PCP 2005/2 Issued on 13 May 2005

THE PANEL ON TAKEOVERS AND MERGERS

CONSULTATION PAPER ISSUED BY THE CODE COMMITTEE OF THE PANEL

DEALINGS IN DERIVATIVES AND OPTIONS

DETAILED PROPOSALS RELATING TO AMENDMENTS PROPOSED TO BE MADE TO THE TAKEOVER CODE

PART 1: DISCLOSURE ISSUES

Before it introduces or amends any Rules of the Takeover Code ("the Code") or the Rules Governing the Substantial Acquisitions of Shares ("the SARs"), the Code Committee of the Takeover Panel ("the Code Committee") is normally required under its consultation procedures to publish the proposed Rules and amendments for public consultation and to consider the responses arising from the public consultation process.

The Code Committee is therefore inviting comments on this Consultation Paper by 24 June 2005.

Comments may be sent by email to:

supportgroup@thetakeoverpanel.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee
The Panel on Takeovers and Mergers
10 Paternoster Square
London
EC4M 7DY

Telephone: 020 7382 9026
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It is the Code Committee's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

SECTION A
INTRODUCTION

1. PCP 2005/1

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

1.2 In paragraph 1.2 of PCP 2005/1, the Code Committee stated that it intended to consult on detailed rule changes in the light of the responses received.

1.3 Eighteen responses were received to PCP 2005/1. The Code Committee has considered those responses and has reviewed the proposals set out in PCP 2005/1 accordingly. Copies of those responses to PCP 2005/1 which are available for public inspection may be obtained from the Panel.

1.4 The purpose of this Public Consultation Paper ("PCP") is to propose rule changes in respect of the Disclosure Issues and to invite comments on them. In the light of responses received to PCP 2005/1, the Code Committee has concluded that there is no reason to alter its overall approach in relation to these issues and the principal measures which were proposed, although it has made certain adjustments to take account of comments made by respondents. The adjustments to the proposals outlined in PCP 2005/1 are described in the relevant section of this PCP.

1.5 The Code Committee intends to publish a Response Statement on the Disclosure Issues in the normal way following this further phase of consultation. At that time, the Code Committee intends to address in detail the

responses received to the questions on the Disclosure Issues raised in both PCP 2005/1 and in this PCP.

1.6 The Code Committee wishes to consider further a number of points relating to the Control Issues and has therefore decided to delay any further consultation on those issues for the time being. The Code Committee envisages that a separate PCP with draft rules on the Control Issues will be issued later this year and that, following that consultation process, it will publish a Response Statement which will address the responses received to the questions on the Control Issues raised in both PCP 2005/1 and in that PCP.

1.7 PCP 2005/1 proposed that if the Code were to be extended to dealings in derivatives and options, corresponding amendments should also be made to the SARs. The Code Committee will address points relating to the SARs in the further PCP relating to the Control Issues.

2. RS 2004/3

In paragraph 6.4 of RS 2004/3 (Market-Related Issues), the Code Committee stated that it would consider the responses to PCP 2005/1 before reaching a final view as to how the "composite disclosure" proposals outlined in paragraph 6 of PCP 2004/3 should be reflected in the Code. The Code Committee's conclusions on this issue are set out in paragraph 7(b) of this PCP.

3. Implementation date and review

3.1 The precise implementation dates for the proposed rule changes relating to the Disclosure Issues and the Control Issues will be set out in the Response Statements to the respective PCPs.

3.2 The Code Committee is aware that the rule changes relating to the Disclosure Issues proposed in this PCP will require market participants to adjust their dealings and reporting systems. It therefore intends to delay implementation

of the Disclosure Issues rule changes to allow for this to take place. The Code Committee believes that a period of three months' delay from the date of issue of the final rule changes relating to the Disclosure Issues would be appropriate, but would welcome comments on this issue.

3.3 The Code Committee recognises that the proposed rule changes relating to the Disclosure Issues and the Control Issues will have significant implications for market participants. In view of this, the Code Committee believes that it will be appropriate to review the operation of the new regulatory environment 18 months after both sets of rule changes have come into effect. The conclusions of this review will be published.

SECTION B
DISCLOSURE OF DEALINGS BY MARKET PARTICIPANTS

4. Current position

4.1 Under Rule 8.1, during an offer period, the offeror, the offeree company and their respective associates are required to disclose publicly all dealings in relevant securities of the offeree company and, in the case of a securities exchange offer, of the offeror, undertaken for their own account (Rule 8.1(a)) and (unless the associate is an exempt fund manager connected with an offeror or the offeree company) for the account of discretionary investment clients (Rule 8.1(b)(i)).

4.2 Under Rule 8.1(b)(ii), exempt fund managers connected with an offeror or the offeree company are required to disclose privately to the Panel all dealings in relevant securities for the account of discretionary investment clients. In addition, under Rule 8.2, dealings by associates for the account of non-discretionary investment clients are required to be disclosed privately to the Panel.

4.3 Under Rule 8.3, if a person owns or controls 1% or more of any class of relevant securities of the offeree company or, in the case of a securities exchange offer, the offeror (or if, as a result of any transaction, he will so own or control 1% or more), he is required to disclose publicly all dealings in such relevant securities of that company.

4.4 For the purpose of Rule 8, "relevant securities" include the securities listed in the first paragraph of Note 2 on Rule 8, which provides as follows:

"*Relevant securities for the purpose of Rule 8 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;

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

(e) options in respect of any of the foregoing and derivatives referenced to any of the foregoing.".

4.5 Accordingly, pursuant to sub-paragraph (e) of the first paragraph of Note 2 on Rule 8, options in respect of and derivatives referenced to other relevant securities are themselves relevant securities. However, persons whose only interests in relevant securities are in the form of derivatives referenced to or options in respect of securities issued by an offeree company (or, if appropriate, an offeror), no matter how large, have no obligation to disclose their dealings under Rule 8 (as long as they are not also associates of an offeror or the offeree company). This is because Note 7 on Rule 8 provides as follows:

"*7. Dealings in options and derivatives*

Under Rule 8.3, a disclosure of dealings in options or derivatives is only required if the person dealing in such options or derivatives owns or controls 1% or more of the class of securities which is the subject of the option or to whose price the derivative is referenced.".

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

5.1 In recent years, a significant element of market activity has moved from the cash market to the derivative market and the Code Committee believes that the Code's disclosure regime should be broadened accordingly. Paragraph 5 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, broadly, as follows:

(a) that persons with long derivative or option positions may, through the securities held 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 The Code Committee continues to believe these reasons to be valid and that they justify increased disclosure. Further, although certain respondents to PCP 2005/1 argued that the disclosure rules should focus only on persons who have de facto control over the underlying shares, and not on persons who have only an economic interest in the price of such shares, the Code Committee believes that this distinction is not easily drawn in the context of a takeover. This is because the price of the target company's shares is invariably affected by the outcome of the bid, which is in turn influenced by how the underlying shares are voted or whether they are assented to the offer. Thus, a derivative investor or option holder with a purely economic, rather than a strategic, motivation is still likely to want to influence the way in which the holder of underlying shares acts in respect of an offer for the company.

