

THE TAKEOVER PANEL

DISCLOSURE OF DEALINGS DURING TAKE-OVERS

The Panel has reviewed the requirements of the Code with regard to disclosure of dealings in securities of an offeror and of the offeree company in the course of a take-over. The existing Rules (principally Rule 8 and the definition of "associate") already require, in summary, public disclosure of dealings in relevant securities by the parties to a take-over and their associates and by significant shareholders. The Panel has decided that amendments should be made to the Code to require more detailed public disclosure of dealings during an offer period.

This principally involves changes to Rule 8 which, in its revised form, is attached in the appendix to this statement. Certain ancillary changes to Rules 24 and 25, which address disclosure of dealings in circulars to offeree company shareholders, are also being made and these are set out in the appendix. The effect of the principal changes may be summarised as follows:-

- 1 The details to be included in public disclosures of dealings by parties to a take-over and their associates have been standardised and make disclosures more complete by requiring in all cases, among other things, details of the identity of the person dealing, an explanation by associates as to why disclosure is necessary and the resultant shareholding. For the purpose of disclosing identity, the owner or controller of the securities in question will also have to be named. Disclosure of a nominee or a vehicle company will not be adequate.
- 2 The existing Rule 8.3 requires an accelerated public disclosure of dealings which would have to be notified to the relevant company under certain provisions of the Companies Act 1985, which operate at the 5% level of interest.

Replacing that Rule is a new Rule to require public disclosure of dealings during an offer period in relevant securities of an offeror or the offeree company by a person who owns or controls 1% or more, or would as a result of the transaction in question own or control 1% or more, of any class of relevant securities (defined in Rule 8) of the company concerned. Similar details will be required in the case of such disclosure as in the case of disclosure by associates.

- 3 Rule 8 currently requires that disclosure of dealings by persons who have an arrangement (formal or informal) for a person connected with the relevant take-over to bear any investment risk in relation to relevant securities must include details of the arrangement. Such arrangements include indemnities. Changes have been made to reinforce the scope of application of this requirement by stating expressly that all types of inducement to deal or refrain from dealing are covered.
- 4 Rule 24.3 in its present form requires any document sent by an offeror to offeree company shareholders to include the shareholdings and dealings of persons connected with the offer. An express requirement has been added to disclose dealings by persons with whom there is an arrangement of the type described above.

A similar change is made to Rule 25.3, the corresponding provision in relation to circulars published by the offeree company board. That Rule is further amended to require disclosure of all shareholdings and dealings of close associates of the offeree company, such as the advisers to the offeree company.

- 5 The principal change to the definition of "associate" in the Code, also set out in revised form in the appendix, is to the presumption in paragraph (6). The percentage level of interest test is changed from 10% to 5%. In contrast with new Rule 8.3, the effect of this will be to require

disclosure of dealings in relevant securities of companies engaged in a take-over by a person who owns or controls 5% of any class of relevant securities of either an offeror or of the offeree company.

The Panel wishes to emphasise the underlying principle that wherever there is doubt as to the application of the Code the Panel should be consulted. This is expressly repeated in Rule 8. It also draws attention to the obligation, contained in Rule 8, on stockbrokers, banks and others who deal in relevant securities in a take-over on behalf of clients to ensure that those clients are aware of the disclosure obligation attaching to associates. The note on this subject has also been reinforced and expanded to make it clear that in certain cases where, for example, a broker/dealer deals as principal, and not simply on behalf of clients, a similar obligation may arise.

Given the greater detail to be required in disclosures and the anticipated increase in volume of disclosures, the Panel proposes to publish shortly specimen forms of disclosure.

The changes to the Code announced in this statement will formally come into effect on 16 February 1987, to allow time for those affected to make any necessary administrative arrangements. Where their application would produce major difficulties (for example because of the state of an offer then in progress) the Panel should be consulted and will endeavour to agree a solution which is fair to the parties.

The publication of new pages to the Code following the amendments made by the Panel's statement of 6 October 1986 (Multi-Service Financial Organisations) has been delayed pending the changes made by this statement. New pages will be published as soon as possible to take account of both statements.

30 January 1987

APPENDIX**A RULE 8**

The revised full text of Rule 8 is as follows:-

**"RULE 8. DEALINGS DURING THE OFFER PERIOD - ANNOUNCEMENTS
(ALSO INDEMNITY AND OTHER ARRANGEMENTS)**

**8.1 DEALINGS BY PARTIES AND BY ASSOCIATES FOR THEMSELVES OR
FOR DISCRETIONARY CLIENTS**

- (a) Dealings in relevant securities by the parties to a take-over and by any associates, for their own account or (unless the associate is an exempt fund manager to which paragraph (6) of the definition of associate does not apply) the account of discretionary investment clients, must be disclosed daily to The Stock Exchange, the Panel and the press not later than 12 noon on the business day following the date of the transaction. Such disclosures must state the total of all relevant securities of any offeror or the offeree company purchased or sold on any day during the offer period, in the market or otherwise, and the price paid or received.
- (b) Except with the consent of the Panel, all dealings in relevant securities of any offeror or the offeree company made for the account of discretionary investment clients by an associate which is an exempt fund manager must be similarly reported to the Panel but not to The Stock Exchange or the press.

