RS 2004/3 Issued on 16 March 2005

THE PANEL ON TAKEOVERS AND MERGERS

MARKET-RELATED ISSUES

STATEMENT BY THE CODE COMMITTEE OF THE PANEL FOLLOWING THE EXTERNAL CONSULTATION PROCESS ON PCP 2004/3

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INTRODUCTION

On 17 June 2004, the Code Committee of the Takeover Panel ("the Code Committee") published a Public Consultation Paper ("PCP 2004/3" or "the PCP") entitled "Market-Related Issues".

The purpose of this statement is to provide details of the Code Committee's response to the external consultation process on PCP 2004/3.

Number of responses received

A total of eight responses were received from a range of parties. A list of the respondents can be found at Appendix D.

Inevitably, in a consultation relating to a paper of the size of PCP 2004/3, not all comments received are referred to specifically in this Response Statement. Nonetheless, they have all been considered by the Code Committee. In this Response Statement, wording such as "Overall, respondents were in favour of the proposed changes" may refer to instances where a comment has been considered but not specifically addressed.

Amendments to the Code

Appendix A sets out the provisions of the City Code on Takeovers and Mergers (the "Code") and the Rules Governing Substantial Acquisitions of Shares (the "SARs") which have been introduced or amended as a result of this consultation exercise. All the amendments to the Code and the SARs introduced as a result of this Response Statement will take effect on 25 April 2005. Amended pages of the Code and the SARs will be published on that date.

In this Response Statement, unless otherwise stated, the underlining or striking through of text indicates a change to the current provisions of the Code or the SARs rather than a change to the proposals set out in the PCP.

New Disclosure Forms

Appendix B sets out the new specimen disclosure forms (the "Disclosure Forms") which are now available on the Panel's website (www.thetakeoverpanel.org.uk). The new Disclosure Forms should be used with effect from 25 April 2005, the date on which the provisions which have been introduced or amended as a result of this consultation exercise will take effect. Up to (and including) 24 April, disclosures should follow the format of the existing forms, which will continue to be available on the Panel's website until that time.

Summary of the provisions of Rule 8

Appendix C sets out a summary of the provisions of Rule 8 which is now available on the Panel's website.

SECTION A

PRINCIPAL TRADERS AND FUND MANAGERS

1. The exempt system

Q.1 Do you agree with the Panel's approach to the exempt system, principal traders and the availability of the Rule 8.3(d) exemption and with the proposed amendments to the Code and the SARs to refer to "principal traders" and "exempt principal traders" referred to above?

1.1 All respondents to this question were in favour of the revisions as proposed. However, in relation to the Panel's approach to the exempt system in general, two respondents raised further issues. One respondent believed that there should be no presumption of concertedness between a connected fund manager and a party to an offer. The other respondent believed that the existing limitations on the availability of exempt status for connected fund managers should, in part, be removed.

1.2 This latter point is addressed in detail in paragraph 16 below. As regards the first point, the argument in support of the removal of the presumption was based on the fiduciary duties owed by fund managers to their clients which oblige them to act in the best interests of their clients. This respondent argued, therefore, that fund managers do not undertake dealings with a view to assisting the corporate finance clients of the groups of which they are part and therefore that the presumption of concertedness is unnecessary.

1.3 The Code Committee accepts that the fiduciary duty owed by a fund manager to its clients significantly reduces the risk of abusive dealing activity taking place and the PCP acknowledged this (see paragraph 1.7 of the PCP). In the Code, the restrictions in Rule 38 do not apply to exempt fund managers for this reason. However, whilst the fund management community's standards of behaviour and degree of compliance with the Code do not, in general, give cause for concern, the Panel has, on occasion, had to investigate dealings by

connected fund managers where there has been evidence to suggest that the motivation for the dealing may have been to assist a corporate finance client of the group of which it was a part. In addition, it should be noted that the Code applies to all fund managers, not simply to those to whom UK law applies.

1.4 As explained in the Introduction to paragraph 1 of PCP 2004/3, the Panel introduced the exempt system so that, where appropriate, the presumption of concertedness could fall away and the burden of complying with the Code be significantly reduced. The Code Committee believes that the exempt system works well and that the administrative work involved for fund managers in complying with the regime is not excessive, particularly given the benefits that exempt status confers. It therefore does not propose to make any change to the presumption of concertedness between a connected fund manager and a party to the offer.

1.5 One respondent said that it would be helpful to have a better understanding of how the exempt system applies to principal trading operations and, in particular, whether there are categories of principal trading that are ineligible for exempt status. The Code Committee understands that any part of an organisation's principal trading operations may apply for exempt status. The grant of exempt status is dependent on a number of factors, but the principal factor to which the Panel has regard is the ability of the relevant part of the principal trading operations to demonstrate its independence from the corporate finance operations within its organisation. It is no longer a requirement for that part of the principal trading operations to demonstrate that its trading activities provide market liquidity.

1.6 The same respondent stated that it presumed that the exemption from disclosure for principal traders under Rule 8.3(d) would extend to all dealing activity by such persons. In this regard, the Code Committee draws attention to paragraph 11.3 of PCP 2005/1 (Dealings in Derivatives and Options) which 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).".

This issue will be further considered in the light of the responses to PCP 2005/1.

1.7 The Code Committee is therefore adopting the amendments to the Code relating to the codification of principal trader status as proposed in paragraph 1.21 of the PCP.

Q.2 Do you agree with the proposed amendment to Note 3 on the definitions of "exempt fund manager" and "exempt principal trader" referred to above?

1.8 All respondents to this question agreed with the proposed amendment. The Code Committee has therefore adopted the new Note 3 on the definitions of "exempt fund manager" and "exempt principal trader" as proposed in paragraph 1.22 of the PCP.

Q.3 Do you agree with the proposed amendments to Note 2 on the definitions of "exempt fund manager" and "exempt principal trader"?

1.9 All respondents to this question agreed with the proposed amendments, save that one respondent referred to its response to Question 1 which proposed that the existing limitations on the availability of exempt status for connected fund

managers should, in part, be removed. This point is addressed in paragraph 16 below.

1.10 Save as indicated in paragraph 15.13 below, the Code Committee has therefore adopted the new Note 2 on the definitions of "exempt fund manager" and "exempt principal trader" as proposed in paragraph 1.25 of the PCP.

Q.4 Do you agree with the inclusion of the proposed new Note 4 on the definitions of "exempt fund manager" and "exempt principal trader" concerning special exempt fund managers?

1.11 The majority of respondents to this question agreed with the proposed amendment. However, one respondent questioned whether special exempt fund manager ("SEFM") status should cease to apply where any corporate finance unit of the group based in the same country as the fund manager concerned is advising in relation to a transaction.

1.12 The grant of SEFM status is a concession offered by the Panel which enables fund managers based overseas to benefit from exempt status without having to make the more rigorous application for "full" exempt status. The Code Committee believes, therefore, that it is prudent and appropriate to withdraw the benefits of SEFM status in these circumstances, given that the Panel will not have reviewed the operation of the Chinese Walls between the relevant businesses. The Code Committee is mindful that, should they so wish, fund managers based overseas may apply for "full" exempt status at any time.

1.13 The Code Committee has therefore adopted the new Note 4 on the definitions of "exempt fund manager" and "exempt principal trader" as proposed in paragraph 1.29 of the PCP.

Q.5 Do you agree with the inclusion of the proposed new Note 5 on the definitions of "exempt fund manager" and "exempt principal trader" concerning "ad hoc" exempt principal trader status?

1.14 All respondents to this question agreed with the proposed amendment, save that one respondent questioned whether the status should cease to apply in the circumstances outlined in paragraph 1.31 of the PCP (i.e. if there is a substantive change in the facts or circumstances after the ad hoc exempt principal trader status is granted, for example if the offer ceases to be recommended or becomes competitive).

1.15 The Code Committee considers that it would be inappropriate for the Panel to operate a system of "ad hoc" exempt status, the granting of which involves much less rigorous procedures than those involved when applying for "full" exempt status, without the Panel having the ability to revoke that status in the circumstances outlined.

1.16 The Code Committee has therefore adopted the new Note 5 on the definitions of "exempt fund manager" and "exempt principal trader" as proposed in paragraph 1.32 of the PCP.

2. Rule 7.2 and dealings by connected persons during an offer period

Q.6 Do you agree with the replacement of Rule 7.2 and its Notes as set out in paragraph 2?

Q.7 Do you agree with the proposed amendments relating to connected non-exempt fund managers and principal traders set out above?

2.1 Paragraph 2 of the PCP set out the Panel's policy regarding connected discretionary fund managers and principal traders who either do not have exempt status or whose exempt status falls away, for example, because their parent organisation is itself the offeror or the offeree company. The PCP proposed that Rule 7.2 and its Notes be redrafted in their entirety and that certain consequential amendments be made.

2.2 All respondents were in favour of the proposals, but two respondents made a number of additional suggestions. These suggestions either sought to extend

the circumstances in which Rule 7.2 can be applied or were of a clarificatory nature.

2.3 One respondent asked whether the consent which the Panel grants, pursuant to Note 3 on Rule 7.2, to principal traders to acquire or dispose of relevant securities without such dealings being relevant for the purposes of Rules 4.2, 4.4, 5, 6, 9, 11 and 36 was conditional on the principal trader "standing down" from dealing in the relevant securities. The Code Committee confirms that it is a requirement for a principal trader to "stand down" in order for it to benefit from the dispensations available under Note 3 on Rule 7.2. However, in certain circumstances, the Panel will consider giving specific consents to principal traders to undertake further dealings, for example, in connection with the closing out of a contract for differences which may have been written prior to Rule 7.2 being relevant.

2.4 The Code Committee also confirms that, as stated in paragraph 2.10 of the PCP, it is usually a condition of the dispensation envisaged by Note 3 being given that the relevant dealings are executed within 24 to 48 hours of the principal trader being presumed to be acting in concert. However, the Code Committee considers that, in certain circumstances, for example, where the principal trader's position is unusually large, it is appropriate for the Panel to have the flexibility to decide either not to give a dispensation or alternatively to permit a longer period of time for the dealings to be completed. Note 3 will also include a reference to the fact that the Panel is likely to consent to a principal trader taking action to unwind, at the outset of an offer, existing securities borrowing or lending transactions in respect of relevant securities which would otherwise be prohibited by Rule 4.6.

2.5 Where it has given consent pursuant to Note 3, the Panel will not normally require such dealings to be disclosed under Rules 4.6, 8.1(a), 24.3 or 25.3 and the Code Committee has amended Note 3 on Rule 7.2 to refer to this. Disclosure may, however, be required in certain circumstances, for example, where the relevant dealing was unusually large.

2.6 As a result of a comment made by two respondents, the Code Committee has introduced a new provision, namely Note 4(a), which envisages the possibility of permission being granted to fund managers connected with either the offeree company or an offeror to purchase, at the outset of an offer, offeree company securities with a view to reducing any short position without the usual consequences applying under the Code. Any relevant dealings will normally have to be executed within 24 to 48 hours of the fund manager being presumed to be acting in concert and will have to be disclosed under Rule 8.1(b)(i). Note 4(a) will also permit, with the Panel's prior consent, fund managers to take action to unwind a borrowing transaction in respect of relevant securities. As in the case of purchases referred to above, the unwinding of a borrowing transaction permitted by Note 4(a) should normally be executed within 24 to 48 hours of the fund manager being presumed to be acting in concert and will have to be disclosed pursuant to Note 3 on Rule 4.6. The recall of lent securities by connected fund managers is addressed in Rule 4.6 and will require the Panel's consent, as referred to in paragraph 27 below. As paragraph 27.16 below makes clear, such consent is unlikely to be denied in respect of the unwinding of a pre-existing lending. The time constraint of 24 to 48 hours referred to above does not apply to the recall of lent securities permitted by the Panel.

2.7 The Code Committee has considered the other matters raised by the respondents and, as a result, it has decided to amend further the drafting of Rule 7.2 in the manner set out below. The revised Rule and its Notes reflect the following main points:

(a) the inclusion of some introductory explanatory wording;

(b) the splitting of proposed Rule 7.2(a) into two separate paragraphs and the necessary consequential amendments;

(c) the inclusion in what will now be Rule 7.2(b) of a reference to clarify exactly when a connected discretionary fund manager or principal trader will be regarded as acting in concert with the offeree company;

(d) the inclusion in what will now be Rule 7.2(c) of a reference to "connected adviser" which, as referred to in paragraph 15 below, will be a new defined term in the Definitions Section of the Code;

(e) the switching of the order of Notes 1(a) and (b) and the inclusion in each of these Notes of a reference to clarify exactly when a connected discretionary fund manager or principal trader will be regarded as acting in concert with the person with whom it is connected; and

(f) the deletion of Note 2(b) as the relevant information is now set out in Rules 7.2(a) and (b) themselves.

2.8 A number of smaller amendments are also being made, and are identified in the new Rule 7.2 as set out in paragraph 2.10 below. All the amendments to Rule 7.2 and its Notes have been marked to show the changes from the proposed Rule as set out in paragraph 2.11 of the PCP.

2.9 In addition to the changes to Rule 7.2 referred to above:

(a) the proposed new Note 17 on Rule 9.1, referred to in paragraph 2.11 of the PCP, has been adopted in the same terms as Note 1(c) on Rule 7.2;

(b) the consequential amendments to (i) Note 6 on Rule 4.2, (ii) Note 8 on Rule 5.1, (iii) Note 8 on Rule 6, (iv) Note 14 on Rule 9.1, (v) Note 7 on Rule 11.1, and (vi) Note 1 on Rule 36.3 referred to in paragraphs 2.14 and 2.15 of the PCP have been adopted;

(c) the amendments to Note 5 (previously Note 6) on Rule 24.3 and to Rule 25.3(b), referred to in paragraphs 2.17(c) and 2.17(b) of the PCP respectively, have been adopted;

(d) the consequential amendment to Rule 25.3(a)(v) proposed in paragraph 2.17(b) of the PCP is not being adopted because the amendment to that Rule proposed in paragraph 30.7 of the PCP has been adopted; and

(e) Note 7 on Rule 7.2, as proposed in paragraph 16.5 of the PCP, will be adopted.

2.10 The Code Committee has therefore replaced the existing Rule 7.2 and the Notes thereon as follows:

"**7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS**

NB Rule 7.2 and the Notes thereon address the position of connected fund managers and principal traders who either do not have exempt status or whose exempt status is not relevant by virtue of the operation of Note 2 on the definitions of exempt fund manager and exempt principal trader.

(a) Discretionary fund managers and principal traders who, in either case, are connected with an offeror or potential offeror, will not normally be presumed to be acting in concert with that person until its identity as an offeror or potential offeror is publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected. Rules 5, 6, 9, 11 and 36 will then be relevant to purchases of offeree company securities and Rule 4.2 to sales of offeree company securities by such persons. Rule 4.6 will also be relevant to securities borrowing and lending transactions.

(b) Similarly, discretionary fund managers and principal traders who, in either case, are connected with the offeree company, will not normally be presumed to be acting in concert with the directors of the offeree company until the commencement of the offer period or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company and that it was connected with the offeree company. Rules 5 and 9 may then be relevant to purchases of offeree company securities and Rule 4.4 will be relevant to purchases of offeree company shares and dealings in derivatives referenced to, or options in respect of, such shares. Rule 4.6 will also be relevant to securities borrowing and lending transactions.

(See also the ~~D~~definition of connected fund managers and principal traders.)

(~~b~~c) An exempt fund manager or exempt principal trader which is connected for the sole reason that it is controlled# by, controls or is under the same control as a ~~financial or other professional adviser (including~~

~~stockbrokers) to the offeror or offeree company or to a concert party of either the offeror or the directors of the offeree company~~ connected adviser will not be presumed to be in concert even after the commencement of the offer period or the identity of the offeror being publicly announced (as the case may be). (See Note 2 on the ~~D~~definitions of exempt fund manager and exempt principal trader.)

#See Note ~~1~~ at end of Definitions Section.

NOTES ON RULE 7.2

1. ~~Prior dealings~~Dealings prior to a concert party relationship arising

(a) ~~As a result of Rule 7.2(a) and notwithstanding the usual application of the presumptions of acting in concert, dealings and stock borrowing and lending transactions by discretionary fund managers and principal traders connected with the offeree company will not normally be relevant for the purposes of Rules 4.6, 5 or 9 before the commencement of the offer period.~~ As a result of Rule 7.2(a) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with an offeror or potential offeror will not normally be relevant for the purposes of Rules 4.2, 4.6, 5, 6, 9, 11 and 36 before the identity of the offeror or potential offeror has been publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected.

(b) ~~Similarly, notwithstanding the usual application of the presumptions of acting in concert, dealings and stock borrowing and lending transactions by discretionary fund managers and principal traders connected with an offeror or potential offeror will not normally be relevant for the purposes of Rules 4.2, 4.6, 5, 6, 9, 11 and 36 before the identity of the offeror or potential offeror has been publicly announced.~~ Similarly, as a result of Rule 7.2(b) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with the offeree company will not normally be relevant for the purposes of Rules 5 or 9 before the commencement of the offer period or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company.

(c) Rule 9 will, however, be relevant if the aggregate holdings of shares of all persons under the same control# (including any exempt fund manager or exempt principal trader) carry 30% or more of the voting rights of a company. Notwithstanding this, if such a group includes a principal trader and the group's aggregate holding of shares in a company approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire further shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period and the

holding of the principal trader does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.

#See Note ~~1~~ at end of Definitions Section.

2. Qualifications

(a) If a connected discretionary fund manager or principal trader is in fact acting in concert with an offeror or with the directors of the offeree company, the usual concert party consequences will apply irrespective of whether the offeree company is in an offer period or the identity of the offeror or potential offeror has been publicly announced.

~~(b) Similarly, if a connected discretionary fund manager or principal trader is aware of the possibility of an offer for the offeree company or by an offeror or potential offeror, it will be considered to be acting in concert with the party with which it is connected as a result of the usual application of the presumptions of acting in concert irrespective of whether the offeree company is in an offer period or the identity of the offeror or potential offeror has been publicly announced.~~

(~~c~~b) If an offeror or potential offeror, or any company in its group, has funds managed on a discretionary basis by an exempt fund manager, Rule 7.2 may be relevant. If, for example, any securities of the offeree company are managed by such exempt fund manager for the offeror or potential offeror, the exception in Rule 7.2(~~b~~c) in relation to exempt fund managers may not apply in respect of those securities. The Panel should be consulted in such cases.

3. ~~Standing down~~ Dealings by principal traders

~~After the identity of an offeror or potential offeror is publicly announced, a principal trader connected with the offeror or potential offeror may stand down from its dealing activities. Similarly, a principal trader connected with the offeree company~~ After a principal trader is presumed to be acting in concert by virtue of Rules 7.2(a) or (b), it may stand down from its dealing activities ~~after the commencement of the offer period~~. In such circumstances, with the prior consent of the Panel, the principal trader may reduce its holding of offeree company securities or offeror securities, or may acquire such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 4.2, 4.4, 5, 6, 9, 11 and 36 ~~or falling to be disclosed under Rule 8.1(a)~~, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally, pursuant to Rule 4.6, consent to connected principal traders taking action to unwind a securities borrowing or lending transaction in such circumstances. The Panel will not normally require such dealings to be disclosed under Rules 4.6, 8.1(a), 24.3, or 25.3. Any such dealings must take place within a time period agreed in advance by the Panel.

4. ~~Sales~~ Dealings by discretionary fund managers ~~connected with an offeror~~

(a) After a discretionary fund manager is presumed to be in concert with an offeror or potential offeror by virtue of Rule 7.2(a), any purchases by it of offeree company securities will normally be relevant for Rules 5, 6, 9, 11 and 36. Similarly, any purchases of offeree company securities by a discretionary fund manager after it is presumed to be in acting concert by virtue of Rule 7.2(b) will not normally be permitted by virtue of Rule 4.4(i). However, with the prior consent of the Panel, a discretionary fund manager connected with either the offeree company or an offeror or potential offeror will normally be permitted to purchase offeree company securities, with a view to reducing any short position, without such purchases being relevant for the purposes of Rules 4.4(i), 5, 6, 9, 11 and 36, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally, pursuant to Rule 4.6, consent to connected discretionary fund managers taking action to unwind securities borrowing transactions in such circumstances. Any such purchases or unwinding arrangements must take place within a time period agreed in advance by the Panel and should be disclosed pursuant to Rule 8.1(b)(i) or Note 3 on Rule 4.6, as appropriate.

(b) After the commencement of the offer period, with the prior consent of the Panel, a discretionary fund manager connected with an offeror will normally be permitted to sell offeree company securities without such sales being relevant for the purposes of Rule 4.2, notwithstanding the usual application of the presumptions of acting in concert and Rule 7.2(a). Any such sale should be disclosed under Rule 8.1(~~a~~b)(i).

5. Rule 9

The Panel should be consulted if, once the identity of the offeror or potential offeror is publicly known, it becomes apparent that relevant securities in the offeree company (including options in respect of and derivatives referenced to such relevant securities) held by the offeror or potential offeror and persons acting in concert with it, including any connected discretionary fund managers and principal traders to which Rule 7.2(a) applies, carry or relate to in aggregate 30% or more of the voting rights of the offeree company.