5.3 The Code Committee therefore proposes to amend the Code to require additional dealing disclosures as set out below.

6. The circumstances in which a disclosure obligation under Rule 8.3 is triggered

(a) Trigger by reference to a long position

6.1 The obligation to disclose dealings in relevant securities during an offer period under Rule 8.3(a) is triggered in the following circumstances:

> "… **if a person, whether or not an associate, owns or controls (directly or indirectly) 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 so own or control 1% or more** …".

6.2 In paragraphs 6 and 7 of PCP 2005/1, the Code Committee proposed that the obligation to disclose under Rule 8.3 should be broadened so as to be triggered where a person has a "long position" of 1% or more in any class of relevant securities of the offeree company (or, where appropriate, of the offeror) or where a person comes to have such a long position as a result of a dealing.

6.3 At present, there is no requirement for a person to make dealing disclosures under Rule 8.3 where his only exposure to movements in the price of relevant securities is a "short" position (unless that short position resulted from a dealing which took place when he owned or controlled 1% or more).

6.4 The Code Committee continues to be of the opinion that, for the reasons stated in paragraph 7.3 of PCP 2005/1, the disclosure obligation under Rule 8.3 should be triggered only where a person holds or acquires a long position in respect of relevant securities of the relevant level and not where a person has only a short position. However, 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.

6.5 In addition, the Code Committee notes that where a person required to make disclosures under Rule 8.3 also has a short position, full details of that short

position must be disclosed in accordance with paragraph (v) of Note 5(a) on Rule 8. At present, paragraph (v) provides as follows:

"*(v) where a person required to make a disclosure has a short position in the relevant security of the company concerned, the number of relevant securities of which that person is short (and the percentage of the class of relevant securities which it represents) should be disclosed;*".

6.6 As part of the "composite disclosure" proposals (see paragraphs 7(b) and 8 below), the Code Committee is proposing to expand the application of Note 5(a) on Rule 8 so as to require the disclosure of a short position in any relevant securities of the company concerned.

(b) Disclosure level and types of interest to be taken into account

6.7 Paragraph 7.5 of PCP 2005/1 stated as follows:

"The Code Committee believes that, in establishing whether a person has a long position of 1% or more, the following interests should be aggregated: physical long positions, call options, long derivative interests and written put options. These interests should be aggregated by class of relevant security (i.e. holdings of ordinary shares should be aggregated with long CFDs referenced to ordinary shares, but not with holdings of convertible bonds).".

6.8 The Code Committee continues to believe that the positions described in paragraph 6.7 above should be aggregated, by class of relevant security, for the purpose of establishing whether a person has a long position of, or in excess of, the relevant percentage level in respect of that class of relevant security.

6.9 In addition, the Code Committee continues to believe that the relevant percentage level at which the disclosure obligation should arise should be 1%.

6.10 The Code Committee is therefore proposing to introduce a new definition of "interests in securities" pursuant to which a person who has, or may have, long

economic exposure to changes in the price of securities will be treated as interested in those securities.

6.11 For the avoidance of doubt, the Code Committee understands that the Panel will treat a person as having a long position in a security if he: will benefit economically if the price of that security goes up; will suffer economically if the price of that security goes down; has the right or option to acquire it or to call for its delivery; or is under an obligation to take delivery of it.

6.12 Conversely, the Code Committee understands that the Panel will treat a person as having a short position in a security if he: will benefit economically if the price of that security goes down; will suffer economically if the price of that security goes up; has the right or option to dispose of it or to put it on to another person; or is under an obligation to deliver it to another person.

6.13 In addition, the Code Committee is proposing:

(a) to make consequential amendments to the definition of "derivative";

(b) to make consequential amendments to Rule 8.3;

(c) to move the definition of "relevant securities" in Note 2 on Rule 8 to the Definitions Section; and

(d) to introduce a new definition of "dealings" (see paragraph 7(a) below).

(c) "Interests in securities"

6.14 The new definition of "interests in securities" proposed by the Code Committee is as follows:

"**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, or may have, long economic exposure 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.".

6.15 For the avoidance of doubt, in relation to paragraph (1) of the definition of "interests in securities", the Code Committee considers that a person who acquires (or disposes of) securities on market-standard settlement terms will become (or cease to be) interested in the securities in question at the time that the transaction is executed. However, the Code Committee believes that the Panel may wish to draw a different conclusion when a dealing is executed on abnormally long settlement terms.

6.16 In relation to paragraph (2) of the definition of "interests in securities", the Code Committee recognises that the question of whether a person has the right to exercise or direct the exercise of the voting rights attaching to, or has general control of, securities will involve the Panel making judgements as to whether such right or control exists. The Code Committee believes that these

judgements will be similar to those made under the current Note 13 on Rule 9.1, which provides that if voting rights, or general control of them, as distinct from the shares themselves are acquired, the Panel will deem this to be the acquisition of the relevant shares for the purpose of Rule 9.1.

6.17 In addition, the Code Committee notes that where the terms of a derivative provide for physical settlement, the derivative will fall within paragraph (3) of the definition of "interests in securities" and that where the terms of the derivative provide for cash settlement, it will fall within paragraph (4) (see paragraph 6.19 below).

(d) "Derivative"

6.18 At present, a financial product will only fall within the Code definition of "derivative" if its terms do not include the possibility of delivery of the underlying securities to whose price its value is referenced. In other words, the present definition of "derivative" relates only to cash-settled derivatives (a physically settled derivative, to date, being treated as an option for the purposes of the Code).

6.19 In order to bring the definition of "derivative" into line with the definition of "interests in securities" (see paragraph 6.17 above) and with the terminology generally used by market participants, the Code Committee is proposing to amend the definition of "derivative" as follows:

"**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~~ but which does not include the possibility of delivery of such underlying securities~~.

…".

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

6.20 The amendments proposed by the Code Committee 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 are 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** …".

6.21 In addition, the Code Committee is proposing to amend Rules 8.3(b) and (c) 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.**

(c) If a person manages investment accounts on a discretionary basis, ~~relevant securities so managed will be treated, for the purpose of this Rule, as controlled by that person~~ he, and not ~~by~~ 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 controlled by~~ 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).".

(f) "Relevant securities"

6.22 The Code Committee is proposing to delete the definition of "relevant securities" from the first paragraph of Note 2 on Rule 8 and to introduce a new definition of "relevant securities" into the Definitions Section.

6.23 The proposed new definition of "relevant securities" comprises the present sub-paragraphs (a) to (d) of the first paragraph of Note 2 on Rule 8. However, the present sub-paragraph (e) ("options in respect of and derivatives

referenced to other relevant securities") has been deleted since (as set out in paragraph 6.14 above) options and derivatives fall within the proposed definition of "interests in securities" and (as set out in paragraph 7.5 below) the relevant actions in relation to options and derivatives fall within the proposed new definition of "dealings".

6.24 The new definition of "relevant securities" proposed by the Code Committee is as follows:

"**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.".

(g) Notes on "interests in securities"

6.25 The preamble to the proposed definition of "interests in securities" confirms that the definition applies equally to references in the Code to "interests in shares" and "interests in relevant securities" (see paragraph 6.14 above). In addition, the Code Committee is proposing to introduce a number of Notes on the application of the definition of "interests in securities", as set out below.

