

THE TAKEOVER PANEL

STOCK EXCHANGE ELECTRONIC TRADING SERVICE

On 20 October the Stock Exchange Electronic Trading Service ("SETS") is to be introduced. This will provide automated execution of trades on an electronic order book for, initially, FTSE-100 securities. The concept of officially designated market-makers in such securities will cease to exist and any Stock Exchange member firm will be able to trade in FTSE-100 securities through the order book.

The new system has certain implications for the Code and the Rules Governing Substantial Acquisitions of Shares ("SARs"). In interpreting and applying the Code and the SARs from 20 October, the following points should therefore be noted. The Executive should be consulted in any case of doubt:-

1. Market prices

- (a) *Middle market price*: the middle market price of a class of securities traded through the order book ("order book securities") will, at any time during trading hours, be the mid-point between the best bid price and the cheapest offer price on the order book at that time. This will be relevant for the purposes of Note 7 on Rule 6 and Note 2(b) on Rule 9.5.
- (b) *Closing price*: the middle market price or quotation of order book securities at the close of business on a particular trading day will be the mid-price of the quotation for that day which appears in the Stock Exchange Daily Official List. This will be relevant for the purposes of Note 2(c) on Rule 9.5, Note 1 on Rule 14.1, and Rule 24.2(b)(vi).

2. **References to exempt market-makers and market-makers**

- (a) A Stock Exchange member firm dealing as principal in order book securities through the order book is referred to in this statement as a "principal trader". There will be no officially designated market-makers in such securities. Except as stated below, or where the context does not allow, all references in the Code and the SARs to exempt market-makers or market-makers should be read to refer also to exempt principal traders or principal traders, as appropriate.

- (b) Unlike a market-maker, a principal trader will have no recognised status in respect of particular securities and so the Code definition of "exempt market-maker" is not appropriate to an exempt principal trader. The Executive will therefore treat as an exempt principal trader:-
 - (i) that part of a member firm which was an exempt market-maker prior to the introduction of SETS. If it was an exempt market-maker in relation to securities outside the FTSE-100, it will continue to be an exempt market-maker in relation to those securities after the introduction of SETS, as well as an exempt principal trader in relation to order book securities; or

 - (ii) a market-maker (non-SETS) or principal trader (SETS) which applies for and is granted exempt status after the introduction of SETS.

- (c) *Rule 8.3(d)*: the exemption from disclosure under Rule 8.3 will be available to principal traders who were recognised market-makers in any security prior to the introduction of SETS. Except with the consent of the Panel, however, it will not be available to principal traders (acting in their capacity as such) who become recognised market-makers thereafter.
- (d) *Note 9 on Rule 8*: a principal trader which is an associate by virtue only of paragraph (6) of the definition of associate will not be required to make disclosure under Rule 8.1 provided that it was a recognised market-maker prior to the introduction of SETS.
- (e) *Note 10 on Rule 8*: all those who deal in relevant securities on behalf of clients, or who deal directly with investors, are reminded of their responsibilities under this Note and should take appropriate steps to ensure full compliance following the introduction of SETS.
- (f) *Rule 38*: this will apply to connected exempt principal traders as for connected exempt market-makers. To ensure compliance with Rules 38.1 and 38.2, offerors and persons acting in concert with them must not purchase offeree securities through SETS or any other anonymous order book system. Further, they must not purchase offeree securities through any other means unless it can be established that the seller is not an exempt principal trader connected with the offeror. In the case of dealings through an inter-dealer broker or other similar intermediary, whether acting as principal or agent, "seller" shall include the person who has transferred the securities to the intermediary as well as the intermediary itself.

3. Dealings by connected principal traders

It should be noted that dealings by connected principal traders without exempt status may have consequences for corporate finance clients as they will be treated as concert party dealings (this reflects the treatment of dealings by connected fund managers under Rule 7.2 and the current approach to dealings by connected non-exempt market-makers). This will be of particular relevance for firms connected with offerors in respect of their dealings in offeree securities due to Rules 4.2, 5, 6, 9 and 11. The approach referred to in Note 2 on Rule 7.2 will, however, apply to the dealings of such connected persons before the identity of the offeror is publicly known.

The Panel proposes to review in due course the operation of the new trading system and its impact on the conduct of takeovers. Depending on the outcome of that exercise, more substantive changes may be made to the Code and the SARs at that time. Amended Rules will not be circulated until that process has been completed.

16 October 1997