PCP 2009/1 Issued on 8 May 2009

THE TAKEOVER PANEL

CONSULTATION PAPER ISSUED BY THE CODE COMMITTEE OF THE PANEL

EXTENDING THE CODE'S DISCLOSURE REGIME

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

The Code Committee is therefore inviting comments on this Public Consultation Paper ("**PCP**"). Comments should reach the Code Committee by 17 July 2009.

Comments may be sent by e-mail to:
supportgroup@thetakeoverpanel.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London
EC4M 7DY

Telephone: 020 7382 9026
Fax: 020 7236 7005

All responses to formal consultation will be made available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.

Unless the context otherwise requires, words and expressions defined in the Code have the same meanings when used in this PCP.

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1. Summary and introduction

(a) Purpose of this PCP

1.1 The purpose of this PCP is to consider a number of proposed amendments to the Code intended to increase transparency in relation to the positions of, and dealings by, persons involved in takeover offers.

1.2 An offer period is a particularly important time in the life of an offeree company and, during this period, the offeree company and matters relevant to the offer will be closely scrutinised by the persons involved and the market generally. The Code Committee believes that a high degree of transparency is essential to the efficient functioning of markets in this critical period and that ensuring that this is achieved is a key objective of the Code.

1.3 The outcome of bids, and decisions by market participants in relation to market activity, may often turn on fine margins. In view of this, the Code Committee believes that the timely and accurate disclosure of information in relation to the positions of, and dealings by, parties to offers, persons who are associated with them and other persons who may have the ability to exercise a material influence over the outcome of offers plays a fundamental part in ensuring that takeovers are conducted within an orderly framework and that the integrity of the markets is maintained. For example:

(a) market prices, market activity and the positions of market participants often represent important information for offeree company shareholders and other market participants in making decisions in relation to a takeover bid; and

(b) market operations by parties to offers, their associates and other interested persons may have a direct impact on the outcome of a takeover bid.

1.4 The Code's current disclosure regime seeks to ensure a high degree of transparency by providing a detailed picture of the dealings and positions (including long and short, and "physical" and "synthetic", positions) in relevant securities of persons involved in takeover offers. Positions of, and dealings by, the parties to an offer (and their respective associates) in relevant securities may have a decisive impact on the success or failure of an offer and it is a key objective of the Code to provide transparency in relation to them. Other important objectives of the Code are to:

(a) *provide transparency as to where voting control of relevant securities lies*: the Code seeks to identify the persons who control the voting rights attaching to relevant securities of the offeree company and, in the case of a securities exchange offer, the offeror;

(b) *identify concert parties*: the Code seeks to identify other persons with significant interests in relevant securities who may be dealing with a view to assisting a party to an offer and who may therefore be acting in concert with an offeror or the offeree company; and

(c) *provide market transparency*: the Code requires persons with significant interests in relevant securities to disclose publicly certain information in relation to their dealings, including the prices at which they have dealt, thereby enabling offeree company shareholders and the market generally to understand the possible impact of such dealings on the market prices of relevant securities.

Whilst the Code Committee believes that the Code's current disclosure regime goes a long way towards achieving its objectives, it also believes that there is scope for significant improvements.

1.5 The Code Committee recognises that, in addition to the Code's disclosure regime,

persons involved in offers may be subject to statutory disclosure obligations and the rules of other regulatory authorities which require the disclosure of certain information in relation to positions in relevant securities. However, the Code has for many years imposed more stringent disclosure requirements in this regard during offer periods than those which apply in the ordinary course and the Code Committee believes, particularly in the light of the matters referred to in paragraphs 1.3 and 1.4 above, that this should continue to be the case.

1.6 Following its review of the Code's derivatives and options regime in June 2007, the Code Committee concluded that the Code changes introduced in 2005 and 2006 had significantly increased transparency in relation to positions and dealings in relevant securities during offer periods and that this represented a considerable benefit to offeree company shareholders and the market generally. However, the Code Committee considered at that time that it might be possible to enhance market transparency further in a number of respects. In particular, certain market participants who were approached during an informal consultation in relation to the implementation of the revisions to the Code's disclosure regime as part of the June 2007 review suggested further changes. Specifically, these respondents questioned whether:

(a) persons with a gross long interest of 1% or more in a class of relevant securities at the commencement of an offer period should be required to disclose their positions at that time (and not only if they dealt in relevant securities during the offer period);

(b) securities borrowing and lending transactions in relevant securities should be treated as dealings and, accordingly, should be required to be disclosed under the Code; and

(c) the dealing disclosure requirements of the Code should be extended to cover persons who are independent of the offeror and offeree company and

have significant short positions in relevant securities but who do not have a gross long interest of 1% or more.

The Code Committee considered these issues, along with a number of other proposals aimed at increasing the efficacy of the Code's disclosure regime, and expressed the view that it intended to consider them further in due course. This PCP sets out the Code Committee's further consideration of these issues.

1.7 In summary, the Code Committee believes that there would be significant benefits if the Code were amended as proposed in this PCP to provide for increased transparency by extending the ambit of certain of the Code's existing disclosure rules. The Code Committee also believes that there are potential benefits in extending the disclosure regime to cover activities that are not currently required to be disclosed (for example, securities borrowing and lending) but the Code Committee is not proposing detailed amendments to the Code in relation to these activities at present. Certain options for reform, and a summary of the Code Committee's recommendations in each case, are set out below.

(b) Summary of proposals

1.8 The Code Committee has considered the following options for reform:

(i) Disclosure of positions following the commencement of an offer period

1.9 The Code Committee believes that persons subject to the Code's disclosure regime should be required to disclose their positions in relevant securities of the offeree company and, in the case of a securities exchange offer, the offeror, regardless of whether they have dealt in relevant securities of the company concerned. The Code Committee believes that such positions should be disclosed shortly after the commencement of the offer period in relation to the offeree company and, in the case of an offeror, shortly after the announcement that first

identifies that offeror. In this PCP, this is referred to as the "**opening position disclosure**" requirement.

(ii) Extending the requirement to disclose dealings and positions on a "composite" basis

1.10 The Code's current disclosure regime requires disclosures to be made on a "composite" basis. This means that persons interested in 1% or more of any class of relevant securities of a party to an offer must disclose dealings and, following a dealing, interests and short positions in all classes of relevant securities of that party (i.e. not only the class of relevant securities in which the interest of 1% or more was held). (This does not apply to interests in relevant securities of a cash offeror, as defined below, since disclosures are not required in relation to relevant securities of cash offerors.)

1.11 The Code Committee believes that the "composite" disclosure regime should now be extended. This would mean that:

(a) persons who have a gross long interest of 1% or more in any class of relevant securities of any party to the offer (other than a cash offeror) would be required to disclose any dealings in the relevant securities not only of that party but also of any other party to the offer (other than a cash offeror); and

(b) any person who is required to make a dealing disclosure under the Code would be required to disclose details of his interests and short positions in the relevant securities of both the party to the offer in whose relevant securities the dealing occurred and any other party to the offer (other than a cash offeror).

In this PCP, this is referred to as "**extended composite disclosure**".

1.12 The combination of the opening position disclosure requirement and extended composite disclosure would result in the parties to the offer (and their respective associates), and persons with gross long interests of 1% or more in any class of relevant securities of the offeree company or a paper offeror, being required to disclose:

(a) positions in the relevant securities of the offeree company and any paper offeror shortly after the commencement of an offer period or, if later, an announcement that first identifies a paper offeror; and

(b) dealings in relevant securities of the offeree company and any paper offeror.

(iii) Definitions of "associate" and "acting in concert"

1.13 The Code Committee believes that the definition of an "associate" of a party to an offer should be deleted and the rules which currently refer to a party's "associates" should be amended to refer instead to "persons acting in concert" with that party (or equivalent wording). There is currently a significant degree of overlap between these two concepts and the Code Committee believes that it would benefit practitioners, parties to offers and market participants generally if this aspect of the Code were to be simplified.

1.14 This amendment would mean that persons who are currently associates of, but not persons acting (or presumed or deemed to be acting) in concert with, an offeror or the offeree company would no longer be required to disclose their dealings and positions in relevant securities, unless they were interested in 1% or more of a class of relevant securities. However, the Code Committee proposes to include a new requirement providing that, where a person successfully rebuts the application of a presumption of concertedness, the Panel could, if it considered it

appropriate, nonetheless require that person to make a private disclosure to the Panel if he deals in relevant securities.

(iv) Disclosure of securities borrowing and lending positions

1.15 The Code Committee believes that there are potential benefits in requiring persons subject to the Code's disclosure regime who have borrowed or lent relevant securities in the offeree company or, in the case of a securities exchange offer, the offeror, to disclose publicly details of, and changes to, their "net" borrowing or lending positions. In this PCP, this is referred to as the "**securities borrowing and lending disclosure**" requirement. In addition, the Code Committee believes that there may be benefits in requiring persons to disclose when another party acquires beneficial ownership of their shares as part of a financial collateral arrangement (see further paragraph 4.35 below).

1.16 However, the Code Committee believes that the costs of introducing the systems and policy changes necessary in order to require, in particular, the disclosure of the loss of the beneficial ownership of shares as part of a financial collateral arrangement would currently be disproportionate to the increase in market transparency that would be achieved during offer periods. The Code Committee is therefore not proposing to adopt the securities borrowing and lending disclosure requirement for the time being. However, the Code Committee intends to keep these issues under review.

(v) Disclosure of short only positions

1.17 The Code Committee has also considered whether persons with a significant gross short position in the relevant securities of a party to an offer, but no significant gross long interest in the relevant securities of any party to an offer, should be required to disclose their dealings and positions in the same way as the Code

requires disclosures by persons with a gross long interest of 1% or more in relevant securities. In this PCP, this is referred to as the "**short trigger**" proposal.

1.18 On balance, the Code Committee has concluded that the short trigger proposal should not be adopted on the basis that:

(a) persons with short only positions are not able to control the voting rights attaching to relevant securities;

(b) many short positions would be disclosed under the Code's current disclosure regime and, if adopted, under the opening position disclosure requirement and extended composite disclosure; and

(c) the Code Committee believes that it is relatively uncommon for persons to take stand-alone short positions in relevant securities during takeover bids.

1.19 The Code Committee also notes that, following a review of short selling in February 2009, the Financial Services Authority (the "**FSA**") favours the introduction of a general requirement in the relevant FSA rules for certain short positions to be disclosed.

1.20 In view of the above, the Code Committee has concluded that, although there is an arguable case for the short trigger proposal, the likely benefits of its adoption would not be significant.

(c) Informal consultation by the Panel Executive

1.21 As part of the Code Committee's consideration of the proposals referred to above and set out in this PCP, the Panel Executive (the "**Executive**") carried out an informal consultation exercise on its behalf, during which the views of, among

others, the persons and bodies listed in Appendix A were sought in relation to the principal substantive issues raised by the proposals.

1.22 In summary, the responses received by the Executive were generally supportive of the objectives set out in this PCP. The Code Committee would like to express its thanks to those persons and bodies, and to others who participated in the informal consultation exercise, for their valuable input.

(d) Proposed amendments and questions

1.23 The full text of the proposed amendments to the Code that are put for consultation is set out in Appendix B.

1.24 For ease of reference, a list of the questions that are put for consultation is set out in Appendix C.

(e) Invitation to comment and proposed implementation

1.25 The Code Committee would welcome comments on the amendments to the Code proposed in this PCP and their implementation. Comments should reach the Code Committee by 17 July 2009 and should be sent in the manner set out at the beginning of this PCP.

1.26 The Code Committee's current intention is that any amendments made to the Code as a result of the proposals set out in this PCP should take effect in early 2010, following an appropriate transitional period.

(f) Interpretation of certain expressions used in this PCP

1.27 In addition to the words and expressions defined in the Code, the following words and expressions have the following meanings in this PCP:

(a) "**cash offeror**" means an offeror (or potential offeror) which has announced, or in respect of which the offeree company has announced, that its offer is, or is likely to be, solely in cash;

(b) "**paper offeror**" means an offeror (or potential offeror) other than a cash offeror; and

(c) "**party to the offer**" means the offeree company and any offeror or competing offeror whose identity has been publicly announced (including, in each case, any potential offeror, offeree company or competing offeror).

1.28 References in this PCP to words and expressions that currently form part of the Code, but which are the subject of amendments proposed in this PCP, have the meaning currently provided in the Code. For example, references to "associate" refer to the current concept of "associate" in the Code albeit that it is proposed that the definition of "associate" will be deleted as part of the amendments.

2. Extending the requirements of the Code's disclosure regime: "opening position disclosure" and "extended composite disclosure"

(a) The Code's current disclosure regime

(i) Parties to the offer and their associates

2.1 Under Rule 8.1, each of the parties to an offer, and each of their respective associates, is required to disclose its long interests and short positions in the relevant securities of any party to the offer (other than a cash offeror) following a dealing in any relevant securities of that party. In addition:

(a) under Rule 2.5, an offeror must include in the announcement of its firm intention to make an offer details of long interests and short positions in the relevant securities of the offeree company held by the offeror and persons acting in concert with it;

(b) under Rule 24.3, an offeror must include in its offer document details of long interests and short positions in the relevant securities of the offeree company and, in the case of a securities exchange offer, the offeror, held by the offeror and persons acting in concert with it; and

(c) under Rule 25.3, the offeree company board must include in its circular responding to the offer document details of long interests and short positions in the relevant securities of the offeree company and, in the case of a securities exchange offer, the offeror, held by the offeree company and certain associates.

(ii) Persons with long interests in relevant securities of 1% or more

2.2 Under Rule 8.3, a person who has a gross long interest of 1% or more in any class

of relevant securities of any party to the offer (other than a cash offeror) is required to disclose his long interests and short positions in the relevant securities of that party following a dealing in any relevant securities of that party. However, if a person subject to Rule 8.3 does not deal in the relevant securities of a party to the offer, he will be under no obligation to make a disclosure under the Code in relation to his interests and short positions in that party's relevant securities. This is the case even if the person's interests in the relevant securities of that party may mean that he has a considerable degree of influence over the outcome of the offer.

2.3 For example, a person interested in 29.9% of a class of relevant securities of an offeree company would not be required to disclose his positions under the Code if he did not undertake a dealing in the offeree company's relevant securities during the offer period, although he is likely to have been required to make a disclosure under other regulations (particularly after 1 June 2009 – see paragraph 2.11 below). By contrast, a person interested in 1.1% of a class of relevant securities of an offeree company would be required to disclose his positions under the Code if he acquired (or disposed of) an interest in a single share in the offeree company.

(iii) Exempt principal traders

2.4 Under Rule 38.5(b), an exempt principal trader which does not benefit from recognised intermediary status (either because it does not have recognised intermediary status or because it does have recognised intermediary status but is not acting in a client-serving capacity) is required to disclose its long interests and short positions in the relevant securities of a party to the offer (other than a cash offeror) following a dealing in any relevant securities of that party. If an exempt principal trader subject to Rule 38.5(b) does not deal in the relevant securities of a party to the offer, it will be under no obligation to make a disclosure under the Code in relation to its interests and short positions in that party's relevant securities.

(b) June 2007 review and subsequent analysis

2.5 In 2005, the Code Committee introduced a number of changes to the Code's disclosure regime as a result of proposals put forward in PCP 2004/3 (Market-related issues) and PCP 2005/2 (Dealings in derivatives and options: disclosure issues) (the "**2005 Amendments**").

2.6 During the Code Committee's review of the 2005 Amendments, the results of which were published in June 2007, the question was raised as to whether persons with interests of 1% or more in a class of relevant securities at the commencement of an offer period should be required to disclose their positions at that time, rather than only following a dealing in relevant securities. This was referred to as the "**snapshot suggestion**".

2.7 In Panel Statement 2007/15, which set out the conclusions of the June 2007 review, the Code Committee recognised the logic of the snapshot suggestion, and that its adoption would improve transparency as to where voting control of a party to an offer lay. However, the Code Committee also recognised that the extension of the Code's disclosure obligations to persons who had not dealt in relevant securities would be a significant step. The Code Committee therefore asked the Executive to analyse the extent to which the adoption of the snapshot suggestion would be likely to improve such transparency before reaching a firm view on this issue.

2.8 Following the Code Committee's June 2007 review, the Executive analysed the interests in relevant securities which the adoption of the snapshot suggestion might have revealed over two separate time periods: (i) July to September 2007; and (ii) November 2008. In each time period, the Executive sought to identify the following interests in relevant securities of parties to an offer which were added to

the Panel's Disclosure Table[1] during the time period in question:

(a) those interests in relevant securities of a party to an offer (other than a cash offeror) held by persons subject to Rule 8.3 which were outside the scope of Chapter 5 of the FSA's Disclosure Rules and Transparency Rules ("**DTR 5**") (and which had therefore not been publicly disclosed prior to the relevant securities of the party to the offer being added to the Disclosure Table), but which would have been subject to disclosure under the Code if the snapshot suggestion had been adopted; and

(b) those interests described in paragraph (a) above which, because the person interested in relevant securities had not dealt in the relevant securities of the party concerned, continued not to have been publicly disclosed under the Code 21 days later.

The Executive's analysis took into account only interests in relevant securities which were outside the scope of DTR 5 when the relevant securities were added to the Disclosure Table (or those interests which would have been outside the scope of DTR 5 if amended, as anticipated, so as to cover contracts for differences ("**CFDs**") and certain other cash-settled derivatives – see paragraph 2.11 below) in view of the argument that the adoption of the snapshot suggestion might be unnecessary given the requirements of DTR 5.

2.9 DTR 5 requires a person who, directly or indirectly, holds voting rights over the shares of an issuer whose shares are admitted to trading on a regulated market (for example, the London Stock Exchange's Main Market) or a prescribed market (for example, AIM) to notify the issuer when the percentage of those voting rights reaches, exceeds or falls below certain thresholds, and for the issuer to make the information contained in such notifications public. As a result of the operation of

[1] The Disclosure Table gives details of the companies in whose relevant securities dealings should be disclosed and the number of such securities in issue. See the Panel's website at www.thetakeoverpanel.org.uk.

DTR 5, certain information in respect of holdings of 3% or more (or, for example, in the case of fund managers, 5% or more) in companies to which DTR 5 applies is available to the market at all times. There is, therefore, a degree of overlap between the Code's disclosure regime and DTR 5, such that a person subject to the Code's disclosure regime may have disclosed details of his interests in relevant securities under DTR 5 prior to the commencement of an offer period.

2.10 However, there are a number of differences between DTR 5 and the Code's current disclosure regime which may mean that a person subject to the Code's disclosure regime has not previously made a notification under DTR 5, or that the information disclosed under DTR 5 is different from, and possibly less extensive than, that required to be disclosed under the Code. Most notably, the 1% disclosure threshold under Rule 8.3 is significantly lower than the initial disclosure thresholds under DTR 5 (for example, 3% for most persons and 5% for fund managers). In addition, whilst Rules 8.1, 8.3 and 38.5(b) require persons to disclose all dealings in relevant securities of the party to the offer concerned, and to give details of their resultant positions following each dealing, a DTR 5 notification is only required when a person crosses a specified percentage threshold (namely 5%, 10% and every 1% thereafter for fund managers and, for most other persons, 3% and every 1% thereafter).

2.11 At the time the Executive undertook its analysis, the interests in securities which were relevant for the purposes of the Code, both in terms of what was counted towards the Rule 8.3 disclosure threshold and what was required to be disclosed following a dealing, extended beyond the interests which were relevant for DTR 5. In particular, interests in securities by virtue of CFDs and other cash-settled derivative instruments were relevant for the Code's disclosure regime but were not relevant for DTR 5. However, in March 2009, the FSA announced in Policy Statement 09/3 that CFDs and other derivative interests would be brought within the scope of DTR 5 from 1 June 2009. Therefore, as indicated above, the Executive's analysis was undertaken both on the basis of (i) DTR 5 as in force

during the relevant time periods, and (ii) DTR 5 as anticipated to be amended so as to cover CFDs and certain other cash-settled derivatives.

2.12 The Executive's findings are summarised in the following table:

	UNDISCLOSED INTERESTS UNDER THE CODE	**July – September 2007**	**November 2008**
1.	Number of offeree companies/paper offerors which were added to the Disclosure Table during the period	59	11
2.	Aggregate average % interests in relevant securities not publicly disclosed by persons subject to Rule 8.3 at the time that the relevant securities were added to the Disclosure Table: (a) on basis of the current DTR 5 (b) on basis of DTR 5 amended so as to cover CFDs and certain other cash-settled derivatives	 14.9% 14.2%	 13.6% 12.9%
3.	Aggregate average % interests in relevant securities not publicly disclosed by persons subject to Rule 8.3 21 days later: (a) on basis of the current DTR 5 (b) on basis of DTR 5 amended so as to cover CFDs and certain other cash-settled derivatives	 9.1% 8.6%	 12.0% 11.3%

2.13 The Code Committee believes that the Executive's findings demonstrate that:

(a) significant interests in relevant securities of a party to an offer may not have been publicly disclosed at the time of the commencement of an offer period or the announcement which first identifies a potential offeror as such;

(b) a significant proportion of the persons holding those interests do not deal in the relevant securities of that party in the following 21 days, such that their interests remain undisclosed; and

(c) the proportion of such undisclosed interests would not change materially as a result of the amendments to DTR 5 which take effect on 1 June 2009.