6. Disclosure of dealings in offer documentation

Holdings of relevant securities and dealings (whether before or after the presumptions in Rules 7.2(a) and (b) apply) by connected discretionary fund managers and principal traders (unless exempt) must be disclosed in any offer document in accordance with Rule 24.3 and in any offeree board circular in accordance with Rule 25.3, as the case may be. This will not apply in respect of a dealing that has been permitted by Note 3 above and has not been required to be disclosed.

7. Consortium offers

See also Note 5 on the definition of acting in concert where the connected fund manager or principal trader is part of the same organisation as an investor in a consortium.".

3. Dealings through anonymous trading systems

Q.8 Do you agree with the proposed new Rule 4.2(b), and consequential amendments, preventing an offeror and persons acting in concert with it acquiring offeree company securities from an anonymous seller?

3.1 Overall, respondents were in favour of the proposed changes. The Code Committee considers that the Rule should therefore, save as referred to below, be adopted as proposed and that the consequential amendments to Rules 4.2 and 38.2 and the deletion of Note 7 on Rule 4.2 referred to in paragraph 3.5 of the PCP should be adopted.

3.2 The Code Committee has, however, revised the wording of the Rule, as set out below, so that the proviso "unless it can be established that the seller is not an exempt principal trader connected with the offeror" applies to both purchases through "any anonymous order book system" and purchases made "through any other means".

3.3 The new Rule 4.2(b) will therefore read as follows:

"**(b) During an offer period, the offeror and persons acting in concert with it must not purchase any securities in the offeree company through any anonymous order book system, or through any other means, unless, in either case, it can be established that the seller is not an exempt principal trader connected with the offeror.**

In the case of dealings through an inter-dealer broker or other similar intermediary, "seller" includes the person who has transferred the securities to the intermediary as well as the intermediary itself.

(See also Rule 38.2.)".

4. Prohibition on the purchase of assented securities by exempt principal traders connected with the offeror

Q.9 Do you agree with the proposed amendment to Rule 38.3 to prevent an exempt principal trader connected with an offeror from purchasing assented securities?

All respondents to this question agreed with the proposal. Accordingly, the Code Committee has adopted the amendment to Rule 38.3 as proposed in paragraph 4.2 of the PCP.

5. Minor clarificatory amendments to Rule 38.5

Q.10 Do you agree with the proposed minor changes to Rule 38.5 and the Notes thereon set out in paragraph 5?

5.1 Overall, respondents to this question were in favour of the proposed changes. Accordingly, the Code Committee has:

(a) adopted the amendment to Rule 38.5 as set out in paragraph 5.3 of the PCP; and

(b) adopted the amendment to Note 2 on Rule 38.5 as proposed in paragraph 5.4 of the PCP.

SECTION B

DISCLOSURE REQUIREMENTS AND AMENDMENTS TO RULE 8

6. Requirement to disclose dealings and resultant total holdings in any relevant securities

Q.11 Do you agree with the proposed amendments to Rule 8.3(a) and Note 7 on Rule 8 set out above?

Q.12 Do you agree with the proposed amendments to require Rule 8 disclosures to include details of the person's resultant position in all relevant securities of the company concerned?

Q.13 Do you agree with the proposed amendment to clarify the disclosure requirements in relation to "linked transactions"?

Q.14 Do you agree with the proposed amendment to clarify the disclosure requirements in relation to side agreements?

Q.15 Do you agree with the proposed amendment to require a description of any relevant option or derivative to be disclosed under Rule 8?

6.1 Paragraph 6 of PCP 2004/3 proposed, inter alia, amendments that would require disclosures made under Rule 8 to include details of all holdings (including relevant derivative and option positions) of any relevant securities in the company concerned held by the person disclosing. The PCP also proposed amendments to vary the basis on which an obligation to make a disclosure relating to a derivative transaction arises. These proposals are referred to below as the "composite disclosure" proposals.

6.2 The majority of respondents were supportive of the proposals relating to composite disclosure, but their support was qualified. Some stated that, in their opinion, the proposals did not go far enough, in that many derivative

transactions would remain undisclosed. Three of the respondents expressed concern that the systems changes required would be significant and that the costs of compliance would fall on fund management operations which are not control-seekers.

6.3 The Code Committee believes that the current disclosure regime can result in an incomplete, and potentially misleading, picture of a person's total interest in, and exposure to movements in the price of, relevant securities and it, therefore, remains of the view that composite disclosure is desirable.

6.4 The Code Committee's outline proposals relating to amendments proposed to be made to the Code and the SARs regarding the treatment of dealings in derivatives and options were set out in PCP 2005/1 issued on 7 January. These proposals are, broadly, linked to the composite disclosure proposals and will themselves require systems changes if implemented. The Code Committee has therefore 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.

6.5 Accordingly, the Code Committee has decided that the proposals set out in paragraph 6 of the PCP should be treated as set out below.

(a) Rule 8.3(a) and Note 7 on Rule 8

6.6 Paragraph 6.6 of the PCP proposed that Rule 8.3(a) and Note 7 on Rule 8 be amended so that a shareholder holding 1% or more of a physical class of relevant securities should be required to disclose all dealings in any class of relevant securities issued by the company concerned and also in options in respect of, and derivatives referenced to, any class of relevant securities issued by that company.

For the reason set out in paragraph 6.4 above, these proposals will not be adopted at this stage.

(b) Note 5(a) on Rule 8

(i) Resultant positions

6.7 Paragraph 6.11 of the PCP proposed that existing paragraphs (v), (vi) and (vii) of Note 5(a) on Rule 8 be replaced so that Rule 8 disclosures would include:

(a) the total amount of each class of relevant securities issued by the company concerned owned or controlled by the person making the disclosure;

(b) details of all open positions in options in respect of, or derivatives referenced to, relevant securities issued by the company concerned held by that person at the time of the disclosure, whether those positions were entered into before or after the start of the offer period; and

(c) details of all existing arrangements covered by Note 6 on Rule 8 that have been entered into by that person, again whether before or after the start of the offer period.

For the reason set out in paragraph 6.4 above, the proposal set out in (a) above will not be adopted at this stage and the existing paragraph (vi) of Note 5(a) on Rule 8 will not be deleted as had been proposed in the PCP.

Paragraph (i) of Note 5(a) on Rule 8 has been amended as set out in paragraph 6.13 below so that, as envisaged in (b) above, where a dealing disclosure is made, any outstanding options in respect of, and derivatives referenced to, the relevant security in which there has been a dealing should also be disclosed.

The amendment proposed in relation to (c) above will not be adopted but existing paragraph (vii) of Note 5(a) on Rule 8, which relates to Note 6 arrangements, will not be deleted as had been proposed in the PCP.

Paragraph 7.3 below addresses the amendment to paragraph (v) of Note 5(a) on Rule 8.

(ii) Linked transactions

6.8 Paragraph 6.15 of the PCP proposed that an additional paragraph be included in Note 5(a) on Rule 8 which would clarify the requirement to disclose details of each dealing where two or more separate but related dealings are executed at or around the same time.

This proposal has been adopted.

(iii) Side agreements

6.9 Paragraph 6.17 of the PCP indicated that, for the purposes of Rule 8, it is the Panel's practice to treat as an option any futures contract for which exercise includes the possibility of delivery of the underlying securities. A futures contract which does not include the possibility of delivery of the underlying securities will fall within the Code definition of "derivative" and will be treated as such by the Panel. The Panel's practice is to treat covered warrants similarly, as was described in Panel Statement 1997/10.

6.10 Although it was not proposed in the PCP that this practice should be codified, the Code Committee now considers that amendments should be made to the Code and the SARs. Accordingly, it has:

(a) introduced a new second sentence to the definitions of "rights over shares" in the Code and SARs as follows:

"Rights over shares include any rights acquired by a person by virtue of an agreement to purchase shares or an option to acquire shares or an irrevocable commitment to accept an offer to be made by him or an agreement to acquire voting rights or general control of them. A futures contract or covered warrant for which exercise includes the possibility of delivery of the underlying securities is treated as an option."; and

(b) adopted a new penultimate paragraph of Note 2 on Rule 8 as follows:

"*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.*".

6.11 In addition, paragraph 6.20 of the PCP proposed that an additional paragraph be included in Note 5(a) on Rule 8 which would clarify the requirement to disclose full details of any agreement, arrangement or understanding relating to the voting rights of any relevant securities under option or relating to the voting rights or future acquisition or disposal of any relevant securities to which a derivative is referenced.

In addition to the amendments set out in paragraph 6.10 above, the proposal set out in paragraph 6.20 of the PCP has been adopted.

(iv) Description of derivatives and options

6.12 Paragraph 6.22 of the PCP proposed to amend what was previously the penultimate paragraph of Note 5(a) on Rule 8 to require a description of any relevant option or derivative to be included in any disclosure.

This proposal has been adopted.

6.13 The relevant provisions of Note 5(a) on Rule 8 will therefore read 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 specimen disclosure form, as set out in the Dealing Disclosure Forms Section, may be obtained from the Panel.~~ Specimen disclosure forms are available on the Panel's website (www.thetakeoverpanel.org.uk) or may be obtained from the Panel. Public disclosure should follow ~~that~~ the format of those forms. Where a disclosure is made pursuant to Rule 8.1(a) or (b)(i), it is not necessary to disclose the same information pursuant to Rule 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 purchased or sold, and details of all outstanding options in respect of, and derivatives referenced to, those relevant securities;

(ii) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed);

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

(iv) if the dealing is by an associate, an explanation of how that status arises;

(v) ~~if the disclosure is made under Rule 8.3, a statement to that effect;~~ 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

(vii) if relevant, details of any arrangements required by Note 6 below.

For the avoidance of doubt, when a person transacts two or more separate but related dealings executed at or around the same time (for example, the entering into of a derivative referenced to relevant securities and the acquisition of such securities for the purposes of hedging), the disclosure must include the required information in relation to each such dealing so executed.

For the purpose of disclosing identity the owner or controller 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 purchases offeree company securities on a specially cum or specially ex dividend basis, details of that fact should also be disclosed.

Percentages should be calculated by reference to the numbers of relevant securities given in a company's latest announcement required by Rule 2.10. In the case of a disclosure relating to a right to subscribe, or subscription, for new securities, the Panel should be consulted regarding the appropriate

number of relevant securities to be used in calculating the relevant percentage.

In the case of option business or dealings in derivatives full details should be given so that the nature of the 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.

In addition, if there exists any agreement, arrangement or understanding, formal or informal, between the person dealing and any other person relating to the voting rights of any relevant securities under option or relating to the voting rights or future acquisition or disposal of any relevant securities to which a derivative is referenced (as the case may be), full details of such agreement, arrangement or understanding, identifying the relevant securities in question, must be included in the disclosure. If there are no such agreements, arrangements, or understandings, this fact should be stated. Where such an agreement, arrangement or understanding is entered into at a later date than the derivative or option to which it relates, it will be regarded as a dealing in relevant securities.

…".

(*The above takes into account the adoption of the other changes to Note 5(a) on Rule 8 referred to in paragraphs 7.3, 10, 11 and 34.1 below. In addition, further changes to Note 5(a) are referred to in paragraphs 9.4, 19.1, 19.8, 27.21 and 27.22 below.*)

7. Disclosure of short positions

Q.16 Do you agree with the proposed disclosure of short positions as set out in paragraph 7 above?

7.1 All responses made in relation to Question 16 were in favour of the disclosure of short positions and one respondent expressed the view that a 1% short position should act as a trigger in the same way as a 1% long position. This latter issue is the subject of Question 4 of PCP 2005/1 (Dealings in Derivatives and Options).

7.2 The Code Committee has adopted the provisions relating to the disclosure of short positions largely as proposed in the PCP. The amendments to Rules 24.3(b) and 25.3(b) relating to the disclosure of residual short positions in offer documentation have been adopted as proposed in paragraph 7.3 of the PCP. The amended Rule 24.3(b) also incorporates the further amendment referred to in paragraph 24.2 below.

7.3 The second sentence of proposed paragraph (v) of Note 5(a) on Rule 8 has been adopted as the entire paragraph (v) in a slightly different form from that proposed in paragraph 7.2 of the PCP, as set out in paragraph 6.13 above. The proposed first sentence of paragraph (v) will not be adopted at this stage.

8. Disclosure of subscriptions for new shares

Q.17 Do you agree with the amendments relating to the disclosure of subscriptions and rights to subscribe for new securities as set out above?

8.1 Whilst some respondents welcomed this proposal, two respondents were concerned that the systems changes that would be necessary to ensure compliance with this requirement would be significant. They also queried the value of the new information to be disclosed, given that the decision-making process relating to a subscription is frequently different from a dealing decision.

8.2 The Code Committee recognises this argument but believes that the market should know the result of such a decision by a person who is otherwise subject to Rule 8. The amendment to Note 2 on Rule 8 has therefore been adopted as proposed in paragraph 8.2 of the PCP.

8.3 In addition, the Code Committee has adopted the new Note 6 on Rule 24.3 and the amendments to Rule 2.5(b)(iii) relating to the disclosure of subscriptions and rights to subscribe as proposed in paragraphs 8.3 and 8.4 of the PCP.

9. Transfers of relevant securities into or out of funds under management

Q.18 Do you agree with the proposed amendment to Note 5(a) on Rule 8 relating to transfers into or out of funds under management?

9.1 In paragraph 9 of PCP 2004/3, it was explained that it is sometimes the case that the number of relevant securities in funds managed by a manager will vary as a result of a decision taken by the investment client rather than the fund manager, for example, when the investment client transfers some or all of its funds away from one fund manager in order for them to be managed by a different fund management operation. Whilst the Code Committee concluded that there was no need for shareholders to be informed of changes in funds under management resulting from an investment client's decision to change the manager of its funds, it believed that where a fund manager had already made a public Rule 8 disclosure, it would be helpful to include an explanation in any subsequent Rule 8 disclosure of any variation from what the resultant total holding might legitimately be expected to be. Accordingly, in paragraph 9.2 of the PCP, the Code Committee proposed to include the following new paragraph in Note 5(a) on Rule 8:

"*If, following a public disclosure made under Rule 8, 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.*".

9.2 Of the five respondents to this question, two were in favour of the proposals and two were concerned about the system changes that might be required. The fifth respondent was concerned that the proposed reference to the transfer in or out of funds under management could reveal that funds were in the process of being transferred and that this would have, it claimed, an undesirable market impact.

9.3 The Code Committee was informed at the time of the publication of the PCP that a significant number of Rule 8 disclosures to which this amendment applies already include a reference in terms similar to the example wording

included in the PCP. The Code Committee is not aware that this has caused problems of a practical nature. Nor is the Code Committee aware of any circumstances where the inclusion of such wording has led to the revelation of market-sensitive information. The Code Committee considers that if, for some reason, the inclusion of this wording might result in damaging consequences, the Panel should be consulted in advance in order to discuss possible ways of avoiding such an outcome.

9.4 Accordingly, the Code Committee has adopted the new paragraph of Note 5(a) on Rule 8 as set out in paragraph 9.1 above.

10. Dealings on a specially cum or ex dividend basis

Q.19 Do you agree with the proposed amendment to Note 5(a) on Rule 8 relating to purchases of offeree company securities on a specially cum or ex dividend basis?

All respondents to this question agreed with the proposal. Accordingly, the Code Committee has adopted the new paragraph of Note 5(a) on Rule 8, relating to purchases of offeree company securities on a specially cum or ex dividend basis, as proposed in paragraph 10.4 of the PCP (see paragraph 6.13 above).

11. Calculation of percentage to be disclosed

Q.20 Do you agree with the inclusion of a paragraph in Note 5(a) on Rule 8 relating to the method of calculating percentages to be disclosed and with the consequential deletion of the corresponding paragraph in Note 2 on Rule 8?

Overall, respondents were in favour of the proposed changes. The Code Committee has therefore deleted the final paragraph of Note 2 on Rule 8 and has adopted the new paragraph of Note 5(a) on Rule 8 as proposed in paragraph 11 of the PCP (see paragraph 6.13 above).

12. Minor amendments to Rule 8

Q.21 Do you agree with the deletion of NB 1, 2 and 3 set out at the beginning of Rule 8 and the amendment to Note 2 on Rule 8?

12.1 All respondents to this question were in favour of the proposed changes. Accordingly, the Code Committee has:

(a) deleted NB 1, 2 and 3 set out at the beginning of Rule 8 as proposed in paragraph 12.1 of the PCP; and

(b) adopted the amendment to Note 2 on Rule 8 as set out in paragraph 12.2 of the PCP.

13. Obligation to publicise the disclosure requirements of Rule 8

Q.22 Do you agree with the proposed deletion of the paragraphs of Note 10 on Rule 8 that require an intermediary to inform its clients of the disclosure obligations of Rule 8?

13.1 Three of the four respondents to this question agreed that the relevant paragraphs of Note 10 on Rule 8 should be deleted. The fourth respondent believed that an insufficiently compelling case for change had been made. The Code Committee nevertheless remains of the view that the proposal in the PCP should be adopted. Accordingly, the Code Committee has deleted the two paragraphs of Note 10 on Rule 8 that require an intermediary to inform its clients of the disclosure obligations of Rule 8, as proposed in paragraph 13.3 of the PCP.

Q.23 Do you agree with the proposed amendments to require a summary of the provisions of Rule 8 to be included in relevant announcements and documents?

13.2 All respondents to this question agreed with the proposals. It was proposed in paragraph 13.6 of the PCP that a summary of the provisions of Rule 8 should be included in an announcement made under, inter alia, Rule 2.4. Following the issue of RS 2004/1 on 6 August 2004, Rule 2.4 has been renumbered as Rule 2.4(a). Save for this, the Code Committee has adopted the amendments to Rule 2.4(a), Rule 2.5(b)(viii) and Rule 2.6 and the introduction of Rule 24.2(d)(xi), as proposed in paragraph 13.6 of the PCP.

13.3 Appendix C sets out a summary of the provisions of Rule 8 (as amended by this Response Statement) which is now available on the Panel's website (www.thetakeoverpanel.org.uk).

Q.24 Do you agree with the proposed amendment to the final paragraph of Note 10 on Rule 8 specifically to require intermediaries to disclose client contact information?

13.4 Four of the six respondents to this question agreed with the proposed requirement for intermediaries to disclose client contact information while two disagreed.

13.5 One respondent believed that where a discretionary fund manager manages relevant securities on behalf of clients who have only a beneficial interest in the securities managed, there should be no further requirement to disclose the identities of those clients. The Code Committee believes that the Panel would be unlikely to require information in relation to the discretionary clients of a discretionary fund manager. However, the Code Committee understands that there have been a number of cases where the Panel has needed additional information on intermediaries' non-discretionary clients. The Code Committee therefore considers it desirable that the Panel's ability to request such information should be clearly set out in the Code.

13.6 Another respondent noted that secrecy laws might, in certain situations and/or jurisdictions, preclude the disclosure of client contact information and that an "absolute" obligation to disclose such information might, therefore, require a

breach of applicable laws. The respondent believed that the requirement should therefore be subject to a “reasonable endeavours” qualification.

13.7 The Code Committee agrees that it would be inappropriate for the Panel to require an intermediary to supply information to it in breach of applicable laws. However, the Code Committee does not consider that the amended provision imposes an “absolute” obligation. Accordingly, the Code Committee does not consider it necessary to amend the proposed provision and has therefore adopted the amendment to Note 10 on Rule 8 as proposed in paragraph 13.8 of the PCP. The amended Note also incorporates the further amendments referred to in paragraph 15.15 below.

SECTION C

ACTING IN CONCERT AND ASSOCIATE STATUS

14. Application of presumption (5) of the definition of "acting in concert", paragraph (2) of the definition of "associate" and paragraph (3) of the definition of "connected fund managers and principal traders"

Q.25 Do you agree with the proposed amendments to the second paragraph of Note 2 on the Definitions?

15. Status of financial and other professional advisers to persons acting in concert with an offeror or with the directors of the offeree company

Q.26 Do you agree with the proposed amendments to the definitions of "acting in concert", "associate", and "connected fund managers and principal traders" and to Note 2 on the definitions of "exempt fund manager" and "exempt principal trader"?

15.1 In paragraph 14.6 of the PCP, it was proposed that the second paragraph of Note 2 at the end of the Definitions Section in relation to "financial and other professional advisers (including stockbrokers)" be amended as set out below:

"*References to "financial and other professional advisers (including stockbrokers)", in relation to a party to an offer, do not normally include an organisation which has stood down~~,~~ because of a conflict of interest ~~or otherwise,~~ from acting for that party in connection with the offer. ~~If the organisation is to have a continuing involvement with that party during the offer, the Panel must be consulted. Unless the Panel is satisfied that the involvement is entirely unconnected with the offer, the above exclusion will not normally apply.~~ In other circumstances and with the consent of the Panel, presumption (5) of the definition of "acting in concert", paragraph (2) of the definition of "associate" and paragraph (3) of the definition of "connected fund managers and principal traders" may be rebutted or disapplied as appropriate. In making its decision, the Panel will take account of all relevant factors.*".