(i) Gross interests

6.26 Paragraph 7.8 of PCP 2005/1 stated as follows:

"The Code Committee considers that, as is currently the case, in establishing whether a disclosure obligation is triggered, what is relevant is a person's

gross interest. Accordingly, a person who has, for example, a 3% long position and a 3.5% short position in respect of the same class of shares should be subject to a disclosure obligation. The reason for this is that the person concerned controls 3% of the class of share in which he has a long position, albeit that his net economic position in respect of such shares is 0.5% short. Furthermore, if a person's net position were to be the yardstick for determining whether he had a disclosure obligation, a person with a long position of over 1% could easily avoid disclosure simply by also taking out a significantly out of the money short position.".

6.27 The Code Committee continues 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. The Code Committee is therefore proposing to introduce a Note 1 on the new definition of "interests in securities" as follows:

"*1. Gross interests*

The number of securities in which a person is treated as having an interest is 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. Short positions should not be deducted.".

(ii) Interests of two or more persons

6.28 At present, under Rule 8, two or more persons may be interested in the same relevant securities. For example, where an intermediary has borrowed securities in order to settle a short sale, both the lender of the securities and the purchaser from the intermediary will be treated as interested in the securities in question (see paragraph 27 of each of PCP 2004/3 and RS 2004/3).

6.29 Assuming that the definition of "interests in securities" is adopted as proposed, the number of instances in which two or more persons may be interested in the same relevant securities will increase. For example, where a person enters

into a long derivative referenced to relevant securities and his counterparty hedges its position by purchasing an equivalent number of relevant securities, both persons will be treated as interested in relevant securities of that class.

6.30 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) (see paragraph 12 below), which is likely significantly to reduce the instances of "multiple" disclosure.

6.31 The Code Committee is therefore proposing to introduce a Note 2 on the new definition of "interests in securities" as follows:

"*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.".

(iii) Number of securities concerned

6.32 The Code Committee is proposing to introduce a further Note in order to address certain issues in relation to the number of securities to which an agreement to purchase, option or derivative relates, including the following:

(a) that where the number of securities in which a person in interested is variable, he should normally be treated as interested in the maximum possible number of securities concerned;

(b) that where a person enters into a derivative by reference to the price of a number of securities, but subject to a multiplying factor, the Panel should have regard to the person's gross economic exposure. For example, if a person enters into a derivative referenced to 500 shares but agrees with his counterparty that changes in the price of those shares will be multiplied by a factor of two, the number of shares in which the Code should treat the person as interested is 1,000, since that is the gross number of shares to which he has economic exposure; and

(c) that if a person's derivative is not referenced to a particular number of securities, the person should normally be treated as interested in the gross number of securities to which he has long economic exposure. For example, if a person enters into a spread bet in relation to shares in a company, pursuant to which his counterparty will pay him £10 for each penny by which the market price of the shares in that company rises, the number of shares in which the Code should treat the person as being interested is 1,000 (i.e. £10 divided by 1p).

6.33 The Code Committee is therefore proposing to introduce a Note 3 on the new definition of "interests in securities" as follows:

"*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.".

6.34 For the avoidance of doubt, the matters in the proposed Note 3 relating to the issues which may arise as to the number of securities to which an agreement to purchase, option or derivative relates are not intended to be exhaustive.

(iv) Securities borrowing and lending

6.35 In paragraphs 27.1 to 27.4 of PCP 2004/3, the Code Committee described the Panel's normal practices (a) to regard relevant securities which have been lent by one person to another as controlled by the lender rather than as owned or controlled by the borrower, and (b) not to regard the borrowing or lending of relevant securities as a dealing in relevant securities.

6.36 In paragraph 27.7 of RS 2004/3, the Code Committee concluded that it would be appropriate to await the outcome of various ongoing reviews before reaching a final conclusion as to whether or not the Code should require the disclosure of borrowing and lending transactions and that the practices referred to in paragraph 6.35 above should continue for the time being.

6.37 Nevertheless, the Code Committee considers that a Note should be introduced to codify 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.

6.38 The Code Committee is therefore proposing to introduce a Note 4 on the new definition of "interests in securities" 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.".

(v) New securities

6.39 Under paragraph (d) of the definition of "relevant securities", as set out in paragraph 6.24 above, securities of the offeree company or an offeror carrying conversion or subscription rights into other relevant securities are themselves a separate class of relevant security. However, such convertible securities or rights to subscribe will not, of themselves, constitute an "interest" in the new securities which will be issued upon conversion or exercise.

6.40 The Code Committee is therefore proposing to introduce a Note 5 on the new definition of "interests in securities" as follows:

"*5. New securities*

Securities convertible into, warrants or options in respect of, or other rights to subscribe for, new securities will not give rise, until conversion or exercise, to an interest in the securities which may be issued, 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 on conversion or exercise of any such convertible securities, warrants, options or other rights will be treated as an acquisition of an interest in such new securities.".

(vi) Proxies and corporate representatives

6.41 The Code Committee believes that a person should not be treated as interested in the securities of a person for whom he acts as proxy or corporate representative. This is because the proxy or corporate representative acts as the agent of the person by whom he has been appointed and does not himself control, or direct the exercise of the voting rights attached to, the securities in question (see paragraph 6.16 above).

6.42 The Code Committee is therefore proposing to introduce a Note 6 on the new definition of "interests in securities" as follows:

"*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.".

(vii) Security interests

6.43 The Code Committee believes that, for the avoidance of doubt, the Code should make clear that the taking of security over shares or securities by a bank in the normal course of its business should not normally be treated as an acquisition of an "interest" in those shares or securities.

6.44 The Code Committee is therefore proposing to introduce a Note 7 on the new definition of "interests in securities" as follows:

"*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.".

(viii) Companies Act 1985

6.45 The Code Committee believes that, consistent with the approach taken elsewhere in the Code, it should be made clear that the provisions of the Code, and the views of the Panel, are separate from and additional to any similar provisions to be found in company law.

6.46 The Code Committee is therefore proposing to introduce a Note 8 on the new definition of "interests in securities" as follows:

"*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.".

7. The triggering of a disclosure obligation under Rule 8

(a) "Dealings"

7.1 Paragraph 7.9 of PCP 2005/1 stated as follows:

> "The Code Committee believes that events which should trigger a disclosure obligation when a person deals in derivatives or options should be set out in the Code and should broadly correspond with Note 2 on Rule 8 … .".

7.2 The second paragraph of Note 2 on Rule 8 provides as follows:

> "*The taking, granting or exercising of an option (including a traded option contract) in respect of any of the foregoing or the exercise or conversion of any security under (d) above [i.e. the current definition of relevant securities in the first paragraph of Note 2 on Rule 8] whether in respect of new or existing securities and the acquisition of, entering into, closing out, exercise (by either party) of any rights under, or variation of, a derivative will be regarded as a dealing in relevant securities (see also Notes 5 and 7 below). Subscribing or agreeing to subscribe for new relevant securities will also be regarded as a dealing.*".

7.3 At present, however, there is no overall definition of what constitutes a "dealing" for the purposes of the Code. The Code Committee believes that the second paragraph of Note 2 on Rule 8, set out in paragraph 7.2 above, should be deleted and that a new definition of "dealings" should be introduced into the Definitions Section, setting out the actions which will trigger an obligation to make a disclosure under Rules 8.1, 8.2 and 8.3.

7.4 The Code Committee believes that the new definition should identify such actions by reference to six particular examples (as set out below in paragraphs (a) to (f) of the new definition), with a general provision (as set out below in paragraph (g) of the new definition) to cover any other actions which would result in an increase or a decrease in the number of securities in which a person is interested.