(c) Proposed requirement to disclose positions following the commencement of an offer period and following an announcement that first identifies an offeror

2.14 As explained in paragraph 1.4 above, one of the objectives of the Code's disclosure regime is to provide transparency as to where voting control of relevant securities lies. The Code Committee does not believe that the Code's current disclosure regime fully achieves this objective in that persons who might have the ability to exercise a material influence over the outcome of an offer, because they are interested in 1% or more of a class of relevant securities, are not required to disclose their positions in such relevant securities unless and until they deal in relevant securities of that party to the offer. This is because the Code's current disclosure regime is based on "dealings" undertaken by persons subject to the regime and not "positions" held by them.

2.15 In addition, the Code Committee believes that the parties to an offer should also be required to disclose their positions in relevant securities, together with details of any relevant securities in respect of which an irrevocable commitment or letter of intent has been procured, at the outset of an offer. As noted above, this information is currently disclosed in the firm offer announcement under Rule 2.5, and the offer document and offeree board circular under Rules 24.3 and 25.3 respectively, but in many cases the "battle" for control of the offeree company will take place ahead of the firm offer announcement. Accordingly, the Code Committee believes that shareholders' interests would be better protected if this information was to be published at the commencement of an offer period.

2.16 In view of this, the Code Committee believes that a public opening position disclosure, containing details of any interests or short positions in, or rights to subscribe for, any relevant securities of the offeree company and any paper

offeror (if the person concerned has any such positions), should be made shortly after the commencement of an offer period and, if later, after an announcement that first identifies an offeror, by the following persons:

(a) the offeree company;

(b) an offeror (after its identity is first publicly announced);

(c) any person who is interested in 1% or more of any class of relevant securities of any party to the offer (other than a cash offeror); and

(d) exempt principal traders which do not benefit from recognised intermediary status and which are therefore currently subject to Rule 38.5(b).

2.17 The Code Committee believes that such disclosures should be made on the basis of "extended composite disclosure", as summarised in paragraph 2.22 below, such that any person required to make an opening position disclosure would be required to disclose details of his interests and short positions in any relevant securities of the offeree company and any publicly identified paper offeror which he had not previously disclosed under the Code.

2.18 As regards offerors and offeree companies, the Code Committee believes that opening position disclosures should include details of the positions held by:

(a) the offeror or offeree company itself; and

(b) its associates,

and that there should be no separate requirement on associates of the parties to the offer to make an opening position disclosure. The Code Committee considers that

all information in relation to the interests and positions of a party to the offer and its associates in relevant securities should be made available in one place and at the same time. In effect, therefore, insofar as they apply to the parties to an offer, the proposed amendments to the Code would essentially bring forward in time, in some cases to a considerable extent, the disclosures that are currently required to be made under Rule 2.5 and Rule 24.3 (in the case of the offeror "camp") and Rule 25.3 (in the case of the offeree company "camp").

(d) Proposed extension of the "composite disclosure" requirement

2.19 As a result of the introduction of the "composite disclosure" requirement as part of the 2005 Amendments, a person who is required to make disclosures under the Code's disclosure regime is currently required to disclose his long interests and short positions, both "physical" and "synthetic", in any class of relevant securities of a party to the offer following a dealing in any class of relevant securities of that party (and not only his interests and short positions in the class of relevant securities in which the dealing takes place). The objective of this regime is to provide a detailed picture of that person's overall position in the relevant securities of the party concerned. As such, during an offer period, the hedging of a long interest by the creation of a short position in the same class of relevant securities of a party to the offer, or arbitrage between the prices of different classes of a party's relevant securities, is currently required to be disclosed under the Code.

2.20 Nevertheless, the Code's disclosure regime may, in some circumstances, provide an incomplete picture of a person's positions in a takeover bid as a whole, in that Rule 8.3 does not require a person to disclose his dealings or positions in the relevant securities of any party to the offer in whose relevant securities he has a long interest of less than 1%, even though any positions that he does have may have a material influence on his view as to the most desirable outcome of the transaction.

2.21 For example, in a "1 for 1" securities exchange offer, a merger arbitrageur might take a short position in 10 million offeror shares at an average price of 100p and a long position in 10 million offeree company shares at an average price of 95p. The merger arbitrageur will have achieved a balanced position which will deliver a profit in the event that the offer completes, no matter at what price the shares trade (in this example, a profit of £500,000). The merger arbitrageur could therefore have an interest in the offer completing that other offeree company shareholders may not, which could cause it to accept an offer made at a price that other shareholders may not be prepared to accept.

2.22 With a view to ensuring that persons making disclosures under the Code provide a more complete picture of their long interests and short positions in relevant securities, the Code Committee believes that the Code should be amended so that:

(a) any person who has a gross long interest of 1% or more in any class of relevant securities of any party to the offer (other than a cash offeror) would be required to disclose any dealings in the relevant securities not only of that party but also of any other party to the offer (other than a cash offeror); and

(b) any person who is required to make a dealing disclosure under the Code would be required to disclose details of his interests and short positions in the relevant securities of both:

(i) the party to the offer in whose relevant securities the dealing occurred; and

(ii) any other party to the offer (other than a cash offeror).

The Code Committee notes that paragraph (b) would not apply to parties to offers, or their associates, to the extent that they make private disclosures of dealings for

the account of non-discretionary clients under Rule 8.2. This is because such private disclosures are not required to include positional details.

2.23 As noted in paragraph 2.17 above, the Code Committee believes that the opening position disclosure requirement should also operate on the basis of extended composite disclosure. The Code Committee believes that the adoption of "extended composite disclosure", particularly when combined with the opening position disclosure requirement, would lead to a significant improvement in market transparency.

Q.1 Do you agree that the "opening position disclosure" requirement and "extended composite disclosure" should be adopted as proposed?

(e) Deadlines for disclosures

(i) Introduction

2.24 The current deadlines for the disclosure of dealings in relevant securities are:

(a) under Rules 8.1 and 38.5, 12 noon on the business day following the date of the dealing for parties to offers, their associates and exempt principal traders; and

(b) under Rule 8.3, 3.30 pm on the business day following the date of the dealing for persons with interests in relevant securities of 1% or more.

In this PCP, the business day following the date of a dealing is referred to as "**T+1**".

2.25 Given that the Code requires dealing disclosures to be made on T+1, it might be considered logical for the Code to require opening position disclosures also to be made on the business day following the commencement of an offer period and, if

different, on the business day following an announcement that first identifies an offeror.

2.26 However, the Code Committee has concluded that a requirement for a person to make an accurate disclosure of his interests and short positions (and those of persons with whom his interests and short positions are required to be aggregated for the purposes of the Code's disclosure regime) on the business day following either the commencement of the offer period or the announcement that first identifies a paper offeror could present significant practical difficulties as regards data collection and collation. The Code Committee considers that this issue could be particularly acute for offerors and offeree companies, who might have to ascertain the interests and short positions of a large number of persons as a result of being responsible for making opening position disclosures in relation to the interests and short positions of their associates, as well as themselves. To a lesser extent, similar practical difficulties might also arise for a person who is currently subject to Rule 8.3 and who does not undertake a dealing in relevant securities. Further information in relation to these requirements is set out below.

2.27 In the light of the above, the Code Committee considers that the deadlines by which opening position disclosures must be made should be:

(a) the day falling 10 business days after the commencement of the offer period; and

(b) the day falling 10 business days after the announcement that first identifies a paper offeror as such.

However, where an offeror announces a firm intention to make an offer under Rule 2.5 prior to the deadline set out in paragraph (b) above, the Code Committee believes that that offeror's opening position disclosure in relation to the interests and short positions of itself and its associates in relevant securities of the offeree

company and the offeror itself should be made at the same time as its Rule 2.5 announcement. The deadlines for opening position disclosures, and for dealing disclosures which would be required prior to the deadline for opening position disclosures, are described in greater detail in paragraphs 2.29 to 2.41 below and an illustrative summary of the disclosure deadlines proposed below is set out in Appendix D.

2.28 The Code Committee has considered whether a shorter deadline for opening position disclosures might be appropriate, for example the day falling five business days after the commencement of the offer period or the announcement that first identifies a paper offeror as such, as the case may be. On balance, however, the Code Committee believes that 10 business days is an appropriate time period. The Code Committee considers that such a time period would afford persons required to make an opening position disclosure sufficient time to collect and collate accurate details, and to make adjustments to their positions, without unduly compromising the additional transparency which would be gained.

(ii) Offeror opening position disclosures

2.29 The Code Committee believes that an offeror should be required to make an opening position disclosure on an extended composite disclosure basis by the following deadlines:

(a) in relation to the relevant securities of the offeror itself (if a paper offeror), any other identified paper offeror and the offeree company, by 3.30 pm on the day falling 10 business days after the announcement that first identifies it as an offeror or, if earlier, at the time at which it announces a firm intention to make an offer under Rule 2.5; and

(b) in relation to the relevant securities of any other paper offeror, by 3.30 pm on the day falling 10 business days after the announcement that first

identifies that paper offeror as such.

2.30 In relation to an announcement of a firm intention to make an offer in the first 10 business days of the offer period, the Code Committee accepts that it may not be practicable in the time available for the offeror to make enquiries of all its associates in order to include all relevant details in respect of such persons in the opening position disclosure. In such circumstances, the Code Committee believes that this fact should be stated and that a further opening position disclosure containing all relevant details should be made as soon as possible thereafter, and in any event before the day falling 10 business days after the announcement that first identified the offeror as an offeror.

2.31 The proposed treatment of potential offerors whose identity has not been publicly announced is described in paragraphs 2.58 to 2.60 below.

(iii) Offeree company opening position disclosures

2.32 The Code Committee believes that an offeree company should be required to make an opening position disclosure on an extended composite disclosure basis by the following deadlines:

(a) in relation to the relevant securities of the offeree company itself and of any paper offeror identified at the commencement of the offer period, by 3.30 pm on the day falling 10 business days after the commencement of the offer period; and

(b) in relation to the relevant securities of any other paper offeror, by 3.30 pm on the day falling 10 business days after the announcement that first identifies that paper offeror as such.

(iv) Dealing disclosures by the parties to the offer and their associates

2.33 The Code Committee believes that an offeror, the offeree company and each of their associates, should continue to be required to make a dealing disclosure by 12 noon on T+1. In accordance with extended composite disclosure, the dealing disclosure by the party to the offer or associate would be required to give details of its positions in the relevant securities of each of the parties to the offer (other than a cash offeror) and not only of the party in whose relevant securities it had dealt. As currently, such a dealing disclosure would be required to include details of the positions of the party or associate which had dealt but not the positions of other associates.

2.34 If a party to an offer or any of its associates deals in relevant securities of any party to the offer (other than a cash offeror) in the 10 business day period following the commencement of the offer period, or the announcement that first identifies a paper offeror (as the case may be), the Code Committee believes that the relevant party or associate should be required to make a dealing disclosure on T+1 (in respect of itself alone). Details of the relevant party or associate's revised position(s) should also be set out in the opening position disclosure to be made by the relevant party (in respect of both itself and any of its associates) by no later than the normal deadline as described above. However, the Code Committee believes that, in such circumstances, it would not be necessary for the dealing information to be repeated in the opening position disclosure.

(v) Persons with interests in relevant securities of 1% or more

2.35 The Code Committee believes that a person with an interest of 1% or more in any class of relevant securities of any party to the offer (other than a cash offeror) should be required to make an opening position disclosure by the following deadlines:

(a) where he has an interest of 1% or more in any class of relevant securities of the offeree company or any paper offeror identified at the commencement of the offer period, by 3.30 pm on the day falling 10 business days after the commencement of the offer period; and

(b) where he has an interest of 1% or more in any class of relevant securities of any other paper offeror, by 3.30 pm on the day falling 10 business days after the announcement that first identifies that paper offeror as such,

unless he has dealt in relevant securities of any party to the offer (other than a cash offeror) before midnight on the day before the relevant deadline and the relevant details have previously been publicly disclosed in a dealing disclosure made under Rule 8 (and have not changed).

2.36 In the event that such a person does deal in relevant securities before the relevant deadline for making opening position disclosures, the Code Committee believes that he should be required to disclose any dealings, together with details of his positions in relevant securities (on an extended composite disclosure basis), by 3.30 pm on T+1, i.e. in accordance with the deadline currently provided for under Rule 8.3.

2.37 The Code Committee has considered carefully whether, in certain cases, it might be unduly harsh to require such a person to disclose his positions in relevant securities on the business day following such a dealing and, accordingly, whether the deadline for the disclosure of dealings shortly after the commencement of the offer period (or the identification of a paper offeror) should be extended. In particular, the Code Committee recognises that the introduction of the opening position disclosure requirement and extended composite disclosure would subject persons holding interests and short positions in relevant securities to an "event risk" beyond their control, such that, irrespective of whether he deals or not, a person holding a gross long interest in relevant securities of 1% or more would be

required to disclose all his positions, long and short, physical and synthetic, in all parties to the offer (other than a cash offeror) within 10 business days. It might therefore be argued that such persons should be afforded an adequate opportunity to deal to adjust their positions before disclosure is required.

2.38 However, the Code Committee has concluded that no such extension is warranted as it:

(a) believes that transparency in relation to dealings is of particular importance in the early stages of an offer period and that the relaxation of the Code's disclosure regime at this sensitive time would be disproportionate. In particular, any relaxation would not only enable a person subject to Rule 8.3 to trade out of an existing position during the extended time period but would, for example, also enable a person who was not currently subject to Rule 8.3 to build a position;

(b) notes that a person will, in most cases, have almost two trading days in which to effect his dealings, given that disclosure would only be required by 3.30 pm on the business day following the dealing; and

(c) considers that a time period of 10 business days before an opening position disclosure is required should provide sufficient opportunity for a person to decide exactly when to deal.

(vi) Exempt principal traders subject to Rule 38.5(b)

2.39 The Code Committee believes that an exempt principal trader which does not benefit from recognised intermediary status, and which is therefore subject to Rule 38.5(b), should be required to make an opening position disclosure by the following deadlines:

(a) if it is connected with either the offeree company or an offeror that is identified at the commencement of the offer period:

(i) in relation to the relevant securities of the offeree company and of such offeror (if it is a paper offeror), by 3.30 pm on the day falling 10 business days after the commencement of the offer period; and

(ii) in relation to the relevant securities of any paper offeror which is identified after the commencement of the offer period, by 3.30 pm on the day falling 10 business days after the announcement that first identifies any such paper offeror; and

(b) if it is connected with an offeror which is identified after the commencement of the offer period, in relation to the relevant securities of all parties to the offer which have already been identified (other than any cash offerors), by 3.30 pm on the day falling 10 business days after the announcement that first identifies the offeror with which it is connected and, in relation to the relevant securities of any paper offeror which is identified thereafter, by 3.30 pm on the day falling 10 business days after the announcement that first identifies that (subsequent) paper offeror,

provided that it does not deal in relevant securities of any party to the offer (other than a cash offeror) before midnight on the day before the relevant deadline.

2.40 The Code Committee believes that exempt principal traders that are subject to Rule 38.5(b) which deal in the relevant securities of any party to the offer should be required to disclose those dealings, together with details of their positions in relevant securities (on an extended composite disclosure basis), by 3.30 pm on T+1.

(vii) Private disclosures

2.41 The Code Committee believes that private dealing disclosures should continue to be made to the Panel as at present by exempt fund managers who are not interested in 1% or more of any class of relevant securities and by parties to the offer and their associates which deal for the account of non-discretionary clients. The Code Committee does not consider that such persons should be required to make private opening position disclosures to the Panel.

Q.2 Should the deadlines for "opening position disclosures" and "dealing disclosures" be those described above?

(f) Time for calculating a person's interests and short positions

(i) Time for calculating whether a person has an interest in relevant securities of 1% or more for the purposes of opening position disclosures

2.42 The Code Committee believes that a person should be required to make an opening position disclosure if he is, or was, interested in 1% or more of any class of relevant securities of any party to the offer (other than a cash offeror) at the time of the announcement that commences the offer period or the time of the announcement that first identifies a paper offeror (as the case may be).

Q.3 Do you agree with the proposal as to the time for calculating whether a person has an interest in relevant securities of 1% or more for the purpose of the "opening position disclosure" requirement?

(ii) Relevant positions are those as at midnight on the day prior to disclosure

2.43 Note 7(b) on Rule 8 currently provides that the positions which are required to be disclosed in dealing disclosures are those which exist or are outstanding at midnight on the date of the dealing in question. The Code Committee believes that this should continue to be the case. However, the requirement to make an

opening position disclosure would not be dependent on there having been a dealing and the Code Committee believes that the positions which should be disclosed in an opening position disclosure are those existing or outstanding at midnight on the day immediately preceding the date on which the disclosure is made.

2.44 The Code Committee notes that a party to the offer would need to ensure that its opening position disclosure stated its, and its associates', positions in relevant securities as at midnight on the day immediately preceding the making of the disclosure, i.e. that the disclosure took account of any dealings by the party to the offer or its associates prior to that time. If a party to the offer or any of its associates had previously made a dealing disclosure in which details had been given of its positions in the relevant securities of the party to the offer concerned, details of those positions would therefore need to be reflected in the subsequent opening position disclosure by the relevant party to the offer.

Q.4 Do you agree that the positions which should be disclosed in an opening position disclosure are those existing or outstanding at midnight on the day immediately preceding the date on which the disclosure is made?

(g) Separate disclosure forms

2.45 The Code Committee believes that the Code should provide that a person who is making disclosures in relation to his positions in the relevant securities of more than one party to the offer at the same time should use a separate disclosure form in respect of each party.

2.46 In addition, the Code Committee believes that a person required to make a dealing disclosure or an opening position disclosure should be required to confirm in his disclosure whether he is on the same day disclosing, or has previously disclosed, details of his positions in the relevant securities of any other party to the offer.

(h) Disclosures in relation to more than one party to the offer and information to be disclosed

2.47 The Code Committee believes that a person should normally have no further obligation to make a disclosure in relation to his positions in the relevant securities of a party to the offer if the person has already disclosed details of those positions under the Code, whether in an opening position disclosure or a dealing disclosure, and if those positions remain unchanged. The Code Committee does not believe that there would normally be a useful purpose in requiring a person to repeat such details in a subsequent disclosure. However, this is subject to certain exceptions, such as where a party to an offer, or one of its associates, deals in relevant securities prior to making an opening position disclosure (in which case, as described in paragraph 2.34 above, the person's positions will be referred to in both its dealing disclosure and in the subsequent opening position disclosure).

2.48 Accordingly, if, for example, a person had previously made an opening position disclosure in relation to his positions in the relevant securities of the offeree company, and if those positions remained unchanged, he would not normally then be required to repeat this information at the time that he made an opening position disclosure in relation to the relevant securities of a paper offeror whose identity was announced subsequently. Similarly, if that person were subsequently to deal in the relevant securities of the offeree company and to make a dealing disclosure, he would not need to repeat the details included in his opening position disclosure in relation to his positions in the relevant securities of the paper offeror, provided that these remained unchanged.

2.49 In addition, the Code Committee believes that, where, following an announcement which commences an offer period, a person is required to make an opening position disclosure and, before the deadline for doing so, a subsequent announcement is made that first identifies a paper offeror, the person's opening position disclosure in respect of the relevant securities of that offeror should be

made by the deadline established by reference to the announcement in relation to that offeror and not by the deadline established by reference to the announcement which commenced the offer period.

2.50 The Code Committee also believes that, where more than one offeror has announced an offer or possible offer for the offeree company, the information required to be included in the offer documentation in relation to interests and dealings under Rules 24.3(a)(iii) and (iv), 24.3(b) and 24.3(c) should be included in relation to the securities of each offeror or possible offeror (other than a cash offeror). In the light of this, the Code Committee believes that a new Note to this effect should be added to Rules 24.3 and 25.3, as set out in Appendix B.

Q.5 Do you agree with the proposals as to disclosures in relation to more than one party to the offer?

(i) Where a cash offer is revised so as to become a securities exchange offer

2.51 The Code Committee believes that, following an announcement by a cash offeror that its offer is being revised to become (or that its possible offer may be) a securities exchange offer, opening position disclosures and dealing disclosures should be required in the same way as if the announcement had been the first to identify the offeror as a paper offeror.

(j) Requirement to provide the Panel with details of persons with interests in securities representing 1% or more and to notify them of their obligations under Rule 8

2.52 The Code Committee understands that, following the commencement of an offer period, the Executive currently requests that offeree companies and paper offerors provide the Executive with details of all persons with interests in any class of relevant securities representing 1% or more. The Code Committee understands that this information is then compared with trade and transaction reports and other

market information for the purpose of ensuring that any dealings by such persons in relevant securities are disclosed in accordance with the provisions of the Code.

