

# THE TAKEOVER PANEL

## COMMENCEMENT OF THE COMPANIES ACT 2006

### CHANGE OF NAME OF “OFEX”

#### CODE AMENDMENTS TO HAVE EFFECT ON 6 APRIL 2007

The Panel and the Code Committee have today published amendments to the Introduction to the Code and the Rules which will come into effect on 6 April 2007. These amendments are required to reflect the commencement of certain provisions of the Companies Act 2006 (“the Act”) and the simultaneous revocation of The Takeovers Directive (Interim Implementation) Regulations 2006 (“the Regulations”). They also provide for the change of name, in October 2006, of OFEX to PLUS Markets Group. The amendments can be found on the “Code” page of the Panel’s website. Replacement pages of the Code incorporating the amendments will be dispatched to subscribers shortly before 6 April.

In accordance with section 4(b) of the Introduction to the Code, as each of the amendments either does not materially alter the effect of the provision in question or is a consequence of changes to relevant legislation or regulatory requirements, the text of the amendments is being published without any formal consultation process.

#### **The Companies Act 2006**

The Act received Royal Assent on 8 November 2006 and is being implemented by a series of commencement orders. The Government made the First Commencement Order on 20 December 2006 and the Second Commencement Order, which is subject to the affirmative resolution procedure, was laid before Parliament in draft on 8 February 2007. If approved by both Houses, it will come into force on 6 April 2007.

## **Amendments to the Code**

### **(a) The Introduction**

The Second Commencement Order will implement Part 28 of the Act relating to takeovers and will revoke the Regulations. Chapter 1 of Part 28 contains provisions arising from the implementation of the Takeovers Directive (“the Directive”), which will put all the activities of the Panel in the UK within a statutory framework. Under the Regulations, the Panel was given statutory powers only in relation to bids to which the Directive relates. With the entry into force of Chapter 1 of Part 28 of the Act on 6 April 2007, the Panel will also be given statutory powers in relation to all other bids covered by the Code (except in relation to the Channel Islands and the Isle of Man). Apart from those explained below, the amendments to the Introduction are of a technical nature, primarily changing references to the Regulations to references to the relevant sections of the Act.

#### *Transitional arrangements*

New section 2(d) sets out a new rule to deal with transitional arrangements. This new rule makes it clear that the Panel can exercise its statutory powers in relation to non-Directive bids which started before 6 April 2007 and any breaches which occurred or rulings which were given before that date.

#### *The Channel Islands and the Isle of Man*

The Code will not have statutory effect in the Channel Islands or the Isle of Man until the provisions of Chapter 1 of Part 28 of the Act are extended to them or until equivalent statutory provision is made in those jurisdictions. Until the relevant legislation is made (either by secondary legislation in the UK or local legislation in those jurisdictions) the Code will continue to apply to Channel Islands and Isle of Man companies as it does now, but the Panel will not be able to exercise any of its statutory powers in relation to the Channel Islands or the Isle of Man. This position is reflected in amendments to sections 1 and 2(a) of the Introduction.

### *Unregistered companies*

It has always been the Panel's stated intention to cover in section 3 of the Introduction all companies covered by the Directive as well as those other companies not within the scope of the Directive but regulated by the Panel before implementation of the Directive in May 2006. A footnote has been added to section 3 of the Introduction to clarify that, in the case of an unregistered company with a principal office in the UK, the term "registered office" used in section 3(a) should be read as a reference to its principal office.

### *Shared jurisdiction*

The overriding principle for determination of jurisdiction over an offer under the Directive lies in Article 4(2)(a), which makes it clear that there is sole jurisdiction for the regulator of the Member State of the European Economic Area ("Member State") where the target company has its registered office if the company has securities admitted to trading on a regulated market in that Member State. This applies even if the target company also has securities admitted to trading on a regulated market in another Member State. Section 3(a)(iii) of the Introduction sets out the rules relating to the application of the Code in shared jurisdiction cases and section 3(a)(iii)(C) in particular covers the situation where a target company has its registered office in a Member State other than the UK but has securities admitted to trading on regulated markets in more than one Member State including the UK. It has been brought to the Executive's attention that while the overriding principle in Article 4(2)(a) is reflected in section 3(a)(iii)(C)(II), it should also be reflected in sections 3(a)(iii)(C)(I) and (III). Section 3(a)(iii)(C) is therefore amended accordingly.

### **(b) Code Rules**

The Code contains a number of references to provisions of the Companies Act 1985 ("the 1985 Act"). From 20 January 2007, pursuant to the First Commencement Order, Part VI (i.e. sections 198 to 220) of the 1985 Act (relating to the disclosure of interests in shares in public companies) was repealed and replaced by certain

provisions in Chapter 5 of the FSA's Disclosure Rules and Transparency Rules and by certain provisions of the Act. The First Commencement Order also provided for the repeal on 6 April 2007 of various provisions of Part X of the 1985 Act, including section 328 (relating to the extension of section 324 to directors' spouses, civil partners and children), which will not be replaced in the Act.

Amendments have been made to reflect these changes in: Note 4 on the definition of "acting in concert"; Note 8 on the definition of "interests in securities"; Note 2 on Rule 2.2; Note 1(a) on Rule 5.2; Note 13 on Rule 8; the Notes on Rule 9.1 under "PERSONS ACTING IN CONCERT"; and Note 1 on Rule 24.3. The definition of "UKLA Rules" has also been updated.

Practice Statement No 17 is superseded by these amendments.

Appendix 6 will be amended as a result of the commencement of Part 28 of the Act. The references to Regulation 10 of the Regulations will be replaced by references to section 953 of the Act. The definition of "regulated market" has also been updated so as to conform with the definition in section 1173 of the Act, which will also come into force on 6 April 2007.

## **OFEX**

The definition of "OFEX", Rule 2.9(a), Note 4 on Rule 8 and paragraphs 1, 2(a) and 2(f) of Appendix 5 have all been amended to reflect the change of name of OFEX to PLUS Markets Group.

7 March 2007