7.5 The Code Committee is therefore proposing:

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

(b) that a new definition of "dealings" be introduced as follows:

"**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.";

(c) that the third paragraph of Note 2 on Rule 8, which relates to the Code's treatment of futures contracts and covered warrants (see paragraph 8.3 below), be moved to Note 5(a) on Rule 8 and that the heading of Note 2 on Rule 8 be amended as follows:

"*2. Dealings in relevant securities of the offeror* ~~*Relevant securities*~~";

(d) that Note 7 on Rule 8, which is set out at paragraph 4.5 above, be deleted;

(e) that consequential amendments to paragraph (i) of Rule 38.5 be made as follows:

"**(i) total acquisitions ~~purchases~~ and disposals~~sales;~~**"; and

(f) that a new Note 1 on Rule 38.5 be introduced as follows (and that the existing Notes 1 to 3 on Rule 38.5 be renumbered accordingly):

"*1. Dealings and relevant securities*

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

7.6 The Code Committee notes that "dealings" are currently referred to in a number of the existing provisions of the Code, other than Rule 8, for example Rules 4.1, 24.3 and 25.3. For the avoidance of doubt, the Code Committee confirms that it is intended that the proposed new definition of "dealings" will be equally applicable to those provisions.

(b) "Composite disclosure"

7.7 In paragraph 6.5 of PCP 2004/3, the Code Committee proposed that the Code be amended so that a shareholder holding 1% or more of a physical class of relevant securities should be required to disclose all further dealings in both:

(a) any class of relevant securities issued by the company concerned; and

(b) options in respect of, and derivatives referenced to, any class of relevant securities issued by that company.

These proposals formed part of what were referred to as the "composite disclosure" proposals.

7.8 In paragraph 6.4 of RS 2004/3, the Code Committee stated that, since the proposals regarding the treatment of dealings in derivatives and options set out in PCP 2005/1 were, broadly, linked to the composite disclosure proposals, and would themselves require systems changes if implemented, the Code Committee had decided that it should consider the responses to PCP 2005/1

before reaching a final view as to how certain of the composite disclosure proposals should be reflected in the Code.

7.9 Having reconsidered the composite disclosure proposals in the light of the responses to PCP 2005/1, the Code Committee continues to believe that the Code should be amended so as to require composite disclosure.

7.10 Accordingly, the Code Committee is proposing that Rule 8.3(a) be amended so that the dealing disclosure obligation on a person who has triggered the 1% disclosure level will be as follows:

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

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

7.11 The Code Committee's proposed amendments to Note 5 on Rule 8 are set out in paragraph 8 below and its proposed amendments to Note 3 on Rule 8 in paragraph 10 below.

8. The information to be disclosed in respect of a dealing

8.1 Paragraph 8.1 of PCP 2005/1 stated as follows:

"The Code Committee is of the view 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. 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 The details required to be included in disclosures made pursuant to Rule 8 are set out in Note 5 on Rule 8. The Code Committee is proposing various amendments to Note 5 on Rule 8 as follows:

"*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~~purchased or sold, and details of all outstanding options in respect of, and derivatives referenced to, those relevant securities~~;

…

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

…

~~(v) where a person required to make a disclosure has a short position in the relevant security of the company concerned, the number of relevant securities of which that person is short (and the percentage of the class of relevant securities which it represents) should be disclosed;~~

~~(vi) the resultant total amount of relevant securities owned or controlled by the associate or other person in question (including those of any person with whom there is an agreement or understanding) and the percentage which it represents; and~~

(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

(vi~~i~~) … .

…

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 ~~purchases~~ 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 ~~option business or dealings in~~ derivatives, full details should be given so that the nature of the interest, position or dealing ~~dealings~~ 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).

…

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 ~~purchased or sold~~ 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.".

8.3 In addition, as indicated in paragraph 7.5(c) above, the Code Committee is proposing to move the third paragraph of Note 2 on Rule 8 to Note 5(a) on Rule 8, as set out in the Appendix to this PCP. For the avoidance of doubt, the Code Committee continues to believe that a futures contract or covered warrant should be treated as an option if exercise includes the possibility of physical delivery of the underlying securities and as a derivative if exercise does not include the possibility of such physical delivery. In either case, a person will be treated as interested in the class of relevant securities to which his futures contract or covered warrant relates.

8.4 New specimen disclosure forms indicating the format for disclosures will be set out in the Response Statement which will follow this PCP.

9. The time at which a person's interest should be evaluated

9.1 In paragraph 9 of PCP 2005/1, the Code Committee stated that it considered that there should be a single point in time by reference to which a person should be required to evaluate what his disclosable interests were and whether they were above or below 1%. The Code Committee stated that it believed that this time should be midnight (London time) at the end of each day.

9.2 The Code Committee continues to believe this to be the case.

9.3 However, the Code Committee is concerned that a person should not be able to circumvent a requirement to disclose a dealing by artificially decreasing his interests to below the disclosure threshold before the midnight reference point with a view to renewing such interests immediately thereafter. The Code Committee therefore believes 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").

9.4 The Code Committee is therefore proposing to introduce a new Note 7 on Rule 8 as follows:

"*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, notwithstanding that he does not have an interest in the relevant securities concerned at midnight on the date in question, there exists any 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.".

10. The time by which disclosures should be made

10.1 Paragraph 9.3 of PCP 2005/1 stated as follows:

"The Code Committee believes that if the disclosure regime is amended as proposed, the deadline for publishing disclosures should remain at 12 noon (London time) on the business day following the date of the dealing. This is because during a takeover, which will often be a dynamic and fast-moving transaction, it is important that material information is disclosed to the market in as timely a manner as possible.".

10.2 Certain respondents argued that, although disclosures for conventional CFDs ought to be capable of being prepared by the current 12 noon deadline for shares and other relevant securities, a 12 noon deadline might not be achievable in respect of more complicated derivative and option products.

10.3 In addition, certain respondents argued that market participants in the US would find it easier to comply with the disclosure regime if the deadline were

later in the day than 12 noon on the business day following the date of the dealing.

10.4 The Code Committee believes that the same deadline should apply for dealings in derivatives and options as for dealings in shares. This is because different regimes relating to the subject matter of disclosure would not only be confusing but, following the introduction of the composite disclosure requirements, would also be unworkable. In addition, the Code Committee continues to believe that the deadline for disclosures made by offerors, offeree companies and their respective associates, pursuant to Rules 8.1 and 8.2, should remain at 12 noon on the business day following the date of the dealing. However, having taken into account the comments of respondents referred to above, the Code Committee now considers that the deadline for 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.

10.5 The Code Committee is therefore proposing to amend Note 3 on Rule 8 as follows:

"*3. Timing of disclosure*

Both public and private disclosure required by Rules 8.1, 8.2 and 8.4 ~~Rule 8~~ 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.".

10.6 The Code Committee understands that the Panel may, in certain circumstances, require particularly sensitive dealings to be disclosed immediately, for example, in the later stages of a hostile bid. The Code Committee believes that this should continue in appropriate situations.