2.53 As previously explained, the introduction of the opening position disclosure requirement would mean that all such persons would be required to disclose their positions in relevant securities in all parties to an offer (other than a cash offeror) following the commencement of an offer period. Since this disclosure would be based on "positions" in relevant securities held by such persons rather than "dealings" undertaken by them, there would be no trade or transaction reports or other market information that could be used to monitor compliance with the opening position disclosure requirement.

2.54 In view of this, the Code Committee believes that receiving accurate and timely information from offeree companies and paper offerors in relation to persons with interests in relevant securities representing 1% or more will assume greater significance in monitoring compliance with the Code than it does at present. In addition, the Code Committee understands that the information currently provided by offeree companies and paper offerors is sometimes incomplete and therefore believes that greater efforts should be made to provide higher quality information.

2.55 The Code Committee also believes that the board of an offeree company (or paper offeror, as the case may be) should have a responsibility to ensure that persons who are interested in 1% or more of any class of relevant securities of the relevant party, or are reasonably considered to be so interested, are aware of their disclosure obligations under the Code and are therefore in a better position to comply with them than might otherwise be the case.

2.56 In view of the above, the Code Committee believes that Rule 22 should be amended to require the board of the offeree company (or a paper offeror, as the case may be) to take all reasonable steps to determine the identity of persons who are interested in 1% or more of any class of relevant securities of the relevant

party and to provide the Panel with details of all persons whom it reasonably considers to be so interested. Whilst the Code Committee believes that the steps that the board of an offeree company (or paper offeror, as the case may be) might reasonably be expected to take in providing information to the Panel under Rule 22 will depend on the particular circumstances of an offer, the Code Committee would normally expect this to include:

(a) providing details of all persons entered in the company's register as holding 1% or more of any class of relevant securities;

(b) providing details of all persons who have provided the company with a notification pursuant to the Disclosure Rules and Transparency Rules or other applicable regulations in respect of a major shareholding or other notifiable interest;

(c) serving notices pursuant to the Companies Act 2006 or other applicable legislation on persons who are known or are reasonably considered to be interested in 1% or more of any class of relevant securities or to hold such an interest on behalf of another person; and

(d) consulting with the company's corporate broker and other advisers in relation to the identity of persons who are known or are reasonably considered to be interested in 1% or more of any class of relevant securities or to hold such an interest on behalf of another person.

The Code Committee recognises that the information that is capable of being provided to the Panel under Rule 22 will vary from case to case. The Code Committee therefore considers that the Executive should be consulted at the earliest opportunity if there is any doubt in relation to how a board may discharge its obligations in this regard.

2.57 The Code Committee believes that offeree companies and paper offerors (as relevant) should also be required to send to all such persons an explanation of their disclosure obligations under Rule 8 by way of a reminder. The Code Committee believes that this should be an explicit reminder of those persons' obligations and that this should be sent to the relevant persons in addition to the summary of the provisions of Rule 8 included in an announcement that commences an offer period, or a circular summarising the terms and conditions of an offer, that is sent to shareholders and other relevant persons under Rule 2.6.

(k) Unnamed potential offerors and their associates

2.58 The Code Committee believes that a potential offeror whose identity has not been publicly announced should not be required to identify itself as a potential offeror simply by virtue of the requirement to make an opening position disclosure as a result of its being interested in 1% or more of a class of relevant securities of a party to an offer. The Code Committee therefore believes that a potential offeror whose identity has not yet been announced, and who is interested in 1% or more of a class of such relevant securities, should initially be treated, for the purposes of the opening position disclosure requirement, in the same way as any other person who has such an interest. The Code Committee believes that such a potential offeror should be required to comply with those aspects of the opening position disclosure requirement which apply to the parties to the offer only once its identity as a potential offeror has been publicly announced.

2.59 Where the identity of an undisclosed potential offeror is revealed as a result of a dealing in relevant securities by the potential offeror or a person acting in concert with it (in the circumstances described in Note 12 on Rule 8), the Code Committee believes that, in addition to requiring a dealing disclosure to be made, the Code should require the offeror to make a separate announcement stating that it is considering making an offer for the offeree company. The Code Committee understands that such announcements are currently required as a matter of

practice. The Code Committee believes that, where such an announcement identifies the offeror as a paper offeror, the announcement should be required to include the summary of the provisions of Rule 8.

2.60 Separately, the Code Committee notes that a person may consider that his only disclosure obligation may be because, for example, he is interested in 1% or more of a class of relevant securities of the offeree company. However, following the identity of a potential offeror being announced, that person may discover that he is an associate of the offeror (for example, because he holds more than 20% of the equity share capital of the offeror). Following the announcement which first identifies the offeror, the offeror's opening position disclosure would need to include details of the positions of all of its associates, including any such associates who had previously made disclosures as persons interested in 1% or more of a class of relevant securities of the offeree company. This would be another example of an exception to the rule that a person is not normally required to repeat details of interests and short positions which have previously been disclosed.

(l) Rule 8.3(b)

(i) Introduction

2.61 Rule 8.3(b) provides that, where two or more persons act pursuant to an agreement or understanding to acquire an interest in relevant securities, they will be deemed to be a single person for the purpose of Rule 8.3.

2.62 The Code Committee has considered what, if any, amendments should be made to Rule 8.3(b) in the light of the proposed introduction of the opening position disclosure requirement and, in this regard, has focussed on two particular issues: (i) the fact that Rule 8.3(b) currently applies in relation to persons who act pursuant to an agreement or understanding to "acquire" an interest in relevant

securities; and (ii) the impact of the opening position disclosure requirement on persons considering a possible consortium offer.

(ii) Agreements or understandings to which Rule 8.3(b) relates

2.63 As drafted, Rule 8.3(b) is triggered only where an agreement or understanding exists relating to the "acquisition" of an interest in relevant securities and not, for example, where two or more persons have an agreement or understanding as to the manner in which their existing shareholdings should be voted, but without in either case their acquiring further shares. The fact that Rule 8.3(b) is drafted in this way does not currently give rise to any issue in practice given that the disclosure obligation under Rule 8.3(a) is itself currently triggered only where a person subject to the Rule deals in relevant securities during an offer period.

2.64 If the opening position disclosure proposal is introduced, the Code Committee believes that a corresponding amendment should be made to Rule 8.3(b) to make clear that the Rule also applies where two or more persons act pursuant to an agreement or understanding to control an interest in relevant securities.

(iii) Members of a consortium considering the possibility of making an offer

2.65 The Code Committee recognises that the combination of the proposed amendment to Rule 8.3(b) described in paragraph 2.64 above and the introduction of the proposed opening position disclosure requirement could, potentially, result in the members of a consortium which is considering the possibility of making an offer becoming publicly identified at a much earlier stage where one or more of them is interested (or where they are collectively interested) in 1% or more of a class of the offeree company's relevant securities than if they are collectively interested in less than 1% of each class of relevant securities. This is because, under Rule 8.3(b) (amended as proposed in paragraph 2.64 above), the members of the

consortium could be seen as acting pursuant to an agreement or understanding to control an interest in relevant securities.

2.66 In line with paragraph 2.58 above, the Code Committee considers that it would be undesirable if the combination of these proposed amendments were automatically to result in the members of a consortium becoming publicly identified as such on the tenth business day following an announcement which triggered an opening position disclosure requirement just because one of them was interested (or they were collectively interested) in 1% or more of a class of the offeree company's relevant securities. This would be undesirable because:

(a) it would put consortia which were so interested at an unjustified disadvantage by comparison with other consortia (for example, because they would, by virtue of their having become publicly named, then potentially become subject to a "put up or shut up" deadline as provided for in Rule 2.4(b)); and

(b) the Code Committee understands that, once an offer period has commenced, the Executive will normally only require a person to make an announcement under Rule 2 confirming its identity as a potential offeror where this is necessary to prevent a false market (see, for example, paragraph 6 of Practice Statement No. 20).

2.67 In view of its conclusion in paragraph 2.66, the Code Committee considers that consortium members should not normally be required, by virtue of the combination of the opening position disclosure requirement and Rule 8.3(b), to disclose their identity as a potential offeror and the Code Committee proposes to make a minor amendment to Rule 8.3(b) and to the Notes on Rule 8 to allow for this.

2.68 Rule 8.3(b) is included in the proposed new Rule 8 as Rule 8.3(c) and the Note referred to in paragraph 2.67 above is at Note 12(b) on Rule 8.

Q.6 Do you agree that the current Rule 8.3(b) should be amended as proposed?

(m) Code amendments

2.69 The Code Committee proposes to implement the principal changes to the Code's disclosure regime described in this section 2 by, in effect, deleting the current Rules 8 and 38.5, and the Notes on those Rules, and replacing them with a new Rule 8 and Notes thereon, as set out in Appendix B.

2.70 The structure of the new Rule 8 and its Notes is summarised in the following table:

PROVISION	TITLE
Headnote	
Rule 8.1	**Disclosure by an offeror**
Rule 8.2	**Disclosure by the offeree company**
Rule 8.3	**Disclosure by persons with interests in securities representing 1% or more**
Rule 8.4	**Disclosure by concert parties**
Rule 8.5	**Disclosure by exempt principal traders**
Rule 8.6	**Disclosure by exempt fund managers with interests in securities representing less than 1% dealing for discretionary clients**
Rule 8.7	**Disclosure of non-discretionary dealings by parties and concert parties**
Note 1	*Cash offerors*
Note 2	*Timing of disclosure*
Note 3	*Method of disclosure*
Note 4	*Disclosure in relation to more than one party*
Note 5	*Details to be included in the disclosure*
Note 6	*Indemnity and other dealing arrangements*
Note 7	*Time for calculating a person's interests*
Note 8	*Discretionary fund managers*
Note 9	*Recognised intermediaries*

PROVISION	TITLE
Note 10	*Responsibilities of intermediaries*
Note 11	*Unquoted public companies and relevant private companies*
Note 12	*Potential offerors*
Note 13	*UKLA Rules*
Note 14	*Amendments*
Note 15	*Irrevocable commitments and letters of intent*

2.71 In addition, the Code Committee proposes:

(a) to delete the current Rule 8.4 and Note 14 on Rule 8 in relation to irrevocable commitments and letters of intent and to replace them a new Rule 2.11 and Notes on Rule 2.11;

(b) to introduce new definitions of "cash offeror" and "parties to the offer" into the Definitions section of the Code and to make consequential amendments to certain provisions of the Code;

(c) to amend Rule 22 as described in paragraphs 2.56 and 2.57 above; and

(d) to make certain other consequential amendments.

The full text of the proposed amendments is set out in Appendix B.

Q.7 Do you agree with the proposed amendments to the Code in relation to the matters described in section 2 of this PCP, as set out in Appendix B to this PCP?

3. Definition of "associate"

(a) Introduction

3.1 As part of its review of the matters set out in this PCP, and with a view to assisting both practitioners and parties to an offer, the Code Committee has considered whether the definition of "associate" can be simplified through its being conformed with the definition of "acting in concert" or, indeed, whether the definition of "associate" can be deleted from the Code.

3.2 As explained below, there are certain categories of person who are deemed to be associates of, but who are not presumed to be persons acting in concert with, an offeror or the offeree company. Therefore, if the definition of "associate" were to be conformed with the definition of "acting in concert" or alternatively deleted, and if, for example, Rule 8.1 were to be amended so as to apply instead to persons acting in concert with (rather than associates of) an offeror or the offeree company, these categories of person would no longer be required to disclose their dealings and positions in relevant securities unless they were interested in 1% or more of a class of relevant security.

(b) Definition of "associate"

3.3 As is made clear in the preamble to the definition, the term "associate" is principally relevant to the disclosure of dealings under Rule 8. Broadly, the term "associate" is intended to cover all persons (whether or not acting in concert) who are interested or deal in relevant securities and who have an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer. The current definition lists seven categories of person who will normally be treated as associates of an offeror or the offeree company.

3.4 With regard to these seven categories, four have direct equivalents in the presumptions of "acting in concert". These are, in summary, as follows:

(a) category (1): associated companies of an offeror or the offeree company (with ownership or control of 20% or more of a company's equity share capital being the test of associated company status) (which is equivalent to the test in presumption (1) of the definition of "acting in concert");

(b) category (2): connected advisers and persons controlling, controlled by or under the same control as such advisers (which is equivalent to the test in presumption (5) of the definition of "acting in concert");

(c) category (4): pension funds of an offeror or the offeree company or any company referred to in paragraph (a) above (which is equivalent to the test in presumption (3) of the definition of "acting in concert"); and

(d) category (5): investment accounts managed on a discretionary basis (which is equivalent to the test in presumption (4) of the definition of "acting in concert").

3.5 The three remaining categories of associate are, broadly, as follows:

(a) category (3): directors of an offeror, the offeree company or any company referred to in paragraph 3.4(a) above. Although, by virtue of presumption (2) of the definition of "acting in concert", directors of an offeror and the offeree company are presumed to be acting in concert with the offeror or offeree company (as appropriate), directors of associated companies of an offeror or the offeree company are associates of, but not persons presumed to be acting in concert with, the offeror or offeree company (as appropriate);

(b) category (6): employee benefit trusts of an offeror, the offeree company or any company referred to in paragraph 3.4(a) above; and

(c) category (7): companies having a material trading relationship with an offeror or the offeree company.

3.6 The Code Committee considers that, if the definition of "associate" were to be conformed with the definition of "acting in concert" (with the consequence that the categories of person referred to in paragraph 3.5 above would no longer be subject to the disclosure requirements of Rule 8.1), this would be unlikely to cause a material loss of protection for offeree shareholders or for the market generally. This is for two principal reasons:

(a) the Code Committee understands that dealings in relevant securities by the categories of person referred to in paragraph 3.5 are not common during an offer period and, when they arise, they are rarely meaningful in the context of the offer; and

(b) the primary purpose in treating these wider categories of person as associates of an offeror or the offeree company is with a view to flushing out whether they may, as evidenced by their dealings in relevant securities, be acting in concert with an offeror or the offeree company (as appropriate). However, this is also one of the objectives of Rule 8.3 – and, given the low threshold at which Rule 8.3 is triggered, the scope for such parties to deal in relevant securities without disclosure would be limited.

3.7 In the light of the above, the Code Committee has reached the following conclusions:

(a) that the definition of "associate" should be conformed with the definition of "acting in concert" and, as a result, that the persons who should be

treated as associates of an offeror or the offeree company should be the same as the persons who should be treated as persons acting in concert with an offeror or the offeree company;

(b) that, in view of the conclusion in paragraph (a) above:

(i) there would be no reason for retaining the definition of "associate" in the Code; and

(ii) that the definition of "associate" should therefore be deleted and the provisions of the Code which refer to the term "associate" should be amended so as to refer instead to any person acting in concert with an offeror or the offeree company (or equivalent wording); and

(c) that a new Note 10 should be added to the definition of "acting in concert", as set out in Appendix B, to provide that, where the Panel agrees that a presumption set out in the definition of "acting in concert" is rebutted in any individual case, it may, in cases where it considers it appropriate to do so, require that the person who would otherwise have been treated as a person acting in concert with an offeror or the offeree company (as appropriate) should make an appropriate private disclosure to the Panel if he deals in any relevant securities during an offer period. This is because such dealings might be relevant to the Panel's assessment of whether it should continue to treat the presumption of concertedness as having been rebutted.

Q.8 Do you agree that the definitions of "associate" and "acting in concert" should be conformed and that the definition of "associate" should be deleted?

Q.9 Do you agree with the proposed new Note 10 on the definition of "acting in concert"?

(c) Dealing arrangements (Note 6 on Rule 8)

3.8 Note 6 on Rule 8 provides as follows:

> *"6. Indemnity and other arrangements*
>
> *(a) For the purpose of this Note, an arrangement includes indemnity or option arrangements, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or refrain from dealing.*
>
> *If any person is party to such an arrangement with any offeror or an associate of any offeror, whether in respect of relevant securities of that offeror or the offeree company, not only will that render such person an associate of that offeror but it is also likely to mean that such person is acting in concert with that offeror; in that case Rules 4, 5, 6, 7, 9, 11 and 24 will be relevant. If any person is party to such an arrangement with an offeree company or an associate of an offeree company, not only will that render such person an associate of the offeree company but Note 3 on Rule 9.1 and Rule 25.3 may be relevant.*
>
> *(b) When an arrangement exists with any offeror, with the offeree company or with an associate of any offeror or of the offeree company in relation to relevant securities, details of such arrangement must be publicly disclosed, whether or not any dealing takes place.*
>
> *(c) This Note does not apply to irrevocable commitments or letters of intent, which are subject to Rule 8.4 and Note 14.*
>
> *(d) See also Rule 4.4*.".

3.9 In the light of the amendments proposed in paragraph 3.7 above, the Code Committee is proposing the following in respect of Note 6 on Rule 8:

(a) to delete the references to "associates" of an offeror or the offeree company and to make clear that (i) the Note applies to arrangements of the kind referred to in paragraph (a) entered into with an offeror or the offeree company or a person acting in concert with either of them, and (ii) that a person who enters into such an arrangement with such a party is likely to

be treated as a person acting in concert with an offeror or the offeree company (as appropriate);

(b) to retain the disclosure obligation in paragraph (b) in Note 6 on Rule 8;

(c) to include the rest of Note 6 on Rule 8 as a new Note 11 on the definition of "acting in concert"; and

(d) to make certain consequential amendments to those Rules which refer to the existing Note 6, namely Rule 2.5(b)(viii), Note 4 on Rule 24.2, Rule 24.3(a)(ii)(*c*), Rule 24.12, (new) Rule 25.3(a)(ii)*(c*), Rule 25.5 and Rule 26(o).

In addition, the Code Committee proposes to make certain amendments to the wording in paragraph (b) of Note 6, as set out in Appendix B, to make clear (i) the time at which the obligation to disclose an arrangement to which the Note applies is triggered, and (ii) the person who is responsible for disclosing details of the arrangement.

3.10 The amendments described in paragraph 3.9 are consequential amendments arising as a result of the amendments described above in paragraph 3.7 above and are not intended to affect the manner in which Note 6 has historically been applied by the Panel.

Q.10 Do you agree with the proposed amendments in relation to the current Note 6 on Rule 8?

(d) Consequential amendments

3.11 In the light of the conclusions in paragraph 3.7 above, the Code Committee believes that a number of consequential amendments should be made to the Code as set out in Appendix B. These include:

(a) deleting paragraph (3) of the definition of "connected adviser", Note 2 on Rule 4.6 and Note 2 on Rule 25.3; and

(b) replacing the references to "associates" of an offeror or the offeree company with "persons acting in concert" with the offeror or the offeree company in the following provisions: Note 3 on the definition of "recognised intermediary", Rule 2.5(b)(iv); Rule 4.4 (heading); Note 3 on Rule 11.2; Rule 17.1; Note 4 on Rule 20.1; Rule 24.2(d)(x); Rule 25.3(a)(ii); Rule 25.5; Rule 25.6(b); Rule 26(i); section 1(a) of Appendix 3; Note 2(c) on section 1 of Appendix 5; and section 8(iv) of Appendix 7.

Q.11 Do you agree with the proposed consequential amendments arising out of the proposed deletion of the definition of "associate"?

4. Disclosure of securities borrowing and lending positions and related issues

(a) Review of the Code's historical approach to securities borrowing and lending

(i) Introduction

4.1 In summary, the treatment of securities borrowing and lending under the Code is currently as follows:

(a) the lender, but not the borrower, of lent securities is treated as being "interested" in them (see Note 4 on the definition of "interests in securities"). Borrowed securities are therefore not counted towards the 1% threshold for dealing disclosures under Rule 8.3 and securities borrowing and lending positions are not required to be disclosed in dealing disclosures under Note 5(a) on Rule 8. However, borrowed shares are counted towards the 30% mandatory bid threshold under Rule 9.1 (see Note 17 on Rule 9.1);

(b) securities borrowing and lending transactions in respect of relevant securities are not treated as "dealings" and are therefore not required to be disclosed under Rules 8 or 38.5; and

(c) securities borrowing and lending transactions in respect of relevant securities by the parties to the offer, persons acting in concert with them and certain other persons are restricted under Rule 4.6. In addition, the securities borrowing and lending positions of such persons are required to be disclosed under Rules 2.5, 17.1, 24.3 and 25.3.

4.2 The Code Committee understands that a significant proportion of the securities lent by lending agents on behalf of their clients is under the management of discretionary fund managers. Under Rule 8.3(c) and Note 8 on Rule 8, the

principle normally applied by the Panel is that where the investment decision is made by a discretionary fund manager, he, and not the person on whose behalf the fund is managed, will be treated as interested in, and having dealt in, the relevant securities concerned. The beneficial owner would not normally, therefore, be concerned with disclosure to the extent that his investment is managed on a discretionary basis. This approach assumes that the fund manager has discretion regarding dealing, voting and offer acceptance decisions and that he does not take instructions on those matters from the beneficial owner.

4.3 The Code Committee understands that, until relatively recently, the information that would have been needed by fund managers from lending agents in order for the fund managers to comply with a requirement to disclose securities borrowing and lending transactions and/or positions was not readily available to them in the timescale on which the Code's disclosure regime operates. Such fund managers would therefore have faced major practical difficulties in complying with a disclosure regime that applied to securities borrowing and lending transactions and/or positions.