NOTE ON RULE 8.1

Exempt fund managers - effect of Rule 8.3

Where an exempt fund manager falls within the requirements of Rule 8.3, its dealings in relevant securities must be disclosed in accordance with that Rule rather than under this Rule.

8.2 DEALINGS BY ASSOCIATES FOR NON-DISCRETIONARY CLIENTS

All dealings in relevant securities of any offeror or the offeree company made by associates for the account of non-discretionary investment clients who are not themselves associates must be similarly reported to The Stock Exchange and the Panel, but need not be disclosed to the press.

8.3 DEALINGS BY 1% SHAREHOLDERS

- (a) If a person, whether or not an associate, owns or controls (directly or indirectly) 1% or more of any class of relevant securities of any offeror or of the offeree company, or as a result of any transaction will so own or control 1% or more, dealings in relevant securities of that company by such person (or any other person through whom such ownership or control is derived) must be reported to The Stock Exchange, the Panel and the press in the manner required by Rule 8.1(a).
- (b) Where two or more persons act pursuant to an agreement or understanding, whether formal or informal, to acquire or control relevant securities, they will be deemed to be a single person for the purpose of this Rule. Relevant securities managed on a discretionary basis by an investment management group (whether or not exempt

fund managers) will, unless otherwise agreed by the Panel, also be deemed to be those of a single person.

- (c) Rule 8.3 does not apply to recognised market-makers acting in that capacity.

NOTES ON RULES 8.1, 8.2 and 8.3

1 Early Bargains

The requirement to disclose deals on the next business day applies equally to deals done after 3.30pm (as early bargains for the next day).

2 Responsibility for establishing whether disclosure is necessary

Stockbrokers, banks and others who deal in the securities of companies involved in a take-over on behalf of clients have a general duty to ensure, so far as they are able, that those clients are aware of the disclosure obligations attaching to associates and other persons under these Rules. Market-makers and dealers who deal directly with investors should in appropriate cases likewise draw attention to the relevant Rules. However, such persons are not required to establish whether their client is aware of such obligations when the total value of the dealings (excluding stamp duty and commission) in any relevant security undertaken for that client during the same Stock Exchange account period is less than £5,000.

This dispensation does not alter the obligation of principals, associates and other persons themselves to initiate disclosure of their own dealings, whatever total value is involved.

3 Competing offers

Dealings by one offeror or its associates (whether for themselves or investment clients) in the shares of any other offeror must be disclosed.

4 Exempt market-makers

Dealings in relevant securities by exempt market-makers connected with an offeror or the offeree company should be disclosed in the manner set out in Rule 38.5.

5 Method of disclosure

- (a) Announcements of dealings under Rules 8.1(a) and 8.3 which are disclosed in writing (or by telex) to The Stock Exchange are published on the Company News Service of The Stock Exchange and arrangements have been made for copies of such announcements to be sent to the Panel. Separate disclosure to the Panel and the press is, therefore, unnecessary.
- (b) Notifications of dealings under Rule 8.2, on behalf of non-discretionary investment clients, which are disclosed in writing (or by telex) to The Stock Exchange are not published. Copies of such disclosures are sent by The Stock Exchange to the Panel to whom separate disclosure is, therefore, unnecessary.
- (c) Dealings by a principal or by an associate or by a person falling within Rule 8.3 may be disclosed by the party concerned or by an agent who acts on its behalf. In cases where there is more than one agent (eg a merchant bank and a stockbroker), particular care should be taken to ensure that the responsibility for disclosure is agreed between the parties and that publication is neither overlooked nor duplicated.

6 Details of disclosure

- (a) When dealings are disclosed under Rule 8.1 (a) or Rule 8.3, as the case may be, in addition to the total amount of relevant securities and the prices paid or received, the following details must be included:
- (i) the identity of the associate or other person dealing and, if different, the owner or controller;
 - (ii) if the disclosure is made by an associate, an explanation of how that status arises;
 - (iii) if the disclosure is made under Rule 8.3, a statement of the percentage of the relevant securities owned or controlled which results in disclosure;
 - (iv) the resultant total amount of relevant securities owned or controlled by the associate or other person (or group) in question and the percentage which it represents.