15.2 In addition, in paragraph 15.4 of the PCP, it was proposed that the definitions of "acting in concert", "associate" and "connected fund managers and principal traders" and Note 2 on the definitions of "exempt fund manager" and "exempt principal trader" be amended as set out below:

(a) presumption (5) of the definition of "acting in concert":

"(5) a financial or other professional adviser (including a stockbroker) with its client and, if its client is acting in concert with an offeror or with the directors of the offeree company, with that offeror or with those directors respectively, in each case in respect of the shareholdings of the adviser and persons controlling, controlled by or under the same control as the adviser (except in the capacity of an exempt ~~market-maker~~ fund manager or an exempt principal trader);";

(b) paragraph (2) of the definition of "associate":

"(2) banks, ~~and~~ financial and other professional advisers (including stockbrokers) to an offeror, the offeree company or any company covered in (1) or to any person who is acting in concert with an offeror or with the directors of the offeree company, and ~~including~~ persons controlling, controlled by or under the same control as such banks, financial and other professional advisers;";

(c) the definition of "connected fund managers and principal traders":

"A fund manager or ~~market-maker~~ principal trader will normally be connected with an offeror or the offeree company, as the case may be, if the fund manager or ~~market-maker~~ principal trader is controlled by, controls or is under the same control as:

(1) an offeror or any person acting in concert with it;

(2) the offeree company or any person acting in concert with the directors of the offeree company; or

(3) any bank or financial or other professional advisers (including stockbrokers) to ~~an offeror or the offeree company~~ any person covered in (1) or (2).";

(d) Note 2 on the definitions of "exempt fund manager" and "exempt principal trader":

"*2. When a principal trader or fund manager is connected with the offeror or offeree company, exempt status is not relevant unless the sole reason for the connection is that the principal trader or fund manager is controlled by, controls or is under the same control as a financial or other professional adviser (including stockbrokers) to:*

(1) the offeror; ~~or~~
(2) the offeree company; or
(3) a concert party of either the offeror (for example as a result of being an investor in a consortium) or the directors of the offeree company.".

15.3 Five respondents made comments in relation to paragraphs 14 and/or 15. Three of the respondents were, overall, supportive of the proposals in paragraphs 14 and 15. The other two respondents raised objections to the proposals and believed that the treatment of advisers proposed in the PCP had been drawn too widely and did not reflect the reality of the modern relationship between investment banks and their corporate finance clients.

15.4 The combined views of the latter two respondents were, in summary, as follows:

- that presumption (5) of the definition of "acting in concert" should apply only to an adviser which is specifically engaged by an offeror or the offeree company in relation to an offer situation and that no concert party should otherwise arise unless the organisation of which the adviser is a member is "actually" acting in concert with the relevant party to the offer;

- that presumption (5) should be considered to be rebutted where an adviser stands down from acting for its client for any reason, not only because of a conflict of interest, and that this should always (and not only normally) be the case; and

- that the Code should identify those situations where the financial adviser to a concert party member might itself be brought within the relevant concert party, distinguishing between situations where the relevant adviser to the concert party member has a role with some connection to the offer (such as a

financial adviser to a party who has agreed to purchase an asset from the offeror following the offer) and situations where the adviser just happens to have an advisory relationship with the concert party member.

15.5 The Code Committee has considered these views and agrees with them in part. Other than in the case of a corporate broker, the Code Committee believed, in proposing the wording in the PCP, that the circumstances would be limited in which an adviser which was not actually advising an offeror or the offeree company (or a person acting in concert with the offeror or with the directors of the offeree company) in connection with the offer would be treated as a member of the relevant concert party. In this context, the Code Committee agrees with paragraph 17 of Panel Statement 2004/12 which stated that:

"… the relationship between the advisory side of investment banks and their clients has evolved to be less permanent or exclusive than it used to be. Advisory clients are now more inclined to seek transaction-based advice than to regard themselves (or to be regarded by others) as using the services of a particular investment bank.".

15.6 The Code Committee also recognises the concerns expressed by respondents in relation to a broad application of the presumption of the "concertedness" of advisers, particularly when the onus of rebutting the presumption rests on those advisers. These concerns included the following:

- that an organisation might feel it necessary to restrict itself from dealing in relevant securities at the commencement of an offer period in circumstances where it is neither advising in connection with (and indeed may have no prior knowledge of) the offer nor has a broking relationship with a party to the offer but where, because of another advisory relationship, there remains a possibility that the organisation might be treated by the Panel as falling within the presumption of concertedness;

- the difficulties of identifying all the advisers who fall within a broadly applied presumption, particularly where this extends to advisers to persons acting in concert with an offeror or with the directors of the offeree company; and

- in certain cases, the burden on the Panel of dealing with a potentially large number of applications to rebut a broadly applied presumption.

15.7 In the light of the above, the Code Committee has decided to amend the second paragraph of Note 2 at the end of the Definitions Section so as to be more narrowly drawn than proposed in paragraph 14.6 of the PCP. In addition, the Code Committee considers that, for clarity, it would be desirable to amend certain of the existing provisions of the Code, and certain of the provisions proposed in the PCP, as follows:

(a) by recasting the second paragraph of Note 2 at the end of the Definitions Section as a new definition of "connected advisers", categorised so as to distinguish between connected advisers to the following clients:

(i) the offeror or the offeree company;

(ii) persons who are acting in concert with the offeror or with the directors of the offeree company; and

(iii) persons who are associates of the offeror or the offeree company by virtue of paragraph (1) of the definition of associate (see paragraph 15.8 below);

(b) by replacing the reference to a "financial or other professional adviser (including a stockbroker)" in presumption (5) of the definition of "acting in concert" with a reference to a "connected adviser";

(c) by replacing the references to "banks and financial and other professional advisers (including stockbrokers)" and to "banks, financial and other

professional advisers" in paragraph (2) of the definition of "associate" with references to a "connected adviser";

(d) by replacing the reference to "any bank or financial or other professional advisers (including stockbrokers)" in the definition of "connected fund managers and principal traders" with a reference to "any connected adviser";

(e) by replacing the reference to a "financial or other professional adviser (including stockbrokers)" in Note 2 on the definitions of "exempt fund manager" and "exempt principal trader" with a reference to a "connected adviser";

(f) by replacing the reference to a "financial or professional adviser to the offeror or the offeree company, to a company which is an associate of the offeror or the offeree company by virtue of paragraph (1) of the definition of associate or to a person acting in concert with the offeror or with the directors of the offeree company" in the proposed Rule 4.6(d) with a reference to a "connected adviser" (see paragraph 27.12 below);

(g) by replacing the reference to a "financial or other professional adviser (including stockbrokers) to the offeror or offeree company or to a concert party of either the offeror or the directors of the offeree company" in the proposed Rule 7.2(b) (now renumbered as the new Rule 7.2(c)) with a reference to a "connected adviser" (see paragraph 2.10 above); and

(h) by replacing the references to "an 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 who is acting in concert with the directors of the offeree company in the proposed Rule 25.3(a)(vi) with a reference to "a connected adviser" to such persons (see paragraph 30.2 below).

15.8 As indicated in paragraph 15.7 above, whilst some provisions of the Code will be applicable to all categories of connected advisers, other provisions will be applicable only to certain categories of connected advisers. Depending on the

provision in question, the Code Committee considers that it would be sufficient normally to restrict the categories of connected advisers to the following organisations:

(1) (a) organisations which are advising the offeror or the offeree company in relation to the offer; and

(b) corporate brokers to the offeror or to the offeree company (for example, a corporate broker which is named as a company's broker in the company's annual report and accounts or in Crawford's Directory of City Connections), other than a broker which is unable to act because of a conflict of interest;

(2) organisations which are advising persons who are acting in concert with the offeror or with the directors of the offeree company either:

(a) in relation to the offer; or

(b) in relation to the matter which is the reason for that person being a member of the relevant concert party (for example, where the adviser is advising in relation to its client's proposed purchase of an offeree company asset from the offeror in the event that the latter's offer is successful); and

(3) organisations which are advising persons who are associates of the offeror or of the offeree company, by virtue of paragraph (1) of the definition of "associate", in relation to the offer.

15.9 The following table summarises which provisions of the Code will include references to connected advisers:

	Connected advisers	**Relevant provisions**	**Connected advisers**	**Relevant provisions**
(1)	(a) Advisers to the offeror where the advisory role is in relation to the offer; and (b) corporate brokers to the offeror.	Presumption (5) of "acting in concert"	(a) Advisers to the offeree company where the advisory role is in relation to the offer; and (b) corporate brokers to the offeree company.	Presumption (5) of "acting in concert"
		Paragraph (2) of "associate"		Paragraph (2) of "associate"
		Paragraph (3) of "connected fund managers and principal traders"		Paragraph (3) of "connected fund managers and principal traders"
		Paragraph (1) of Note 2 on "exempt fund manager/ principal trader"		Paragraph (2) of Note 2 on "exempt fund manager/ principal trader"
		Rule 4.6(d)		Rule 4.6(d)
		Rule 7.2(c)		Rule 7.2(c)
				Rule 25.3(a)(vi)
(2)	Advisers to a person acting in concert with the offeror where the advisory role is: (a) in relation to the offer; or (b) in relation to the matter which is the reason for the person being in concert with the offeror.	Presumption (5) of "acting in concert"	Advisers to a person acting in concert with the directors of the offeree company where the advisory role is: (a) in relation to the offer; or (b) in relation to the matter which is the reason for the person being in concert with the directors of the offeree company.	Presumption (5) of "acting in concert"
		Paragraph (2) of "associate"		Paragraph (2) of "associate"
		Paragraph (3) of "connected fund managers and principal traders"		Paragraph (3) of "connected fund managers and principal traders"
		Paragraph (3) of Note 2 on "exempt fund manager/ principal trader"		Paragraph (3) of Note 2 on "exempt fund manager/ principal trader"
		Rule 4.6(d)		Rule 4.6(d)
		Rule 7.2(c)		Rule 7.2(c)
				Rule 25.3(a)(vi)
(3)	Advisers to an associate of the offeror by virtue of paragraph (1) of "associate" where the advisory role is in relation to the offer.	Paragraph (2) of "associate"	Advisers to an associate of the offeree company by virtue of paragraph (1) of "associate" where the advisory role is in relation to the offer.	Paragraph (2) of "associate"
		Rule 4.6(d)		Rule 4.6(d)
				Rule 25.3(a)(vi)

15.10 The Code Committee has considered the view of two respondents, mentioned in paragraph 15.4 above, that presumption (5) of the definition of "acting in concert" should be considered to have been rebutted in all cases where the organisation in question has "stood down" and not only where it stands down because of a conflict of interest. The Code Committee continues to be of the view that standing down for a reason other than a conflict of interest is not normally a sufficient reason for an organisation not to be considered a "connected adviser" to a party to the offer. In reaching this conclusion, the Code Committee is mindful, in particular, of the ongoing nature of broking relationships (as referred to in paragraph 14.4 of the PCP). However, the Code Committee agrees with the respondent that a more accurate description of the relevant test is whether the organisation is "unable to act" rather than whether it has "stood down".

15.11 Although the Code Committee considers that connected advisers should normally be limited to the categories of adviser described in paragraph 15.8 above, the Code Committee believes that there will be occasions when the Panel will treat other organisations as connected advisers. For example, if company X had instructed adviser A in relation to a strategic review of the group's portfolio of businesses but, whilst that review was still in process, company X subsequently instructed adviser B in relation to the making of an offer for another company, the Panel may treat adviser A as a connected adviser to offeror company X.

15.12 In order for the Panel to determine whether to treat any advisers other than those described in paragraph 15.8 above as connected advisers, the Code Committee would expect offerors and offeree companies to respond promptly to enquiries by the Panel as to the identities of any advisers which they, or any group companies, currently retain in relation to any material advisory projects (for example, a merger or acquisition or other equity-financed project which would require the consent of the shareholders of any party concerned, were such party a company whose shares were admitted to trading on the Official List).

15.13 In the light of the above, the Code Committee has adopted various changes to the Definitions Section as follows:

(a) Note 2 at the end of the Definitions Section has been deleted;

(b) a new definition of "connected advisers" has been introduced, as follows:

"**Connected advisers**

Connected advisers normally includes only the following:

(1) in relation to the offeror or the offeree company:

(a) an organisation which is advising that party in relation to the offer; and

(b) a corporate broker to that party;

(2) in relation to a person who is acting in concert with the offeror or with the directors of the offeree company, an organisation which is advising that person either:

(a) in relation to the offer; or

(b) in relation to the matter which is the reason for that person being a member of the relevant concert party; and

(3) in relation to a person who is an associate of the offeror or of the offeree company by virtue of paragraph (1) of the definition of associate, an organisation which is advising that person in relation to the offer.

Such references do not normally include a corporate broker which is unable to act in connection with the offer because of a conflict of interest.";

(c) presumption (5) of the definition of "acting in concert" has been amended as follows:

"(5) a ~~financial or other professional adviser (including a stockbroker)*~~ connected adviser with its client and, if its client is acting in concert with an offeror or with the directors of the offeree company, with that offeror or with those directors respectively, in each case in respect of the shareholdings of ~~the~~ that adviser and persons controlling#, controlled by or under the same control as ~~the~~ that adviser (except in the capacity of an exempt ~~market maker~~ fund manager or an exempt principal trader); and

…

~~**See Note 2 at end of Definitions Section.*~~
#See Note ~~1~~ at end of Definitions Section.";

(d) paragraph (2) of the definition of "associate" has been amended as follows:

"(2) ~~banks and financial and other professional advisers (including stockbrokers)* to an offeror, the offeree company or any company covered in (1), including~~ connected advisers and persons controlling#, controlled by or under the same control as such ~~banks, financial and other professional~~ connected advisers;

…

~~**See Note 2 at end of Definitions Section.*~~
#See Note ~~1~~ at end of Definitions Section.";

(e) the definition of "connected fund managers and principal traders" has been amended as follows (taking into account the adoption of the other changes to the definition of "connected fund managers and principal traders" referred to in paragraph 16.8 below):

"A fund manager or ~~market-maker~~ principal trader will normally be connected with an offeror or the offeree company, as the case may be, if the fund manager or ~~market-maker~~ principal trader is controlled# by, controls or is under the same control as:

(1) an offeror or any person acting in concert with it (for example as a result of being an investor in a consortium (see also Note 5 on the definition of acting in concert));

(2) the offeree company or any person acting in concert with the directors of the offeree company; or

(3) any ~~bank or financial or other professional advisers (including stockbrokers)* to an offeror or the offeree company~~ connected adviser to any person covered in (1) or (2).~~; or~~

~~(4) an investor in a consortium (eg through a vehicle company formed for the purpose of making an offer).~~

~~**See Note 2 at end of Definitions Section.*~~
#See Note ~~1~~ at end of Definitions Section."; and

(f) Note 2 on the definitions of "exempt fund manager" and "exempt principal trader" has been amended as follows:

> *"2. When a ~~market maker~~ principal trader or fund manager is connected with the offeror or offeree company, exempt status is not relevant ~~only where~~ unless the sole reason for the connection is that the ~~market maker~~ principal trader or fund manager is controlled# by, controls or is under the same control as a ~~financial or other professional adviser (including stockbrokers)*~~ connected adviser to:*
>
> *(1) the offeror; ~~or~~*
>
> *(2) the offeree company; or*
>
> *(3) a person acting in concert with the offeror (for example as a result of being an investor in a consortium) or with the directors of the offeree company.*
>
> …
>
> *~~*See Note 2 at end of Definitions Section.~~*
> *#See Note ~~1~~ at end of Definitions Section."*.

15.14 As regards the advisory relationship between a broker and its corporate client, the Code Committee considers that the relevant relationship with which the Code is concerned should be described in the Code as that of a "corporate broker" rather than that of a "stockbroker". Accordingly, the Code Committee has replaced the word "stockbroker" in Rule 3.3 and in the first paragraph of Rule 4.4 (two references) with the words "corporate broker".

15.15 The Code Committee has also amended the reference to "stockbrokers, banks and other intermediaries" in the heading of Note 10 on Rule 8, and the reference to "stockbrokers and other intermediaries" in the second sentence of what was previously the first paragraph of Note 10 on Rule 8 (as amended by this Response Statement), so as to refer only to "intermediaries". These amendments are for clarity only and the Code Committee does not consider that they will affect the application of Note 10.

15.16 For clarity, the Code Committee has also amended the remaining references in the Code to a "stockbroker" or "stockbrokers" so as to refer to a "broker" or "brokers" (as appropriate). The relevant provisions of the Code in which these references appear are as follows:

(a) the final sentence of Note 4(a) on Rule 8;

(b) the first paragraph of Note 4 on Rule 19.1;

(c) the first sentence of Note 3 on Rule 20.1; and

(d) the heading of Note 4 on Rule 20.1 and the fourth paragraph of that Note (two references).

15.17 The Code Committee has also taken this opportunity to replace the words "a merchant bank" in the final sentence of Note 4(a) on Rule 8 with the words "an investment bank".

16. Consortium members and acting in concert

Q.27 Do you agree with the amendments relating to consortium members set out above?

16.1 Paragraph 16 of the PCP stated that where an investor in an offer consortium is part of a larger group, the Panel will also regard other parts of that group, which might include a fund manager or principal trader, as acting in concert with the offeror unless the investment in the consortium is insignificant. It is the Panel's current practice to treat an investment in a consortium of 5% or less of the equity share capital (or other similar securities) of the offeror as insignificant for these purposes. Where the investment in the consortium is more than 5% but less than 20%, the Panel may be prepared, depending on the circumstances, to waive the acting in concert presumption for other parts of the group. The PCP proposed to codify this policy.

16.2 Whilst the proposed amendments themselves were supported by the respondents to Question 27, more general representations were made by some of these respondents as part of the consultation process about the Panel's policy that limits the circumstances in which exempt status is relevant. In particular, exempt status is not relevant if the principal trader or fund manager is part of an organisation which is providing equity finance to the offeror (see Note 2 on the definition of "connected fund managers and principal traders"). As a consequence, fund management and principal trading operations which are part of an organisation which is providing equity finance to the offeror cannot continue to deal without the risk of incurring potentially serious Code consequences, for themselves or the offeror, unless the size of the equity finance investment is deemed to be insignificant as described above.

16.3 In the light of these comments, the Code Committee has considered whether the Code can be made less restrictive without creating an opportunity for dealings to take place which are, or might be, motivated by a desire to assist the offeror.

16.4 The Code Committee believes that it would be possible to change the basic test of materiality to 10% without any significant diminution of the current level of protection. The Code Committee has also reviewed the percentages between which the Panel may, at its discretion, determine the size of the investment in the offeror not to be material so that other parts of the organisation will not be regarded as being in concert with the offeror. The Code Committee believes, having considered the factors to which the Panel has regard, that these could also be increased without the necessary protection being compromised. Accordingly, the Code Committee has amended the relevant band in which the Panel may exercise its discretion to between 10% and 50%.

16.5 When deciding whether the size of an investment in a consortium is material, the factors which the Panel is likely to take into consideration include the following:

(a) whether a bid is (or becomes) hostile, competitive or otherwise contentious;

(b) the total size of an organisation's investment in the consortium and the percentage of that amount that is represented by the organisation's own funds or funds which it controls;

(c) the adequacy of the Chinese Walls between the equity finance operation and the other operations;

(d) whether the other operations have existing exempt status; and

(e) what other role or roles other parts of the organisation have in the transaction, e.g. advisory and/or lending.

16.6 Where the size of the investment in the consortium is 20% or more and the Panel has deemed the size of the investment not to be material, the Panel will also decide whether any other parts of the organisation which is providing the equity finance to the offeror should be regarded as "associates" for the purposes of the Code.

16.7 The Code Committee has, therefore, decided to amend Note 5 on the definition of "acting in concert" as follows:

"*5. Consortium offers*

Investors in a consortium (eg through a vehicle company formed for the purpose of making an offer) will normally be treated as acting in concert with the offeror. Where such an investor is part of a larger organisation, the Panel should be consulted to establish which other parts of the organisation will also be regarded as acting in concert.

Where the investment in the consortium is, or is likely to be, 10% or less of the equity share capital (or other similar securities) of the offeror, the Panel will normally be prepared to waive the acting in concert presumption in relation to other parts of the organisation, including any connected fund manager or principal trader, provided it is satisfied as to the independence of those other parts from the investor. Where the investment is, or is likely to be, more than 10% but less than 50%, the Panel may be prepared to waive the acting in concert presumption in relation to other parts of the organisation depending

on the circumstances of the case. (See also Connected fund managers and ~~market makers~~ principal traders in the Definitions Section and Rule 7.2 ~~regarding discretionary fund managers~~.)".

16.8 The Code Committee confirms that the amendments to the definition of "connected fund managers and principal traders" proposed in paragraph 16.7 of the PCP will be adopted (see paragraph 15.13 above).

16.9 As indicated in paragraph 2.9 above, the Code Committee has adopted Note 7 on Rule 7.2 as proposed in paragraph 16.5 of the PCP.

17. Acting in concert and pension funds

Q.28 Do you agree with the inclusion of new Note 6 on the definition of "acting in concert"?

Q.29 Do you agree that paragraph (3) of the definition of "acting in concert" should be amended as proposed?

17.1 PCP 2004/3 proposed, in paragraph 17.5, to bring presumption (3) of the definition of "acting in concert" into line with paragraph (4) of the definition of "associate" such that all group pension funds would be presumed to be acting in concert with the parent company of the group. The PCP also proposed, in paragraph 17.2, to include a Note on the definition of "acting in concert" to draw attention to the factors to which the Panel has regard in deciding whether the presumption should be rebutted.