4.4 Certain other background information on securities borrowing and lending is set out in Part 1 of Appendix E.

4.5 The historical approach of the Code to securities borrowing and lending was examined by the Executive in the course of its informal pre-consultation exercise in relation to the current proposals. On the basis of the conclusions reached in that exercise, the Code Committee believes that the Code's historical approach to securities borrowing and lending may no longer hold good. The Code Committee believes that:

(a) the historical assumption that lent securities will invariably be recalled by, and redelivered to, the lender prior to the time of an offer-related vote or acceptance decision may be incorrect;

(b) the historical practical difficulties faced by securities lenders and fund managers in obtaining timely information in relation to lending positions have been largely removed in recent years;

(c) it remains possible for a person to borrow relevant securities with the aim of voting them (or ensuring that they are not voted) in a particular way, or of accepting them (or ensuring that they are not accepted) to a particular offer; and

(d) one of the practical effects of not requiring a person to disclose that he has lent relevant securities may be that the lent securities are, in effect, "double counted".

Each of these matters is considered in turn below.

4.6 However, as explained further below, the Code Committee has concluded that it would not be appropriate to put forward proposals for the amendment of the Code in relation to securities borrowing and lending disclosure at the present time. In this section of the PCP, the Code Committee is therefore consulting mainly on the principle of the disclosure of securities borrowing and lending positions and related matters, although a number of Code amendments are proposed at the end of this section.

(ii) Recalling and redelivering lent securities

4.7 Historically, the primary reason that the Code has not required persons subject to Rule 8.3 to disclose securities borrowing and lending transactions and positions has been the assumption that lent securities will be recalled by, and redelivered to, the lender prior to the time of an offer-related vote or acceptance decision. However, following the Executive's informal pre-consultation exercise, the Code

Committee understands that this is not always the case and that different lenders have different policies on recalling relevant securities during an offer period.

4.8 The Code Committee understands that some shareholders will recall relevant securities which they have lent as soon as the offer period commences, in order to ensure that they have full control over them. Other shareholders may prefer to continue to earn lending fees and to recall lent securities only if an offer is hostile or contentious, or in the event of a competitive situation arising. Such shareholders may consider it unnecessary to recall lent securities if they believe that the outcome of the offer is certain and they agree with that outcome. A different group of shareholders may only rarely (if ever) recall lent securities in the context of an offer, for example, because they have passive investment strategies (such as tracker funds) or because they consider their shareholding to be too small to have any bearing on the outcome of an offer.

4.9 In addition, even if a lender does recall lent relevant securities, there is no guarantee that equivalent securities will be redelivered by the borrower within the usual settlement cycle and therefore in sufficient time for them to be voted by the lender on an offer-related resolution or for the lender to ensure that they are accepted (or not accepted) to an offer.

4.10 This may be particularly important where a person has made statements about his intention to accept, or not to accept, an offer or has given a commitment to do so. For example, a lender who has disclosed his interest in the lent securities by way of a disclosure required by Rule 8.3, and who has made a public statement of his intention to accept the offer, but who has not sought to recall lent securities, might be incapable of accepting those shares to the offer by the final acceptance date. Similarly, a person who has made a public statement of his intention to vote in favour of a scheme of arrangement, but who has not sought to recall lent securities, might be incapable of voting those shares at the shareholder meetings.

The Code Committee considers that such disclosures and public statements might therefore be considered as potentially misleading.

(iii) Information flow

4.11 In paragraph 27.7 of PCP 2004/3, the Code Committee noted that the information which fund management organisations would require from lending agents in order to comply with an obligation to disclose securities borrowing and lending transactions did not appear at that time to have been readily available to them and that the establishment of the necessary systems to achieve this could have led to considerable costs having to be incurred. Furthermore, in the course of its enquiries into securities borrowing and lending following the publication of PCP 2004/3, the Executive was told that lending agents did not usually produce lending reports in a timeframe which would enable lending transactions and positions to be publicly disclosed by the deadline applicable to disclosures under the Code and that certain shareholders might choose to cease lending activity rather than incur the costs of establishing appropriate reporting systems.

4.12 The Code Committee understands that, since that time, there has been a significant improvement in the flow of information from lending agents to their clients and to their clients' fund managers. The Code Committee understands that, in the course of its pre-consultation process, the Executive was informed that the clients of a number of lending agents are now able to obtain on-line reports of lending transactions and positions on the business day following the transaction. In addition, the Code Committee understands that, whilst these reports are normally addressed to lender clients, the discretionary fund managers appointed by those clients should normally be able to access these reports insofar as they relate to securities under the fund managers' discretionary management.

(iv) "Borrowing to vote"

4.13 The Code Committee understands that the prevailing view amongst borrowers and lenders of securities, other market participants and market commentators is that a person should not borrow securities for the purpose of exercising the voting rights attaching to them. This view is reflected in, for example:

(a) the Securities Borrowing and Lending Code of Guidance drawn up by the Securities Lending and Repo Committee;

(b) the Securities Lending Code of Best Practice issued by the International Corporate Governance Network;

(c) the Report by Paul Myners in January 2004 to the Shareholder Voting Working Group; and

(d) the Standards of the Hedge Fund Standards Board.

4.14 On the basis of the conclusions of the Executive's informal pre-consultation exercise, the Code Committee has no reason to believe that the voting of borrowed securities on offer-related resolutions, or the accepting of borrowed securities to an offer, is common practice. However, it remains possible for a person to borrow securities in order to vote them without breaching the law or applicable regulations.

(v) "Double counting" of lent securities

4.15 At present, a disclosure under the Code does not distinguish between relevant securities which the person disclosing "owns and controls" and relevant securities which that person has "lent". This is despite the fact that, although it might be possible to regard the lender as, in a sense, the "owner" of the lent securities, and

although the lender has the right to require the lent securities (or equivalent securities) to be redelivered to him by the borrower, he is no longer the "controller" of those securities and, until the lent securities are recalled, and equivalent securities are redelivered, the lender has no ability to exercise the voting rights attaching to the securities, or to accept (or not accept) them to an offer.

4.16 The practical effect of this is that, where securities are borrowed in order to settle a short sale, the lent securities may, in effect, be "double counted" if both the lender and the person who purchases the securities from the short seller are persons required to make disclosures under the Code. This is illustrated in the following example:

Example

Following a dealing, investor A discloses under Rule 8.3 that it owns 10% of the ordinary shares of offeree company X. Prime broker B (a recognised intermediary) then writes a short CFD in respect of 5% of the ordinary shares of X for its client, C. In order to hedge the synthetic long position created by the writing of the short CFD, B borrows 5% of X from A and then sells the borrowed shares to investor D.

Under the current Code:

(a) the lending of the shares by A and the borrowing of shares by B would not be disclosed, as the disclosure of securities borrowing and lending transactions is not required. Even if it were, disclosure would not be required by B as it is a recognised intermediary acting in a client-serving capacity;

(b) entering into the short CFD would not be disclosed by C, provided that C

did not have a gross long interest of 1% or more in the relevant securities of X;

(c) the sale of the shares in X by B to D would not be disclosed by B as it is a recognised intermediary acting in a client-serving capacity; and

(d) following the purchase of the borrowed shares, investor D would disclose under Rule 8.3 that it owned 5% of the ordinary shares of X.

4.17 In aggregate, investors A and D will have disclosed that they own 15% of the ordinary shares of offeree company X under Rule 8.3. However, the Code Committee considers that this may be regarded as potentially misleading. This is because, at the time that the disclosures were made, an aggregate of only 10% of the ordinary shares in X (i.e. the "net" 5% held by A and the 5% held by D) were capable of being voted (or accepted to an offer) by a combination of A and D. This would continue to be the case unless and until B redelivered to A equivalent securities to the 5% borrowed, at which point A would again be able to vote the entirety of its 10% holding or accept those shares to an offer. The potentially misleading nature of A's disclosure would be compounded if A were to make a statement that it intended to accept (or not accept) its 10% shareholding to a particular offer, or to give an irrevocable commitment to accept (or not to accept) a particular offer, without making clear that 5% of that 10% holding had been lent and was therefore not currently under its control.

(vi) Conclusion

4.18 In summary, the Code Committee believes that:

(a) one of the principal objectives of the Code's disclosure regime is to provide transparency as to who controls the voting rights attaching to the relevant securities of an offeree company or paper offeror. A lender of

securities does not control the voting rights attaching to lent securities but the borrower does (for so long as it retains the securities). However, this fact is not currently reflected in disclosures made under the Code;

(b) the fact that lent securities may not, in practice, be recalled by, and/or redelivered to, the lender during the course of an offer further indicates that the Code's disclosure regime should not ignore securities borrowing and lending;

(c) the flow of information from lending agents to their clients, and to their clients' discretionary fund managers, appears to have improved significantly in recent years, such that historical practical difficulties in complying with a requirement to make timely disclosures in relation to securities borrowing and lending may have been largely removed;

(d) whilst "borrowing to vote" may not be common practice in the context of takeover offers, this does not detract from the important fact that control over lent/borrowed securities will rest with the borrower unless and until they (or equivalent securities) are redelivered to the lender or are otherwise disposed of; and

(e) the fact that lent securities may be "double counted" under the Code's disclosure regime if subsequently sold by the borrower to a purchaser who is required to disclose its interests in relevant securities under Rule 8 or Rule 38.5(b) should be addressed.

4.19 In the light of the above, the Code Committee believes that that there could be potential benefits if the Code were to be amended such that:

(a) a borrower of securities would be treated under the Code as having acquired "control" of, and therefore as interested in, any relevant securities which he has borrowed;

(b) a lender of securities would be treated under the Code as, in effect, continuing to "own", and therefore as continuing to be interested in, any relevant securities which he has lent, but as having temporarily lost "control" of those relevant securities; and

(c) the Code's disclosure regime would treat securities borrowing and lending transactions as dealings and would require a person to disclose his borrowing or lending position in relevant securities (after the netting of borrowing and lending positions as provided in paragraphs 4.22 to 4.24 below).

As explained further in paragraphs 4.39 to 4.47 below, the Code Committee is not putting forward detailed proposals for the amendment of the Code in relation to securities borrowing and lending disclosure at the present time. However, the following paragraphs describe in substance the amendments that the Code Committee believes might be made if detailed proposals were to be put forward in the future.

(b) "Interests in securities" and "dealings"

(i) Definition of "interests in securities" and Note 4 on the definition

4.20 The Code Committee believes that the first paragraph of the definition of "interests in securities" could be amended to provide that a person who controls securities, or the voting rights attaching to securities, would be treated as interested in them in addition to persons who have long economic exposure to changes in the price of securities.

4.21 In addition, the Code Committee believes that Note 4 on the definition of "interests in securities" could provide that, for the purposes of the Code:

(a) a lender of securities would be treated as continuing to be the "owner" (but not the "controller") of the lent securities, and thus as continuing to be interested in them; and

(b) a borrower of securities would be treated as becoming the "controller" (but not the "owner") of the borrowed securities, and thus as being interested in them until such time as he sells or on-lends those securities to a third party or redelivers them (or equivalent securities) to the lender.

(ii) Netting of securities borrowing and lending positions

4.22 Under Note 1 on the definition of "interests in securities", the number of securities in which a person is treated as having an interest is normally the gross number, aggregating the number of securities falling under the various categories of interest set out in the definition. The netting of offsetting positions against each other is normally allowed only in the limited circumstances set out in Note 1.[2]

4.23 The Code Committee believes that, in addition to the circumstances set out in Note 1, a person who is interested in securities by virtue of having borrowed them should be permitted to offset such interests against the interests he has in any securities of the same class which he has lent. In other words, a person who had borrowed a greater number of securities than he had lent would be regarded as having a "net borrowing position" and a person who had lent a greater number of

[2] The Code Committee is proposing to delete the final sentence of the first paragraph of Note 1 on the definition of "interests in securities" which were introduced into the Code incorrectly in 2005.

securities than he had borrowed would be regarded as having a "net lending position".

4.24 The Code Committee believes that this approach would reflect the fact that a person is temporarily able to control the exercise of voting rights attaching to securities which he has borrowed and is temporarily unable to control the voting rights attaching to securities which he has lent. As compared with what he would be required to disclose under the Code currently, the disclosure of his net borrowing (or lending) position would therefore inform the market of the extent to which he might either be able temporarily to control (or not control) voting rights attaching to a number securities in excess of (or less than) the number of securities in which he had disclosed himself to be interested.

(iii) Definition of "dealings"

4.25 The Code Committee believes that the definition of "dealings" could be amended to include: (i) the delivery of securities by a lender to a borrower; (ii) the receipt of securities by a borrower from a lender; (iii) the redelivery of securities (or equivalent securities) by a borrower to a lender; and (iv) the receipt of redelivered securities (or equivalent securities) by a lender from a borrower.

(iv) Summary

4.26 In summary, if the definition of "dealings" were to be amended as described above, securities borrowing and lending transactions would trigger a requirement for a person subject to the Code's disclosure regime to make a dealing disclosure, including details of his net borrowing position or his net lending position. In addition, if the definition of "interests in securities" were to be amended as described above, a person's "net borrowing position" would be relevant when calculating whether the person was interested in 1% or more of any class of relevant securities, and thus subject to the provisions of Rule 8.3.

(c) Disclosures

(i) "Net" borrowing or lending positions, and not transactions, to be disclosed

4.27 Although, as explained in paragraph 4.25 above, the Code Committee recognises that securities borrowing and lending transactions could be treated as dealings, the Code Committee does not believe that it would be necessary for dealing disclosures to provide details of securities borrowing and lending transactions as such. The Code Committee believes that it would be sufficient for the disclosure to provide details of the person's "net" borrowing or lending position (and to indicate whether that position had changed since any previous disclosure of his interests and short positions in the relevant securities concerned).

(ii) Disclosure required only if net borrowing or lending position exceeds or falls below a 0.1% threshold

4.28 The Code Committee understands that a person's securities lending positions, in particular, may be subject to frequent changes of a *de minimis* amount. For example, the Code Committee understands that, in the case of lending from pooled accounts, as is common amongst certain lending agents, the sale of securities previously lent by one member of the pool may lead to a reallocation of lending positions amongst other members of the pool. However, the Code Committee understands that the number of securities to be reallocated will often be small.

4.29 The Code Committee considers that it would be unduly burdensome for the Code to require *de minimis* changes in a person's net borrowing or lending position to be disclosed when he has not otherwise undertaken a dealing and that, in the absence of another type of dealing, it would be sufficient for a disclosure to be made only when a person's net borrowing or lending position reached, exceeded or fell below a particular threshold. The Code Committee believes that it would

be appropriate for this threshold to be set at each 0.1% of a class of relevant securities. However, the Code Committee believes that, if a person with a net borrowing or lending position undertakes a dealing (other than a securities borrowing or lending transaction) in the relevant securities of a party to the offer, up-to-date details of that person's net borrowing or lending position in the relevant securities of that party should be required to be disclosed.

(d) DBV collateral

4.30 The Code Committee understands that a borrower of securities is required to provide collateral to the lender, which could include relevant securities in an offeree company or a paper offeror. In the same way that title to lent securities is transferred from the lender to the borrower, title to collateral securities is normally transferred from the borrower to the lender. Although the collateral provided by the borrower to the lender might comprise relevant securities, the Code Committee believes that, for the purposes of the Code, a lender of securities should not be treated as acquiring an interest in such collateral securities and that a borrower of securities should not be treated as disposing of an interest in such collateral securities. The Code Committee considers that this would be consistent with Note 7 on the definition of "interests in securities", which provides that a bank taking security over shares or other securities in the normal course of its business will not normally be considered to be interested in those shares or securities.

4.31 In any event, the Code Committee understands that, in practice, it is very unlikely that a securities lender would exercise the voting rights attaching to collateral securities. This is because such securities are usually held under the delivery-by-value ("**DBV**") mechanism within the CREST system. The Code Committee understands that the CREST system automatically selects and delivers DBV collateral securities (and reverses the transaction the following morning) and that the collateral securities are liable to change on a daily basis, such that there is no

certainty that securities held as DBV collateral on a particular day will continue to be held as collateral the following day. Although collateral for securities borrowing is not exclusively provided by way of the DBV mechanism, the Code Committee's understanding is that the risk of collateral securities being voted by a securities lender is negligible.

(e) Recognised intermediaries

4.32 The Code Committee believes that securities borrowing and lending desks of banks and securities houses should be able to apply for recognised intermediary status and that the exemptions from disclosure that are afforded to recognised intermediary desks should be capable of being extended to securities borrowing and lending transactions undertaken, and positions held, in a client-serving capacity, so that client-serving securities borrowing and lending transactions by desks with recognised intermediary status would not trigger a requirement to make a dealing disclosure. However, the Code Committee believes that securities borrowing and lending by desks with recognised intermediary status would need to be appropriately monitored by the Executive.

4.33 The Code Committee notes that the first paragraph of Note 16 on Rule 9.1 provides, in effect, that where a recognised intermediary is acting in a client-serving capacity, it will not be treated as interested in securities for the purpose of Rule 9.1 by virtue of a derivative or option position in such securities. The Code Committee believes that Note 16 could be amended to provide that, in addition, a recognised intermediary acting in a client-serving capacity would not be treated as interested in borrowed securities for the purposes of Rule 9.1.

Q.12 Should securities borrowing and lending positions be disclosed under the Code as described?

(f) Financial collateral arrangements and rights of use

(i) Introduction

4.34 The historical approach of the Code to the granting of security interests over shares and other securities, and certain other background information on financial collateral arrangements and rights of use, is set out in Part 2 of Appendix E.

(ii) Financial collateral arrangements and securities borrowing and lending

4.35 The Code Committee believes that, for the purposes of the Code's disclosure regime, it is not possible to make a meaningful distinction between the position of:

(a) a shareholder whose shares have been lent to a securities borrower under a securities lending agreement; and

(b) a shareholder whose shares are either (i) subject to a security financial collateral arrangement where the collateral-taker has exercised its right to acquire itself or transfer to a third party full title in the shares (otherwise known as a "right of use" or "right of rehypothecation"), or (ii) subject to a title transfer financial collateral arrangement.

In each case, whilst the shareholder will remain economically interested in the shares concerned, the shareholder will generally have given up its beneficial ownership of, and control of the voting rights attaching to, the shares and its beneficial interest in the shares will have been replaced by a contractual right to be redelivered equivalent securities at some point in the future.

4.36 The Code Committee therefore believes that, where a right of use over relevant securities in which a person is interested has been exercised, or where relevant

securities in which a person is interested are subject to a title transfer collateral arrangement, the person could be required to disclose this in the same way as a person would be required to disclose that the relevant securities in which he was interested had been lent.

4.37 For example, if a shareholder is interested in 2% of the shares in an offeree company and transfers legal title in those shares to its bank under a security financial collateral arrangement, retaining the beneficial ownership in the shares subject to the bank's right of use, the Code Committee believes that a disclosure by the shareholder under the Code's disclosure regime would indicate that he "owns" and "controls" those shares. However, if the bank subsequently exercises its right of use over 0.5% of the shareholder's shares, for example, by selling them, the Code Committee believes that the shareholder could be required to disclose, in effect, a net lending position in respect of 0.5% of the 2% of the offeree company shares in which it is interested. This would reflect the fact that, unless and until equivalent securities are redelivered to him (pursuant to his contractual rights), the shareholder would be able to control, and exercise the votes attaching to, only 1.5% of the offeree company shares.

4.38 In addition, the Code Committee believes that:

(a) a person should be able to net any relevant securities which he has borrowed against any relevant securities in respect of which a right of use has been exercised (or which are subject to a title transfer collateral arrangement) in the same way as a person would be permitted to net borrowed securities against lent securities; and

(b) the 0.1% *de minimis* threshold proposed for securities borrowing and lending positions should apply in the same way (and on an aggregated basis) to a person's positions in relevant securities in respect of which a

right of use has been exercised (or which are subject to a title transfer collateral arrangement).

Q.13 Should the Code's disclosure regime apply where a right of use is exercised in respect of relevant securities in which a person is interested or where relevant securities are subject to a title transfer collateral arrangement?

(g) Conclusions in relation to securities borrowing and lending and financial collateral arrangements

4.39 The Code Committee understands that, in order for:

(a) the prime brokerage departments of certain investment banks which hold customers' shares over which they have taken security financial collateral in a pooled client account to be able to notify those customers when the bank exercises its right of use over such shares (and of the consequent reduction in the customers' proportionate proprietary interests in the shares held in the pooled client account); and

(b) the proprietary and client-serving trading desks of certain investment banks to be able to identify the shares over which they do and do not currently have control,

those investment banks would need to implement new policies and to introduce changes to their existing practices, systems and technology. In the course of its informal pre-consultation exercise, certain investment banks informed the Executive that the cost of making such changes would be significant and that they regarded this cost as unjustified, particularly given the current economic climate and the increasing demands of other regulatory regimes. These issues are explained further below.