11. No de minimis exemption from disclosure

11.1 Paragraph 10.1 of PCP 2005/1 stated that, given the frequency with which a number of investors deal, and given that the market is only likely to be interested in material changes in a person's interest in relevant securities, the Code Committee had considered whether it would be beneficial to introduce a de minimis exemption into Rule 8.3 (in addition to the fact that the disclosure obligation is only triggered at the 1% level in the first place). However, in paragraph 10.4 of PCP 2005/1, the Code Committee concluded that the attractions of a de minimis regime were outweighed by its complexity and the likely costs to market participants of implementing the systems to apply it.

11.2 The Code Committee continues to believe this to be the case and, accordingly, is not proposing to introduce a de minimis exemption from disclosure.

12. The person responsible for disclosing dealings in derivatives and options

12.1 In paragraph 11 of PCP 2005/1, the Code Committee stated that it believed that the person responsible for disclosing the dealing should be the investor (i.e. the derivative or option holder) and that, accordingly, in the context of, for example, a simple long CFD, the disclosure should be made by the CFD holder and not by the investment bank or securities house counterparty. The Code Committee stated that it believed that the exemption from disclosure for market-makers and principal traders under Rule 8.3(d) should, therefore, continue to apply.

12.2 However, in paragraph 11.3 of PCP 2005/1 and in paragraph 1.6 of RS 2004/3, the Code Committee stated as follows:

"An important proviso to the continued application of the Rule 8.3(d) exemption … is that the Code Committee believes that it should not be available to the proprietary trading desk (or the equivalent trading operation) of an investment bank – i.e. the desk, if there is one, within an investment bank which invests (and puts at risk) the bank's own capital. This is because

the Code Committee sees no reason why such an entity should be treated any differently from any other investor. The Code Committee anticipates that individual investment banks will have to consult with the Panel to establish which entities within their organisation will be required to disclose their dealings under Rule 8.3 and which entities can continue to benefit from the exemption contained in Rule 8.3(d).".

12.3 The Code Committee understands that therefore, since the issue of RS 2004/3, the Panel has commenced 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.

13. Other minor amendments

13.1 In addition to the amendments referred to above, the Code Committee is proposing to make various minor amendments to the Code as set out below.

(a) Notes on Rule 8

13.2 The Code Committee is proposing:

(a) to amend the first sentence of Note 8 on Rule 8 as follows:

"*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, ~~the relevant securities are treated as controlled by him~~ and not ~~by~~ the person on whose behalf the fund is managed, will be treated as interested in, and having dealt in, the relevant securities concerned. …";

(b) to amend the second sentence of the second paragraph of Note 9 on Rule 8 as follows:

"*9. Principal traders*

…

… For example, ~~purchases of~~ 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 ~~purchases~~ a dealing by that person. …"; and

(c) to amend Note 14 on Rule 8 as follows:

"*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 ~~shares~~ of each class to which the irrevocable commitment or letter of intent relates;

…".

(b) Other provisions

13.3 The Code Committee is proposing:

(a) to amend the first substantive paragraph of the definition of "associate" as follows:

"**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 ~~own~~ or deal in ~~the shares~~ relevant securities of an offeror or the offeree company in an offer and who have ~~(in addition to their normal interests as shareholders)~~ an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer.";

(b) to amend the definition of "irrevocable commitments and letters of intent" as follows:

"**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.";

(c) to delete Note 1 on Rule 2.10, which refers to the current definition of "relevant securities" in Note 2 on Rule 8, and to introduce a new Note 1 on Rule 2.10 as follows:

"*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."; and

(d) to delete the words "(as defined in Rule 8)", which refer to the current definition of "relevant securities" in Note 2 on Rule 8, in each of Rules 38.2 and 38.5.

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

SECTION C
DETAILS TO BE INCLUDED IN OFFER ANNOUNCEMENTS, ANNOUNCEMENTS OF ACCEPTANCE LEVELS AND OFFER DOCUMENTATION

14. The announcement of a firm intention to make an offer

14.1 Rule 2.5 and the Notes thereon specify the details which must be contained in an announcement of a firm intention to make an offer, including details of the existing holdings of the offeror (and of persons acting in concert with it) in the offeree company and of any outstanding derivatives referenced to securities in the offeree company entered into by the offeror (or by any person acting in concert with it).

14.2 The Code Committee believes that the relevant provisions of Rule 2.5 should be recast to take into account the proposed amendments set out in Section B above, including the proposed introduction of the new definitions of "interests in securities" and "relevant securities".

14.3 In addition, the Code Committee believes that an announcement made pursuant to Rule 2.5 should set out the full extent of the relevant securities of the offeree company in which the offeror and persons acting in concert with it are interested or in which they have a short position. The Code Committee believes that the details of such interests and short positions which should be required to be disclosed in the offeror's announcement should be the same as the details which are required to be disclosed under paragraph (v) of Note 5(a) on Rule 8 following a dealing to which Rule 8.1 applies (see paragraph 8.2 above).

14.4 The Code Committee is therefore proposing:

(a) to amend Rule 2.5(b) as follows:

"**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 ~~contain~~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;~~existing holding in the offeree company:~~

~~(a) which the offeror owns or over which it has control;~~

~~(b) which is owned or controlled by any person acting in concert with the offeror (see Note 2);~~

~~(c) 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);~~

~~(d) in respect of which the offeror holds an option to purchase or right to subscribe;~~

~~(e) in respect of which any person acting in concert with the offeror holds an option to purchase or right to subscribe;~~

~~(iv) details of any outstanding derivative referenced to securities in the offeree company entered into by the offeror or any person acting in concert with it (see Note 2);~~

(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);

… "; and

(b) to amend Note 2 on Rule 2.5 as follows:

"*2. ~~Holdings of~~ 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 ~~holdings of~~ relevant securities of the offeree company in which ~~shares or options in respect of them held by or derivatives referenced to them entered into by~~ other parts of an adviser's group are interested or have a short position (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 ~~holdings~~ are significant, a further announcement may be required.".

15. The announcement of acceptance levels

15.1 Rule 17.1 and the Notes thereon specify the details which must be contained in an announcement of acceptance levels, including the numbers of shares and rights over shares for which acceptances of the offer have been received, which were held before the offer period and which have been acquired or agreed to be acquired during the offer period.

15.2 The Code Committee believes that Rule 17.1 should be recast to take into account the proposed amendments set out in Section B above, including the proposed introduction of the new definitions of "interests in securities" and "relevant securities".

15.3 The Code Committee believes that an announcement made pursuant to Rule 17.1 should set out various matters as follows:

(a) details of acceptances of the offer, including 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 letter of intent. The Code Committee considers that Rule 17.1 itself (rather than Note 7 on Rule 17.1) should require these latter details to be stated;

(b) details of the full extent of the relevant securities of the offeree company in which the offeror is interested or in which it has a short position and, in addition, details of the interests and short positions in relevant securities of

persons acting in concert with the offeror. The Code Committee believes that the details of such interests and short positions which should be required to be disclosed in the offeror's announcement should be the same as the details which are required to be disclosed under paragraph (v) of Note 5(a) on Rule 8 following a dealing to which Rule 8.1 applies (see paragraph 8.2 above); and

(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.

15.4 In addition, the Code Committee believes that an announcement made pursuant to Rule 17.1 should clearly state how many of the shares referred to in the announcement may be counted towards the acceptance condition required by Rule 10 (in the case of a voluntary offer) or Rule 9.3 (in the case of a mandatory offer). This may be different from the total interests in relevant securities described in paragraph 15.3 above, for example:

(a) because a long derivative position will be disclosable under Rule 17.1 (as proposed to be amended) but could not be counted towards the acceptance condition under Rules 10 or 9.3; or

(b) because shares held by a person acting in concert with the offeror may not be counted towards satisfaction of a Rule 10 acceptance condition (although they are counted towards satisfaction of a Rule 9.3 acceptance condition).