17.2 Three responses were received and all covered both questions. Two respondents were supportive of the direction of the proposals, but made alternative suggestions, and one disagreed with them.

17.3 All three respondents believed that the test of independence should focus on the independence of the trustees from the sponsoring company and not the terms of the fund management contract. Two of the respondents stated that, given the independence of pension fund trustees, the presumption of

concertedness should be reversed - i.e. that there should be a presumption of non-concertedness. In addition, two respondents stated that, in practice, "absolute" discretion is rarely granted to third party managers by the trustees and that the presumption of concertedness should be capable of being rebutted even where this is not the case.

17.4 The Code Committee considers that it is correct to apply the test of independence for Code purposes to the relationship between the trustees and the fund manager. The principal reason for this is that, in practice, it is often difficult to establish whether the trustees are truly independent. As a matter of law, only one third of pension fund trustees have to be appointed by the members, rather than the sponsoring company, and recent legislation obliges the sponsoring company and the pension fund trustees to agree matters such as the funding of the scheme. Accordingly, the Code Committee does not propose either to focus the test on the independence of the pension fund trustees or to reverse the presumption. The Code Committee does, however, accept that, in practice, the discretion granted to fund managers is rarely "absolute" and has therefore decided to add a second sentence to the new Note 6 on the definition of "acting in concert". The full Note, in the form in which it has been adopted, is set out below. This will mean that the presumption is capable of being rebutted even if the discretion given to a fund manager is not absolute. Where this is the case (because, for example, there is a residual right for the trustees to override the fund manager's discretion), the presumption will cease to be rebutted if the pension fund trustees' behaviour indicates otherwise or they exercise their retained powers in connection with dealing, voting or offer acceptance decisions relating to the fund.

17.5 The revised wording of Note 6 on the definition of "acting in concert", in the form in which it has been adopted, is as follows:

"*6. Pension funds*

The presumption that a company is acting in concert with any of its pension funds will normally be rebutted if it can be demonstrated to the Panel's satisfaction that the assets of the pension fund are managed under an

agreement or arrangement with an independent third party which gives such third party absolute discretion regarding dealing, voting and offer acceptance decisions relating to the fund. Where, however, the discretion given is not absolute, the presumption will be capable of being rebutted, provided that the pension fund trustees do not exercise any powers they have retained to intervene in such decisions.".

17.6 The Code Committee has adopted the amendment to presumption (3) of the definition of "acting in concert" as proposed in paragraph 17.5 of the PCP.

18. Treatment of funds where the management of part of the fund has been sub-contracted to another fund manager

Q.30 Do you agree with the proposed inclusion of the new Note 7 on the definition of "acting in concert" and the changes to Note 8 on Rule 8 and to Note 2 on SAR 5?

18.1 The majority of the responses received on this question were in favour of the proposed changes although one respondent believed that the amendments should be more detailed and address the possibility of responsibility for voting decisions being granted to a party different from the one which has responsibility for dealing decisions. The Code Committee believes that the detail required to tackle the issue of split responsibilities, which is not a commonplace situation, would be extensive and will, therefore, not be amending the Code to address this.

18.2 The Code Committee has, however, amended the proposed Note 7 on the definition of "acting in concert" and Note 8 on Rule 8 to take account of the fact that, as referred to in paragraph 17.4 above, in practice, the discretion granted by pension fund trustees to fund managers is rarely absolute. The revised wording of the Notes, in the form in which they have been adopted, is set out below:

(a) Note 7 on the definition of "acting in concert":

"*7. Sub-contracted fund managers*

Where a fund manager sub-contracts discretionary management of funds to another independent fund manager, the Panel will normally regard those funds as controlled by the latter if the discretion regarding dealing, voting and offer acceptance decisions relating to the funds, originally granted to the fund manager, has been transferred to the sub-contracted fund manager and presumption (4) will apply to the sub-contracted fund manager in respect of those funds. This approach assumes that the sub-contracted fund manager does not take instructions from the beneficial owner or from the originally contracted manager on the dealings in question and that fund management arrangements are not established or used to avoid disclosure."; and

(b) Note 8 on Rule 8:

"*8. Discretionary fund managers*

The principle normally applied by the Panel is that where the investment decision is made by a discretionary fund manager the relevant securities are treated as controlled by him and not by the person on whose behalf the fund is managed. For that reason, Rule 8.3(c) requires a discretionary fund manager to aggregate the investment accounts which he manages for the purpose of determining whether he has an obligation to disclose. The beneficial owner would not normally, therefore, be concerned with disclosure to the extent that his investment is managed on a discretionary basis. However, where any of the funds managed on behalf of a beneficial owner are not managed by the fund manager originally contracted to do so but are managed by a different independent third party who has discretion regarding dealing, voting and offer acceptance decisions, the fund manager to whom the management of the funds has been sub-contracted (and not the originally contracted fund manager) is required to aggregate those funds and to comply with the relevant disclosure obligations accordingly.

This approach assumes that the discretionary fund manager does not take instructions from the beneficial owner (or, in the case of sub-contracted funds, from the originally contracted manager or the beneficial owner) on the dealings in question and that fund management arrangements are not established or used to avoid disclosure.".

18.3 In addition, the Code Committee has adopted the related amendment to Note 2 on SAR 5 referred to in paragraph 18.3 of the PCP as set out in Appendix A of the PCP.

19. Deletion of paragraph (6) of the definition of "associate"

Q.31 Do you agree with the proposed deletion of paragraph (6) of the definition of "associate" and with the consequential changes?

19.1 All respondents to this question agreed with the proposals. Accordingly, the Code Committee has deleted the existing paragraph (6) of the definition of "associate" and has adopted the consequential changes to Notes 5(a) and 9 on Rule 8 as proposed in paragraph 19.3 of the PCP.

19.2 In paragraph 19.3(b) of the PCP, the Code Committee proposed that the second paragraph of Rule 8.1(b)(ii) should be replaced with the following sentence:

"**If, however, Rule 8.3 applies, an exempt fund manager must disclose publicly under that Rule in addition to disclosing privately.**".

19.3 One respondent queried the necessity for a connected exempt fund manager to disclose both privately under Rule 8.1(b)(ii) and publicly under Rule 8.3 (dealings by 1% shareholders) where both Rules are applicable.

19.4 This dual reporting obligation arose for historic reasons but the Code Committee now considers that a requirement for a connected exempt fund manager to which Rule 8.3 applies to make a private disclosure to the Panel under Rule 8.1(b)(ii) is unnecessary and that the Rules should be amended so as to avoid such duplication.

19.5 The Code Committee has therefore replaced the second paragraph of Rule 8.1(b)(ii) as follows:

"~~**If, however, the exempt fund manager is an associate by virtue of paragraph (6) of the definition of associate or if Rule 8.3 applies, the exempt fund manager must disclose publicly under Rules 8.1 or 8.3 as appropriate in addition to disclosing privately.**~~ **If, however, an exempt fund manager is required to disclose publicly under Rule 8.3, such private disclosure will not normally be required in addition.**".

19.6 Revised specimen disclosure forms were set out in Appendix B of the PCP. The proposed Form 8.1(b)(ii) provided, inter alia, for a connected exempt fund manager to disclose privately to the Panel the name of the offeree company or offeror with which it is connected and the nature of the connection. However, the proposed Form 8.3 did not provide for this information to be included in a public disclosure.

19.7 As a result of the amendment to Rule 8.1(b)(ii) set out in paragraph 19.5 above, Form 8.3 has been amended so that public disclosures by connected exempt fund managers under Rule 8.3 will include the name of the offeree company or offeror with which the exempt fund manager is connected and the nature of the connection. The new Disclosure Forms (as amended), which are set out in Appendix B of this Response Statement, are now available on the Panel's website (www.thetakeoverpanel.org.uk) and should be used with effect from 25 April 2005. (See also paragraph 34 below in relation to the Disclosure Forms.)

19.8 In addition, the Code Committee has introduced a new paragraph to Note 5(a) on Rule 8 and a new second paragraph to Note 5(b) on Rule 8 as follows:

"*A disclosure by an exempt fund manager must specify the name of the offeror or the offeree company with which it is connected and the nature of the connection.*".

20. Disclosure of dealings by employee benefit trusts

Q.32 Do you agree with the inclusion of a specific reference to employee benefit trusts in the definition of "associate"?

All respondents to this question agreed with the proposed amendment. Accordingly, the Code Committee has adopted the inclusion of a specific reference to employee benefit trusts in paragraph (6) of the definition of "associate" as proposed in paragraph 20.2 of the PCP.

SECTION D

IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

21. Treatment of irrevocable commitments and letters of intent

21.1 Five respondents made comments in relation to Section D regarding the treatment of irrevocable commitments and letters of intent.

21.2 All five respondents were supportive of the proposals in relation to the obtaining by an offeror or the offeree company of irrevocable commitments. One respondent raised a number of objections to the proposed requirements in relation to letters of intent and, in particular, the proposed requirement for the identity of the giver of a letter of intent to be disclosed. Another respondent expressed a reservation that the proposals could result in fewer shareholders being prepared to sign letters of intent.

21.3 The views of the former respondent were, in summary, as follows:

- that the binding nature of an irrevocable commitment should be distinguished from the non-binding nature of a letter of intent and that the consequent ability of a giver of such a letter to change its intention, or to dispose of the shares to which it relates, should be recognised;

- that the anonymity currently allowed to a giver of a letter of intent further dilutes any "moral obligation" which it might have to "honour" its intention;

- that a requirement to disclose the identity of a giver of a letter of intent would significantly reduce the willingness of shareholders to sign such letters; and

- that shareholders should be able to give support to an offeror or the offeree company privately, subject to the Panel verifying the accuracy of any

"statements of support" in accordance with its current practice (as described in paragraph 21.3 of the PCP).

21.4 The Code Committee has considered these views but believes that details of both irrevocable commitments and letters of intent (as defined in the new definition proposed in the PCP) which have been procured by the offeror or offeree company (or their associates) should be publicly disclosed in the manner described in the proposed new Rule 8.4(a), even if this may result in fewer such commitments or letters being given. In coming to this view, the Code Committee has taken into account the fact that all three "shareholder community" respondents to Section D of the PCP were supportive of the proposals.

21.5 The Code Committee believes that, although they are not legally binding, letters of intent are generally complied with and often have an important influence on the outcome of an offer. Such letters affect the momentum of the transaction and market sentiment and should, therefore, be disclosed. In addition, the disclosure of the identity of the holder or controller of the shares concerned will often reveal further information (for example, about the investment policy of the giver of the letter) which the Code Committee believes that the market should know.

21.6 Subject to the further amendments mentioned in this Section D of this Response Statement, the Code Committee has therefore adopted the proposed amendments to the Code in relation to irrevocable commitments and letters of intent.

22. Disclosure by offerors and offeree companies of irrevocable commitments and letters of intent

(a) Rule 8.4(a) and the definition of "irrevocable commitments and letters of intent"

Q.33 Do you agree that the obtaining by an offeror or offeree company or any of their respective associates of an irrevocable commitment and/or a letter of intent should be publicly disclosed and, if so, do you agree with the proposed new Rule 8.4(a)?

Q.34 Do you agree with the proposed new definition of "irrevocable commitments and letters of intent"?

22.1 Overall, all five respondents were in favour of the proposed changes insofar as they related to irrevocable commitments and all but one supported the proposed changes insofar as they related to letters of intent.

22.2 As indicated in paragraph 21 above, the Code Committee has adopted the definition of "irrevocable commitments and letters of intent" as proposed in paragraph 22.6 of the PCP.

22.3 Two respondents, while welcoming the new Rule 8.4(a) and the new definition of "irrevocable commitments and letters of intent", sought clarification that the new provisions would not affect the ability of fund managers to communicate to investee companies their intentions as regards voting on forthcoming shareholder resolutions.

22.4 The Code Committee confirms that it does not consider Rule 8.4(a) to impose any requirement on a shareholder, fund manager or other person to announce its intention in relation to an offer or scheme simply because that person has formulated such an intention or has privately and unilaterally advised its intention to the offeree company or the offeror. Similarly, there will normally be no obligation on the offeree company or the offeror to make an announcement in such circumstances.

22.5 In order to clarify further that it is not intended that the relevant provisions of the Code should apply to unsolicited statements of intention, the Code Committee has substituted the word "obtains" in the proposed Rule 8.4(a) with the word "procures". The new Rule 8.4(a) therefore reads as follows:

"**8.4 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT**

(a) During an offer period, if an offeror or offeree company or any of their respective associates procures an irrevocable commitment or a letter of intent, the offeror or offeree company (as appropriate) must publicly disclose the details in accordance with Notes 3, 4 and 14.".

22.6 Nevertheless, in accordance with normal Code principles, the Code Committee would expect a person who wished to publicise "on the record" his intention to accept, or not to accept, an offer (or to vote in favour of, or against, a resolution relating to an offer or scheme) to do so by way of a regulatory news announcement (rather than, say, speaking to the press). Similarly, if such a person were subsequently to change his publicly announced intention, or to become unable to fulfil that intention (whether because he had sold the shares in question or for some other reason), the Code Committee would expect that person promptly to make a regulatory news announcement to that effect or, alternatively, to notify that fact to the offeree company or offeror (as appropriate) and to the Panel. Upon receipt of such a notification, the Code Committee would expect the offeree company or offeror then promptly to make a regulatory news announcement of the information notified to it.

(b) Note 14 on Rule 8, Rule 8.4(b), Note 6 on Rule 8, Note on Rule 4.4

Q.35 Do you agree that when an offeror or offeree company is disclosing the obtaining of an irrevocable commitment or letter of intent under Rule 8.4(a) it should be required to disclose the information set out in the proposed new Note 14 on Rule 8?

Q.36 Do you agree with the inclusion in the Code of the proposed Rule 8.4(b)?

Q.37 Do you agree with the proposed amendment to Note 6 on Rule 8 to make it clear that the disclosure of irrevocable commitments and letters of

intent is governed by Rule 8.4 and Note 14 on Rule 8 and not by Note 6 on Rule 8?

Q.38 Do you agree with the inclusion in the Code of the proposed Note on Rule 4.4?

22.7 Overall, subject to the objections raised in relation to letters of intent mentioned above, respondents were in favour of the proposed changes referred to in Questions 35 to 38.

22.8 One respondent believed that there should be a requirement to make an announcement in all instances where an irrevocable commitment ceases to be binding and not only where the person who has given it breaches its terms. The Code Committee notes the requirements to disclose the information set out in Note 14 on Rule 8, including details of the circumstances (if any) in which an irrevocable commitment will cease to be binding, as set out in each of the following provisions:

(a) Rule 2.5(b)(iii)(*c*) (in relation to an announcement of a firm intention to make an offer);

(b) the new Rule 24.2(d)(viii) (in relation to an offer document – see paragraph 24.5 below); and

(c) paragraph (c) of Note 14 on Rule 8 (in relation to a disclosure made under Rule 8.4(a) – see paragraph 22.14 below).

22.9 In addition, the amended Note 7 on Rule 17.1 (see paragraph 25 below) requires an announcement under Rule 17.1 to make clear the extent to which acceptances have been received in respect of shares which were the subject of an irrevocable commitment. The Code Committee believes that the occurrence of circumstances leading to an irrevocable commitment ceasing to be binding will usually be the subject of a public announcement and, in the

light of the terms of Note 7 on Rule 17.1, considers it unnecessary to introduce a specific Rule for the few occasions when this is not the case.

22.10 Another respondent suggested that the final sentence of the proposed Rule 8.4(b) might be better cast so as not to require express reference to be made to a breach of the terms of an irrevocable commitment but rather to require "an update of the position". The Code Committee has accepted this suggestion.

22.11 A third respondent believed that the obligation to make an announcement under the proposed new Rule 8.4(b) should rest with the offeror or offeree company (as appropriate) rather than with the giver of the irrevocable commitment or letter of intent. The Code Committee agrees that, as an alternative to the giver itself making an announcement, it would also be acceptable for that person to notify the offeror or offeree company (as appropriate), and also the Panel, of the updated situation and for the offeror or the offeree company (as the case may be) promptly to make an announcement of the relevant facts.

22.12 As indicated by the Code Committee in paragraph 3.4 of PCP 2005/1 (Dealings in Derivatives and Options), an offeror or offeree company may procure an irrevocable commitment or letter of intent from a person, other than a shareholder, who has de facto control of the shares in question, for example, a holder of a long contract for differences. In addition, if the reason for a person no longer being able to comply with the terms of an irrevocable commitment or letter of intent is because the shares to which it relates have been sold, that person will no longer be a shareholder in the relevant company. In order to reflect these points, the Code Committee has amended the references to a "shareholder" in the new Rule 8.4(b) and in paragraph (b) of the new Note 14 on Rule 8 (two references) so as to refer to a "person".

22.13 For the reason given in paragraph 22.5 above, the Code Committee has also substituted the word "obtained" with the word "procured" in the new Note 14 on Rule 8 (three references) and has substituted the word "obtaining" with the

word "procuring" in (i) the first paragraph of the new Note 14 on Rule 8, (ii) the new Note on Rule 4.4, and (iii) the amended Note 12 on Rule 8.

22.14 In the light of the above, the Code Committee has adopted the new Rule 8.4(b) and the new Note 14 on Rule 8 in slightly different forms from those set out in paragraphs 22.10 and 22.8 of the PCP, as follows:

(a) Rule 8.4(b):

"**(b) If a person who has given an irrevocable commitment or a letter of intent either becomes aware that he will not be able to comply with the terms of that commitment or letter or no longer intends to do so, that person must:**

(i) promptly announce an update of the position together with all relevant details; or

(ii) promptly notify the offeror or offeree company (as appropriate) and the Panel of the up-to-date position. Upon receipt of such a notification, the offeror or offeree company must promptly make an appropriate announcement of the information notified to it together with all relevant details."; and

(b) Note 14 on Rule 8:

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

(b) the identity of the person from whom the irrevocable commitment or letter of intent has been procured. For this purpose, the information which should be disclosed is that which would be required by Note 5(a) on Rule 8 if the person concerned were disclosing a dealing in relevant securities;

(c) in respect of an irrevocable commitment, the circumstances (if any) in which it will cease to be binding; and

(d) in the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer under Rule 2.5,

the value (and any other material terms) of the possible offer in respect of which the commitment or letter has been procured. (See Rule 2.4(c).)

No separate disclosure by an offeror is required under Rule 8.4(a) where the relevant information is included in an announcement made under Rule 2.5 which is released no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured.".

22.15 The Code Committee has adopted the new paragraph (c) of Note 6 on Rule 8 (and has renumbered the existing paragraph (c) as paragraph (d)) as proposed in paragraph 22.11 of the PCP. In addition, save for substituting the word "obtaining" with the word "procuring" as mentioned in paragraph 22.13 above, the Code Committee has adopted the new Note on Rule 4.4 as set out in paragraph 22.12 of the PCP.

(c) Note 2 on Rule 19.3

22.16 Paragraph 21.3 of PCP 2004/3 stated as follows:

"The Code Committee understands that the Panel interprets Note 2 on Rule 17.1 and Note 2 on Rule 19.3 to mean that an offeror or offeree company respectively is only permitted to make statements about the level of support it has obtained in favour of or against the offer if those statements have been verified to the satisfaction of the Panel. In practice, this means that, inter alia, the shareholders concerned must have confirmed their support in writing to the offeror or offeree company.".

22.17 Note 2 on Rule 19.3 provides as follows:

"*2. Statements of support*

The board of the offeree company must not make statements about the level of support from its shareholders unless their up-to-date intentions have been clearly stated to the offeree company or its advisers. The Panel will require any such statement to be verified to its satisfaction; this may include immediate confirmation being given directly to the Panel by the relevant shareholders.".

22.18 One respondent believed that confirmations of shareholder support to which a party to the offer might wish to refer in a "statement of support" should fall outside the scope of Rule 8.4 and of the other proposed new disclosure requirements relating to letters of intent. The Code Committee disagrees with this view.

22.19 In the light of the above, the Code Committee considers that the Panel's practice described in paragraph 21.3 of the PCP, and the treatment of confirmations of support under the Code, should be incorporated in Note 2 on Rule 19.3 as follows:

(a) by amending Note 2 so as to clarify that it applies to a statement of support made by an offeror as well as one made by the offeree company;

(b) by clarifying that Note 2 applies also to support given by persons other than shareholders, for example, persons who have de facto control of the shares in question (see paragraph 22.12 above);

(c) by codifying in Note 2 the Panel's practice, as described in paragraph 21.3 of the PCP, of requiring (i) that the persons concerned must have confirmed their support in writing to the offeror or offeree company, and (ii) that such written confirmations must be provided to the Panel; and

(d) by clarifying in Note 2 that such written confirmations will then be subject to the provisions of the Code which relate to letters of intent.

22.20 In addition, the Code Committee considers that Note 2 on Rule 19.3 should make clear that where an offeror discloses that it has obtained a letter of intent in an announcement of a firm intention to make an offer under Rule 2.5, there is no need for the letter of intent to be separately verified to the satisfaction of the Panel.