(i) Designated and pooled client accounts

4.40 In order for the shareholder in the example given in paragraph 4.37 above to be able to comply with a requirement to make a disclosure when the bank exercises its right of use in respect of its shares, the bank would need to notify the shareholder when the right was exercised. This would be similar to the notification that a securities lending agent is required to give to its client when its shares are lent.

4.41 The Code Committee understands that some investment banks which enter into security financial collateral arrangements with their customers hold each customer's shares in a "designated" client account until such time as the bank wishes to exercise its right of use over the customer's shares. At this point, the bank sends the customer a notice, indicating the shares in respect of which the bank has exercised its right of use and in respect of which the customer is therefore no longer the beneficial owner.

4.42 However, the Code Committee understands that the majority of investment banks which enter into security financial collateral arrangements do not operate designated client accounts in respect of such arrangements. Instead, the Code Committee understands that such banks will hold such customers' shares in a pooled client account. As with the designated client account system, the customers will retain beneficial ownership of their shares until such time as the bank exercises its right of use, at which point they will acquire a contractual right to be redelivered equivalent securities.

4.43 The Code Committee understands that there is no requirement on a bank to allocate positions to particular customers when it exercises rights of use in respect of shares held in a pooled client account and that, as a matter of practice, most banks that operate pooled client accounts do not do so. Owing to the fungible nature of the co-mingled shares, and in the absence of policies and systems for

doing so, the Code Committee understands that it would not currently be practicable for such a bank to issue notifications on a customer by customer basis of the extent to which a right of use had been exercised in respect of each customer's shares.

(ii) Proprietary accounts

4.44 The Code Committee understands that similar issues may also arise in relation to shares which an investment bank holds in a proprietary capacity. The Code Committee understands that a bank may pool a number of shares in which different proprietary trading desks and client-serving trading desks are interested into a single account, and that the shares in that account may be used in securities lending, repo or other transactions involving the transfer of those shares.

4.45 The positions of such trading desks may, or may not, be aggregated with each other for the purposes of disclosures made under the Code and such trading desks may or may not have recognised intermediary status. However, the Code Committee understands that banks do not generally allocate positions in shares which are subject to such transactions in a way which would allow each desk to identify the extent to which it did or did not currently have control over the shares in which it was interested for the purposes of disclosures under the Code.

(iii) Conclusions

4.46 As indicated in paragraph 4.35 above, the Code Committee does not believe that, for the purposes of the Code's disclosure regime, it would be possible to make a meaningful distinction between, on the one hand, a securities lender and, on the other, a shareholder whose shares are subject to a security financial collateral arrangement where the collateral-taker has exercised its right of use or a shareholder whose shares are subject to a title transfer financial collateral arrangement. However, the Code Committee considers that the costs of

implementing the necessary policy and systems changes referred to in paragraph 4.39 above would be disproportionate to the increase in market transparency that would be achieved during offer periods.

4.47 Accordingly, the Code Committee does not believe that it would be appropriate at present to put forward detailed proposals for the amendment of the Code in relation to securities borrowing and lending disclosure as described above. The Code Committee intends to keep these issues under review.

Q.14 Do you have any comments regarding the Code Committee's conclusions in relation to the disclosure of securities borrowing and lending and financial collateral arrangements?

4.48 In the meantime, the Code Committee is proposing certain amendments to Rule 4.6 and Rule 9, as described below.

(h) Rule 4.6

(i) Securities borrowing and lending in the relevant securities of a paper offeror

4.49 Under Rule 4.6, the parties to the offer, persons acting in concert with them and certain other persons are restricted from entering into or taking action to unwind a securities borrowing or lending transaction in respect of the relevant securities of an offeree company or a paper offeror during an offer period, except with the consent of the Panel.

4.50 The Code Committee believes that the Code should continue to restrict securities borrowing and lending transactions by such persons in respect of the relevant securities of the offeree company, but that the restriction on securities borrowing and lending transactions in respect of the relevant securities of a paper offeror should be lifted. The Code does not normally impose any restrictions on dealings in the relevant securities of a paper offeror and, on reflection, the Code

Committee believes that it is unduly harsh for Rule 4.6 to restrict the borrowing or lending of such relevant securities. However, the Code Committee believes that any borrowing or lending transactions in respect of the relevant securities of a paper offeror should be subject to disclosure under Rule 4.6.

(ii) Title transfer collateral and rights of use

4.51 The Code Committee believes that, in the same way that it restricts the lending of relevant securities of the offeree company by the parties to the offer and persons acting in concert with them during an offer period, Rule 4.6 should also restrict such persons either from granting a right of use over relevant securities of the offeree company to a collateral-taker in the context of a security financial collateral arrangement or from entering into a transfer of title collateral arrangement in relation to such relevant securities, except with the consent of the Panel. The Code Committee notes that, by virtue of the final sentence of the current Rule 4.2(a), an offeror, and any person acting in concert with it is, in any event, likely to be restricted from entering into such an arrangement, on the basis that it would be likely to involve a "transaction which may result in securities in the offeree company being sold during the offer period … by the counterparty to the transaction".

4.52 In addition, the Code Committee believes that, if a party to the offer or any person acting in concert with it has a pre-existing security financial collateral arrangement or transfer of title collateral arrangement with respect to relevant securities of the offeree company, these should be required to be disclosed in the opening position disclosure by the relevant party to the offer and that, in such cases, the Panel should be consulted by the relevant party to the offer or by the relevant person acting in concert with it.

4.53 The Code Committee also believes that where, during an offer period, a person subject to Rule 4.6 enters into a security financial collateral arrangement or a

transfer of title collateral arrangement with respect to the relevant securities of a paper offeror or, with the consent of the Panel, the offeree company, this should be disclosed as if it were a dealing in those relevant securities.

(iii) Code amendments

4.54 In the light of the above, the Code Committee proposes:

(a) to amend Rule 4.6 and Note 3 on Rule 4.6 ("Disclosure or notice where consent is given");

(b) to introduce a new Note 4 on Rule 4.6 regarding financial collateral arrangements;

(c) to introduce provisions in relation to the disclosure of financial collateral arrangements into the proposed new Note 5(l) on Rule 8; and

(d) make certain consequential amendments,

as set out in Appendix B.

Q.15 Do you agree with the proposed amendments to Rule 4.6 and its Notes and to the introduction of provisions in relation to financial collateral arrangements into the proposed new Note 5(l) on Rule 8?

(i) Rule 9

4.55 Borrowed shares are currently relevant for the purposes of the mandatory bid threshold in accordance with Note 17 on Rule 9.1, which states that, 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. If the definition of "interests in securities" were in the future to be

amended so that a person was treated as interested in borrowed shares, such borrowed shares would then become relevant for the purposes of the restrictions on acquisitions of interests in securities in Rule 5.1.

4.56 The Code Committee believes that a person who borrows and lends shares on the same day should be regarded as having breached the 30% threshold referred to in Rule 9.1 as a result of his borrowing or lending activities only if these activities result in an increase in that person's net borrowing position, or that of any person acting in concert with him, as at midnight on that day. The Code Committee proposes to amend Note 17 on Rule 9.1 accordingly, as set out in Appendix B.

4.57 In addition, Note 17 on Rule 9.1 currently provides that, in circumstances where a mandatory offeror, or persons acting in concert with it, have borrowed or lent shares in the offeree company, the Panel will determine how the borrowed or lent shares should be treated for the purpose of the acceptance condition of the mandatory offer. The Code Committee believes that this provision would more appropriately sit within Note 2 on Rule 9.3, which is the Note which addresses matters in relation to the acceptance condition in a mandatory offer. The Code Committee proposes to amend Note 17 on Rule 9.1 and Note 2 on Rule 9.3 accordingly, as set out in Appendix B.

Q.16 Do you agree that Note 17 on Rule 9.1 and Note 2 on Rule 9.3 should be amended as proposed?

5. Disclosure of short only positions

5.1 The Code Committee has considered whether the Code's disclosure regime should require a person who has a significant gross short position in the relevant securities of a party to an offer, but who does not have a gross long interest in any such securities of 1% or more, to disclose his dealings and positions in the same way as it requires disclosure by a person with a gross long interest of 1% or more in relevant securities.

5.2 On the one hand, the Code Committee considers that two of the objectives of the Code's disclosure regime identified in paragraph 1.4 above might be in point where a person has a gross short only position in relevant securities, namely the objectives of identifying concert parties and providing market transparency.

5.3 On the other hand, the Code Committee considers that various arguments can be made against the adoption of a requirement for persons with short only positions to make disclosures under the Code. These include the following:

(a) *no voting control over relevant securities*: one of the other objectives of the Code's disclosure regime (i.e. to provide transparency as to where voting control of relevant securities lies) is not in point where a person has a short only position in relevant securities and therefore does not control voting rights attaching to relevant securities;

(b) *many short positions would be subject to disclosure in any event*: if a person with a short position in a class of relevant securities has a gross long interest of 1% or more in any class of relevant securities of the company concerned, and deals in relevant securities of that company, disclosure of the dealing and the resultant long interest and short position is already required by Rule 8.3. In addition, if the opening position disclosure requirement and extended composite disclosure are adopted, a

person who has or who, at any time during the offer period, acquires, a long interest of 1% or more in any relevant securities of the offeree company or a paper offeror will be required to disclose his long interests and short positions in the relevant securities of each party to the offer (other than a cash offeror); and

(c) *stand-alone short positions in takeover bids are relatively uncommon*: the Code Committee believes that the most common short selling activity in the context of takeover bids is undertaken for the purpose of arbitrage between the share prices of a paper offeror and the offeree company (or between different classes of relevant security of the same company) or otherwise in order to hedge a long position (either in the same company or in another party to the offer) and that it is relatively uncommon for persons to establish or take stand-alone short positions in such a context.

5.4 In addition, the Code Committee notes that, on 18 September 2008, the FSA introduced temporary short selling measures in relation to stocks in UK financial sector companies on an emergency basis. The FSA has also conducted a review of short selling and set out its analysis and conclusions in Discussion Paper 09/1 (Short selling), issued on 6 February 2009. In summary, Discussion Paper 09/1 explained that the FSA favours an amended version of the disclosure obligation introduced as part of the temporary short selling measures but extended to all UK stocks admitted to trading on a prescribed market.

5.5 The Code Committee believes that an arguable case can be made for a short trigger requirement. However, the Code Committee does not believe that it would be proportionate to introduce a new disclosure requirement for the relatively unusual cases in which short positions would not otherwise be subject to disclosure under the Code. The Code Committee also notes that, if the FSA's preferred option for the regulation of short selling is adopted, a net short position

of 0.5% or more in the securities of a company admitted to trading on a prescribed market would, in any event, be subject to disclosure.

5.6 On balance, therefore, the Code Committee has concluded that the short trigger proposal should not be adopted.

Q.17 Do you agree with the Code Committee's conclusion that the Code should not require persons with a significant gross short position in the relevant securities of a party to an offer to disclose their dealings and positions in relevant securities if they do not have a gross long interest of 1% or more in any class of relevant securities of a party to the offer?

6. Assessment of the impact of the proposals

(a) Opening position disclosure requirement and extended composite disclosure

(i) Benefits of the proposals

6.1 As discussed in more detail in section 1 of this PCP, the Code Committee believes that a high degree of transparency is essential to the efficient functioning of markets, particularly in an offer period, and that ensuring that this is achieved is one of the principal purposes of the Code. Against this background, the Code Committee considers that the combination of the opening position disclosure requirement and extended composite disclosure will lead to significant improvements in market transparency.

6.2 The proposed amendments will have the principal effect of, in many cases, accelerating the time at which disclosure is made of the interests and short positions in relevant securities of parties to the offer and persons acting in concert with them to no later than the tenth business day following the commencement of the offer period (or the public identification of the relevant offeror). Under current Code rules, such disclosures will be made either (i) in the announcement of a firm intention to make an offer pursuant to Rule 2.5, and in the offer document published pursuant to Rule 24, or (ii) in the offeree board's circular to sent shareholders pursuant to Rule 25. The Code Committee considers this acceleration to represent a significant benefit, given that market practice in recent years has evolved such that, in many cases, the "bid battle" is effectively over by the time that an announcement of a firm intention to make an offer is made pursuant to Rule 2.5.

6.3 In addition, the Code Committee believes that the proposed amendments will:

(a) result in the disclosure of positions which could have a significant influence on the outcome of offers and which would otherwise remain undisclosed, even following the implementation of the amendments to DTR 5 on 1 June 2009; and

(b) require the disclosure of the totality of positions and dealings, long and short, physical and synthetic, in all relevant parties to the offer by persons subject to the new Rule 8.3, and thereby significantly enhance transparency as to such persons' overall economic interests. This may be of particular importance where such persons' interests may diverge from their ability to influence the outcome of the offer.

(ii) Costs

6.4 The Code Committee recognises that the proposed amendments will lead to an increased burden both on parties to the offer and their advisers and to persons having or acquiring a gross long interest in relevant securities of 1% or more in any party to the offer (other than a cash offeror). In particular, the Code Committee recognises that all relevant parties are likely to be subject to an increased administrative and monitoring burden, particularly in the early stages of an offer period, and that various market participants may need to make amendments to their monitoring and compliance systems. However, the Code Committee considers that, as the proposed amendments are essentially a logical extension of existing disclosure requirements (as opposed to a fundamental change in approach), the additional burden should be relatively modest. In particular, the Code Committee believes that:

(a) in relation to parties to the offer and their advisers, the proposed amendments represent essentially an acceleration of existing requirements and that the period of 10 business days following the commencement of an

offer period before any opening position disclosure is required should be adequate for all relevant enquiries to be made without undue burden; and

(b) all persons dealing in relevant securities currently need to have systems in place to monitor whether they are already, or following a dealing will become, interested in 1% or more of a class of relevant securities.

Consequently, whilst it is not possible for the Code Committee to assess precisely what systems' amendments will be required in individual cases, the Code Committee believes that the additional monitoring required should be relatively modest.

(iii) Alternative approaches

6.5 The Code Committee has considered whether there might be alternative means of achieving the expected benefits described in paragraphs 6.1 to 6.3 above at lower cost. It has, however, concluded that the best available approach is to build upon and extend the Code's existing disclosure regime and that any alternative would be likely to involve additional complexity and cost.

(iv) Conclusion

6.6 The Code Committee therefore considers that the likely benefits of introducing the opening position disclosure requirement and extended composite disclosure outweigh the likely additional burden and costs.

(c) Securities borrowing and lending disclosure

(i) Benefits of the proposals

6.7 As described in section 4 above, the Code Committee believes that there could be

potential benefits to market transparency if the securities borrowing and lending disclosure requirement were to be adopted, particularly in the context of providing transparency as to where voting control of relevant securities lies, which (as described in paragraph 1.4 above) is one of the objectives of the Code's disclosure regime. Specific benefits would include:

(a) providing transparency as to the extent to which a person was, as a result of his net borrowing or net lending position, temporarily able (or unable) to exercise voting power relative to what the market would otherwise expect; and

(b) minimising the risk of relevant securities being "double counted".

(ii) Costs

6.8 The Code Committee recognises, however, that the securities borrowing and lending disclosure requirement would not simply be an extension of the Code's existing disclosure regime, but would represent a significant new requirement. It further understands that, as described in more detail in paragraphs 4.39 to 4.47, adoption of the requirement would be likely to lead to a significant additional burden, and systems' investment requirement, for a number of investment banks in particular.

6.9 It is difficult for the Code Committee to assess with accuracy whether the securities borrowing and lending disclosure requirement would have any material effect on the liquidity of relevant securities during the course of an offer period. It is possible that the introduction of a requirement for net borrowing and lending positions to be disclosed might lead to a reduction in the number of securities available for lending during the course of an offer period. For example, shareholders might not wish to be perceived as lenders of securities to short sellers or might consider the costs of compliance with such requirements to

outweigh the fee income generated by securities lending. However, the conclusions of the Executive's informal pre-consultation exercise suggest that, whilst a reduction in the number of securities available for lending might lead to lending fees during the course of an offer period rising, a material reduction in the liquidity of such securities would be unlikely.

(iii) Conclusion

6.10 The Code Committee has concluded that the potential benefits of adopting the securities borrowing and lending requirement, in current circumstances, would be outweighed by the likely costs. However, the Code Committee intends to keep the securities borrowing and lending disclosure requirement under review.

(d) Short trigger proposal

6.11 Although the Code Committee believes that there is an arguable case for the short trigger proposal, it does not believe that the likely benefits of its adoption would be significant. Accordingly, the Code Committee has concluded that it should not be adopted.

APPENDIX A

Persons consulted informally by the Panel Executive (on a non-confidential basis)

1. Allen & Overy LLP
2. Alternative Investment Managers Association (AIMA)
3. Association of British Insurers
4. The Association of Investment Companies
5. Association of Private Client Investment Managers and Stockbrokers
6. AXA Investment Managers
7. The Bank of New York Mellon
8. Barclays
9. Citi
10. Clifford Chance LLP
11. Computershare/Georgeson
12. Credit Suisse
13. Data Explorers
14. Farallon Capital
15. GC100 (Association of General Counsel and Company Secretaries of the FTSE 100)
16. Goldman Sachs International
17. Governance for Owners
18. Hedge Fund Standards Board
19. Hermes Investment Management Ltd
20. HSBC Securities Services
21. The Hundred Group of Finance Directors
22. Institute of Chartered Accountants in England and Wales
23. International Securities Lending Association
24. International Swaps and Derivatives Association
25. Investec Bank plc
26. Investment Management Association
27. Investor Relations Society
28. J.P. Morgan

29. Lansdowne Partners
30. Laxey Partners
31. London Investment Banking Association
32. Loudwater Investment Partners
33. Makinson Cowell
34. Morgan Stanley
35. National Association of Pension Funds
36. Quoted Companies Alliance
37. Securities Lending and Repo Committee
38. State Street
39. Takeovers Joint Working Party of the City of London Law Society Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law
40. UBS Investment Bank

APPENDIX B

Proposed amendments to the Code

DEFINITIONS

Acting in concert

…

NOTES ON ACTING IN CONCERT

…

10. Disclosure where presumption rebutted

Where it is accepted by the Panel that a person who would normally be presumed to be acting in concert with either an offeror or the offeree company should not in fact be considered in a particular case to be acting in concert with that party, the Panel may still require the person concerned to make private disclosures to the Panel (containing the details that would be required to be disclosed under Rule 8.4) of any dealings by it in any relevant securities of any party to the offer.

11. Indemnity and other dealing arrangements

(a) For the purpose of this Note, a dealing arrangement includes any indemnity or option arrangements, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or refrain from dealing.

If any person is party to such a dealing arrangement with any offeror or any person acting in concert with any offeror, whether in respect of relevant securities of that offeror or the offeree company or any competing offeror, such person will be treated (during an offer period) as acting in concert with that offeror. If any person is party to such an arrangement with an offeree company or any person acting in concert with an offeree company, such person will be treated (during an offer period) as acting in concert with the offeree company.

(b) Dealing arrangements of the kind referred to in this Note in relation to relevant securities which have been entered into, or are entered into, by any offeror, the offeree company or a person acting in concert with any offeror or the offeree company, must be disclosed as required by Note 9 on Rule 2.4, Rule 2.5(b)(v), Notes 5 and 6 on Rule 8, Rule 24.12 and Rule 25.5.

(c) This Note does not apply to irrevocable commitments or letters of intent, which are subject to Rule 2.11.

(d) See also Rule 4.4.

Associate

[Note: The current definition of "Associate" would be deleted.]

…

Cash offeror

An offeror (or potential offeror) which has announced, or in respect of which the offeree company has announced, that its offer is, or is likely to be, solely in cash.

…

Connected adviser

Connected adviser 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; and

(2) in relation to a person who is acting in concert with the offeror or 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.~~

…

Date, day, times and period of time

…

(2) … ; ~~and~~

(3) … ~~.~~; and

(4) all references to time are to the time in London.

Dealings

…

NOTES ON DEALINGS

1. Indemnity and other dealing arrangements

Dealing arrangements of the kind referred to in Note 11 on the definition of acting in concert in relation to relevant securities which are entered into during the offer period by any offeror, the offeree company or a person acting in concert with any offeror or the offeree company must be disclosed as required by Notes 5 and 6 on Rule 8, Rule 24.12 and Rule 25.5.

2. Securities borrowing and lending

Securities borrowing and lending transactions are not regarded as dealings. However, under Rule 4.6 if an offeror, the offeree company or any person acting in concert with an offeror or the offeree company enters into, or takes action to unwind, a securities borrowing or lending transaction (including any financial collateral arrangement of the kind referred to in Note 4 on Rule 4.6) in respect of relevant securities of an offeror (other than an cash offeror) or, with the Panel's consent, the offeree company, the transaction must be disclosed as if it were a dealing in relevant securities.

…

Exempt fund manager

…

Exempt principal trader

…

NOTES ON EXEMPT FUND MANAGER AND EXEMPT PRINCIPAL TRADER

…

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 exempt principal traders, but not connected exempt fund managers, must comply with Rule 38. Connected exempt principal traders and connected exempt fund managers must comply with the relevant provisions of Rule 8.