15.5 The Code Committee believes that, other than that described in paragraph 15.4 above, no other statement about the total acceptance levels should normally be made by the offeror.

15.6 The Code Committee is therefore proposing:

(a) to amend Rule 17.1 as follows:

"**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 ~~the total number of shares and rights over shares (as nearly as practicable):~~

(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) ~~held before the offer period~~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; and

(c) ~~acquired or agreed to be acquired during the offer period~~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 must specify the percentages of ~~the relevant~~ each class~~es~~ of ~~share capital~~ 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 number of shares which the offeror may count towards the satisfaction of its acceptance condition. 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.";

(b) to amend Note 6 on Rule 17.1 as follows:

"*6. Incomplete acceptances and offeror purchases*

Acceptances not complete in all respects and purchases must only be included in the ~~totals in an announcement~~ 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."; and

(c) to delete Note 7 on Rule 17.1.

16. Shareholdings and dealings

16.1 Rule 24.3 and the Notes thereon specify the details which are required to be stated in the offer document in relation to the shareholdings and dealings of the offeror, the offeror's directors, persons acting in concert with the offeror and any person with whom the offeror or any person acting in concert with it has any arrangement of the kind referred to in Note 6(b) on Rule 8.

16.2 Similarly, Rule 25.3 (to which the Notes on Rule 24.3 also apply) specifies the details which are required to be stated in the first major circular from the offeree board in relation to the shareholdings and dealings of the offeree company, the directors of the offeree company and certain associates of, and other persons having arrangements with, the offeree company.

16.3 The Code Committee believes that Rules 24.3 and 25.3 should be recast to take into account the proposed amendments set out in Section B above, including the proposed introduction of the new definitions of "interests in securities" and "relevant securities", and that the details of the interests and short positions which should be required to be disclosed in offer documents and offeree board circulars should be the same as the details which are required to be disclosed under paragraph (v) of Note 5(a) on Rule 8 following a dealing to which Rule 8.1 applies (see paragraph 8.2 above).

(a) Rule 24.3

16.4 In the light of the above, the Code Committee is proposing:

(a) to delete Rule 24.3(a) and to introduce a new Rule 24.3(a) as follows:

"**24.3 ~~SHAREHOLDINGS~~ 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; and**

(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.";

(b) to amend Rules 24.3(b) and (c) as follows:

"**(b) If, in the case of any of the persons referred to in Rule 24.3(a), ~~in any of the above categories~~ there are no interests or short positions to be disclosed~~shareholdings~~, this fact should be stated~~; if, however, the person concerned has a short position, full details should be given~~. This will not apply to category (a)~~(iv)~~(ii)*(c)* if there are no such arrangements.**

(c) If any person referred to in Rule 24.3(a) ~~party whose shareholdings are required by this Rule to be disclosed (whether there is an existing holding or not)~~ has dealt ~~for value~~ in ~~the shares in question~~ 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 ~~and prices~~, must be stated (see Note 5(a) on Rule 8). If no such dealings have taken place, this fact should be stated.";

(c) to delete Notes 1, 2 and 6 on Rule 24.3; and

(d) to amend Notes 3, 4 and 5 (and to renumber them as Notes 1, 2 and 3) as follows:

"~~*3*~~*1*. *Directors ~~Meaning of "interested"~~*

~~References to directors being "interested" in shareholdings are interpreted in the manner described in~~ In the case of directors, the disclosure should include details of all interests and short positions 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.

~~4~~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 ~~dealings~~ 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 ~~purchases~~ and all disposals ~~sales~~ can be aggregated;

(ii) for dealings in the three months prior to that period, all acquisitions ~~purchases~~ and all disposals ~~sales~~ in that period can be aggregated on a monthly basis; and

(iii) for dealings in the nine months prior to that period, acquisitions ~~purchases~~ and disposals ~~sales~~ can be aggregated on a quarterly basis.

Acquisitions ~~Purchases~~ and disposals ~~sales~~ should not be netted off, ~~and~~ 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.

~~5~~3. Discretionary fund managers and principal traders

Interests in relevant securities and short positions ~~Shareholdings~~ 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)(~~iii~~)(b) *and 24.3(c) respectively.*".

(b) Rule 25.3

16.5 Equally, in relation to Rule 25.3, the Code Committee is proposing:

(a) to delete paragraphs (i) to (vii) of Rule 25.3(a) and to introduce new paragraphs (i) to (iii) of Rule 25.3(a) (and to renumber paragraph (viii) as paragraph (iv))as follows:

"**25.3 ~~SHAREHOLDINGS~~ 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 compay 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; and

(~~viii~~iv) … .";

(b) to amend Rules 25.3(b) and (c) as follows:

"**(b) If, in the case of any of the persons referred to in Rule 25.3(a), ~~in any of the above categories~~ there are no interests or short positions to be disclosed~~shareholdings~~, this fact should be stated~~; if, however, the person concerned has a short position, full details should be given~~. This will not apply to category (a)(ii)*(g)*~~(vii)~~ if there are no such arrangements.**

(c) If any person referred to in Rule 25.3(a)(i) ~~party whose shareholdings are required by this Rule to be disclosed (whether there is an existing holding or not)~~ has dealt ~~for value~~ in ~~the shares in question~~ 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 ~~and prices~~, 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 any 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."; and

(c) to amend Notes 1 and 2 on Rule 25.3 as follows:

"*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 ~~and their shareholdings and dealings must be disclosed in the circular~~ in the usual way.

2. Pension funds

Rule 25.3(a)~~(iv)~~(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.*".

(c) Other provisions

16.6 As a consequence of the amendments proposed in paragraphs 16.4 and 16.5 above, the Code Committee is proposing:

(a) to amend Rule 26(j) as follows:

"**(j) where the Panel has given consent to aggregation of dealings, a full list of all dealings (~~Note 4~~ Note 2 on Rule 24.3);**";

(b) to amend Rule 27.1(b) as follows:

"**27.1 MATERIAL CHANGES**

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

…

(b) ~~shareholdings~~ interests and dealings (Rules 24.3 and 25.3);"; and

(c) to amend paragraph 4(i) of Appendix 1 as follows:

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

17. Other consequential amendments

17.1 The Code Committee considers that a number of additional amendments are required to Rules 24 and 25 as a consequence of the proposed amendments set out in Section B above.

17.2 The Code Committee is therefore proposing:

(a) to amend Rule 24.5 as follows (see also paragraph 18.4 below):

"**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."; and

(b) to amend Rule 24.8 as follows:

"**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 ~~securities in~~ the offeree company held by such persons, or a statement that no such interests ~~securities~~ are held.";

(c) to amend paragraph (viii) of Rule 24.2(d) as follows:

"**(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 ~~shares in~~ the offeree company (or, if appropriate, the offeror) (see Note 14 on Rule 8);**" and

(d) to amend Rule 25.6 as follows:

"**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 ~~shares in~~ the offeree company (or, if appropriate, the offeror) (see Note 14 on Rule 8).".