22.21 Accordingly, the Code Committee has amended Note 2 on Rule 19.3 as follows:

"*2. Statements of support*

An offeror or ~~The board of~~ the offeree company must not make statements about the level of support from ~~its~~ shareholders or other persons unless their up-to-date intentions have been clearly stated to the offeror or the offeree company (as appropriate) or ~~its~~ to their respective advisers. The Panel will require any such statement to be verified to its satisfaction.~~; this may include immediate confirmation being given directly to the Panel by the relevant shareholders.~~ This will normally include the shareholder or other person confirming its support in writing to the relevant party to the offer or its adviser and that confirmation being provided to the Panel. Such confirmation will then be treated as a letter of intent. The Panel will not require separate verification by an offeror where the information required by Note 14 on Rule 8 is included in an announcement made under Rule 2.5 which is released no later than 12 noon on the business day following the date on which the letter of intent is procured.".

23. Documents to be on display

Q.39 Do you agree with the proposed amendments to Rule 26?

23.1 Overall, subject to the objections raised in relation to letters of intent mentioned above, all respondents to this question were in favour of the proposed changes. Accordingly, the Code Committee has adopted the new Rule 26(o) as proposed in paragraph 23.5 of the PCP.

23.2 For the reason given in paragraph 22.5 above, the Code Committee has amended Rule 26(i) so that it applies only to irrevocable commitments and letters of intent which have been procured by the offeror or offeree company or any of their respective associates. Accordingly, the Code Committee has adopted Rule 26(i) as follows:

"**(i) any document evidencing an irrevocable commitment ~~to accept an offer~~ or a letter of intent which has been procured by the offeror or offeree company (as appropriate) or any of their respective associates;**".

24. Disclosure of irrevocable commitments and letters of intent in offer documents and offeree board circulars

Q.40 Do you agree that it should not be necessary for the shareholdings and dealings of shareholders who have given irrevocable commitments or letters of intent to accept or not to accept an offer to be disclosed in the offer document or offeree company circular and, accordingly, do you agree with the proposed deletion of paragraph (a)(iv) of Rule 24.3 and Note 5 on Rule 24.3 and with the consequential amendment to Rule 24.3(b)?

24.1 Two of the three respondents to this question agreed with the proposals. The third respondent believed that recent dealings by parties who have given irrevocable commitments or letters of intent should continue be disclosed, although the respondent believed that this could be limited to a period of three (rather than twelve) months.

24.2 The Code Committee has considered this view but believes that information as to dealings by persons who have given an irrevocable commitment or a letter of intent, but who are not acting in concert with a party to the offer, is not material information for a shareholder in the offeree company. Accordingly, as proposed in paragraph 24.2 of the PCP, the Code Committee has deleted Rule 24.3(a)(iv) and Note 5 on Rule 24.3 and has made the consequential amendment to the second sentence of Rule 24.3(b).

Q.41 Do you agree with the proposed amendments to Rules 24.2(d)(viii), 2.5(b)(iii)*(c)*, 25.6 and 27.1(a) and with the consequential deletion of Note 3 on Rule 2.5?

24.3 Overall, subject to the objections raised in relation to letters of intent mentioned above, all respondents to this question were in favour of the proposed changes. Accordingly, the Code Committee has:

(a) deleted Note 3 on Rule 2.5 (and renumbered the existing Notes 4 to 6) as proposed in paragraph 24.4 of the PCP; and

(b) adopted the amendments to Rule 27.1(a) as proposed in paragraph 24.6 of the PCP.

24.4 For the reason given in paragraph 22.5 above, the Code Committee has substituted the word "received" with the word "procured" in (i) the new Rule 24.2(d)(viii), (ii) the amended Rule 2.5(b)(iii)(*c*), and (iii) the new Rule 25.6(b). Save for this, the Code Committee has adopted the amendments to Rule 2.5(b)(iii)(*c*) as proposed in paragraph 24.4 of the PCP.

24.5 In addition, the Code Committee has amended the new Rule 24.2(d)(viii) and the new Rule 25.6(b) so as to clarify further that these Rules require details of the irrevocable commitments and letters of intent in question to be provided and not only details of the shareholdings to which they relate. The Code Committee has therefore adopted the new Rule 24.2(d)(viii) and the new Rule 25.6(b) as follows:

(a) Rule 24.2(d)(viii):

"**(viii) details of any irrevocable commitment or letter of intent which the offeror or any of its associates has procured in relation to shares in the offeree company (or, if appropriate, the offeror) (see Note 14 on Rule 8);**"; and

(b) Rule 25.6(b):

"**(b) details of any irrevocable commitment or letter of intent which the offeree company or any of its associates has procured in relation to shares in the offeree company (or, if appropriate, the offeror) (see Note 14 on Rule 8).**".

(The amendment to the heading of Rule 25.6 and the consequential changes to Rule 25.6 as a result of the introduction of Rule 25.6(b) have been adopted as proposed in paragraph 24.5 of the PCP.)

24.6 The Code Committee has also amended paragraph 4(l) of Appendix 1 so as also to refer to irrevocable commitments and letters of intent, as follows:

"**(l) Rule 25.6 (material contracts, irrevocable commitments and letters of intent);**".

25. Announcements of acceptance levels

Q.42 Do you agree with the proposed amendment to Note 7 on Rule 17.1?

All respondents to this question agreed with the proposed amendment. However, for the reason given in paragraph 22.5 above, the Code Committee has adopted Note 7 on Rule 17.1 in a slightly different form from that proposed in paragraph 25 of the PCP, as follows:

"*7. Irrevocable commitments, letters of intent and ~~P~~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 ~~and~~ 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.".

26. Other minor amendments

(a) No requirement for separate disclosure under Rule 8.4 if all relevant details are included in a Rule 2.5 announcement

Q.43 Do you agree that no separate disclosure should be required under Rule 8.4 where the relevant information relating to the irrevocable commitments and/or letters of intent is included in a Rule 2.5 announcement?

26.1 All respondents to this question were in favour of the proposed changes. Accordingly, the Code Committee has adopted the final paragraph of the new Note 14 on Rule 8 as set out in paragraph 22.14 above.

(b) Consequential amendment to Note 12 on Rule 8 in the light of Rule 8.4

Q.44 Do you agree with the proposed amendments to Note 12 on Rule 8?

26.2 All respondents to this question were in favour of the proposed amendments. Accordingly, save for substituting the word "obtaining" with the word "procuring" as mentioned in paragraph 22.13 above, the Code Committee has adopted the amendments to Note 12 on Rule 8 as set out in paragraph 26.2 of the PCP.

(c) Rule 4.3

26.3 In the light of the new definition of "irrevocable commitments and letters of intent", the Code Committee has amended the reference in Rule 4.3 to "an irrevocable commitment to accept or refrain from accepting an offer or contemplated offer" so as to refer to "an irrevocable commitment". Accordingly, the amended Rule 4.3 now reads as follows:

"**4.3 GATHERING OF IRREVOCABLE COMMITMENTS**

Any person proposing to contact a private individual or small corporate shareholder with a view to seeking an irrevocable commitment ~~to accept or refrain from accepting an offer or contemplated offer~~ must consult the Panel in advance.".

SECTION E

MISCELLANEOUS

27. Stock borrowing and lending

(a) Introduction

27.1 Five respondents made comments in relation to the proposals in paragraph 27 of the PCP regarding the treatment of stock borrowing and lending transactions. The respondents expressed widely divergent views. In summary, these were as follows:

- one respondent believed that the Code Committee should recognise the transfer of legal title involved in the "borrowing" and "lending" of securities and should reconsider its proposals accordingly;

- a further three respondents were supportive of the proposals but two of them considered that they did not go far enough, expressing concern that the ability of borrowers to vote borrowed securities could result in control of a company passing as a result of borrowings (rather than purchases); and

- the fifth respondent expressed concern at the proposed change of the Panel's treatment of securities borrowing and lending transactions from the current "neutral" treatment to the introduction of (i) a prohibition on such borrowing and lending activity by parties to the offer and persons associated with them, except with the consent of the Panel, and (ii) a requirement for persons not associated with the parties to the offer to disclose such transactions in certain circumstances.

27.2 In relation to Question 46 of the PCP, two respondents expressed concerns about the practical application of the requirement in the latter part of the proposed new Rule 8.5 for the Panel to be consulted in circumstances where a

person who is not associated with a party to the offer wishes to borrow securities "for a reason connected with an offer".

(b) Stock borrowing and lending by persons other than offerors, offeree companies and certain persons associated with them

Q.45 Do you agree that stock borrowing and lending should not normally be regarded as a dealing and that borrowed stock should be regarded as controlled by the lender rather than the borrower? If so, do you agree with the proposed amendment to Note 2 on Rule 8 and with the first part of proposed new Rule 8.5?

Q.46 Do you agree that a person to whom Rule 8.3 applies (or to whom Rule 8.3 would apply if borrowing was regarded as a dealing) should consult the Panel before borrowing relevant securities for a reason connected with an offer and, if so, do you agree with the proposed addition to the proposed new Rule 8.5?

27.3 It was proposed in paragraph 27 of the PCP that the Code should set out the Panel's current practice of not regarding the borrowing or lending of relevant securities for reasons unconnected with an offer as dealings requiring disclosure. The proposed Rule 8.5 stated as follows:

"**8.5 STOCK BORROWING AND LENDING**

Relevant securities which have been lent by one person to another will normally be regarded as controlled by the lender rather than the borrower and will not normally be regarded as owned by the borrower for the purpose of Rule 8. Similarly, the borrowing or lending of relevant securities will not normally be regarded as a dealing in relevant securities. However, if a person to whom Rule 8.3 applies (or to whom Rule 8.3 would apply if borrowing was regarded as a dealing) wishes to borrow relevant securities during an offer period for a reason connected with an offer, he should consult the Panel before entering into such a transaction. In such circumstances, the Panel will normally require the transaction to be disclosed by that person as if it were a dealing in relevant securities. (See also Rule 4.6.)".

27.4 In making its proposals, two factors were taken into particular account by the Code Committee. First, that a borrowing/lending transaction in an offer situation is, in effect, a transaction with a "neutral" effect, assuming that any borrowed/lent securities in the capital of the offeree company or the offeror (as appropriate) will be recalled by, and redelivered to, the lender prior to any offer-related shareholder meeting or critical offer closing date (see paragraph 27.2 of the PCP). Secondly, that the treatment of borrowing and lending transactions as dealings in relevant securities could lead to considerable costs having to be incurred, particularly by fund management organisations, and to voluminous disclosures which would be likely to be immaterial in the context of an offer (see paragraph 27.7 of the PCP).

27.5 Securities borrowing and lending is a complex area and this was reflected in the divergence of the responses to the PCP. As mentioned in paragraph 27.2 of the PCP, a borrowing/lending transaction on current standard market terms involves the transfer of title in the borrowed/lent securities and, accordingly, the transfer from the lender to the borrower of any voting rights attached to those securities. To a certain extent, therefore, the use by the market of terminology such as "borrowing" and "lending" in this context can be misleading.

27.6 The Code Committee acknowledges the concerns of certain respondents that the Panel's current practice does not recognise these transfers of title. In addition, the Code Committee has been told that lenders do not invariably recall lent securities from borrowers prior to offer-related shareholder meetings or critical offer closing dates and that even when they do, on occasion, borrowers fail to redeliver recalled securities to lenders in good time. In certain cases, therefore, it may not be appropriate for the securities in question to be regarded as continuing to be controlled by the lender. The Code Committee also recognises the potential difficulty for the Panel in determining whether a proposed borrowing transaction is "for a reason connected with an offer". Further, the Code Committee has been unable to quantify the extent to which the volume of disclosures would be likely to

increase were the Code to treat borrowing and lending transactions as dealings for the purpose of Rule 8.

27.7 In the light of the above, the Code Committee has concluded that it should reconsider the proposals set out in section (a) of paragraph 27 of the PCP in relation to stock borrowing and lending by persons other than offerors, offeree companies and certain persons associated with them. The Code Committee understands that various groups of market participants are reviewing their policies in relation to securities borrowing and lending and the Code Committee considers that it would be appropriate to await the outcome of those reviews before reaching a final conclusion as to whether or not the Code should require the disclosure of borrowing and lending transactions. The Code Committee has therefore concluded that, in the meantime, it will not proceed with the adoption of the new Rule 8.5 proposed in paragraphs 27.5 and 27.10 of the PCP or with the amendment to Note 2 on Rule 8 proposed in paragraph 27.5 of the PCP. The Code Committee therefore considers that the practices currently applied by the Panel and described in paragraphs 27.1 to 27.4 of PCP 2004/3 should continue for the time being.

(c) Borrowing and lending by offerors, offeree companies and certain persons associated with them

Q.47 Do you agree that the persons listed in proposed Rule 4.6 should be prevented from entering into or unwinding stock borrowing or lending transactions in respect of relevant securities and with the proposed restriction in the new Rule 4.6 and its Notes?

27.8 Two of the three respondents to this question were supportive of the proposed restrictions while the third respondent was opposed to them.

27.9 The latter respondent believed that the proposed restriction on borrowing and lending transactions by offerors, the offeree company and persons associated with them was excessively restrictive and that seeking the Panel's consent to such transactions would be impracticable. The respondent believed that a

requirement to disclose securities borrowing and lending transactions would be more appropriate. The Code Committee has considered this view but continues to believe that there is a risk of potential abuse attached to borrowing and lending transactions by parties to an offer and certain persons associated with them. The Code Committee considers that the restrictions proposed to be introduced by way of Rule 4.6, pursuant to which borrowing and lending transactions by such persons would be subject to the Panel's consent, but not prohibited, represents a balanced and proportionate response to that risk.

27.10 The same respondent suggested that the references to persons acting in concert with the offeror and with the directors of the offeree company in paragraphs (a) and (b) of Rule 4.6 should be deleted since some concert party members fell within other paragraphs of the Rule. The respondent believed that any remaining concert party members should be dealt with in a separate paragraph (f) of the Rule. The Code Committee accepts this suggestion.

27.11 In addition, the Code Committee has decided to amend the reference in paragraph (d) of the proposed Rule 4.6 to a "financial or professional adviser" to certain persons so as to refer simply to a "connected adviser" (see paragraph 15.7 above). The Code Committee has also substituted the word "stock" with the word "securities" in (i) the heading to Rule 4.6, (ii) the first paragraph of Rule 4.6, (iii) Notes 1 (two references), 3 and 4 on Rule 4.6, (iv) paragraphs (a) and (b) of Note 1 on Rule 7.2 (see paragraph 2.10 above), and (v) Note 5(a) on Rule 8.

27.12 Accordingly, the Code Committee has adopted the new Rule 4.6 in a slightly different form from that proposed in paragraph 27.12 of the PCP, as follows:

"**4.6 RESTRICTION ON SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND CERTAIN OTHER PARTIES**

During the offer period, none of the following persons may, except with the consent of the Panel, enter into or take action to unwind a securities borrowing or lending transaction in respect of relevant securities:

(a) the offeror;

(b) the offeree company;

(c) a company which is an associate of the offeror or the offeree company by virtue of paragraph (1) of the definition of associate;

(d) a connected adviser and persons controlling#, controlled by or under the same control as any such adviser (except for an exempt principal trader or an exempt fund manager);

(e) a pension fund of the offeror or the offeree company or of a company which is an associate of the offeror or the offeree company by virtue of paragraph (1) of the definition of associate; and

(f) any other person acting in concert with the offeror or with the directors of the offeree company.

#See Note at end of Definitions Section.".

27.13 For clarity, the Code Committee has also adopted Note 1 on Rule 4.6 in a slightly different form from that proposed in paragraph 27.12 of the PCP, as follows:

"*1. Return of borrowed relevant securities*

The redelivery by a borrower of relevant securities (or equivalent securities) which have been recalled, or the accepting by a lender of the redelivery of relevant securities (or equivalent securities) which have not been recalled, in each case in accordance with an existing securities borrowing or lending agreement, will not normally be treated as taking action to unwind a securities borrowing or lending transaction."

27.14 The Code Committee has adopted Note 2 on Rule 4.6 as proposed in paragraph 27.12 of the PCP.

27.15 One respondent believed that lending activity which was under the discretionary control of an independent third party should be exempt from Rule 4.6. The Code Committee notes that, pursuant to Note 2 on Rule 4.6, Rule 4.6(e) 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 the new Note 6 on the definition of "acting in concert" (see

paragraph 17.5 above). In addition, the Code Committee recognises that securities lending is often carried out by custodians or lending agents, rather than by shareholders or fund management organisations themselves. However, such lending activity is carried out on an agency basis and subject to the terms of the mandate granted by the owner or controller of the shares being lent. The Code Committee does not therefore consider that lending activity by such third party lending agents should be exempted from the terms of Rule 4.6.

27.16 The same respondent believed that a distinction should be drawn between entering into a new securities borrowing or lending transaction and unwinding an existing one and was concerned that a lender should not be prevented from taking action to unwind a transaction in order to exercise the rights attached to the securities which it has lent. The Code Committee recognises this concern, which is most likely to be applicable, in particular, to non-exempt connected fund managers and other funds which are acting in concert with the offeror or with the directors of the offeree company (for example, pension funds which do not fall within the new Note 2 on Rule 4.6). The Code Committee continues to consider that the persons identified in Rule 4.6 should obtain the Panel's consent before taking action to unwind an existing securities borrowing or lending transaction but believes that the Panel would be unlikely to deny that consent so as to prevent such a fund from taking action to unwind a pre-existing lending transaction.

27.17 Another respondent believed that it should be possible to obtain a single consent to borrow or lend relevant securities of the offeror or the offeree company in the course of the offer period. The Code Committee acknowledges this and, in relation to lending (but not borrowing) transactions, it agrees that once the Panel has been persuaded that the purpose of the proposed lender is not manipulative, it might be considered to be onerous to require that person to disclose each lending transaction separately. The Code Committee has therefore decided to introduce a new second sentence to Note 3 on Rule 4.6 in order to give the Panel the flexibility instead to require a lender to give a single public notice of its intention. The possibility of such a notice

being given has also been reflected in the heading of the Note. The Code Committee has otherwise adopted the new Note 3 on Rule 4.6 as proposed in paragraph 27.13 of the PCP. Accordingly, the new Note 3 on Rule 4.6 now reads as follows:

"*3. Disclosure or notice where consent is given*

Where the Panel consents to a person to whom Rule 4.6 applies entering into or taking action to unwind a securities borrowing or lending transaction in respect of relevant securities, the Panel will normally require the transaction to be disclosed by that person as if it were a dealing in the relevant securities. Where a person wishes to enter into or take action to unwind more than one lending transaction in respect of relevant securities, the Panel may instead require that person to give public notice that he might do so.".

27.18 Save as mentioned in paragraph 27.11 above, the Code Committee has adopted Note 4 on Rule 4.6 as proposed in paragraph 27.14 of the PCP.

(d) Note 5(a) on Rule 8

Q.48 Do you agree with the amendment to Note 5(a) on Rule 8 in respect of stock borrowing and lending transactions?

27.19 In paragraph 27.15 of the PCP, it was proposed to introduce two new paragraphs to Note 5(a) on Rule 8 as follows:

"*Where a disclosure of a stock borrowing or lending transaction is made under Rule 4.6 or Rule 8.5, all relevant details should be given.*

Where offerors, offeree companies or persons acting in concert with the offeror or the directors of the offeree company disclose a dealing in relevant securities and have previously borrowed relevant securities from, or lent such securities to, another person, all relevant details should be given.".

27.20 Overall, respondents to Question 48 were in favour of the proposed changes. However, one respondent queried the meaning of the words "all relevant details should be given" at the end of each of the two proposed new paragraphs.

27.21 As regards the first of the proposed new paragraphs, the Code Committee confirms that, in accordance with Note 3 on Rule 4.6, where disclosure of a borrowing or lending transaction in respect of relevant securities is made pursuant to that Note, the transaction should be disclosed as if it were a dealing in the relevant securities. The relevant details to be given are therefore those required by the applicable provisions of Note 5(a) on Rule 8. The Code Committee has, however, deleted the reference to Rule 8.5 in the first of the proposed new paragraphs (since, as explained in paragraph 27.7 above, the proposed new Rule 8.5 has not been adopted) and has clarified that any disclosure will be made "pursuant to Note 3 on Rule 4.6" (rather than "under Rule 4.6"). Accordingly, the Code Committee has adopted the first of the proposed new paragraphs of Note 5(a) on Rule 8 set out in paragraph 27.15 of the PCP in a slightly different form from that proposed, as follows:

"*Where a disclosure of a securities borrowing or lending transaction is made pursuant to Note 3 on Rule 4.6, all relevant details should be given.*".

27.22 As regards the second of the proposed new paragraphs, however, where a person to whom that paragraph applies discloses a dealing and has previously borrowed or lent relevant securities, the Code Committee now considers that it should not normally be necessary to give all the details required by the relevant provisions of Note 5(a) on Rule 8 in relation to such previous borrowing or lending transactions. The Code Committee considers that the details which should be disclosed should be agreed by the Panel on a case by case basis. The Code Committee also considers that the paragraph should apply to all persons to whom Rule 4.6 applies. Accordingly, the Code Committee has adopted the second of the proposed new paragraphs of Note 5(a) on Rule 8 set out in paragraph 27.15 of the PCP in a slightly different form from that proposed, as follows:

"*Where a person to whom Rule 4.6 applies discloses a dealing in relevant securities and has previously borrowed relevant securities from, or lent such securities to, another person, the disclosure must be made in a form agreed by the Panel.*".