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)~~8.6) include such special exempt fund managers, subject always to the conditions on which such special exempt status is granted in any particular case.

…

Interests in securities

…

NOTES ON INTERESTS IN SECURITIES

1. Gross interests

… ~~*Short positions should not be deducted.*~~

…

Parties to the offer

The offeree company and any offeror or competing offeror whose identity has been publicly announced (including, in each case, any potential offeree company, offeror or competing offeror).

…

Recognised intermediary

…

NOTES ON RECOGNISED INTERMEDIARY

…

2. Recognised intermediary status is relevant only for the purposes of Note 16 on Rule 9.1, Note 1(c) on Rule 7.2, ~~and~~ Rule 8.3(~~d~~e) and Note 5(b) on Rule 8, in each case to the extent only that the recognised intermediary is acting in a client-serving capacity. As a result, subject to Note 3 below~~,~~ and to the extent only that it is acting in a client-serving capacity: (i) a recognised intermediary will not

be treated, for the purposes of Rule 9.1, as interested in (or as having acquired an interest in) any securities by virtue only of paragraph (3) or paragraph (4) of the definition of interests in securities~~, nor will~~; (ii) any dealings by it in relevant securities during an offer period will not be required to be publicly disclosed under Rules 8.3(a) to ~~(c),~~(d); and (iii) dealing disclosures required to be made by it under Rule 8.5(c) will need to include the details specified in Note 5(b), rather than those specified in Note 5(a), on Rule 8. ~~in each case to the extent only that the recognised intermediary is acting in a client-serving capacity~~.

3. …

Where a recognised intermediary is, or forms part of, a person acting in concert with ~~an associate of~~ the offeree company, it will not benefit from the exception from disclosure afforded by Rule 8.3(e~~d~~) after the commencement of the offer period. Where a recognised intermediary is acting in concert with ~~an associate of~~ an offeror or potential offeror, it will not benefit from the exception from disclosure afforded by Rule 8.3(e~~d~~) after the identity of the offeror or potential offeror ~~of~~ with which it is ~~an associate~~ acting in concert is publicly announced. After such time, disclosures should be made ~~dealings should be disclosed~~ under Rule 8.4~~8.1(a)~~ or, if the recognised intermediary is, or forms part of, an exempt principal trader whose exempt status has not fallen away, Rule 8.5~~8.5(a) or (b)~~.

…

4. Any dealings by a recognised intermediary which is not acting in a client-serving capacity will not benefit from the dispensations afforded by Note 16 on Rule 9.1, Note 1(c) on Rule 7.2 ~~and~~, Rule 8.3(e~~d~~) and Note 5(b) on Rule 8 with the result that all such dealings by it will be subject to the provisions of the Code as if those dispensations did not apply.

…

Rule 2.4

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

…

NOTES ON RULE 2.4

…

9. Indemnity and other dealing arrangements

Where the offeree company, an offeror or any person acting in concert with the offeree company or an offeror enters into any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert before the start of the offer period or the announcement that first identifies the offeror, details of the arrangement must be included in the relevant announcement as required by Notes 6(b) and (c) on Rule 8.

Where a dealing arrangement of the kind referred to above is entered into during the offer period, see Note 6(a) on Rule 8.

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 state:—

…

~~**(iii) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which he has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see Note 2 below and Note 5(a) on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;**~~

~~**(iv) details of any relevant securities of the offeree company in respect of which the offeror or any of its associates has procured an irrevocable commitment or a letter of intent (see Note 14 on Rule 8);**~~

~~**(v) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold;**~~

(~~v~~iii) … **;**

(~~vi~~iv) … **;**

(~~viii~~v) details of any dealing arrangement of the kind referred to in Note ~~6(b) on Rule 8~~11 on the definition of acting in concert to which the offeror or any person acting in concert with it is a party;

(~~ix~~vi) … **~~;~~ and**

(~~x~~vii) … **~~.~~; and**

(viii) confirmation that the offeror is on the same day disclosing, or has previously disclosed, the details required to be disclosed by it under Rule 8.1(a) and, where such disclosure is being made on the same day but (in accordance with Note 2(a)(i) on Rule 8) may not include all relevant details in respect of all persons acting in concert with the offeror, confirmation that a further disclosure in accordance with Rule 8.1(a) and Note 2(a)(i) on Rule 8 will be made as soon as possible.

…

NOTES ON RULE 2.5

…

~~*2. Interests of a group of which an adviser is a member*~~

~~*It is accepted that, for reasons of secrecy, it would not be prudent to make enquiries so as to include in an announcement details of any relevant securities of the offeree company in which other parts of an adviser's group are interested or have short positions or borrowings (see (5) of "acting in concert" in Definitions Section). In such circumstances, details should be obtained as soon as possible after the announcement has been made and the Panel consulted. If the interests, short positions or borrowings are significant, a further announcement may be required.*~~

2~~3~~. Subjective conditions

…

3~~4~~. New conditions for increased or improved offers

…

4~~5~~. Pre-conditions

…

5~~6~~. Financing conditions and pre-conditions

…

Rule 2.9

2.9 PUBLICATION OF AN ANNOUNCEMENT ABOUT AN OFFER OR POSSIBLE OFFER

…

NOTES ON RULE 2.9

…

2. Rules 2.11, 6, 7, 8, 9, 11, 12, 17, 30, 31, 32, Appendix 1.6, Appendix 5 and Appendix 7

Announcements made under Rules 2.11, 6.2(b), 7.1, 8(Notes 6 and 12), 9.1(Note 9), …

Rule 2.11

2.11 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

(a) During an offer period, if any party to the offer or any person acting in concert with it procures an irrevocable commitment or a letter of intent, the relevant party to the offer must publicly disclose the details in accordance with the Notes on this Rule.

(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 relevant party to the offer and the Panel of the up-to-date position. Upon receipt of such a notification, the relevant party to the offer must promptly make an appropriate announcement of the information notified to it together with all relevant details.

(See also Note 9 on the definition of acting in concert.)

NOTES ON RULE 2.11

1. Timing of disclosure

A disclosure required by Rule 2.11(a) must be made by no later than 12 noon on the business day following the date of the transaction.

No separate disclosure by an offeror is required under Rule 2.11(a) where the relevant information is included in an announcement made under Rule 2.5 which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured.

2. Method of disclosure

Disclosure under this Rule 2.11 should be made in accordance with the requirements of Rule 2.9.

3. Contents of disclosure

A disclosure of the procuring of an irrevocable commitment or a letter of intent must provide full details of the nature of the commitment or letter including:

(a) the number of relevant securities 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 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).)

Rule 4.2

4.2 RESTRICTION ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES

(a) … 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 person ~~party~~ or by the counterparty to the transaction.

…

Rule 4.4

4.4 DEALINGS IN OFFEREE SECURITIES BY CERTAIN OFFEREE COMPANY CONCERT PARTIES~~ASSOCIATES~~

…

Rule 4.6

4.6 ~~RESTRICTION ON~~ SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND THEIR CONCERT ~~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 in the offeree company:

(a) the offeror;

(b) the offeree company; and

~~(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~~

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

Where a person subject to Rule 4.6 enters into or takes action to unwind a securities borrowing or lending transaction in respect of relevant securities in an offeror (other than a cash offeror), the transaction must be disclosed as if it were a dealing in the relevant securities.

NOTES ON RULE 4.6

…

~~*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 7 on the definition of acting in concert.*~~

2~~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 in the offeree company, 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 in the offeree company, the Panel may instead require that person to give public notice that he might do so.

3~~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.

4. Financial collateral arrangements

If, during an offer period, a person subject to Rule 4.6 enters into a security financial collateral arrangement which provides a right for the collateral-taker to use and dispose of relevant securities of the offeree company as if it were the owner of those relevant securities (a "right of use"), or enters into a title transfer collateral arrangement in respect of relevant securities of the offeree company, this will be treated as entering into a securities lending transaction. A person subject to Rule 4.6 should not therefore enter into such an arrangement, except with the consent of the Panel.

A person subject to Rule 4.6 who, during an offer period, grants a right of use, or who enters into a title transfer collateral arrangement, in respect of relevant securities of an offeror (other than a cash offeror) or, with the consent of the

Panel, the offeree company, should disclose the transaction as if it were a dealing in relevant securities.

Rule 5.4

5.4 ACQUISITIONS FROM A SINGLE SHAREHOLDER – DISCLOSURE

…

(b) any shares of the company in which he has an interest or in respect of which he has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see Note 5~~(a)~~ on Rule 8). …

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 7.1

7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED

…

NOTE ON RULE 7.1

Potential offerors

… *A Dealing Disclosure will also be required in accordance with Rule 8.1(b).*

Rule 7.2

7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS

…

(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 person ~~party~~ had actual knowledge of the possibility of an offer being made by a person with whom it is connected. …

(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 offeree company until the commencement of the offer period or, if prior to that, the time at which the connected person ~~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. …

…

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 person ~~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 person ~~party~~ had actual knowledge of the possibility of an offer being made for the offeree company.

…

3. Dealings by principal traders

… 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 respect of relevant securities of the offeree company in such circumstances. The Panel will not normally require such dealings to be disclosed

under Rules 4.6, ~~8.1(a),~~ 8.4, 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) … The Panel will also normally, pursuant to Rule 4.6, consent to connected discretionary fund managers taking action to unwind securities borrowing transactions in respect of relevant securities of the offeree company in such circumstances. Any such acquisitions 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)~~ 8.4, Rule 4.6 or Note ~~3~~2 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)~~8.4.

Rule 8

[Note: the current Rule 8 would be deleted.]

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

Rule 8 requires various persons, during an offer period, to make public disclosures, or in certain cases private disclosures to the Panel only, of their positions or dealings in relevant securities of the parties to the offer. Disclosures are not required to be made in respect of positions or dealings in relevant securities of a cash offeror.

An Opening Position Disclosure is an announcement containing details of interests or short positions in, or rights to subscribe for, any relevant securities of a party to the offer if the person concerned has such a position. An Opening Position Disclosure is required to be made after the commencement of the offer period and, if later, after the announcement that first identifies an offeror and must be made by the offeree company, by an offeror (after its identity is first publicly disclosed) and by any person that is interested in 1% or more of any class of relevant securities of any party to the offer. Opening Position Disclosures must be made within 10 business days.

A Dealing Disclosure is required after the person concerned deals in relevant securities of any party to the offer. If a person is, or becomes, interested in 1% or more of any class of relevant securities of any party to the offer, he must make a

Dealing Disclosure if he deals in any relevant securities of any party to the offer (including by means of an option in respect of, or a derivative referenced to, relevant securities) by no later than 3.30 pm on the business day following the date of the relevant dealing. If a party to the offer or any person acting in concert with it deals in relevant securities of any party to the offer, it must make a Dealing Disclosure by no later than 12.00 noon on the business day following the date of the relevant dealing.

Rule 8 also sets out the disclosure obligations of exempt principal traders and exempt fund managers, and of the parties to the offer and persons acting in concert with them when they deal for the account of non-discretionary clients.

8.1 DISCLOSURE BY AN OFFEROR

(a) An offeror must make a public Opening Position Disclosure:

(i) after the announcement that first identifies it as an offeror; and

(ii) after the announcement that first identifies a competing offeror (other than a cash offeror).

(b) An offeror must also make a public Dealing Disclosure if it deals in any relevant securities of any party to the offer (other than a cash offeror) during an offer period for its own account or for the account of discretionary investment clients.

(See also Note 12 below.)

8.2 DISCLOSURE BY THE OFFEREE COMPANY

(a) An offeree company must make a public Opening Position Disclosure:

(i) after the commencement of the offer period; and

(ii) if later, after the announcement that first identifies any offeror (other than a cash offeror).

(b) An offeree company must also make a public Dealing Disclosure if it deals in any relevant securities of any party to the offer (other than a cash offeror) during an offer period for its own account or for the account of discretionary investment clients.

8.3 DISCLOSURE BY PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE

(a) Any person who at the relevant time (see Note 7(a) below) is interested (directly or indirectly) in 1% or more of any class of relevant securities of any party to the offer (other than a cash offeror) must make a public Opening Position Disclosure:

(i) after the commencement of an offer period; and

(ii) if later, after the announcement that first identifies any offeror (other than a cash offeror).

(b) Any person who is (or as a result of any dealing becomes) interested (directly or indirectly) in 1% or more of any class of relevant securities of any party to the offer (other than a cash offeror) must make a public Dealing Disclosure if he deals in any relevant securities of any party to the offer (other than a cash offeror) during an offer period.

(c) Where two or more persons act pursuant to an agreement or understanding, whether formal or informal, to acquire or control an interest in relevant securities, they will normally be deemed to be a single person for the purpose of this Rule. (See also Note 12(b) below.)

(d) If a person manages investment accounts on a discretionary basis, he, and not the person on whose behalf the relevant securities (or interests in relevant securities) are managed, will be treated for the purpose of this Rule as interested in the relevant securities concerned. Except with the consent of the Panel, where more than one discretionary investment management operation is conducted in the same group, the interests in relevant securities of all such operations will be treated for the purpose of this Rule as those of a single person and must be aggregated (see Note 8 below).

(e) Rules 8.3(a) to (d) do not apply to recognised intermediaries acting in a client-serving capacity (see Note 9 below).

(f) A person making a disclosure in accordance with Rules 8.1, 8.2, 8.4 or 8.5 need not also disclose the same information pursuant to Rule 8.3.

8.4 DISCLOSURE BY CONCERT PARTIES

A person acting in concert with any party to an offer must make a public Dealing Disclosure if he deals in any relevant securities of any party to the offer (other than a cash offeror) during an offer period for his own account or for the account of discretionary investment clients. (See also Note 12 below.)

8.5 DISCLOSURE BY EXEMPT PRINCIPAL TRADERS

(a) An exempt principal trader connected with an offeror which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in, or right to subscribe for, any relevant securities of any party to the offer (other than a cash offeror) in a proprietary capacity must make a public Opening Position Disclosure:

(i) after the announcement that first identifies the offeror with which it is connected as an offeror; and

(ii) after the announcement that first identifies a competing offeror (other than a cash offeror).

(b) An exempt principal trader connected with the offeree company which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in, or right to subscribe for, any relevant securities of any party to the offer (other than a cash offeror) in a proprietary capacity must make a public Opening Position Disclosure:

(i) after the commencement of the offer period; and

(ii) if later, after the announcement that first identifies any offeror (other than a cash offeror).

(c) An exempt principal trader connected with a party to the offer must make a public Dealing Disclosure if it deals in any relevant securities of any party to the offer (other than a cash offeror) during an offer period.

8.6 DISCLOSURE BY EXEMPT FUND MANAGERS WITH INTERESTS IN SECURITIES REPRESENTING LESS THAN 1% DEALING FOR DISCRETIONARY CLIENTS

(a) An exempt fund manager connected with a party to the offer must make a private Dealing Disclosure if it deals in any relevant securities of any party to the offer (other than a cash offeror) for the benefit of discretionary investment clients during an offer period.

(b) Rule 8.6(a) does not apply if the exempt fund manager is also required to make a disclosure in accordance with Rule 8.3.

8.7 DISCLOSURE OF NON-DISCRETIONARY DEALINGS BY PARTIES AND CONCERT PARTIES

A party to the offer and any person acting in concert with it must make a private Dealing Disclosure if it deals in any relevant securities of any party to the offer (other than a cash offeror) during an offer period for the account of non-discretionary investment clients (other than a non-discretionary client that is a party to the offer or any person acting in concert with it).

NOTES ON RULE 8

1. Cash offerors

Shares or other securities of a cash offeror will not be treated as "relevant securities" for the purposes of Rule 8.

Following an announcement by a cash offeror that its offer is being revised to become (or that its possible offer may be) a securities exchange offer, Opening Position Disclosures and Dealing Disclosures will be required in the same way as if the announcement had been the first to identify the offeror as an offeror which was not a cash offeror.

2. Timing of disclosure

(a) Disclosures by the parties to the offer

(i) Subject to the following paragraph, a party to the offer must make an Opening Position Disclosure by 3.30 pm on the day falling 10 business days after the commencement of the offer period or the announcement that first identifies an offeror (as the case may be).

However, if an offeror announces a firm intention to make an offer before the deadline in the previous paragraph, it must at the same time make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). In such a case, it may not be practicable in the time available to have made enquiries of all persons acting in concert with the offeror in order to include all relevant details in respect of such persons in the Opening Position Disclosure. In such circumstances, this fact should be stated and a further Opening Position Disclosure, containing all relevant details, should be made as soon as possible thereafter and in any event (except with the consent of the Panel) before the deadline in the previous paragraph. The Panel should be consulted in all such cases.

If a party to the offer deals in any relevant securities of any party to the offer (other than a cash offeror) before midnight on the day before the relevant deadline in the paragraphs above, it must make a Dealing Disclosure (in respect of itself alone) in accordance with paragraph (ii) below. However, the party to the

offer must also make an Opening Position Disclosure (in respect of itself and any persons acting in concert with it) by the relevant deadline above.

(ii) A party to the offer must make a Dealing Disclosure (whether public or private) by 12.00 noon on the next business day following the date of the dealing.

(b) Disclosures by persons with interests in securities representing 1% or more

(i) Subject to the following paragraph, a person required to make an Opening Position Disclosure under Rule 8.3(a) must do so by 3.30 pm on the day falling 10 business days after the commencement of the offer period or the announcement that first identifies an offeror (as the case may be).

However, if a person required to make an Opening Position Disclosure under Rule 8.3(a) deals in any relevant securities of any party to the offer (other than a cash offeror) before midnight on the day before the deadline in the previous paragraph, he must instead make a Dealing Disclosure under Rule 8.3(b) by 3.30 pm on the next business day following the date of the dealing. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.3(a).

(ii) A person required to make a Dealing Disclosure under Rule 8.3(b) must do so by 3.30 pm on the next business day following the date of the dealing.

(c) Disclosures by concert parties

(i) A person acting in concert with a party to the offer does not need to make an Opening Position Disclosure itself. Instead, details of the person's positions will be included in the Opening Position Disclosure made by the party to the offer with which he is acting in concert (see Note 5(a)(vi) below).

(ii) A person acting in concert with a party to the offer must make a Dealing Disclosure (whether public or private) by 12.00 noon on the next business day following the date of the dealing.

(d) Disclosures by exempt principal traders

(i) Subject to the following paragraph, an exempt principal trader required to make an Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b) must do so by 3.30 pm on the day falling 10 business days after the commencement of the offer period or the announcement that first identifies an offeror (as the case may be).

However, if an exempt principal trader required to make an Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b) deals in any relevant securities of any

party to the offer (other than a cash offeror) before midnight on the day before the deadline in the previous paragraph, it must instead make a Dealing Disclosure under Rule 8.5(c) by 12 noon on the next business day. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b).

(ii) An exempt principal trader must make a Dealing Disclosure by 12.00 noon on the next business day following the date of the dealing.

(e) Disclosures by exempt fund managers with interests in securities representing less than 1% dealing for discretionary clients

A private Dealing Disclosure by an exempt fund manager subject to Rule 8.6(a) dealing for discretionary clients must be made by 12.00 noon on the next business day following the date of the dealing.

3. Method of disclosure

(a) Public disclosures

Public disclosures under Rule 8 must be made to a RIS in typed format by fax or electronic delivery and may be made by the person concerned or by an agent acting on its behalf. A copy must also be sent to the Panel in electronic form.

(b) Private disclosures

Private disclosures are to the Panel only and must be sent to the Panel in electronic form.

(c) Disclosure forms

Specimen disclosure forms are available on the Panel's website (www.thetakeoverpanel.org.uk) or may be obtained from the Panel. Disclosures should follow the format of those forms.

4. Disclosure in relation to more than one party

(a) Opening Position Disclosures

Subject to paragraphs (i) to (iii) below, when an Opening Position Disclosure is made, the details in Note 5 below must be disclosed in relation to the relevant securities of each party to the offer (other than a cash offeror) at the same time.

However:

(i) no disclosure is required in respect of the relevant securities of any party to the offer if there are no positions to disclose;

(ii) (except where the disclosure is an Opening Position Disclosure by an offeror or the offeree company) no disclosure is required in respect of the relevant securities of any party to the offer if such details have previously been publicly disclosed under Rule 8 (and have not changed). An Opening Position Disclosure by an offeror or the offeree company, though, must include the details in Note 5 in relation to the relevant securities of each party to the offer (other than a cash offeror), even if certain details have previously been disclosed by the offeror or offeree company or persons acting in concert with the offeror or the offeree company (as the case may be), in accordance with Rule 8; and

(iii) where a person is required to make an Opening Position Disclosure and, before the deadline for doing so in Note 2, there is a subsequent announcement that first identifies an offeror, the Opening Position Disclosure does not need to disclose details in respect of the relevant securities of that subsequently announced offeror. A separate Opening Position Disclosure must then be made in respect of the relevant securities of that offeror by the deadline established under Note 2 by reference to the subsequent announcement.

Where a person is disclosing details in respect of more than one party to the offer at the same time, he must use a separate disclosure form in respect of each such party.