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

SECTION D
OTHER PROVISIONS

18. Rule 16: special deals with favourable conditions

18.1 Paragraph 14.3(d) of PCP 2005/1 stated that the Code Committee proposed to amend Rule 16 to make clear that persons with long derivative and option positions referenced to or in respect of shares would be subject to the Rule in the same way as shareholders.

18.2 In addition, the Code Committee believes that Rule 16 should make clear that there is no requirement for an offeror to extend any offer, or any "special deal" falling 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.

18.3 The Code Committee is therefore proposing to add a new second paragraph to Rule 16 and to amend Notes 1, 2 and 3 on Rule 16 as follows:

"**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 ~~are purchased~~ 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 ~~shareholder~~ 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 ~~shareholder~~ 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 ~~shareholding~~ 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~~a shareholder~~, would have been entitled to receive no less remuneration.".

18.4 For the avoidance of doubt, the Code Committee believes that the restrictions in Rule 16 should normally only apply to the extent that the offeror, or any person acting in concert with it, knows, or ought reasonably to know, that the person with whom the arrangement is proposed is a shareholder in, or a person otherwise interested in shares of, the offeree company. Similarly, the Code Committee believes that Rule 24.5 (see paragraph 17.2 above) should normally only apply to the extent that the offeror, or any person acting in concert with it, knows, or ought reasonably to know, that the person with whom the agreement, arrangement or understanding exists is (or has recently been) a director, shareholder or person interested in shares of the offeree company.

19. Rule 20: equality of information

19.1 Paragraph 14.3(e) of PCP 2005/1 stated that the Code Committee proposed to amend Rule 20.1 to make clear that it 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.

19.2 The Code Committee is therefore proposing to amend Note 3 on Rule 20.1 as follows:

"*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 hold a significant number of shares.".

20. Rule 4

20.1 In view of the proposed amendments set out in this PCP, in particular the introduction of the new definitions of "dealings" and "interests in securities", and of the further amendments relating to the Control Issues which the Code Committee envisages that it will propose in the separate PCP later this year (see paragraph 1.6 above), the Code Committee believes that certain amendments will be required to Rule 4.1 (prohibited dealings by persons other than the offeror), Rule 4.2 (restriction on dealings by the offeror and concert parties) and Rule 4.4 (dealings in offeree securities by certain offeree company associates) and to certain of the Notes on those Rules.

20.2 The Code Committee will address points relating to Rule 4 in the further PCP relating to Control Issues.

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

SECTION E
COST/BENEFIT IMPLICATIONS

The Code Committee believes that the Code amendments proposed in this PCP will increase market transparency – a key objective of the Panel system – by widening the range of financial instruments which fall within the Code's disclosure regime. Those obligations which fall on offerors, offeree companies, their concert parties and associates should lead to little or no extra cost being incurred. The Code Committee recognises that the obligations which fall on market participants who are not connected with offerors or offeree companies – in particular the broadened disclosure obligation under Rule 8.3 – are likely to lead to increased compliance and systems costs for these persons. However, it believes that these extra costs are outweighed by the benefits of increased transparency described above.

APPENDIX

Proposed 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 ~~own~~ or deal in ~~the shares~~ relevant securities of an offeror or the offeree company in an offer and who have ~~(in addition to their normal interests as shareholders)~~ 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.

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 ~~but which does not include the possibility of delivery of such underlying securities~~.

…

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, or may have, long economic exposure 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 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. Short positions should not be deducted.

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.

5. New securities

Securities convertible into, warrants or options in respect of, or other rights to subscribe for, new securities will not give rise, until conversion or exercise, to an interest in the securities which may be issued, 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 on conversion or exercise of any such convertible securities, warrants, options or other rights will be treated as an acquisition of an interest in such new securities.

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 ~~contain~~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;~~existing holding in the offeree company:~~

~~(a) which the offeror owns or over which it has control;~~

~~(b) which is owned or controlled by any person acting in concert with the offeror (see Note 2);~~

~~(c) 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);~~

~~(d) in respect of which the offeror holds an option to purchase or right to subscribe;~~

~~(e) in respect of which any person acting in concert with the offeror holds an option to purchase or right to subscribe;~~

~~(iv) details of any outstanding derivative referenced to securities in the offeree company entered into by the offeror or any person acting in concert with it (see Note 2);~~

(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);

…

NOTES ON RULE 2.5

…

2. ~~Holdings of~~ 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 ~~holdings of~~ relevant securities of the offeree company in which ~~shares or options in respect of them held by or derivatives referenced to them entered into by~~ other parts of an adviser's group are interested or have a short position (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 ~~holdings~~ 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. Relevant securities~~

~~See Note 2 on Rule 8.~~

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 8

8.3 DEALINGS BY PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE~~SHAREHOLDERS~~

(a) During an offer period, 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, dealings in ~~such~~ any relevant securities of that company by such person (or any other person through whom the interest ~~ownership or control~~ 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 ~~or control~~ 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, ~~relevant securities so managed will be treated, for the purpose of this Rule, as controlled by that person~~ he, and not ~~by~~ 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 ~~controlled by~~ 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 ~~Relevant securities~~

~~*Relevant securities for the purpose of Rule 8 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;*~~

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

~~*(e) options in respect of any of the foregoing and derivatives referenced to any of the foregoing.*~~

~~*The taking, granting or exercising of an option (including a traded option contract) in respect of any of the foregoing or the exercise or conversion of any security under (d) above whether in respect of new or existing securities and the acquisition of, entering into, closing out, exercise (by either party) of any rights under, or variation of, a derivative will be regarded as a dealing in relevant securities (see also Notes 5 and 7 below). Subscribing or agreeing to subscribe for new relevant securities will also be regarded as a dealing.*~~

~~*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.*~~

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* ~~*Rule 8*~~ *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~~*purchased or sold, and details of all outstanding options in respect of, and derivatives referenced to, those relevant securities*~~*;*

…

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

…

~~*(v) where a person required to make a disclosure has a short position in the relevant security of the company concerned, the number of relevant securities of which that person is short (and the percentage of the class of relevant securities which it represents) should be disclosed;*~~

~~*(vi) the resultant total amount of relevant securities owned or controlled by the associate or other person in question (including those of any person with whom there is an agreement or understanding) and the percentage which it represents; and*~~

(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

(vi~~i~~) … .

…

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 ~~purchases~~ 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 ~~option business or dealings in~~ derivatives, full details should be given so that the nature of the interest, position or dealing ~~dealings~~ 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 ~~purchased or sold~~ 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. Dealings in options and derivatives*~~

~~*Under Rule 8.3, a disclosure of dealings in options or derivatives is only required if the person dealing in such options or derivatives owns or controls 1 % or more of the class of securities which is the subject of the option or to whose price the derivative is referenced.*~~

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, notwithstanding that he does not have an interest in the relevant securities concerned at midnight on the date in question, there exists any 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.

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, ~~the relevant~~

~~securities are treated as controlled by him~~ and not ~~by~~ 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, ~~purchases of~~ 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 ~~purchases~~ 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 ~~shares~~ of each class to which the irrevocable commitment or letter of intent relates;

…

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 ~~are purchased~~ 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 ~~shareholder~~ 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 ~~shareholder~~ 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 ~~shareholding~~ 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~~a shareholder~~, 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~~ the total number of shares and rights over shares (as nearly as practicable):~~

(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) ~~held before the offer period~~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; and

(c) ~~acquired or agreed to be acquired during the offer period~~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 must specify the percentages of ~~the relevant~~ each class~~es~~ of ~~share capital~~ 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 number of shares which the offeror may count towards the satisfaction of its acceptance condition. 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 ~~totals in an announcement~~ 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.

