

The Takeover Panel: “Extending the Disclosure Regime”

March 2010

Summary of the key changes to the disclosure regime under The City Code on Takeovers and Mergers (the Code)

Key amended provisions

Rules 8.1 – 8.7 and 22

When in force

19 April 2010

Summary of changes

■ The Takeover Panel has announced a number of amendments to the existing disclosure regime under Rule 8 of the Code during an offer period.

■ Highlights of the changes include:

- > the introduction of an 'Opening Position Disclosure' requirement;
- > the consolidation of the rules relating to disclosure of dealings during an offer period (now named 'Dealing Disclosures'); and
- > the extension of the existing disclosure regime to cover positions/dealings in relevant securities of any party to the offer other than a cash offeror (so-called 'extended composite disclosure').

Opening Position Disclosure

- > An Opening Position Disclosure is an announcement containing details of interests and/or short positions in, or rights to subscribe for, any relevant securities of a party to the offer. Under the amended Rule 8, a public Opening Position Disclosure must be made on the basis of extended composite disclosure (see below) by:

- > any offeror (Rule 8.1(a));
- > the offeree (Rule 8.2(a));
- > any person who holds a gross long interest in 1% or more of any class of relevant securities¹ of any party to the offer (other than a cash offeror) (Rule 8.3(a)); and
- > an exempt principal trader connected with an offeror or the offeree which either is not a recognised intermediary or is a recognised intermediary but holds in a non-client serving capacity an interest or short position in any relevant securities of any party to the offer (other than a cash offeror) (Rule 8.5(a) and (b)).

■ Disclosure must be made no later than either 12 noon or 3.30 pm (depending on the person disclosing) 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 this deadline, that offeror must make its Opening Position Disclosure at the same time as it makes its firm intention announcement.

Dealing Disclosure

■ A Dealing Disclosure is an announcement required after a person concerned deals in relevant securities of any party to an offer (other than a cash offeror). A public Dealing Disclosure must be made by:

- > any offeror (Rule 8.1(b));
- > the offeree (Rule 8.2(b));

¹ The Takeover Panel Code Committee considered, and decided against, extending this to cover persons who hold a significant short position but who do not have a gross long interest of 1% or more in any class of relevant securities in a party to the offer.

- > any person who holds a gross long interest in 1% or more of any class of relevant securities of any party to the offer (other than a cash offeror)² (Rule 8.3(b));
- > any person acting in concert with a party to the offer dealing for his own account or for the account of discretionary investment clients (Rule 8.4); and
- > an exempt principal trader connected with a party to the offer³, EVEN IF it is a recognised intermediary acting in a client-serving capacity⁴ (Rule 8.5(c)). The level of disclosure will vary depending on whether or not the exempt principal trader is a recognised intermediary acting in a client-serving capacity⁵ (see *Extended composite disclosure* below).

■ A private Dealing Disclosure (i.e. to the Takeover Panel only) must be made by:

- > an exempt fund manager connected with a party to the offer dealing for the benefit of discretionary investment clients (where that exempt fund manager is not already caught under Rule 8.3(b)) (Rule 8.6); and
- > a party to the offer and any person acting in concert with that party dealing for the account of a non-discretionary investment client which itself is not a party to the offer or acting in concert with any such party (Rule 8.7).

Extended composite disclosure

- Opening Position Disclosures and Dealing Disclosures are required to contain details of the interests and/or short positions in, or rights to

subscribe for, any relevant securities of the party to the offer in whose securities the person disclosing has a disclosable interest/has dealt, AS WELL AS that person's positions (if any) in the relevant securities of any other party to the offer (other than a cash offeror), unless these have already been disclosed under Rule 8 and have not since changed.

- A Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity need only contain details of the person disclosing, the party to which it is connected, the total acquisitions and disposals, the highest and lowest prices paid and received and the date of the dealing as well as full details of any dealings in options or derivatives.

Responsibilities of the offeror and offeree

Under the amended Rule 22, both the offeror and offeree are obliged to assist the Takeover Panel in identifying those persons interested in 1% or more of any class of relevant securities of the offeror/offeree (as appropriate). This will help the Takeover Panel to identify those persons who should be making an Opening Position Disclosure following the commencement of an offer period.

Furthermore, the offeror and offeree will be required to send to those persons an explanation of the disclosure obligations of that person under Rule 8. However, where the offeree has already, pursuant to Rule 2.6⁶, sent a copy of an announcement or a circular that contains an explanation of these obligations, there is no requirement for the offeror or offeree to send a separate explanation.

² Note that under Rule 8.3(d), a person would not be required to make a Dealing Disclosure if an investment account is managed for him on a discretionary basis; instead, the account manager would be required to make the Dealing Disclosure (as per the old Rule 8.3(c)).

³ This is a re-wording of the old Rule 38.5, which has been deleted.

⁴ Note that in such a scenario, the client with whom the exempt principal trader is dealing may also be required to make a Dealing Disclosure under Rule 8.3(b).

⁵ For these purposes, "client-serving capacity" means acting as a market-maker, rather than as an agent for or on behalf of the client.

⁶ Under Rule 2.6, promptly after commencement of an offer period, the offeree is required to send a copy of the announcement that triggered the offer period (or alternatively, in the case of a Rule 2.5 announcement, it may send a circular summarising the terms and conditions of the offer) to its shareholders and persons with information rights.