(b) Dealing Disclosures

Subject to the following sentence, when a Dealing Disclosure is made the details in Note 5 below must be disclosed in relation to the relevant securities of each party to the offer (other than a cash offeror) at the same time. However, no disclosure is required in respect of the relevant securities of any party if there are no dealings or positions to disclose or if such details have previously been publicly disclosed under Rule 8 (and have not changed).

Where a person is disclosing details in respect of more than one party to the offer at the same time, he must use a separate disclosure form in respect of each such party.

The above paragraphs of this Note 4(b) do not apply to disclosures under Rule 8.7 where details only need to be given in relation to the party in whose relevant securities the dealing took place.

5. Details to be included in the disclosure

(a) Public disclosures (other than Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity)

Any public disclosure under Rule 8 (other than a Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity) must include:

(i) the identity of the person disclosing and that person's status (eg offeror, person acting in concert with the offeror, etc.);

(ii) details of any relevant securities of the offeree company or the offeror (as the case may be) in which the person making the disclosure has an interest or in respect of which he has a right to subscribe, in each case specifying the nature of the interests or rights concerned and the relevant percentages. Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be disclosed;

(iii) details of any dealing arrangements of a kind referred to in Note 11 on the definition of acting in concert to which the person making the disclosure is a party;

(iv) if the disclosure is by an exempt fund manager or an exempt principal trader, the identity of the party to the offer with which the person disclosing is connected; and

(v) confirmation whether the person making the disclosure is on the same day disclosing, or has previously disclosed, similar details in respect of the relevant securities of any other party or parties to the offer under Rule 8.

An Opening Position Disclosure by a party to the offer must also include:

(vi) similar details as in (ii) and (iii) above of any interests, short positions and rights to subscribe of any person acting in concert with that party to the offer, and of any dealing arrangements of a kind referred to in Note 11 on the definition of acting in concert to which any such person acting in concert with it is a party, together with (in each case) the identity of the persons concerned;

(vii) details of any securities borrowing and lending positions required by Note 5(l) below; and

(viii) details of any relevant securities in respect of which that party or any person acting in concert with it has procured an irrevocable commitment or a letter of intent (see Note 3 on Rule 2.11).

The interests, short positions, rights to subscribe, dealing arrangements, securities borrowing and lending positions and irrevocable commitments and letters of intent to be disclosed under (ii), (iii), (vi), (vii) and (viii) above are those existing or outstanding at midnight on the day immediately preceding the date on which the disclosure is made.

Any Dealing Disclosure must also include:

(ix) the total of the relevant securities in question in which the dealing took place;

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

(xi) if the disclosure is by a person acting in concert with a party to the offer, the identity of the party to the offer concerned; and

(xii) if the disclosure is by a party to the offer or any person acting in concert with it, details of any securities borrowing and lending positions required by Note 5(l) below.

(b) Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity

A Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity must include:

(i) the identity of the person disclosing;

(ii) the identity of the party to the offer with which the person disclosing is connected;

(iii) total acquisitions and disposals; and

(iv) the highest and lowest prices paid and received.

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(i) below).

(c) Private disclosures by connected exempt fund managers with interests in securities representing less than 1%

A private Dealing Disclosure under Rule 8.6 must include the same details as a public Dealing Disclosure (see (a) above).

(d) Private disclosures of non-discretionary dealings by parties and concert parties

A private Dealing Disclosure made under Rule 8.7 must include:

(i) the identity of the person disclosing;

(ii) if the disclosure is by a person acting in concert with a party to the offer, the identity of the party to the offer concerned;

(iii) the total of the relevant securities in question in which the dealing took place; and

(iv) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). 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(i) below).

(e) Related dealings

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) or has two or more separate but related positions in relevant securities, any disclosure must include the required information in relation to each such dealing so executed or position held.

(f) Owner or controller details

For the purpose of disclosing identity, the owner or controller of any interest in securities disclosed must be specified, in addition to any other details. 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 disclosures by fund managers of dealings on behalf of, or positions held for the account of, discretionary clients, the clients need not be named.

(g) Specially cum or ex dividend acquisitions

Where an offeror or any person acting in concert with it acquires any interest in offeree company securities on a specially cum or specially ex dividend basis, details of that fact should also be disclosed.

(h) Percentage calculations and subscription for new securities

Percentages should be calculated by reference to the numbers of relevant securities given in a party'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.

(i) Options, derivatives etc.

In the case of agreements to purchase or sell, rights to subscribe, options or derivatives, full details should be given so that the nature of the interest, position or dealing can be fully understood. For options this should include, at least, a description of the options concerned, the number of securities under option, the exercise period (or in the case of exercise, the exercise date), the exercise price and any option money paid or received. For derivatives this should include, at least, a description of the derivatives concerned, the number of reference securities to which they relate (when relevant), the maturity date (or if applicable the closing out date) and the reference price (and any fee payable on entering into the derivative).

In addition, if there exists any agreement, arrangement or understanding, formal or informal, between the person disclosing 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.

(j) Futures contracts and covered warrants

For the purpose of any disclosure, 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.

(k) Transfers in and out

If, following a public disclosure made under Rule 8, interests in relevant securities are transferred into or out of a person's management, a reference to the transfer must be included in the next public disclosure made by that person under Rule 8.

(l) Securities borrowing and lending

An Opening Position Disclosure by a party to the offer must also include details of any relevant securities of the offeree company and any offeror (other than a cash offeror) which the party making the disclosure or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold. In addition, a Dealing Disclosure by a party to the offer or any person acting in concert with a party to the offer must also include details of any relevant securities of the offeree company and any offeror (other than a cash offeror) which the person making the disclosure has borrowed or lent, save for any borrowed shares which have been either on-lent or sold.

Where a party to the offer or any person acting in concert with it enters into, or takes action to unwind, a securities borrowing or lending transaction in respect of relevant securities of an offeror or, with the Panel's consent under Rule 4.6, the offeree company, a Dealing Disclosure must normally be made by that person.

The provisions of this Note also apply in respect of any financial collateral arrangements of the kind referred to in Note 4 on Rule 4.6 entered into by a party to the offer or any person acting in concert with it as if such arrangements were securities lending transactions.

In all cases referred to above, all relevant details should be given and the disclosure must be made in a form agreed by the Panel.

6. Indemnity and other dealing arrangements

(a) Where a dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert is entered into during the offer period by an offeror, the offeree company or a person acting in concert with an offeror or the offeree company, that person must make an immediate announcement, giving all relevant details of the dealing arrangement, in accordance with Rule 2.9.

(b) Where the offeree company has entered into such a dealing arrangement before the start of the offer period or an offeror has entered into such a dealing arrangement before the announcement that first identifies it as an offeror, details of the arrangement must be included in the announcement that commences the

offer period or the announcement that first identifies the offeror (as the case may be).

(c) Where a person acting in concert with the offeree company has entered into such a dealing arrangement before the start of the offer period or a person acting in concert with an offeror has entered into such a dealing arrangement before the announcement that first identifies the offeror, that person must make an announcement, giving all relevant details of the dealing arrangement, in accordance with Rule 2.9 as soon as possible after the commencement of the offer period or the announcement that first identifies the offeror (as the case may be).

(d) Details of dealing arrangements must also be included in Opening Position Disclosures and Dealing Disclosures as required by Note 5 above.

7. Time for calculating a person's interests

(a) Under Rule 8.3(a), an Opening Position Disclosure is required if the person is interested in 1% or more of any class of relevant securities of any party to the offer (other than a cash offeror) at the time of the announcement that commences the offer period or the time of the announcement that first identifies an offeror (as the case may be).

(b) Under Rule 8.3(b), a Dealing Disclosure is required if the person dealing is interested in 1% or more of any class of relevant securities of any party to the offer (other than a cash offeror) at midnight on the date of the dealing or was so interested at midnight on the previous business day.

(c) A person will be treated as interested in relevant securities for the purposes of this Note 7 and Rule 8 if he has disposed of an interest in relevant securities before midnight on the date in question but there exists an agreement, arrangement or understanding, formal or informal, of any nature (but not itself amounting to an interest in the securities) as a result of which he is entitled, or would expect to be able, to acquire an interest in the securities concerned (or equivalent securities) thereafter.

8. Discretionary fund managers

The principle normally applied by the Panel is that where the investment decision is made by a discretionary fund manager, he, and not the person on whose behalf the fund is managed, will be treated as interested in (or having a short position in or right to subscribe for), or having dealt in, the relevant securities concerned. For that reason, Rule 8.3(d) 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 positions or dealings in question and that fund management arrangements are not established or used to avoid disclosure.

9. Recognised intermediaries

(a) The exceptions in this Rule in relation to recognised intermediaries must not be used to avoid or delay disclosures. For example, a dealing in relevant securities by a recognised intermediary, backed by a firm commitment by a person to purchase the relevant securities from the recognised intermediary, will be regarded as a dealing 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 recognised intermediary 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 recognised intermediary under Rule 8.4).

(b) Where a desk with recognised intermediary status deals, or has any interest or short position in, or right to subscribe for, relevant securities in a proprietary capacity, it should aggregate the interests, short positions and rights to subscribe which it holds in a proprietary capacity with those of the rest of the group. However, in making such disclosures, it need not aggregate and disclose details of any interests, short positions and rights to subscribe which it holds in a client-serving capacity. Where a desk with recognised intermediary status re-books a position which was acquired in a client-serving capacity so as to hold it in a proprietary capacity, it will be regarded as a dealing in a proprietary capacity.

(c) Recognised intermediaries which are considered to be acting in concert with a party to the offer and to which exempt status is not applicable should disclose dealings under Rule 8.4.

10. Responsibilities of intermediaries

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

11. Unquoted public companies and relevant private companies

The requirements to disclose dealings and positions under Rule 8 apply also in respect of the relevant securities of public companies whose securities are not admitted to trading and of relevant private companies.

12. Potential offerors

(a) If a potential offeror has been the subject of an announcement that talks are taking place but has not been named, the potential offeror and persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement in accordance with Rule 8.1(b) or Rule 8.4 respectively.

At the same time as or before any such Dealing Disclosure, the offeror must also make an announcement that it is considering making an offer in accordance with Rule 2.9 (see also the Note on Rule 7.1 for when an immediate announcement will be required). Other than in the case of a cash offeror, the announcement must include a summary of the provisions of Rule 8 (see www.thetakeoverpanel.org.uk).

(b) If a potential offeror has not been identified as such, it will not need to make an Opening Position Disclosure under Rule 8.1(a)(i) or (ii) until after the announcement that first identifies it as an offeror. However, before that time, the potential offeror and persons acting in concert with it will need to make Opening Position Disclosures in accordance with Rule 8.3(a), if applicable. If the potential offeror might be subject to Rule 8.3(c) by virtue of being a member of a consortium, it should first consult the Panel.

(c) After the announcement that first identifies a potential offeror as such, it will be required to make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). Such disclosure must include details in relation to the relevant securities of each party to the offer (other than a cash offeror), even if certain details have previously been disclosed in accordance with Rule 8.3.

13. UKLA Rules

In addition to the requirements to disclose under Rule 8, the requirements of the UKLA Rules may be relevant.

14. Amendments

If details included in a disclosure under Rule 8 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.

15. Irrevocable commitments and letters of intent

See Rule 2.11.

Rule 9.1

9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

…

NOTES ON RULE 9.1

…

17. 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~~ interested in such shares save for any borrowed shares which he has either on-lent or sold. A person must consult the Panel before borrowing or otherwise acquiring an interest in ~~or borrowing~~ shares which, when taken together with shares in which he or any person acting in concert with him is already interested, ~~and~~ including shares already borrowed or lent by him or any person acting in concert with him, would result in an obligation to make a mandatory offer~~this Rule being triggered~~. However, where a person borrows and lends shares on the same day, a mandatory offer will only be required if this results in an increase in his net borrowing position or that of any person acting in concert with him as at midnight on that day. ~~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.~~ See also Note 2 on Rule 9.3.

Rule 9.3

9.3 CONDITIONS AND CONSENTS

…

2. Acceptance condition

…

… (See also Rule 35.1.)

The Panel must be consulted if the offeror, or any person acting in concert with it, has borrowed or lent shares in the offeree company. The Panel will then decide 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

…

5. Purchases

…

(b) … The offeror must advise its receiving agent of any persons ~~parties~~ whose registered holdings or purchases are relevant for the purpose of the acceptance condition. The offeror's receiving agent must then certify the holding of each such person ~~party~~ on the basis of the register (or, in relation to holdings in CREST in respect of which CREST maintains the register, the record of securities held in uncertificated form).

Rule 11.2

11.2 WHEN A SECURITIES OFFER IS REQUIRED

…

NOTES ON RULE 11.2

…

3. Vendor placings

Shares acquired in exchange for securities will normally be deemed to be acquisitions for cash for the purposes of this Rule if an offeror or any person acting in concert with it ~~of its associates~~ arranges the immediate placing of such consideration securities for cash, in which case no obligation to make a securities offer under this Rule will arise.

Rule 13.3

13.3 ACCEPTABILITY OF PRE-CONDITIONS

…

(See Note ~~5~~4 on Rule 2.5.)

Rule 17.1

17.1 TIMING AND CONTENTS

…

(a) the number of shares for which acceptances of the offer have been received, specifying the extent to which acceptances have been received from persons acting in concert with the offeror or in respect of shares which were subject to an irrevocable commitment or a letter of intent procured by the offeror or any person acting in concert with the offeror~~of its associates~~;

(b) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which he has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see Note 5~~(a)~~ on Rule 8). … **;**

(c) details of any relevant securities of the offeree company in respect of which the offeror or any person acting in concert with it ~~of its associates~~ has an outstanding irrevocable commitment or letter of intent (see ~~Note 14 on Rule 8~~Note 3 on Rule 2.11); and

…

Rule 19.1

19.1 STANDARDS OF CARE

…

NOTES ON RULE 19.1

…

8. Merger benefits statements

In order to satisfy the existing standards of information set out in the Code, certain additional requirements may need to be complied with if a party to the offer makes quantified statements about the expected financial benefits of a proposed takeover or merger (for example, a statement by an offeror that it would expect the offeree company to contribute an additional £x million of profit post acquisition). …

…

A party to an offer ~~Parties~~ wishing to make a merger benefits statement~~s~~ should consult the Panel in advance. See also Rule 28.6(g).

Rule 19.3

19.3 UNACCEPTABLE STATEMENTS

Parties to an offer ~~or potential offer~~ and their advisers must take care not to make statements which, while not factually inaccurate, may be misleading or may create uncertainty. In particular, an offeror must not make a statement to the effect that it may improve its offer, or that it may make a change to the structure, conditionality or the non-financial terms of its offer, without committing itself to doing so and specifying the improvement or change. In the case of any doubt as to the application of this Rule to a proposed statement, parties to an offer ~~or potential offer~~ and their advisers should consult the Panel.

NOTES ON RULE 19.3

…

2. Statements of support

… The Panel will not require separate verification by an offeror where the information required by Note 3 on Rule 2.11 ~~Note 14 on Rule 8~~ is included in an announcement made under Rule 2.5 which is published no later than 12 noon on the business day following the date on which the letter of intent is procured.

Rule 19.6

19.6 INTERVIEWS AND DEBATES

Parties to an ~~involved in~~ offers should, if interviewed on radio, television or any other media, seek to ensure that the sequence of the interview is not broken by the insertion of comments or observations by others not made in the course of the interview. …

Rule 19.7

19.7 INFORMATION PUBLISHED FOLLOWING THE ENDING OF AN OFFER PERIOD PURSUANT TO RULE 12.2

… **Consequently, the parties to an offer must take care to ensure that any statements made during the competition reference period are capable of substantiation.**

Rule 20.1

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

…

NOTES ON RULE 20.1

…

2. Media interviews

Parties ~~involved in~~ to an offer must take particular care not to disclose new material in interviews or discussions with the media. …

…

4. Information published by concert parties ~~associates~~ (eg brokers)

Rule 20.1 does not prevent brokers or advisers to any party to the ~~transaction~~ offer sending circulars during the offer period to their own investment clients provided such publication has previously been approved by the Panel.

In giving to their own clients material on the companies involved in an offer, persons acting in concert with any party to the offer ~~associates~~ must bear in mind the essential point that new information must not be restricted to a small group. …

The ~~associate's~~ status of the person issuing the circular as a person acting in concert with the offeree company or an offeror must be clearly disclosed. …

Attention is drawn to paragraph (5~~2~~) of the definition of acting in concert~~associate~~, as a result of which, for example, this Note will be relevant to brokers who, although not directly involved with the offer, are presumed to be acting in concert with ~~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.

When an offer or possible offer is referred to the Competition Commission or the European Commission initiates proceedings, the offer period may end in accordance with Rule 12.2(a). ~~Associates~~Persons acting in concert with an offeror or the offeree company must, however, consult the Panel about the publication of circulars as described in this Note during the reference or proceedings. …

Rule 22

RULE 22. RESPONSIBILITIES OF THE OFFEREE COMPANY AND AN OFFEROR REGARDING REGISTRATION PROCEDURES AND PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE

(a) The board of the offeree company should ~~take action to~~ ensure that its registrar complies fully with the procedures set out in Appendix 4. The board should also ensure prompt registration of transfers during an offer.

(b) The board of the offeree company should take all reasonable steps to determine the identity of persons who are interested in 1% or more of any class of relevant securities of the offeree company and should provide the Panel with details of all persons who are reasonably considered to be so interested promptly after the commencement of an offer period. All such

persons should also be sent an explanation of their disclosure obligations under Rule 8 at the same time as their details are provided to the Panel.

(c) Except in cases where it has been announced that any offer is, or is likely to be, in cash, the board of the offeror should take all reasonable steps to determine the identity of persons who are interested in 1% or more of any class of relevant securities of the offeror and should provide the Panel with details of all persons who are reasonably considered to be so interested promptly after the announcement that first identifies the offeror as such. All such persons should be sent an explanation of their disclosure obligations under Rule 8 at the same time as their details are provided to the Panel.

Rule 24.2

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

…

(d) …

(x) details of any irrevocable commitment or letter of intent which the offeror or any person acting in concert with it ~~of its associates~~ has procured in relation to relevant securities of the offeree company (or, if appropriate, the offeror) (see Note 3 on Rule 2.11~~Note 14 on Rule 8~~);

…

NOTES ON RULE 24.2

…

4. Persons acting in concert with the offeror

… Disclosure will normally include: a person who is interested in shares in the offeree company and (in the case of a securities exchange offer only) the offeror; any person with whom the offeror or the offeree company and any person acting in concert with either of them has any arrangement of the kind referred to in Note 11 ~~6(b)~~ on the definition of acting in concert ~~Rule 8~~; any financial adviser which is advising the offeror or the offeree company in relation to the offer; and any corporate broker to either of them. In cases of doubt, the Panel should be consulted.

Rule 24.3

24.3 INTERESTS AND DEALINGS

(a) The offer document must state:—

(i) details of any relevant securities of the offeree company in which the offeror has an interest or in respect of which he has a right to subscribe, specifying the nature of the interests or rights concerned (see Note 5~~(a)~~ on Rule 8). … **;**

(ii) the same details as in (i) above in relation to each of:

…

(c) **any person with whom the offeror or any person acting in concert with the offeror has any arrangement of the kind referred to in Note 11~~6~~ on the definition of acting in concert~~Rule 8~~;**

…

(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeror or any person acting in concert with it has borrowed or lent (including for these purposes any financial collateral arrangements of the kind referred to in Note 4 on Rule 4.6), save for any borrowed shares which have been either on-lent or sold.

…

(c) If any person referred to in Rule 24.3(a) has dealt in any relevant securities of the offeree company (or, in the case of a securities exchange offer only, of the offeror) during the period beginning 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the offer document, the details, including dates, must be stated (see Note 5~~(a)~~ on Rule 8). If no such dealings have taken place, this fact should be stated.

…

NOTES ON RULE 24.3

…

4. Competing offerors

Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 24.3(a)(iii) and (iv), 24.3(b) and 24.3(c) must be included in relation to the relevant securities of each offeror or possible offeror (other than any cash offeror).

