been delivered to The Stock Exchange and that the shares have been apportioned to the offeror or to a vendor with whom the offeror has a contract of purchase; or
- (c) the purchases are evidenced by a transfer certified by the offeree company's registrar or The Stock Exchange; or
- (d) an executed form of transfer and the relevant share certificates have been delivered to the offeror."

RULE 17.1

Add as Note 6 on Rule 17.1 the following:-

"6. Incomplete acceptances and offeror purchases

Acceptances not complete in all respects and purchases by the offeror must only be included in the totals in an announcement under this Rule where they could be counted towards fulfilling an acceptance condition under Notes 4 and 5 on Rule 10."