(e) Treatment of borrowed or lent stock in the context of a Rule 10 acceptance condition and in the context of Rule 9

Q.49 Do you agree with the proposed new Note 8 on Rule 10?

Q.50 Do you agree with the proposed new Note 18 on Rule 9?

27.23 It was proposed in, respectively, sections (d) and (e) of paragraph 27 of the PCP that a new Note 8 on Rule 10 and a new Note 18 on Rule 9 be introduced as follows:

(a) Note 8 on Rule 10:

"*8. Borrowed shares*

Except with the consent of the Panel, shares which have been borrowed by the offeror may not be counted towards fulfilling an acceptance condition."; and

(b) Note 18 on Rule 9:

"*18. Borrowed or lent stock*

If a person has borrowed or lent shares, the voting rights in respect of such shares will be treated as being held by that person for the purpose of this Rule. A person must consult the Panel before acquiring or borrowing shares which, when taken together with shares already held, borrowed or lent by him or any person acting in concert with him, would result in this Rule being triggered. In such circumstances, the Panel will then decide, inter alia, how the borrowed or lent shares should be treated for the purpose of the acceptance condition.".

27.24 Three of the four respondents to Questions 49 and 50 were in favour of the proposed new Notes. The fourth respondent believed that not treating securities borrowing and lending transactions as dealings led to this area being more complicated than it need be.

27.25 In relation to Note 8 on Rule 10, two respondents believed that Note 8 ought expressly to state that shares in the offeree company which had been lent by the offeror could not be counted towards the offeror's shareholding for the

purpose of a Rule 10 acceptance condition. As indicated in paragraph 27.21 of the PCP and paragraph 27.5 above, the title in such lent shares will have transferred to the borrower and the offeror will no longer be registered as the owner of those shares. Therefore, as indicated in paragraph 27.19 of the PCP, the lent shares will only be counted towards the fulfilment of the offeror's acceptance condition if the borrower decides to accept the offer. The Code Committee believes this to be self-evident and considers there to be no need expressly to state this in the Code. Accordingly, the Code Committee has adopted the new Note 8 on Rule 10 as proposed in paragraph 27.20 of the PCP.

27.26 In relation to Note 18 on Rule 9.1, one respondent suggested that Note 18 should be redrafted in order to clarify that only the original lender and the end borrower should be treated as the holders of the voting rights attaching to the lent or borrowed shares. The Code Committee accepts this suggestion and confirms that Note 18 does not apply to a person who has borrowed shares from the original lender but who has subsequently on-lent or sold the shares to another borrower or purchaser. Accordingly, the Code Committee has adopted the new Note 18 on Rule 9.1 in a slightly different form from that proposed in paragraph 27.24 of the PCP, as follows:

"*18. Borrowed or lent shares*

For the purpose of this Rule, if a person has borrowed or lent shares he will be treated as holding the voting rights in respect of such shares save for any borrowed shares which he has either on-lent or sold. A person must consult the Panel before acquiring or borrowing shares which, when taken together with shares already held, borrowed or lent by him or any person acting in concert with him, would result in this Rule being triggered. In such circumstances, the Panel will then decide, inter alia, how the borrowed or lent shares should be treated for the purpose of the acceptance condition.".

27.27 The Code Committee notes that the new Note 18 provides that the voting rights in respect of any borrowed or lent shares will be counted towards a person's percentage holding for the purpose of Rule 9.1 (and, therefore, Rule 5.1). Therefore, it will not be possible, as two respondents were concerned that it might be (see paragraph 27.1 above), for a person to obtain

"Code control" of a company by borrowing shares without incurring a mandatory bid obligation under Rule 9 (or to avoid incurring a mandatory bid obligation simply because part of his holding has been lent out).

28. Derivatives referenced to baskets or indices of securities

Q.51 Do you agree with the policy in respect of derivatives referenced to baskets or indices of securities and the proposed amendments to the Note on the definition of "derivative"?

All respondents to this question were in favour of the proposals. Accordingly, the Code Committee has adopted the amendments to the Note on the definition of "derivative" as proposed in paragraph 28.8 of the PCP.

29. The application of Rule 4.2 to dealings in options and derivatives

Q.52 Do you agree with the proposed amendment of Rule 4.2 to refer to transactions which might result in securities being sold?

All respondents to this question were in favour of the proposal. Accordingly, the Code Committee has adopted the new sentence at the end of Rule 4.2(a) as proposed in paragraph 29.4 of the PCP.

30. Disclosure of dealings in offeree board circulars

Q.53 Do you agree with the proposed amendments to the disclosure of dealings in relevant securities in offeree board circulars and the consequential amendments referred to above?

30.1 Overall, respondents were in favour of the proposed changes.

30.2 As indicated in paragraph 15.7 above, the Code Committee has decided to amend the reference to "an adviser" in the proposed new paragraph (vi) of Rule 25.3(a) so as to refer to a "connected adviser". Accordingly, the Code

Committee has adopted the new paragraph (vi) of Rule 25.3(a) in a slightly different form from that proposed in paragraph 30.7 the PCP, as follows:

"**(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);**

…

#See Note at end of Definitions Section.".

30.3 Save as indicated in paragraph 30.2 above, the Code Committee has adopted the amendments to Rules 25.3(a), (b) and (c) as proposed in paragraph 30.7 of the PCP.

30.4 In addition, the Code Committee has:

(a) adopted the new Note 2 on Rule 25.3 as proposed in paragraph 30.7 of the PCP; and

(b) adopted the consequential amendments to Rule 37.4(b) and to paragraph 4(i) of Appendix 1 as proposed in paragraph 30.8 of the PCP.

31. Acquisitions from a single shareholder

Q.54 Do you agree with the proposed amendments to Note 1 on Rule 5.2 and the Note on Rule 2 of the SARs?

31.1 Overall, respondents were in favour of the proposed changes. Accordingly, the Code Committee has adopted the amendments to Note 1 on Rule 5.2 as proposed in paragraph 31.6(a) of the PCP.

31.2 The Code Committee has also adopted the amendments to the Note on Rule 2 of the SARs as proposed in paragraph 31.6(b) of the PCP. However, the Code Committee has decided that this Note should be adopted (in a slightly amended form) as a new Note on the definition of "single shareholder" in the Definitions Section of the SARs, rather than as the Note on Rule 2 of the SARs.

32. Clarification of details to be disclosed pursuant to Rule 5.4

Q.55 Do you agree with the inclusion of the Note on Rule 5.4?

All respondents to this question agreed with the proposal. Accordingly, the Code Committee has adopted the new Note on Rule 5.4 as proposed in paragraph 32.2 of the PCP.

33. Purchases of securities by whitewash offerors

Q.56 Do you agree with the proposed amendments to paragraph 7 of Appendix 1 and to Note 11 on Rule 9.1?

Overall, respondents were in favour of the proposed changes. Accordingly, the Code Committee has adopted the amendments to paragraph 7 of Appendix 1 and to Note 11 on Rule 9.1 as proposed in paragraphs 33.6 and 33.7 of the PCP respectively.

34. Consequential amendments arising as a result of changes to the Disclosure Forms

Q.57 Do you agree with the proposed changes to the Disclosure Forms set out in Appendix B?

Q.58 Do you agree with the proposed changes to the Code that arise as a result of the changes to the Disclosure Forms?

34.1 All respondents to Questions 57 and 58 agreed with the proposed changes to the disclosure forms and the proposed changes to the Code that arise as a result of those changes. Accordingly, the Code Committee has adopted the amendments to (i) Note 5(a) on Rule 8, (ii) Note 5(b) on Rule 8, (iii) Note 1 on Rule 38.5, and (iv) Note 4 on SAR 3 and Note 4 on SAR 5 as proposed in paragraph 34.2 of the PCP.

34.2 As mentioned in paragraphs 6.4, 6.6 and 6.7 above, the Code Committee has decided that certain proposed changes to Rule 8.3(a) and to Notes 5(a) and 7 on Rule 8 relating to "composite disclosure" will not be adopted at this stage. Forms 8.1, 8.1(b)(ii) and 8.3 set out in Appendix B of the PCP have therefore been amended by the deletion of the section of each Form headed "Holdings of other relevant securities of the company to which this disclosure relates". Form 8.3 has also been amended as described in paragraph 19.7 above.

34.3 The new Disclosure Forms are set out in Appendix B of this Response Statement and are now available on the Panel's website (www.thetakeoverpanel.org.uk). As proposed in paragraph 34.1 of the PCP, the existing disclosure forms, which, until now, have been set out at the end of the Code, will be removed from the Code with effect from 25 April 2005. As indicated in the Introduction above, the new Disclosure Forms should be used with effect from 25 April, the date on which the provisions which have been introduced or amended as a result of this consultation exercise will take effect. In the case of doubt, please contact the Monitoring Section of the Panel on 020 7638 0129.

34.4 In addition, the Financial Services Authority has agreed to amend the headline categories for use with regulatory announcements so as to conform to the new Disclosure Forms. The new headline categories should be used with effect from 25 April.

APPENDIX A

Amendments to the Code and the SARs

PART A - THE CODE

DEFINITIONS

Acting in concert

…

(3) a company with any of its pension funds and the pension funds of any company covered in (1);

…

(5) a connected adviser with its client and, if its client is acting in concert with an offeror or with the directors of the offeree company, with that offeror or with those directors respectively, in each case in respect of the shareholdings of that adviser and persons controlling#, controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or an exempt principal trader); and

…

#See Note at end of Definitions Section.

NOTES ON ACTING IN CONCERT

…

5. Consortium offers

Investors in a consortium (eg through a vehicle company formed for the purpose of making an offer) will normally be treated as acting in concert with the offeror. Where such an investor is part of a larger organisation, the Panel should be consulted to establish which other parts of the organisation will also be regarded as acting in concert.

Where the investment in the consortium is, or is likely to be, 10% or less of the equity share capital (or other similar securities) of the offeror, the Panel will normally be prepared to waive the acting in concert presumption in relation to other parts of the organisation, including any connected fund manager or principal trader, provided it is satisfied as to the independence of those other parts from the investor. Where the investment is, or is likely to be, more than

10% but less than 50%, the Panel may be prepared to waive the acting in concert presumption in relation to other parts of the organisation depending on the circumstances of the case. (See also Connected fund managers and principal traders in the Definitions Section and Rule 7.2.)

6. Pension funds

The presumption that a company is acting in concert with any of its pension funds will normally be rebutted if it can be demonstrated to the Panel's satisfaction that the assets of the pension fund are managed under an agreement or arrangement with an independent third party which gives such third party absolute discretion regarding dealing, voting and offer acceptance decisions relating to the fund. Where, however, the discretion given is not absolute, the presumption will be capable of being rebutted, provided that the pension fund trustees do not exercise any powers they have retained to intervene in such decisions.

7. Sub-contracted fund managers

Where a fund manager sub-contracts discretionary management of funds to another independent fund manager, the Panel will normally regard those funds as controlled by the latter if the discretion regarding dealing, voting and offer acceptance decisions relating to the funds, originally granted to the fund manager, has been transferred to the sub-contracted fund manager and presumption (4) will apply to the sub-contracted fund manager in respect of those funds. This approach assumes that the sub-contracted fund manager does not take instructions from the beneficial owner or from the originally contracted manager on the dealings in question and that fund management arrangements are not established or used to avoid disclosure.

Associate

…

Without prejudice to the generality of the foregoing, the term associate will normally include the following:-

…

(2) connected advisers and persons controlling#, controlled by or under the same control as such connected advisers;

…

[Previous paragraph (6) has been deleted.]

(6) an employee benefit trust of an offeror, the offeree company or any company covered in (1); and

…

#See Note at end of Definitions Section.

…

Connected advisers

Connected advisers normally includes only the following:

(1) in relation to the offeror or the offeree company:

(a) an organisation which is advising that party in relation to the offer; and

(b) a corporate broker to that party;

(2) in relation to a person who is acting in concert with the offeror or with the directors of the offeree company, an organisation which is advising that person either:

(a) in relation to the offer; or

(b) in relation to the matter which is the reason for that person being a member of the relevant concert party; and

(3) in relation to a person who is an associate of the offeror or of the offeree company by virtue of paragraph (1) of the definition of associate, an organisation which is advising that person in relation to the offer.

Such references do not normally include a corporate broker which is unable to act in connection with the offer because of a conflict of interest.

Connected fund managers and principal traders

A fund manager or principal trader will normally be connected with an offeror or the offeree company, as the case may be, if the fund manager or principal trader is controlled# by, controls or is under the same control as:-

(1) an offeror or any person acting in concert with it (for example as a result of being an investor in a consortium (see also Note 5 on the definition of acting in concert));

(2) the offeree company or any person acting in concert with the directors of the offeree company; or

(3) any connected adviser to any person covered in (1) or (2).

#See Note at end of Definitions Section.

…

Derivative

…

NOTE ON DEFINITION OF DERIVATIVE

The term "derivative" is intentionally widely defined to encompass all types of derivative transactions. However, it is not the intention of the Code to restrict dealings in, or require disclosure of, derivatives which are not connected with an offer or potential offer. The Panel will not normally regard a derivative which is referenced to a basket or index of securities, including relevant securities, as connected with an offer or potential offer if at the time of dealing the relevant securities in the basket or index represent less than 1% of the class in issue and, in addition, less than 20% of the value of the securities in the basket or index. In the case of any doubt, the Panel should be consulted.

…

Exempt fund manager

…

Exempt principal trader

An exempt principal trader is a principal trader who is recognised by the Panel as an exempt principal trader for the purposes of the Code.

NOTES ON EXEMPT FUND MANAGER AND EXEMPT PRINCIPAL TRADER

…

2. When a principal trader or fund manager is connected with the offeror or offeree company, exempt status is not relevant unless the sole reason for the connection is that the principal trader or fund manager is controlled# by, controls or is under the same control as a connected adviser to:

(1) the offeror;

(2) the offeree company; or

(3) a person acting in concert with the offeror (for example as a result of being an investor in a consortium) or with the directors of the offeree company.

References in the Code to exempt principal traders or exempt fund managers should be construed accordingly. (See also Rule 7.2.)

#See Note at end of Definitions Section.

3. The effect of a principal trader or fund manager having exempt status is that presumption (5) of the definition of acting in concert will not apply. However, the principal trader or fund manager will still be regarded as connected with the offeror or offeree company, as appropriate. Connected principal traders, but not connected exempt fund managers, must comply with Rule 38.

4. In appropriate cases, a fund manager based overseas may be granted special exempt status subject to its satisfying certain conditions. References in the Code to exempt fund managers (with the exception of those in Rule 8.1(b)) include such special exempt fund managers, subject always to the conditions on which such special exempt status is granted in any particular case.

5. In appropriate cases, a trading entity may be granted exempt status on an ad hoc basis subject to the satisfaction of certain conditions. References in the Code to exempt principal traders include persons granted such ad hoc exempt status, for so long as the grant of such exempt status remains valid and subject always to the conditions on which such ad hoc exempt status is granted in any particular case.

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 an offer and also irrevocable commitments and letters of intent to vote in favour of or against a resolution of an offeror or the offeree company in the context of the offer.

...

Principal trader

A principal trader is a person who:

(1) is registered as a market-maker with the Stock Exchange, or is accepted by the Panel as a market-maker; or

(2) is a Stock Exchange member firm dealing as principal in order book securities.

…

Rights over shares

Rights over shares include any rights acquired by a person by virtue of an agreement to purchase shares or an option to acquire shares or an irrevocable commitment to accept an offer to be made by him or an agreement to acquire voting rights or general control of them. A futures contract or covered warrant for which exercise includes the possibility of delivery of the underlying securities is treated as an option.

…

NOTE ON DEFINITIONS

The normal test for whether a person is controlled by, controls or is under the same control as another person will be by reference to the definition of control. There may be other circumstances which the Panel will regard as giving rise to such a relationship (eg where a majority of the equity share capital is owned by another person who does not have a majority of the voting rights); in cases of doubt, the Panel should be consulted.

[Previous Note 2 at the end of the Definitions Section has been deleted.]

Rule 2.4

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

(a) Except in the case of a mandatory offer under Rule 9, until a firm intention to make an offer has been notified, a brief announcement that talks are taking place (there is no requirement to name the potential offeror in such an announcement) or that a potential offeror is considering making an offer will normally satisfy the obligations under this Rule. Except with the consent of the Panel, such an announcement should also include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).

…

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:-

…

(iii) details of any existing holding in the offeree company:

…

(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; and**

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

…

(viii) a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).

…

[Previous Note 3 on Rule 2.5 has been deleted. Previous Notes 4, 5 and 6 have been renumbered as Notes 3, 4 and 5.]

Rule 2.6

2.6 OBLIGATION ON THE OFFEREE COMPANY TO CIRCULATE ANNOUNCEMENTS

Promptly after the commencement of an offer period, a copy of the relevant announcement, or a circular summarising the terms and conditions of the offer, must be sent by the offeree company to its shareholders and to the Panel. Where necessary the board should explain the implications of the announcement. Any circular published under this Rule should also include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).

Rule 3.3

3.3 DISQUALIFIED ADVISERS

The Panel will not regard as an appropriate person to give independent advice a person who is in the same group as the financial or other professional adviser (including a corporate broker) to an offeror or who has a significant interest in or financial connection with either an offeror

or the offeree company of such a kind as to create a conflict of interest (see also Appendix 3).

Rule 4.2

4.2 RESTRICTION ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES

(a) During an offer period, the offeror and persons acting in concert with it must not sell any securities in the offeree company except with the prior consent of the Panel and following 24 hours public notice that such sales might be made. The Panel will not give consent for sales where a mandatory offer under Rule 9 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it may make further purchases and only in exceptional circumstances will the Panel permit the offer to be revised. The Panel should be consulted whenever the offeror or a person acting in concert with it proposes to enter into or close out any type of transaction which may result in securities in the offeree company being sold during the offer period either by that party or by the counterparty to the transaction.

(b) During an offer period, the offeror and persons acting in concert with it must not purchase any securities in the offeree company through any anonymous order book system, or through any other means, unless, in either case, it can be established that the seller is not an exempt principal trader connected with the offeror.

In the case of dealings through an inter-dealer broker or other similar intermediary, "seller" includes the person who has transferred the securities to the intermediary as well as the intermediary itself.

(See also Rule 38.2.)

NOTES ON RULES 4.1 and 4.2

…

6. Discretionary fund managers and principal traders

Sales of securities of the offeree company by non-exempt discretionary fund managers and principal traders which are connected with the offeror will be treated in accordance with Rule 7.2.

[Previous Note 7 on Rules 4.1 and 4.2 has been deleted.]

Rule 4.3

4.3 GATHERING OF IRREVOCABLE COMMITMENTS

Any person proposing to contact a private individual or small corporate shareholder with a view to seeking an irrevocable commitment must consult the Panel in advance.

Rule 4.4

4.4 DEALINGS IN OFFEREE SECURITIES BY CERTAIN OFFEREE COMPANY ASSOCIATES

During the offer period, except for exempt principal traders and exempt fund managers, no financial adviser or corporate broker (or any person controlling, controlled by or under the same control as any such adviser or corporate broker) to an offeree company (or any of its parents, subsidiaries or fellow subsidiaries, or their associated companies or companies of which such companies are associated companies) shall, except with the consent of the Panel:—

…

NOTE ON RULE 4.4

Irrevocable commitments and letters of intent

Rule 4.4(iii) does not prevent an adviser to an offeree company from procuring irrevocable commitments or letters of intent not to accept an offer.

Rule 4.6

4.6 RESTRICTION ON SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND CERTAIN OTHER PARTIES

During the offer period, none of the following persons may, except with the consent of the Panel, enter into or take action to unwind a securities borrowing or lending transaction in respect of relevant securities:

(a) the offeror;

(b) the offeree company;

(c) a company which is an associate of the offeror or the offeree company by virtue of paragraph (1) of the definition of associate;

(d) a connected adviser and persons controlling#, controlled by or under the same control as any such adviser (except for an exempt principal trader or an exempt fund manager);

(e) a pension fund of the offeror or the offeree company or of a company which is an associate of the offeror or the offeree company by virtue of paragraph (1) of the definition of associate; and

(f) any other person acting in concert with the offeror or with the directors of the offeree company.

#See Note at end of Definitions Section.

NOTES ON RULE 4.6

1. Return of borrowed relevant securities

The redelivery by a borrower of relevant securities (or equivalent securities) which have been recalled, or the accepting by a lender of the redelivery of relevant securities (or equivalent securities) which have not been recalled, in each case in accordance with an existing securities borrowing or lending agreement, will not normally be treated as taking action to unwind a securities borrowing or lending transaction.

2. Pension funds

Rule 4.6(e) 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.

3. Disclosure or notice where consent is given

Where the Panel consents to a person to whom Rule 4.6 applies entering into or taking action to unwind a securities borrowing or lending transaction in respect of relevant securities, the Panel will normally require the transaction to be disclosed by that person as if it were a dealing in the relevant securities. Where a person wishes to enter into or take action to unwind more than one lending transaction in respect of relevant securities, the Panel may instead require that person to give public notice that he might do so.

4. Discretionary fund managers and principal traders

Securities borrowing or lending transactions by non-exempt discretionary fund managers and principal traders which are subject to Rule 4.6(d) will be treated in accordance with Rule 7.2.