~~7. Irrevocable commitments letters of intent and persons acting in concert~~

~~An announcement under this Rule must make it clear to what extent 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 to accept the offer procured by the offeror or any of its associates. The announcement must also state the number of shares and rights over shares (as nearly as practicable) held before the offer period and acquired or agreed to be acquired during the offer period by persons acting in concert with the offeror.~~

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 hold 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 shares in the offeree company (or, if appropriate, the offeror) (see Note 14 on Rule 8);

…

Rule 24.3

24.3 ~~SHAREHOLDINGS~~ INTERESTS AND DEALINGS

~~(a) The offer document must state:~~

~~(i) the shareholdings of the offeror in the offeree company;~~

~~(ii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company in which directors of the offeror are interested;~~

~~(iii) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which any persons acting in concert with the offeror own or control (with the names of such persons acting in concert); and~~

~~(iv) the shareholdings 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 Rule 8.~~

(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; and**

(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.

(b) If, in the case of any of the persons referred to in Rule 24.3(a), ~~in any of the above categories~~ there are no interests or short positions to be disclosed~~shareholdings~~, this fact should be stated~~; if, however, the person concerned has a short position, full details should be given~~. This will not apply to category (a)~~(iv)~~(ii)*(c)* if there are no such arrangements.

(c) If any person referred to in Rule 24.3(a) ~~party whose shareholdings are required by this Rule to be disclosed (whether there is an existing holding or not)~~ has dealt ~~for value~~ in ~~the shares in question~~ 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 ~~and prices~~, 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

~~*1. Relevant shareholdings*~~

~~*References in this Rule to shareholdings should be taken to mean:*~~

~~*(a) in the case of shareholdings in the offeree company, holdings of:*~~

~~*(i) securities which are being offered for or which carry voting rights; and*~~

~~*(ii) securities convertible into (i), rights to subscribe for (i), options (including traded options) in respect of (i) and derivatives referenced to (i); and*~~

~~*(b) in the case of shareholdings in the offeror company, holdings of:*~~

~~*(i) equity share capital;*~~

~~*(ii) securities which carry substantially the same rights as any to be issued as consideration for the offer; and*~~

~~*(iii) securities convertible into (i) or (ii), rights to subscribe for (i) or (ii), options (including traded options) in respect of (i) or (ii) and derivatives referenced to (i) or (ii).*~~

~~*2. Options and derivatives*~~

~~*Where holdings of options are disclosed, the number of securities under option, the exercise period and the exercise price must be given. Where dealings involving options are disclosed, the date of taking or granting the option, the number of securities under option, the exercise period, the exercise*~~

~~*price and any option money paid or received must be stated. The exercise of an option must also be disclosed; the date of exercise, the exercise price and any option money paid or received must be stated.*~~

~~*Where holdings of derivatives are disclosed, the number of reference securities to which they relate (when relevant), the maturity date and the reference price must be given. Where dealings involving derivatives are disclosed, the number of reference securities to which they relate, the date of entering into or closing out of the derivative, the maturity date and the reference price must be stated. In each case, full details should be given so that the nature of the holding or dealing can be fully understood.*~~

~~*3*~~*1. Directors* ~~*Meaning of "interested"*~~

~~*References to directors being "interested" in shareholdings are interpreted in the manner described in*~~ *In the case of directors, the disclosure should include details of all interests and short positions 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.*

~~*4*~~*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 ~~*dealings*~~ *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* ~~*purchases*~~ *and all disposals* ~~*sales*~~ *can be aggregated;*
>
> *(ii) for dealings in the three months prior to that period, all acquisitions* ~~*purchases*~~ *and all disposals* ~~*sales*~~ *in that period can be aggregated on a monthly basis; and*
>
> *(iii) for dealings in the nine months prior to that period, acquisitions* ~~*purchases*~~ *and disposals* ~~*sales*~~ *can be aggregated on a quarterly basis.*

Acquisitions ~~*Purchases*~~ *and disposals* ~~*sales*~~ *should not be netted off,* ~~*and*~~ *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.*

~~*5*~~*3. Discretionary fund managers and principal traders*

Interests in relevant securities and short positions ~~Shareholdings~~ 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~~i~~)(b) and 24.3(c) respectively.

~~*6. Dealings*~~

~~*For the purpose of this Rule, dealings includes any action which is regarded as a dealing for the purposes of Note 2 on Rule 8.*~~

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 24.8

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 ~~securities in~~ the offeree company held by such persons, or a statement that no such interests ~~securities~~ are held.

Rule 25.3

25.3 ~~SHAREHOLDINGS~~ 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 compay 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; and

~~**(i) the shareholdings of the offeree company in the offeror;**~~

~~**(ii) the shareholdings in the offeree company and in the offeror in which directors of the offeree company are interested;**~~

~~**(iii) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a company which is an associate of the offeree company by virtue of paragraph (1) of the definition of associate;**~~

~~**(iv) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a pension fund of the offeree company or by a pension fund of a company which is an associate of the offeree company by virtue of paragraph (1) of the definition of associate;**~~

~~**(v) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by an employee benefit trust of the offeree company or by an employee benefit trust of a company which is an associate of the offeree company by virtue of paragraph (1) of the definition of associate;**~~

~~**(vi) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a 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, or by persons controlling#, controlled by or under the same control as any such adviser (except for an exempt principal trader or an exempt fund manager);**~~

~~**(vii) the shareholdings in the offeree company and (in the case of a securities exchange offer only) in the offeror owned or controlled by a person who has an arrangement of the kind referred to in Note 6(b) 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; and**~~

(~~viii~~iv) … **.**

(b) If, in the case of any of the persons referred to in Rule 25.3(a), ~~in any of the above categories~~ there are no interests or short positions to be disclosed~~shareholdings~~, this fact should be stated~~; if, however, the person concerned has a short position, full details should be given~~. This will not apply to category (a)(ii)*(g)*~~(vii)~~ if there are no such arrangements.

(c) If any person referred to in Rule 25.3(a)(i) ~~party whose shareholdings are required by this Rule to be disclosed (whether there is an existing holding or not)~~ has dealt ~~for value~~ in ~~the shares in question~~ 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 ~~and prices~~, 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 ~~and their shareholdings and dealings must be disclosed in the circular~~ in the usual way.

2. Pension funds

Rule 25.3(a)~~(iv)~~(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 ~~shares in~~ 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 4~~ Note 2 on Rule 24.3);

…

Rule 27.1

27.1 MATERIAL CHANGES

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

…

(b) ~~shareholdings~~ 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 ~~(as defined in Rule 8)~~ 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 ~~(as defined in Rule 8)~~ 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 ~~purchases~~ and disposals~~sales~~;

…

NOTES ON RULE 38.5

1. Dealings and relevant securities

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

~~*1*~~*2*. …

~~*2*~~*3*. …

~~*3*~~*4*. …

Appendix 1

APPENDIX 1

WHITEWASH GUIDANCE NOTE

…

4 CIRCULAR TO SHAREHOLDERS

…

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

…