For the purpose of disclosing identity, the owner or controller must be specified, in addition to the person dealing. The Panel may require additional information to be disclosed where it appears to it 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 a fund manager on behalf of discretionary clients, the clients need not be named.

Where an offer period exists but the potential offeror has not yet been named, dealings in relevant securities of the offeree company by the potential offeror (or any person acting in concert with it) must be disclosed. The name of the potential offeror need not, however, be revealed and the disclosure should refer simply to a potential offeror.

If an associate is an associate for more than one reason (for example because he falls within paragraphs (6) and (7) of the definition of associate), all the reasons must be specified.

- (b) When an arrangement exists with any offeror, with the offeree company or with an associate of any offeror or of the offeree company in relation to relevant securities, details of such arrangement must immediately be disclosed, whether or not any dealing takes place. When dealings to which such an arrangement may be relevant are disclosed by an associate, details of the arrangement must also be disclosed. An arrangement includes, in addition to indemnity or option arrangements, any agreement or understanding, formal or informal, of whatever nature relating to relevant securities which may be an inducement to deal or refrain from dealing.

If any person is party to such an arrangement with any offeror or an associate of any offeror, whether in respect of securities of that offeror or the offeree company, not only will that render such person an associate of that offeror but it is also likely to mean that such person is acting in concert with that offeror; in that case Rules 4, 5, 6, 7, 9, 11 and 24 may be relevant. Where a person is party to such an arrangement with an offeree company or an associate of an offeree company, not only will that render such person an associate of the offeree company but Note 3 on Rule 9.1 and Rule 25.3 may be relevant.

- (c) In any case of doubt as to the application of this Rule, the Panel executive should be consulted.

- (d) Relevant securities for the purposes of these Rules include:-
- (i) securities of the offeree company which are being offered for or which carry voting rights;
 - (ii) equity share capital of the offeree company and any offeror;
 - (iii) securities of any offeror which carry substantially the same rights as any to be issued as consideration for the offer;
 - (iv) securities of the offeree company and any offeror carrying conversion or subscription rights into any of the foregoing, where variations in the price of such securities are likely to affect the price of the securities into which they are convertible or over which they carry subscription rights.

In addition, the taking, granting or exercising of an option (including a traded option contract) in respect of any of the foregoing must be disclosed; the exercise period, the exercise price and any option money paid or received should be stated.

- (e) The requirements to disclose dealings apply also to dealings in the shares of unlisted public companies and of relevant private companies.
- (f) There is no requirement to disclose dealings in securities of an offeror offering solely cash.
- (g) In addition to the requirements to disclose under these Rules, the requirements of Part VI of the Companies Act 1985 as to disclosure of interests may be relevant. It is likely that, where disclosure is necessary under that Act in respect of a notifiable interest in shares and a dealing occurs during an offer period, disclosure will also be necessary under Rule 8.3."

B ASSOCIATE

Paragraph (6) of the definition will read as follows:

"(6) a person who owns or controls 5% or more of any class of relevant securities (as defined in Rule 8) of an offeror or of the offeree company, including a person who as a result of any transaction owns or controls 5% or more (where two or more persons act pursuant to an agreement or understanding (formal or informal) to acquire or control such securities, they will be deemed to be a single person for the purposes of this paragraph; relevant securities managed on a discretionary basis by an investment management group will, unless otherwise agreed by the Panel, also be deemed to be those of a single person);"

C CONTROL

The following sentence is added to the definition of Control:-

"This definition is not relevant for the purposes of the definition of associate or Rule 8."

D RULE 24.3

Add to paragraph (a) of Rule 24.3 a new sub-paragraph (v):-

"the shares in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by a 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 (b) on Rules 8.1, 8.2 and 8.3."

E RULE 25.3

1 Delete existing paragraph (a) (iii) and add the following:-

- "(iii) the shares in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a person who is an associate of the offeree company by virtue of paragraphs (1), (2), (3) or (4) of the definition of associate, but excluding exempt market-makers;
- (iv) the shares in the offeree company and (in the case of a securities exchange offer only) in the offeror owned by a person who has an arrangement of the kind referred to in Note 6 (b) on Rules 8.1, 8.2 and 8.3 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;
- (v) except with the consent of the Panel, the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by persons whose investments are managed on a discretionary basis by fund managers connected with the offeree company (other than exempt fund managers). The persons need not be named;"

Renumber existing paragraph (iv) accordingly.

- 2 In paragraph (b) of Rule 25.3 change cross reference to (a) (v).
- 3 In paragraph (c) of Rule 25.3, add at the end:

"In appropriate circumstances, the Panel may consent to disclosure of dealings by market-makers and discretionary fund managers in respect of a shorter period."

F RULES 24.12 AND 25.5

Change cross references to Note 6 (b) on Rules 8.1, 8.2 and 8.3.