Rule 24.12

24.12 ARRANGEMENTS IN RELATION TO DEALINGS

The offer document must disclose any arrangements of the kind referred to in Note ~~6(b) on Rule 8~~ 11 on the definition of acting in concert which exist between the offeror, or any person acting in concert with the offeror, and any other person; if there are no such arrangements, this should be stated. ~~If the directors or their financial advisers are aware of any such arrangements between any other associate of the offeror and any other person, such arrangements must also be disclosed.~~

Rule 25.3

25.3 INTERESTS AND DEALINGS

(a) The first major circular published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer) must state:—

(i) details of any relevant securities of the offeror in which the offeree company or any of the directors of the offeree company has an interest or in respect of which it or he has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see Note 5~~(a)~~ on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(ii) the same details as in (i) above in respect of any relevant securities of the offeree company in relation to each of:

***(a)* the directors of the offeree company;**

***(b)* any other person acting in concert with the offeree company; and ~~company which is an associate of the offeree~~**

~~**company by virtue of paragraph (1) of the definition of associate;**~~

~~***(c)*** **any pension fund of the offeree company or of a company which is an associate of the offeree company by virtue of paragraph (1) of the definition of associate;**~~

~~***(d)*** **any employee benefit trust of the offeree company or of a company which is an associate of the offeree company by virtue of paragraph (1) of the definition of associate;**~~

~~***(e)*** **any connected adviser to the offeree company, to a company which is an associate of the offeree company by virtue of paragraph (1) of the definition of associate or to a person acting in concert with the offeree company;**~~

~~***(f)*** **any person controlling#, controlled by or under the same control as any connected adviser falling within *(e)* above (except for an exempt principal trader or an exempt fund manager); and**~~

(c~~g~~) **any person with whom the offeree company or any person acting in concert with the offeree company ~~who~~ has an arrangement of the kind referred to in Note ~~6 on Rule 8~~11 on the definition of acting in concert~~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~~;**

(iii) in the case of a securities exchange offer, the same details as in (i) above in respect of any relevant securities of the offeror in relation to each of the persons listed in (ii)*(b)* and *(c)* ~~to *(g)*~~ above;

(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeree company or any person acting in concert with the offeree company has borrowed or lent (including for these purposes any financial collateral arrangements of the kind referred to in Note 4 on Rule 4.6), save for any borrowed shares which have been either on-lent or sold; and

…

(b) If, in the case of any of the persons referred to in Rule 25.3(a), there are no interests or short positions to be disclosed, this fact should be stated. This will not apply to category (a)(ii)*(~~g~~c)* if there are no such arrangements.

(c) If any person referred to in Rule 25.3(a)(i) has dealt in any relevant securities of the offeree company or the offeror between the start of the offer period and the latest practicable date prior to the publication of the circular, the details, including dates, must be stated (see Note 5~~(a)~~ on Rule 8). If any person referred to in Rule 25.3(a)(ii)*(b)* to *(c~~g~~)* has dealt in relevant securities of the offeree company (or, in the case of a securities exchange offer only, the offeror) during the same period, similar details must be stated. In all cases, if no such dealings have taken place this fact should be stated.

…

NOTES ON RULE 25.3

…

~~*2. Pension funds*~~

~~*Rule 25.3(a)(ii)*(c) *does not apply in respect of any pension funds which are managed under an agreement or arrangement with an independent third party in the terms set out in Note 7 on the definition of acting in concert.*~~

2. Competing offerors

Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 25.3(a)(i), (iii) and (iv) must be included in relation to the relevant securities of each offeror or possible offeror (other than any cash offeror). Similarly, where more than one offeror has announced an offer in accordance with Rule 2.5, the details required by Rule 25.3(a)(v) must be included in respect of each offer.

Rule 25.5

25.5 ARRANGEMENTS IN RELATION TO DEALINGS

The first major circular published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer) must disclose any arrangements of the kind referred to in Note ~~6(b) on Rule 8~~ 11 on the definition of acting in concert which exist between the offeree company, or any person acting in concert with the offeree company~~who is an associate of the offeree company by virtue of paragraphs (1), (2), (3) or (4) of the definition of associate~~, and any other person; if there are no such arrangements, this should be stated. ~~If the directors or their financial advisers are aware of any such arrangements between any other associate of~~

~~**the offeree company and any other person, such arrangements must also be disclosed.**~~

Rule 25.6

25.6 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

…

(b) details of any irrevocable commitment or letter of intent which the offeree company or any person acting in concert with it ~~of its associates~~ has procured in relation to relevant securities of the offeree company (or, if appropriate, the offeror) (see ~~Note 14 on Rule 8~~Note 3 on Rule 2.11).

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 person acting in concert with it~~of their respective associates~~;

…

(l) all derivative contracts which in whole or in part have been disclosed under Rules 24.3(a) and (c) and 25.3(a) and (c) or in accordance with Rules 8.1, 8.2 or 8.4. Documents in respect of the last mentioned must be made available for inspection from the time the offer document or the offeree board circular is published or from the time of disclosure, whichever is the later;

…

(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~~11 on the definition of acting in concert;

…

Rule 27.1

27.1 MATERIAL CHANGES

Documents subsequently sent to shareholders of the offeree and persons with information rights by a ~~either~~ party to the offer 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:—

…

Rule 27.2

27.2 CONTINUING VALIDITY OF PROFIT FORECASTS

When a profit forecast has been made, documents subsequently published by the party to the offer making the forecast must comply with the requirements of Rule 28.5.

Rule 28.6

28.6 STATEMENTS WHICH WILL BE TREATED AS PROFIT FORECASTS

…

(g) Earnings enhancement and merger benefits statements

Parties to an offer wishing to make earnings enhancement statements which are not intended to be profit forecasts must include an explicit and prominent disclaimer to the effect that such statements should not be interpreted to mean that earnings per share will necessarily be greater than those for the relevant preceding financial period.

…

Rule 29.1

29.1 VALUATIONS TO BE REPORTED ON IF GIVEN IN CONNECTION WITH AN OFFER

When a valuation of assets is given in connection with an offer, it should be supported by the opinion of a named independent valuer. (For the purposes of this Rule, "an independent valuer" means a valuer who meets the requirements of an "external valuer" as defined in The Standards and, in addition, has no connection with other parties to the offer~~transaction~~.)

…

(d) Another party's assets

A party to an offer ~~a takeover situation~~ will not normally be permitted to publish a valuation, …

Rule 38.5

[Note: Rule 38.5 and the Notes on Rule 38.5 would be deleted.]

Appendix 3

APPENDIX 3

DIRECTORS' RESPONSIBILITIES AND CONFLICTS OF INTEREST GUIDANCE NOTE

1 DIRECTORS' RESPONSIBILITIES

…

(a) the board is provided promptly with copies of all documents and announcements published by or on behalf of their company which bear on the offer; the board receives promptly details of all dealings in relevant securities made by their company or any persons acting in concert with it ~~its associates~~ and details of any agreements, understandings, guarantees, expenditure (including fees) or other obligations entered into or incurred by or on behalf of their company in the context of the offer which do not relate to routine administrative matters;

…

Appendix 5

APPENDIX 5

TENDER OFFERS

1 PANEL'S CONSENT REQUIRED

…

NOTES ON SECTION 1

…

2. Tender offers in competition with other types of offer under the Code

…

(c) disclosure of positions and dealings by the offeror making the tender offer and any persons treated as acting in concert with it ~~associates~~ in the manner set out in Rule 8.

…

3 DETAILS OF TENDER OFFER ADVERTISEMENTS

(a) …

…

(viii) the number and percentage of shares in which the offeror and persons acting in concert with it are interested, specifying the nature of the interests concerned (see Note 5~~(a)~~ on Rule 8);

…

Appendix 7

APPENDIX 7

SCHEMES OF ARRANGEMENT

…

8 SWITCHING

…

(c) …

…

(iv) an explanation of whether or not any irrevocable commitments or letters of intent procured by the offeror or <u>any person acting in concert with it</u> ~~its associates~~ will remain valid following the switch.

APPENDIX C

List questions

Q.1 **Do you agree that the "opening position disclosure" requirement and "extended composite disclosure" should be adopted as proposed?**

Q.2 **Should the deadlines for "opening position disclosures" and "dealing disclosures" be those described above?**

Q.3 **Do you agree with the proposal as to the time for calculating whether a person has an interest in relevant securities of 1% or more for the purpose of the "opening position disclosure" requirement?**

Q.4 **Do you agree that the positions which should be disclosed in an opening position disclosure are those existing or outstanding at midnight on the day immediately preceding the date on which the disclosure is made?**

Q.5 **Do you agree with the proposals as to disclosures in relation to more than one party to the offer?**

Q.6 **Do you agree that the current Rule 8.3(b) should be amended as proposed?**

Q.7 **Do you agree with the proposed amendments to the Code in relation to the matters described in section 2 of this PCP, as set out in Appendix B to this PCP?**

Q.8 **Do you agree that the definitions of "associate" and "acting in concert" should be conformed and that the definition of "associate" should be deleted?**

Q.9 **Do you agree with the proposed new Note 10 on the definition of "acting in concert"?**

Q.10 **Do you agree with the proposed amendments in relation to the current Note 6 on Rule 8?**

Q.11 **Do you agree with the proposed consequential amendments arising out of the proposed deletion of the definition of "associate"?**

Q.12 **Should securities borrowing and lending positions be disclosed under the Code as described?**

Q.13 **Should the Code's disclosure regime apply where a right of use is exercised in respect of relevant securities in which a person is interested or where relevant securities are subject to a title transfer collateral arrangement?**

Q.14 Do you have any comments regarding the Code Committee's conclusions in relation to the disclosure of securities borrowing and lending and financial collateral arrangements?

Q.15 Do you agree with the proposed amendments to Rule 4.6 and its Notes and to the introduction of provisions in relation to financial collateral arrangements into the proposed new Note 5(l) on Rule 8?

Q.16 Do you agree that Note 17 on Rule 9.1 and Note 2 on Rule 9.3 should be amended as proposed?

Q.17 Do you agree with the Code Committee's conclusion that the Code should not require persons with a significant gross short position in the relevant securities of a party to an offer to disclose their dealings and positions in relevant securities if they do not have a gross long interest of 1% or more in any class of relevant securities of a party to the offer?

APPENDIX D

Illustrative summary of opening position disclosure requirement deadlines

	Opening position disclosure ("OPD") deadline: relevant securities of offeree ("EE")	**OPD deadline: relevant securities of first offeror ("OR 1") (only if OR 1 is a paper OR)**	**OPD deadline: relevant securities of second offeror ("OR 2") (only if OR 2 is a paper OR)**	**Dealing disclosure ("DD") deadline for pre-OPD deadline dealings**
OR 1 (may or may not be a paper OR)	Earlier of: (a) OR 1's Rule 2.5 announcement; (b) 10 business days after announcement identifying OR 1	Earlier of: (a) OR 1's Rule 2.5 announcement; (b) 10 business days after announcement identifying OR 1	10 business days after first identification of OR 2 as a paper OR	T+1 (i.e. current Rule 8.1 DD plus extended composite disclosure ("**ECD**") details)
OR 1's concert party	No separate OPD obligation: positions included in OR 1's OPD	No separate OPD obligation: positions included in OR 1's OPD	No separate OPD obligation: positions included in OR 1's OPD	T+1 (i.e. current Rule 8.1 DD plus ECD details)
OR 2 (may or may not be a paper OR)	Earlier of: (a) OR 2's Rule 2.5 announcement; (b) 10 business days after announcement identifying OR 2	Earlier of: (a) OR 2's Rule 2.5 announcement; (b) 10 business days after announcement identifying OR 2	Earlier of: (a) OR 2's Rule 2.5 announcement; (b) 10 business days after announcement identifying OR 2	T+1 (i.e. current Rule 8.1 DD plus ECD details)
OR 2's concert party	No separate OPD obligation Positions included in OR 2's OPD	No separate OPD obligation: positions included in OR 2's OPD	No separate OPD obligation: positions included in OR 2's OPD	T+1 (i.e. current Rule 8.1 DD plus ECD details)
EE	10 business days after the commencement of the offer period	10 business days after announcement identifying OR 1	10 business days after announcement identifying OR 2	T+1 (i.e. current Rule 8.1 DD plus ECD details)
EE's concert party	No separate OPD obligation Positions included in EE's OPD	No separate OPD obligation: positions included in EE's OPD.	No separate OPD obligation: positions included in EE's OPD.	T+1 (i.e. current Rule 8.1 DD plus ECD details)

	Opening position disclosure ("OPD") deadline: relevant securities of offeree ("EE")	**OPD deadline: relevant securities of first offeror ("OR 1") (only if OR 1 is a paper OR)**	**OPD deadline: relevant securities of second offeror ("OR 2") (only if OR 2 is a paper OR)**	**Dealing disclosure ("DD") deadline for pre-OPD deadline dealings**
Person with 1%+ interest in rel secs of EE only	10 business days after the commencement of the offer period, unless pre-OPD deadline dealings (in which case, T+1)	10 business days after announcement identifying OR 1, even if sub 1% interest/short, unless pre-OPD deadline dealings (in which case, T+1)	10 business days after announcement identifying OR 2, even if sub 1% interest/short, unless pre-OPD deadline dealings (in which case, T+1)	T+1 (i.e. current Rule 8.3 DD plus ECD details)
Person with 1%+ interest in rel secs of OR 1 only (only if paper OR)	10 business days after announcement identifying OR 1, unless pre-OPD deadline dealings (in which case T+1)	10 business days after announcement identifying OR 1, unless pre-OPD deadline dealings (in which case T+1). OPD would also need to disclose any sub 1% interests/short positions in EE	10 business days after announcement identifying OR 2, even if sub 1% interest/short position, unless pre-OPD deadline dealings (in which case T+1)	T+1 (i.e. current Rule 8.3 DD plus ECD details)
Person with 1%+ interest in rel secs of OR 2 only (only if paper OR)	10 business days after announcement identifying OR 2, unless pre-OPD deadline dealings (in which case T+1)	10 business days after announcement identifying OR 2, unless pre-OPD deadline dealings (in which case T+1)	10 business days after announcement identifying OR 2, unless pre-OPD deadline dealings (in which case T+1). OPD would also need to disclose any sub 1% interests/short positions in EE/OR 1.	T+1 (i.e. current Rule 8.3 DD plus ECD details)

APPENDIX E

Securities borrowing and lending and financial collateral arrangements

Part 1: Securities borrowing and lending

(a) "Borrowing" and "lending"

1. Securities "borrowing" and "lending" transactions involve the transfer of legal title in securities from a "lender" to a "borrower" for an agreed lending fee (and against the transfer of collateral from the borrower to the lender) and an agreement by the borrower to transfer "equivalent securities" (i.e. securities of an identical type, nominal value, description and amount to those originally lent) to the lender at a later date. In view of this transfer of legal title in the lent securities, the use of the terms "borrowing" and "lending" is regarded by some commentators as misleading.

2. A lender of securities will usually have the right to call at any time for the redelivery of the lent securities (or, more precisely, the delivery of equivalent securities to those lent) on the market-standard settlement timeframe (normally three business days) and the borrower will usually have the right to redeliver the lent/equivalent securities to the lender at any time.

3. Given that it is intended that the lender should remain economically interested in the shares, albeit that title in the lent securities, and therefore all rights attaching to them, are transferred from the lender to the borrower, the relevant contractual arrangements will provide that the lender should be "made whole" by the borrower as regards any dividend distributions or other "corporate actions" which occur during the term of the loan. However, there is usually no equivalent concept in relation to the exercise of the voting rights attaching to the lent securities. For example, the May 2000 version of the Global Master Securities Lending Agreement issued by the International Securities Lending Association

provides that a borrower has no obligation to arrange for lent securities to be voted in accordance with the instructions of the lender, unless the parties otherwise agree. In practice, therefore, the only way that a lender of securities can be certain that "its" securities will be voted in a particular way on a shareholder resolution is by recalling them and for the lent securities (or equivalent securities) to be redelivered to the lender by the voting record date.

(b) The lending chain

4. There are a number of reasons why a person may wish to borrow securities. However, the most commonly cited reason is borrowing to cover a short position. A typical securities borrowing and lending transaction will involve a number of parties at various stages. By way of example, if a short seller of shares wished to borrow shares in order to settle his short sale, the following parties might be involved:

(a) *shareholder/lender*: a shareholder may wish to earn additional income from its securities (through the fees charged to persons to whom securities are lent) and may arrange for certain of the securities in its portfolio to be capable of being lent to third parties. Certain institutions have "in-house" securities lending departments which perform this function. Such a department will be separate from the institution's fund management department. Other beneficial owners (such as pension funds) may engage the services of a lending agent to perform the securities lending function on their behalf. In addition, such a beneficial owner may appoint a fund manager otherwise to manage its investments;

(b) *lending agent*: the shareholder's custodian may also act as its lending agent. Alternatively, the shareholder may instruct a "third-party" lending agent. Once the terms of the lending mandate have been agreed (including which securities may be lent, to whom, and in return for what types of

collateral), a lending agent will generally have a wide discretion in relation to the lending of a client's securities;

(c) *prime broker/initial borrower/on-lender*: for counterparty risk and other reasons, the ultimate borrower of securities may not have direct access to a lending agent. The ultimate borrower may therefore need to arrange for the prime brokerage department of an investment bank to borrow securities on its behalf;

(d) *ultimate borrower/short seller*: the prime broker may then on-lend the borrowed securities to the ultimate borrower so that he can deliver them to a purchaser in order to settle a short sale; and

(e) *purchaser*: the counterparty to the short sale will not be aware that the seller is a short seller, or that the securities which are delivered to him have been borrowed, and will take full legal title to the securities like any other purchaser of securities.

(c) Discretionary fund managers

5. A beneficial owner of securities may grant discretion over dealing, voting and offer acceptance decisions in relation to the securities of which it is the beneficial owner to a fund manager but grant discretion over securities lending decisions to a lending agent, or to its own securities lending department. As a result of these arrangements, the fund manager may not be made aware automatically when securities under his management have been lent, although this information may be available to him upon enquiry. Even if it is so available, a fund manager may not always take the trouble to enquire into whether securities under his management have been lent, since the economic interest in any lent securities will continue to be reflected in the client's investment portfolio. Furthermore, the fund manager is likely to assume that any lent securities may be recalled at any time, if so

required, and that equivalent securities will be promptly redelivered (for example, in order for the fund manager to sell them, vote them or accept them to an offer).

6. The ability of a discretionary fund manager to understand whether securities under his management have been lent is crucial to the operation of any requirement for securities borrowing and lending to be disclosed under the Code's disclosure regime. This is because, under Rule 8.3(c), if a person manages investment accounts on a discretionary basis, he, and not the person on whose behalf the relevant securities are managed, will be treated as interested in the relevant securities concerned.

Part 2: Financial collateral arrangements

(a) Historical approach of the Code to security interests

1. Note 7 on the definition of "interests in securities" provides that a bank which takes security over shares or other securities in the normal course of its business will not normally be considered to be interested in those shares or securities. The corollary of this is that the customer who has granted security to the bank as part of the loan arrangements will not normally be treated as having disposed of an interest in its shares by virtue of entering into the security arrangement.

2. This approach is based on the assumption that, for so long as the bank does not enforce its security, the beneficial ownership of the shares will remain with the customer, even if the security arrangement involves legal title in shares being transferred into the bank's name.

(b) Prime brokerage

3. The prime brokerage departments of investment banks provide various services to their customers, who include hedge funds and other market participants, including

clearing, custody, securities lending and financing services. Prime brokers generate revenues from, amongst other things, charging interest on money lent to their customers to finance the purchase of shares and other securities on margin. The purchased shares are held in custody by the bank which takes a charge over the shares in order to secure the financing extended. The Code Committee understands that a prime broker's margin lending activity is funded, in part, by the bank entering into securities lending, repo and other transactions involving the transfer of the charged shares to third parties.

4. The Code Committee understands that there are two principal ways in which the prime brokerage departments of investment banks take security over their customers' shares in the context of financing transactions, as described below.

(c) Title transfer financial collateral arrangements

5. A transfer of title collateral arrangement involves the customer transferring both the legal title and the beneficial ownership of the charged shares to the bank. In other words, full title in the shares, including the right to vote, passes to the bank which may dispose of them without further reference to the customer. As indicated above, the Code Committee understands that the bank will, as a matter of course, enter into securities lending, repo and other transactions involving the transfer of the charged shares to third parties. The Code Committee understands that such activity is often referred to (incorrectly) as the "rehypothecating" of the charged shares by the bank. (The use of the term "rehypothecating" in this context is inaccurate since the Code Committee understands that this term is only correctly used in circumstances where a customer initially retains the beneficial ownership of charged shares and not where beneficial ownership of the shares has, as in the case of title transfer collateral, been transferred to the bank from the outset.)

6. The Code Committee understands that the respective rights and obligations between the customer and the bank under a transfer of title collateral arrangement are very similar to the rights and obligations that the parties would have if the customer had lent the shares to the bank under a securities lending arrangement. In both cases, legal and beneficial ownership in the charged shares would pass from the customer to the bank and the customer's beneficial interest in the shares would be replaced by a contractual right to have equivalent securities delivered to him by the bank at a later date. In addition, in both cases the bank would have an obligation to make "manufactured" payments to the customer in respect of dividends and other income payments.

7. The Code Committee understands that, if the record date for a general meeting of the company concerned is approaching, and the customer wishes to exercise the votes attaching to the charged shares, the bank will normally endeavour to make a temporary transfer of equivalent securities to the customer. The reason for this is that banks generally have a policy of not voting shares which they hold under a transfer of title collateral arrangement.

(d) Security financial collateral arrangements

8. Under a security financial collateral arrangement, the customer transfers the legal title in the charged shares to the bank but beneficial ownership of the charged shares remains initially with the customer. However, the Code Committee understands that the customer may also grant to the bank a right to acquire itself or transfer to a third party full title in the charged shares, known as a "right of use" or "right of rehypothecation". The Code Committee understands that, upon the exercise of this right, the customer's beneficial interest will generally be replaced with a contractual right to have equivalent securities redelivered by the bank.