Rule 5.1

5.1 RESTRICTIONS

…

NOTES ON RULE 5.1

…

8. Discretionary fund managers and principal traders

Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 7.2.

Rule 5.2

5.2 EXCEPTIONS TO RESTRICTIONS

…

NOTES ON RULE 5.2

1. Single shareholder

For the purpose of Rule 5.2(a), a number of shareholders wishing to dispose of their shares or rights over their shares will be regarded as a single shareholder only if they are all members of the same family or of a group of companies which is regarded as one for disclosure purposes under Section 203(2) to (4) of the Companies Act 1985. A principal trader or a fund manager managing investment accounts on behalf of a number of underlying clients (whether or not on a discretionary basis) will not normally be considered to be a single shareholder for the purpose of this Rule. The Panel should be consulted in cases of doubt.

…

Rule 5.4

5.4 ACQUISITIONS FROM A SINGLE SHAREHOLDER - DISCLOSURE

…

NOTE ON RULE 5.4

Disclosure of the identity of the person dealing

Any announcement must comply with the requirements of Note 5(a) on Rule 8 regarding the disclosure of the identity of the person dealing and, if different, the owner or controller.

Rule 6

6.1 PURCHASES BEFORE A RULE 2.5 ANNOUNCEMENT

…

6.2 PURCHASES AFTER A RULE 2.5 ANNOUNCEMENT

…

NOTES ON RULE 6

…

8. Discretionary fund managers and principal traders

Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 7.2.

Rule 7.2

[Previous Rule 7.2 and the Notes thereon have been deleted in their entirety.]

7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS

NB Rule 7.2 and the Notes thereon address the position of connected fund managers and principal traders who either do not have exempt status or whose exempt status is not relevant by virtue of the operation of Note 2 on the definitions of exempt fund manager and exempt principal trader.

(a) Discretionary fund managers and principal traders who, in either case, are connected with an offeror or potential offeror, will not normally be presumed to be acting in concert with that person until its identity as an offeror or potential offeror is publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected. Rules 5, 6, 9, 11 and 36 will then be relevant to purchases of offeree company securities and Rule 4.2 to sales of offeree company securities by such persons. Rule 4.6 will also be relevant to securities borrowing and lending transactions.

(b) Similarly, discretionary fund managers and principal traders who, in either case, are connected with the offeree company, will not normally be presumed to be acting in concert with the directors of the offeree company until the commencement of the offer period or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company and that it was connected with the offeree company. Rules 5 and 9 may then be relevant to purchases of offeree company securities and Rule 4.4 will be relevant to purchases of offeree company shares and dealings in derivatives referenced to, or options in respect of, such shares. Rule 4.6 will also be relevant to securities borrowing and lending transactions.

(See also the definition of connected fund managers and principal traders.)

(c) An exempt fund manager or exempt principal trader which is connected for the sole reason that it is controlled# by, controls or is under the same control as a connected adviser will not be presumed to be in concert even after the commencement of the offer period or the identity of the offeror being publicly announced (as the case may be). (See Note 2 on the definitions of exempt fund manager and exempt principal trader.)

#See Note at end of Definitions Section.

NOTES ON RULE 7.2

1. Dealings prior to a concert party relationship arising

(a) As a result of Rule 7.2(a) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with an offeror or potential offeror will not normally be relevant for the purposes of Rules 4.2, 4.6, 5, 6, 9, 11 and 36 before the identity of the offeror or potential offeror has been publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected.

(b) Similarly, as a result of Rule 7.2(b) and notwithstanding the usual application of the presumptions of acting in concert, dealings and securities borrowing and lending transactions by discretionary fund managers and principal traders connected with the offeree company will not normally be relevant for the purposes of Rules 5 or 9 before the commencement of the offer period or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made for the offeree company.

(c) Rule 9 will, however, be relevant if the aggregate holdings of shares of all persons under the same control# (including any exempt fund manager or exempt principal trader) carry 30% or more of the voting rights of a company. Notwithstanding this, if such a group includes a principal trader and the group's aggregate holding of shares in a company approaches or exceeds

30% of the voting rights, the Panel may consent to the principal trader continuing to acquire further shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period and the holding of the principal trader does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.

#See Note at end of Definitions Section.

2. Qualifications

(a) If a connected discretionary fund manager or principal trader is in fact acting in concert with an offeror or with the directors of the offeree company, the usual concert party consequences will apply irrespective of whether the offeree company is in an offer period or the identity of the offeror or potential offeror has been publicly announced.

(b) If an offeror or potential offeror, or any company in its group, has funds managed on a discretionary basis by an exempt fund manager, Rule 7.2 may be relevant. If, for example, any securities of the offeree company are managed by such exempt fund manager for the offeror or potential offeror, the exception in Rule 7.2(c) in relation to exempt fund managers may not apply in respect of those securities. The Panel should be consulted in such cases.

3. Dealings by principal traders

After a principal trader is presumed to be in acting concert by virtue of Rules 7.2(a) or (b), it may stand down from its dealing activities. In such circumstances, with the prior consent of the Panel, the principal trader may reduce its holding of offeree company securities or offeror securities, or may acquire such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 4.2, 4.4, 5, 6, 9, 11 and 36, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally, pursuant to Rule 4.6, consent to connected principal traders taking action to unwind a securities borrowing or lending transaction in such circumstances. The Panel will not normally require such dealings to be disclosed under Rules 4.6, 8.1(a), 24.3, or 25.3. Any such dealings must take place within a time period agreed in advance by the Panel.

4. Dealings by discretionary fund managers

(a) After a discretionary fund manager is presumed to be in concert with an offeror or potential offeror by virtue of Rule 7.2(a), any purchases by it of offeree company securities will normally be relevant for Rules 5, 6, 9, 11 and 36. Similarly, any purchases of offeree company securities by a discretionary fund manager after it is presumed to be acting in concert by virtue of Rule 7.2(b) will not normally be permitted by virtue of Rule 4.4(i). However, with the prior consent of the Panel, a discretionary fund manager connected with either the offeree company or an offeror or potential offeror will normally be permitted to purchase offeree company securities, with a view to

reducing any short position, without such purchases being relevant for the purposes of Rules 4.4(i), 5, 6, 9, 11 and 36, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally, pursuant to Rule 4.6, consent to connected discretionary fund managers taking action to unwind securities borrowing transactions in such circumstances. Any such purchases or unwinding arrangements must take place within a time period agreed in advance by the Panel and should be disclosed pursuant to Rule 8.1(b)(i) or Note 3 on Rule 4.6, as appropriate.

(b) After the commencement of the offer period, with the prior consent of the Panel, a discretionary fund manager connected with an offeror will normally be permitted to sell offeree company securities without such sales being relevant for the purposes of Rule 4.2, notwithstanding the usual application of the presumptions of acting in concert and Rule 7.2(a). Any such sale should be disclosed under Rule 8.1(b)(i).

5. Rule 9

The Panel should be consulted if, once the identity of the offeror or potential offeror is publicly known, it becomes apparent that relevant securities in the offeree company (including options in respect of and derivatives referenced to such relevant securities) held by the offeror or potential offeror and persons acting in concert with it, including any connected discretionary fund managers and principal traders to which Rule 7.2(a) applies, carry or relate to in aggregate 30% or more of the voting rights of the offeree company.

6. Disclosure of dealings in offer documentation

Holdings of relevant securities and dealings (whether before or after the presumptions in Rules 7.2(a) and (b) apply) by connected discretionary fund managers and principal traders (unless exempt) must be disclosed in any offer document in accordance with Rule 24.3 and in any offeree board circular in accordance with Rule 25.3, as the case may be. This will not apply in respect of a dealing that has been permitted by Note 3 above and has not been required to be disclosed.

7. Consortium offers

See also Note 5 on the definition of acting in concert where the connected fund manager or principal trader is part of the same organisation as an investor in a consortium.

Rule 8

RULE 8. DISCLOSURE OF DEALINGS DURING THE OFFER PERIOD; ALSO INDEMNITY AND OTHER ARRANGEMENTS

[Previous NB 1, 2, and 3 have been deleted.]

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

…

(b) For discretionary clients

…

(ii) Except with the consent of the Panel, all dealings in relevant securities made during an offer period for the account of discretionary investment clients by an associate which is an exempt fund manager connected with the offeror or the offeree company must be privately disclosed in accordance with Notes 3, 4 and 5.

If, however, an exempt fund manager is required to disclose publicly under Rule 8.3, such private disclosure will not normally be required in addition.

…

8.3 DEALINGS BY 1% SHAREHOLDERS

…

(d) Rule 8.3 does not apply to principal traders acting in that capacity (see Note 9 below).

8.4 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

(a) During an offer period, if an offeror or offeree company or any of their respective associates procures an irrevocable commitment or a letter of intent, the offeror or offeree company (as appropriate) must publicly disclose the details in accordance with Notes 3, 4 and 14.

(b) If a person who has given an irrevocable commitment or a letter of intent either becomes aware that he will not be able to comply with the terms of that commitment or letter or no longer intends to do so, that person must:

> **(i) promptly announce an update of the position together with all relevant details; or**
>
> **(ii) promptly notify the offeror or offeree company (as appropriate) and the Panel of the up-to-date position. Upon receipt of such a notification, the offeror or offeree company must**

promptly make an appropriate announcement of the information notified to it together with all relevant details.

NOTES ON RULE 8

…

2. Relevant securities

…

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.

[The previous final paragraph of Note 2 has been deleted.]

…

4. Method of disclosure (public or private)

(a) Public disclosure

…

Public disclosure may be made by the party concerned or by an agent acting on its behalf. Where there is more than one agent (eg an investment bank and a broker), particular care should be taken to ensure that the responsibility for disclosure is agreed between the parties and that it is neither overlooked nor duplicated.

…

5. Details to be included in disclosures (public or private)

(a) Public disclosure (Rules 8.1(a), 8.1(b)(i) and 8.3)

Specimen disclosure forms are available on the Panel's website (www.thetakeoverpanel.org.uk) or may be obtained from the Panel. Public disclosure should follow the format of those forms. Where a disclosure is made pursuant to Rule 8.1(a) or (b)(i), it is not necessary to disclose the same information pursuant to Rule 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 purchased or sold, and details of all outstanding options in respect of, and derivatives referenced to, those relevant securities;

(ii) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed);

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

(iv) if the dealing is by an associate, an explanation of how that status arises;

(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

(vii) if relevant, details of any arrangements required by Note 6 below.

For the avoidance of doubt, when a person transacts two or more separate but related dealings executed at or around the same time (for example, the entering into of a derivative referenced to relevant securities and the acquisition of such securities for the purposes of hedging), the disclosure must include the required information in relation to each such dealing so executed.

For the purpose of disclosing identity the owner or controller 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 purchases offeree company securities on a specially cum or specially ex dividend basis, details of that fact should also be disclosed.

Percentages should be calculated by reference to the numbers of relevant securities given in a company's latest announcement required by Rule 2.10. In the case of a disclosure relating to a right to subscribe, or subscription, for new securities, the Panel should be consulted regarding the appropriate number of relevant securities to be used in calculating the relevant percentage.

In the case of option business or dealings in derivatives full details should be given so that the nature of the 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.

In addition, if there exists any agreement, arrangement or understanding, formal or informal, between the person dealing and any other person relating to the voting rights of any relevant securities under option or relating to the voting rights or future acquisition or disposal of any relevant securities to which a derivative is referenced (as the case may be), full details of such agreement, arrangement or understanding, identifying the relevant securities in question, must be included in the disclosure. If there are no such agreements, arrangements, or understandings, this fact should be stated. Where such an agreement, arrangement or understanding is entered into at a later date than the derivative or option to which it relates, it will be regarded as a dealing in relevant securities.

If, following a public disclosure made under Rule 8, 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.

If an associate is an associate for more than one reason, all the reasons must be specified.

A disclosure by an exempt fund manager must specify the name of the offeror or the offeree company with which it is connected and the nature of the connection.

Where a disclosure of a securities borrowing or lending transaction is made pursuant to Note 3 on Rule 4.6, all relevant details should be given.

Where a person to whom Rule 4.6 applies discloses a dealing in relevant securities and has previously borrowed relevant securities from, or lent such

securities to, another person, the disclosure must be made in a form agreed by the Panel.

(b) Private disclosure (Rules 8.1(b)(ii) and 8.2)

Private disclosure under Rule 8.1(b)(ii) by exempt fund managers connected with an offeror or the offeree company must be in the form required by the Panel. A specimen disclosure form is available on the Panel's website (www.thetakeoverpanel.org.uk) or may be obtained from the Panel.

A disclosure by an exempt fund manager must specify the name of the offeror or the offeree company with which it is connected and the nature of the connection.

A private disclosure under Rule 8.2 must include the identity of the associate dealing, the total of relevant securities 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.

6. Indemnity and other arrangements

…

(c) This Note does not apply to irrevocable commitments or letters of intent, which are subject to Rule 8.4 and Note 14.

[Previous paragraph (c) has been renumbered as paragraph (d).]

…

8. Discretionary fund managers

The principle normally applied by the Panel is that where the investment decision is made by a discretionary fund manager the relevant securities are treated as controlled by him and not by the person on whose behalf the fund is managed. For that reason, Rule 8.3(c) requires a discretionary fund manager to aggregate the investment accounts which he manages for the purpose of determining whether he has an obligation to disclose. The beneficial owner would not normally, therefore, be concerned with disclosure to the extent that his investment is managed on a discretionary basis. However, where any of the funds managed on behalf of a beneficial owner are not managed by the fund manager originally contracted to do so but are managed by a different independent third party who has discretion regarding dealing, voting and offer acceptance decisions, the fund manager to whom the management of the funds has been sub-contracted (and not the originally contracted fund

manager) is required to aggregate those funds and to comply with the relevant disclosure obligations accordingly.

This approach assumes that the discretionary fund manager does not take instructions from the beneficial owner (or, in the case of sub-contracted funds, from the originally contracted manager or the beneficial owner) on the dealings in question and that fund management arrangements are not established or used to avoid disclosure.

9. Principal traders

[The previous first paragraph of this Note has been deleted.]

Except with the consent of the Panel, the exception in relation to principal traders for Rule 8.3(d) is only available to principal traders who were recognised market-makers in any security prior to the introduction of the Stock Exchange Electronic Trading Service.

The exception in relation to principal traders must not be used to avoid or delay disclosure of dealings. For example, purchases of 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 by that person. A commitment may effectively be firm even if not legally binding, for example because of market practice. Such arrangements, therefore, should not be entered into unless appropriate disclosures are to be made. In addition, if such an arrangement is entered into with an offeror or a person acting in concert with the offeror, it might mean that the principal trader is acting in concert with the offeror and normal concert party consequences might follow (such as the application of Rules 4, 5, 6, 7, 9, 11 and 24 and disclosure of dealings by the principal trader under Rule 8.1).

Exempt principal traders connected with an offeror or the offeree company should, subject to the above, disclose dealings in the manner set out in Rule 38.5.

10. Responsibilities of intermediaries

[The previous first two paragraphs of this Note have been deleted.]

Intermediaries are expected to co-operate with the Panel in its dealings enquiries. Therefore, those who deal in relevant securities should appreciate that intermediaries will supply the Panel with relevant information as to those dealings, including identities of clients and full client contact information, as part of that co-operation.

…

12. Potential offerors

If a potential offeror has been the subject of an announcement that talks are taking place (whether or not the potential offeror has been named) or has announced that it is considering making an offer, the potential offeror and persons acting in concert with it must disclose dealings in accordance with Rule 8.1 and must disclose the procuring of irrevocable commitments or letters of intent in accordance with Rule 8.4 and such disclosures must include the identity of the potential offeror.

…

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

(b) the identity of the person from whom the irrevocable commitment or letter of intent has been procured. For this purpose, the information which should be disclosed is that which would be required by Note 5(a) on Rule 8 if the person concerned were disclosing a dealing in relevant securities;

(c) in respect of an irrevocable commitment, the circumstances (if any) in which it will cease to be binding; and

(d) in the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer under Rule 2.5, the value (and any other material terms) of the possible offer in respect of which the commitment or letter has been procured. (See Rule 2.4(c).)

No separate disclosure by an offeror is required under Rule 8.4(a) where the relevant information is included in an announcement made under Rule 2.5 which is released no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured.

Rule 9

9.1 WHEN IT IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

…

NOTES ON RULE 9.1

…

11. Convertible securities, warrants and options

…

The Panel will not normally require an offer to be made following the exercise of conversion or subscription rights provided that the issue of convertible securities, or rights to subscribe for new shares carrying voting rights, to the person exercising the rights is approved by a vote of independent shareholders in general meeting in the manner described in Note 1 of the Notes on Dispensations from Rule 9. However, if the potential controlling shareholders propose to purchase or subscribe for further voting shares following the relevant meeting, the Panel should be consulted to establish the number of shares to which the waiver will be deemed to apply.

…

14. Discretionary fund managers and principal traders

Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror or the offeree company will be treated in accordance with Rule 7.2.

…

17. Aggregation of holdings across a group

Rule 9 will be relevant if the aggregate holdings of shares of all persons under the same control# (including any exempt fund manager or exempt principal trader) carry 30% or more of the voting rights of a company. Notwithstanding this, if such a group includes a principal trader and the group's aggregate holding of shares in a company approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period and the holding of the principal trader does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.

#See Note at end of Definitions Section.

18. Borrowed or lent shares

For the purpose of this Rule, if a person has borrowed or lent shares he will be treated as holding the voting rights in respect of such shares save for any borrowed shares which he has either on-lent or sold. A person must consult the Panel before acquiring or borrowing shares which, when taken together with shares already held, borrowed or lent by him or any person acting in concert with him, would result in this Rule being triggered. In such circumstances, the Panel will then decide, inter alia, how the borrowed or lent shares should be treated for the purpose of the acceptance condition.

Rule 10

RULE 10. THE ACCEPTANCE CONDITION

…

NOTES ON RULE 10

…

8. Borrowed shares

Except with the consent of the Panel, shares which have been borrowed by the offeror may not be counted towards fulfilling an acceptance condition.

Rule 11.1

11.1 WHEN A CASH OFFER IS REQUIRED

…

NOTES ON RULE 11.1

…

7. Discretionary fund managers and principal traders

Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 7.2.

Rule 17.1

17.1 TIMING AND CONTENTS

…

NOTES ON RULE 17.1

…

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 19.1

19.1 STANDARDS OF CARE

…

NOTES ON RULE 19.1

…

4. Quotations

A quotation (eg from a newspaper or a broker's circular) must not be used out of context and details of the origin must be included.

…

Rule 19.3

19.3 UNACCEPTABLE STATEMENTS

…

NOTES ON RULE 19.3

…

2. Statements of support

An offeror or the offeree company must not make statements about the level of support from shareholders or other persons unless their up-to-date intentions have been clearly stated to the offeror or the offeree company (as appropriate) or to their respective advisers. The Panel will require any such statement to be verified to its satisfaction. This will normally include the shareholder or other person confirming its support in writing to the relevant party to the offer or its adviser and that confirmation being provided to the Panel. Such confirmation will then be treated as a letter of intent. The Panel will not require separate verification by an offeror where the information required by Note 14 on Rule 8 is included in an announcement made under Rule 2.5 which is released no later than 12 noon on the business day following the date on which the letter of intent is procured.

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 either the offeror or the offeree company, 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. Except with the consent of the Panel, an appropriate representative of the financial adviser or corporate broker to the offeror or the offeree company must be present. That representative will be responsible for confirming in writing to the Panel, not later than 12 noon on the business day following the date of the meeting, that no material new information was forthcoming and no significant new opinions were expressed at the meeting.

…

4. Information issued by associates (eg brokers)

…

Attention is drawn to paragraph (2) of the definition of associate, as a result of which, for example, this Note will be relevant to brokers who, although not directly involved with the offer, are associates of an offeror or the offeree company because the broker is in the same group as the financial adviser to an offeror or the offeree company.

Rule 24.2

24.2 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER

Except with the consent of the Panel:-

…

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

(ix) … **;**

(x) … **; and**

(xi) a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk);

…

Rule 24.3

24.3 SHAREHOLDINGS AND DEALINGS

(a) The offer document must state:-

…

(iii) … **; and**

[Previous paragraph (iv) has been deleted. Previous paragraph (v) has been renumbered as paragraph (iv).]

(b) If in any of the above categories there are no 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) if there are no such arrangements.

…

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).

…

[Previous Note 5 has been deleted.]

5. Discretionary fund managers and principal traders

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) 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 25.3

25.3 SHAREHOLDINGS 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) 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) whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or reject the offer.

(b) If in any of the above categories there are no shareholdings, then 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)(vii) if there are no such arrangements.

(c) If any 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 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. In all cases, if no such dealings have taken place this fact should be stated.

(d) See also Rule 37.3(c).

#See Note at end of Definitions Section.

NOTES ON RULE 25.3

(See also Notes on Rule 24.3 which apply equally to this Rule.)

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) 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:-

(a) a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the offeree company or any of its subsidiaries during the period beginning two years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries; and

(b) details of any irrevocable commitment or letter of intent which the offeree company or any of its associates has procured in relation to 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

…

(i) any document evidencing an irrevocable commitment or a letter of intent which has been procured by the offeror or offeree company (as appropriate) or any of their respective associates;

…

(m) … **;**

(n) … **; and**

(o) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 6 on Rule 8.

Rule 27.1

27.1 MATERIAL CHANGES

Documents subsequently sent to shareholders of the offeree company by either party must contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period; if there have been no such changes, this must be stated. In particular, the following matters must be updated:-

(a) changes or additions to material contracts, irrevocable commitments or letters of intent (Rules 24.2(a), (c) and (d)(viii) and 25.6);

…

Rule 36.3

36.3 BUYING DURING AND AFTER THE OFFER

…

NOTES ON RULE 36.3

1. Discretionary fund managers and principal traders

Dealings by non-exempt discretionary fund managers and principal traders which are connected with an offeror will be treated in accordance with Rule 7.2.

…

Rule 37.4

37.4 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEROR COMPANY

…

(b) Disclosure in the offer document

The offer document must state (in the case of a securities exchange offer only) the amount of relevant securities of the offeror which the offeror has redeemed or purchased during the offer period and ending with the latest practicable date prior to the posting of the offer document and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.

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. (See also Rule 4.2(b).)

Rule 38.3

38.3 ASSENTING SECURITIES AND DEALINGS IN ASSENTED SECURITIES

An exempt principal trader connected with the offeror must not assent offeree company securities to the offer or purchase such securities in assented form until the offer is unconditional as to acceptances.

Rule 38.5

38.5 DISCLOSURE OF DEALINGS

Dealings in relevant securities (as defined by 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 purchases and sales;

(ii) the highest and lowest prices paid and received; and

(iii) whether the connection is with an offeror or the offeree company.

In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5 on Rule 8).

NOTES ON RULE 38.5

1. Method of disclosure

Dealings should be disclosed to a RIS by electronic delivery. A copy must be faxed or e-mailed to the Panel. A specimen disclosure form is available on the Panel's website (www.thetakeoverpanel.org.uk) or may be obtained from the Panel. Disclosures under this Rule should follow that format.

2. Exception

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.

…

Appendix 1

APPENDIX 1

WHITEWASH GUIDANCE NOTE

…

4 CIRCULAR TO SHAREHOLDERS

…

(i) Rules 24.3 and 25.3 (disclosure of shareholdings and dealings). Dealings in respect of Rule 24.3 should be covered for the 12 months prior to the posting of the circular but dealings in respect of Rule 25.3 need not be disclosed as there is no offer period;

…

(l) Rule 25.6 (material contracts, irrevocable commitments and letters of intent);

…

7 SUBSEQUENT ACQUISITIONS BY POTENTIAL CONTROLLING SHAREHOLDERS

Immediately following approval of the proposals at the shareholders' meeting, the potential controlling shareholders will be free to acquire additional shares in the offeree company, subject to the provisions of Rules 5 and 9.

Where shareholders approve the issue of convertible securities, or the issue of warrants or the grant of options to subscribe for new shares where no immediate voting rights are obtained, the Panel will view the approval as sanctioning maximum conversion or subscription at the earliest possible moment without the necessity for the making of an offer under Rule 9. However, if the potential controlling shareholders propose to purchase or subscribe for further voting shares following the relevant meeting, the Panel should be consulted to establish the number of shares to which the waiver will be deemed to apply.

(See also Note 4 on Rule 9.1 and Rule 37.1.)

PART B - THE SARS

DEFINITIONS

Rights over shares

Rights over shares include any rights acquired by a person by virtue of an agreement to purchase shares or an option to acquire shares or an irrevocable commitment to accept an offer to be made by him or an agreement to acquire voting rights or general control of them. A futures contract or covered warrant for which exercise includes the possibility of delivery of the underlying securities is treated as an option.

Single shareholder

…

NOTE ON SINGLE SHAREHOLDER

A principal trader or a fund manager managing investment accounts on behalf of a number of underlying clients (whether or not on a discretionary basis) will not normally be considered to be a single shareholder. The Panel should be consulted in cases of doubt.

[The previous Note on SAR 2 has been deleted.]

SAR 3

RULE 3. DISCLOSURE

…

NOTES ON RULE 3

…

4. Method of disclosure

Dealings should be disclosed to a RIS or, if the shares are traded on OFEX, to Newstrack, in typed format, by fax or electronic delivery. A copy must also be faxed or e-mailed to the Panel. A specimen disclosure form is available on the Panel's website (www.thetakeoverpanel.org.uk) or may be obtained from the Panel. Disclosures under this Rule should follow that format.

SAR 5

RULE 5. PERSONS ACTING BY AGREEMENT OR UNDERSTANDING

…

NOTES ON RULE 5

…

2. Investment managers

Investments managed by a fund manager on a discretionary basis and shares owned by the fund manager or by any company controlling#, controlled by or under the same control as the fund manager, are regarded as being the holding of one person for the purpose of this Rule. However, where the Panel accepts that a part of a group is operating independently and without regard to the interests of any other part (for example, where, in an offer, the fund manager or principal trader, as appropriate, would have exempt status for the purposes of the Code), aggregation of the holdings of such independent parts of the group will not be required.

If a person manages investment accounts on a discretionary basis, shares so managed will be treated, for the purpose of this Rule, as held by that person and not by the person on whose behalf the shares are managed. Except with the consent of the Panel, where more than one discretionary investment management operation is conducted in the same group, shares held by all such operations will be treated, for the purpose of this Rule, as those of a single person and must be aggregated.

See also Note 8 on Rule 8 of the Code regarding aggregation of sub-contracted funds.

In cases of doubt, the Panel should be consulted.

…

#See Note at the end of the Definitions Section of the Code.

…

4. Method of disclosure

A copy of the notification to the company should be sent at the same time to a RIS or, if the shares are traded on OFEX, to Newstrack, in typed format, by fax or electronic delivery. A copy must also be faxed or e-mailed to the Panel. A specimen disclosure form is available on the Panel's website (www.thetakeoverpanel.org.uk) or may be obtained from the Panel. Disclosures under this Rule should follow that format.

PART C – AMENDMENTS TO THE CODE AND THE SARS TO REFLECT THE SUBSTITUTION OF MARKET-MAKERS WITH PRINCIPAL TRADERS

(a) In addition to the above changes, the references to "exempt market-maker" or "exempt market-makers" in the following locations of the Code have been amended to "exempt principal trader" or "exempt principal traders", as appropriate:

- paragraph (f)(iii) of Section 3 of the Introduction to the Code;
- the heading of Section Q;
- Rule 38.1 and the Note thereon;
- Rule 38.4; and
- Section 2(b) of Appendix 3.

(b) In addition to the above changes, the references to "market-maker" or "market-making" in the following locations of the Code have been amended to "principal trader" or "principal trading", as appropriate:

- paragraph (f)(iii) of Section 3 of the Introduction to the Code;
- Note 1 on the definition of exempt principal trader;
- Note 4 on Rule 6;
- the Note on Rule 38.1 (two references);
- Section 2(b) of Appendix 3;
- Section 2 of the Introduction to the SARs; and
- Note 6 on SAR 1 (four references, including the heading).

APPENDIX B

New Disclosure Forms

See following pages

FORM 8.1

DEALINGS BY OFFERORS, OFFEREE COMPANIES OR THEIR ASSOCIATES FOR THEMSELVES OR FOR DISCRETIONARY CLIENTS
(Rules 8.1(a) and (b)(i) of The City Code on Takeovers and Mergers)

Name of purchaser/vendor *	
Company dealt in	
Relevant security dealt in	
Name of offeree/offeror with which associated	
Specify category and nature of associate status #	
Date of dealing	

DEALINGS †

Amount bought	**Price per unit (currency must be stated)**
Amount sold	**Price per unit (currency must be stated)**

Resultant total amount and percentage of the same relevant security owned or controlled	

IS A SUPPLEMENTAL FORM 8 (DERIVATIVE)/FORM 8 (OPTION) ATTACHED? YES/ NO

Date of disclosure	
Contact name	
Telephone number	

* Specify the owner or controller in addition to the person dealing. The naming of nominees or vehicle companies is insufficient. In the case of disclosure of dealings by fund managers on behalf of discretionary clients, the clients need not be named.
\# See the definition of "associate" in the Definitions Section of the Code.
† If disclosing dealings/holdings in derivatives or options, please attach Supplemental Form 8 (Derivative) or Supplemental Form 8 (Option), as appropriate.

For details of the Code's dealing disclosure requirements, see Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

FORM 8.1(b)(ii)
(NOT FOR PUBLIC DISCLOSURE)

DEALINGS BY CONNECTED EXEMPT FUND MANAGERS ON BEHALFOF DISCRETIONARY CLIENTS
(Rule 8.1(b)(ii) of The City Code on Takeovers and Mergers)

Name of exempt fund manager	
Company dealt in	
Relevant security dealt in	
Name of offeree/offeror with which connected	
Nature of connection #	
Date of dealing	

DEALINGS †

Amount bought	**Price per unit (currency must be stated)**
Amount sold	**Price per unit (currency must be stated)**

Resultant total amount and percentage of the same relevant security owned or controlled *	

IS A SUPPLEMENTAL FORM 8 (DERIVATIVE)/FORM 8 (OPTION) ATTACHED? YES/ NO

Date of disclosure	
Contact name	
Telephone number	

See the definition of "connected fund managers and principal traders" in the Definitions Section of the Code.
† If disclosing dealings/holdings in derivatives or options, please attach Supplemental Form 8 (Derivative) or Supplemental Form 8 (Option), as appropriate.
* Where relevant securities are held within a fund in respect of which seed capital represents 10% or more of the funds under management, specify the percentage of seed capital in addition to the amount of stock held within that fund.

For details of the Code's dealing disclosure requirements, see Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

FORM 8.2
(NOT FOR PUBLIC DISCLOSURE)

DEALINGS BY OFFERORS, OFFEREE COMPANIES OR THEIR ASSOCIATES FOR NON-DISCRETIONARY CLIENTS
(Rule 8.2 of The City Code on Takeovers and Mergers)

Name of entity dealing	
Company dealt in	
Relevant security dealt in	
Name of offeree/offeror with which associated	
Specify category and nature of associate status #	
Date of dealing	

DEALINGS †

Amount bought	**Price per unit (currency must be stated)**
Amount sold	**Price per unit (currency must be stated)**

IS A SUPPLEMENTAL FORM 8 (DERIVATIVE)/FORM 8 (OPTION) ATTACHED? YES/ NO

Date of disclosure	
Contact name	
Telephone number	

See the definition of "associate" in the Definitions Section of the Code.
† If disclosing dealings/holdings in derivatives or options, please attach Supplemental Form 8 (Derivative) or Supplemental Form 8 (Option), as appropriate.

For details of the Code's dealing disclosure requirements, see Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

FORM 8.3

DEALINGS BY PERSONS WHO OWN OR CONTROL 1% OR MORE OF ANY CLASS OF RELEVANT SECURITY
(Rule 8.3 of The City Code on Takeovers and Mergers)

Name of purchaser/vendor *	
Company dealt in	
Relevant security dealt in	
If a connected EFM, name of offeree/offeror with which connected	
If a connected EFM, nature of connection #	
Date of dealing	

DEALINGS †

Amount bought	**Price per unit (currency must be stated)**
Amount sold	**Price per unit (currency must be stated)**

Resultant total amount and percentage of the same relevant security owned or controlled	

IS A SUPPLEMENTAL FORM 8 (DERIVATIVE)/FORM 8 (OPTION) ATTACHED? YES/ NO

Date of disclosure	
Contact name	
Telephone number	

* Specify the owner or controller in addition to the person dealing. The naming of nominees or vehicle companies is insufficient. In the case of disclosure of dealings by fund managers on behalf of discretionary clients, the clients need not be named.
\# See the definition of "connected fund managers and principal traders" in the Definitions Section of the Code.
† If disclosing dealings/holdings in derivatives or options, please attach Supplemental Form 8 (Derivative) or Supplemental Form 8 (Option), as appropriate.

For details of the Code's dealing disclosure requirements, see Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

SUPPLEMENTAL FORM 8 (DERIVATIVE)

DEALINGS/HOLDINGS IN DERIVATIVES
(This form should be attached to Form 8.1, Form 8.1(b)(ii), Form 8.2 or Form 8.3, as appropriate)

Description of all derivative products disclosed on this form	
Full details of any agreement, arrangement or understanding between the person disclosing and any other person relating to the voting rights or future acquisition or disposal of any relevant securities to which any derivative referred to on this form is referenced. If none, this should be stated.	

WRITING/ENTERING INTO A DERIVATIVE

Product name eg long CFD	**Transaction date**	**Writing/entering into (indicate as applicable)**	**Number of securities to which the derivative is referenced**	**Reference price (currency must be stated)**	**Maturity date**

CLOSING OUT A DERIVATIVE

Product name eg long CFD	**Transaction date**	**Number of securities to which the derivative is referenced**	**Reference price (currency must be stated)**	**Closing out price (currency must be stated)**

DETAILS OF OPEN DERIVATIVES (excluding any transaction set out above)

Product name eg long CFD	**Transaction date**	**Written/entered into (indicate as applicable)**	**Number of securities to which the derivative is referenced**	**Reference price (currency must be stated)**	**Maturity date**

For details of the Code's dealing disclosure requirements, see Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

SUPPLEMENTAL FORM 8 (OPTION)

DEALINGS/HOLDINGS IN OPTIONS
(This form should be attached to Form 8.1, Form 8.1(b)(ii), Form 8.2 or Form 8.3, as appropriate)

Description of all option products disclosed on this form	
Full details of any agreement, arrangement or understanding between the person disclosing and any other person relating to the voting rights of any relevant securities under any option referred to on this form. If none, this should be stated.	

WRITING/PURCHASE OF OPTION

Product name eg call option	**Transaction date**	**Writing/purchase (indicate as applicable)**	**Number of securities under option**	**Exercise price (currency must be stated)**	**Expiry date**	**Option money paid/received (currency must be stated)**

EXERCISE OF OPTION

Product name eg call option	**Transaction date**	**Number of securities under option**	**Exercise price (currency must be stated)**

DETAILS OF OPEN OPTIONS (excluding any transaction set out above)

Product name eg call option	**Transaction date**	**Written/purchased (indicate as applicable)**	**Number of securities under option**	**Exercise price (currency must be stated)**	**Expiry date**	**Option money paid/received (currency must be stated)**

For details of the Code's dealing disclosure requirements, see Rule 8 and its Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

FORM 38.5

DEALINGS BY CONNECTED EXEMPT PRINCIPAL TRADERS
(Rule 38.5 of The City Code on Takeovers and Mergers)

Name of exempt principal trader	
Company dealt in	
Relevant security dealt in	
Name of offeree/offeror with whom connected	
Nature of connection #	
Date of dealing	

Total number of securities bought	
Highest price paid (currency must be stated)	
Lowest price paid (currency must be stated)	

Total number of securities sold	
Highest price paid (currency must be stated)	
Lowest price paid (currency must be stated)	

Date of disclosure	
Contact name	
Telephone number	

See the definition of "connected fund managers and principal traders" in the Definitions Section of the Code.

For details of the Code's dealing disclosure requirements, see Rules 8 and 38.5 and their Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

FORM 38.5 (DERIVATIVE)

DEALINGS IN DERIVATIVES BY CONNECTED EXEMPT PRINCIPAL TRADERS
(Rule 38.5 of The City Code on Takeovers and Mergers)

Name of exempt principal trader	
Company dealt in	
Description of all derivative products disclosed on this form	
Relevant security to which the derivative is referenced	
Name of offeree/offeror with whom connected	
Nature of connection #	
Full details of any agreement, arrangement or understanding between the person disclosing and any other person relating to the voting rights or future acquisition or disposal of any relevant securities to which any derivative referred to on this form is referenced. If none, this should be stated.	
Date of dealing	

WRITING/ENTERING INTO A DERIVATIVE

Product name eg long CFD	**Transaction date**	**Writing/entering into (indicate as applicable)**	**Number of securities to which the derivative is referenced**	**Reference price (currency must be stated)**	**Maturity date**

CLOSING OUT A DERIVATIVE

Product name eg long CFD	**Transaction date**	**Number of securities to which the derivative is referenced**	**Reference price (currency must be stated)**	**Closing out price (currency must be stated)**

Date of disclosure	
Contact name	
Telephone number	

See the definition of "connected fund managers and principal traders" in the Definitions Section of the Code.

For details of the Code's dealing disclosure requirements, see Rules 8 and 38.5 and their Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

FORM 38.5 (OPTION)

DEALINGS IN OPTIONS BY CONNECTED EXEMPT PRINCIPAL TRADERS
(Rule 38.5 of The City Code on Takeovers and Mergers)

Name of exempt principal trader	
Company dealt in	
Description of all option products disclosed on this form	
Relevant security under option	
Name of offeree/offeror with whom connected	
Nature of connection #	
Full details of any agreement, arrangement or understanding between the person disclosing and any other person relating to the voting rights of any relevant securities under any option referred to on this form. If none, this should be stated.	
Date of dealing	

WRITING/PURCHASE OF OPTION

Product name eg call option	**Transaction date**	**Writing/purchase (indicate as applicable)**	**Number of securities under option**	**Exercise price (currency must be stated)**	**Expiry date**	**Option money paid/received (currency must be stated)**

EXERCISE OF OPTION

Product name eg call option	**Transaction date**	**Number of securities under option**	**Exercise price (currency must be stated)**

Date of disclosure	
Contact name	
Telephone number	

See the definition of "connected fund managers and principal traders" in the Definitions Section of the Code.

For details of the Code's dealing disclosure requirements, see Rules 8 and 38.5 and their Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

FORM SAR 3

DISCLOSURE OF ACQUISITIONS
(Rule 3 of The Rules Governing Substantial Acquisitions of Shares)

Name of acquirer	
Beneficial owner, if different from above	
Names of any other persons acting by agreement or understanding (see SAR 5)	
Company dealt in	
Class of voting shares (eg ordinary shares)	
Date of acquisition	

Number of shares acquired	
Number of rights over shares acquired #	
Nature of rights over shares	

Total holding of voting shares (and percentage of total voting shares in issue)	
Total holding of rights over shares (and percentage of total voting shares in issue)	
Combined total holding (and percentage) of voting shares and rights over shares	

Date of disclosure	
Contact name	
Telephone number	

See the definition of "rights over shares" in the Definitions Section of the SARs.

For details of the SARs disclosure requirements, see SARs 3 and 5 and their Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

FORM SAR 5

DISCLOSURE OF DISPOSALS
(Rule 5 of The Rules Governing Substantial Acquisitions of Shares)

Name of seller	
Beneficial owner, if different from above	
Names of any other persons acting by agreement or understanding (see SAR 5)	
Company dealt in	
Class of voting shares (eg ordinary shares)	
Date of disposal	

Number of shares disposed of	
Number of rights over shares disposed of #	
Nature of rights over shares	

Total holding of voting shares (and percentage of total voting shares in issue)	
Total holding of rights over shares (and percentage of total voting shares in issue)	
Combined total holding (and percentage) of voting shares and rights over shares	

Date of disclosure	
Contact name	
Telephone number	

See the definition of "rights over shares" in the Definitions Section of the SARs.

For details of the SARs disclosure requirements, see SARs 3 and 5 and their Notes which can be viewed on the Takeover Panel's website at www.thetakeoverpanel.org.uk.

APPENDIX C

Summary of the provisions of Rule 8 for inclusion on the Panel's website

A summary of the principal provisions of Rule 8 in the following form would normally be acceptable for the purposes of Rules 2.4(a), 2.5(b)(viii), 2.6 and 24.2(d)(xi). Any material variation should be specifically agreed by the Panel in advance.

"Dealing Disclosure Requirements

Under the provisions of Rule 8.3 of the City Code on Takeovers and Mergers (the "City Code"), any person who, alone or acting together with any other person(s) pursuant to an agreement or understanding (whether formal or informal) to acquire or control relevant securities of [*the offeror* or] *the offeree company*, owns or controls, or becomes the owner or controller, directly or indirectly, of one per cent. or more of any class of securities of [*the offeror* or] *the offeree company* is required to disclose, by not later than 12.00 noon (London time) on the London business day following the date of the relevant transaction, dealings in such securities of that company (or in any option in respect of, or derivative referenced to, any such securities) during the period to the date on which the offer becomes or is declared unconditional as to acceptances or lapses or is otherwise withdrawn.

Under the provisions of Rule 8.1 of the City Code, all dealings in relevant securities of [*the offeror* or] *the offeree company* by *the offeror* or *the offeree company*, or by any of their respective "associates" (within the meaning of the City Code) must also be disclosed.

If you are in any doubt as to the application of Rule 8 to you, please contact an independent financial adviser authorised under the Financial Services and Markets Act 2000, consult the Panel's website at www.thetakeoverpanel.org.uk or contact the Panel on telephone number +44 20 7638 0129; fax +44 20 7236 7013."

NB1 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.

NB2 References above to "the offeror" and "the offeree company" should be replaced with the names of the relevant companies.

APPENDIX D

List of respondents

1. Hermes Investment Management Limited
2. The Institute of Chartered Accountants in England & Wales, Corporate Finance Faculty
3. Investment Management Association (IMA)
4. London Investment Banking Association (LIBA)
5. The National Association of Pension Funds Limited (NAPF)
6. Schroder Investment Management Limited
7. UBS Global Asset Management (UK) Ltd
8. UBS Investment Bank