

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2022/6

Presumptions of the definition of “acting in concert” and related matters

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, Articles 2, 3 and 4 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009, and sections 340A, 340B and 340C of the Companies (Guernsey) Law, 2008, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 20 February 2023, in accordance with the Appendix to this instrument.

In the Appendix, underlining indicates new text and striking-through indicates deleted text.

Chris Saul

Chair of the Code Committee

for and on behalf of the Code Committee

14 December 2022

APPENDIX

DEFINITIONS

Acting in concert

This definition has particular relevance to mandatory offers and further guidance with regard to behaviour which constitutes acting in concert is given in the Notes on Rule 9.1.

Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of an offer for a company. A person and each of its affiliated persons will be deemed to be acting in concert all with each other (see Note 2 below).

Without prejudice to the general application of this definition, the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:

~~(1) a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, all with each other (for this purpose ownership or control of 20% or more of the equity share capital of a company is regarded as the test of associated company status);~~

(1) a company ("X") and any company which controls#, is controlled by or is under the same control as X, all with each other;

~~(2) a company with its directors (together with their close relatives and the related trusts of any of them);~~

(2) a company ("Y") and any other company ("Z") where one of the companies is interested, directly or indirectly, in 30% or more of the equity share capital in the other, together with any company which would be presumed to be acting in concert with either Y or Z under presumption (1), all with each other;

(3) a company's with any of its pension schemes, and the pension schemes of any company with which the company is presumed to be acting in concert described in under presumption (1) or (2), with the company;

~~(4) a fund manager (including an exempt fund manager) with any investment company, unit trust or other person whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;~~

(4) the directors of a company (together with their close relatives and the related trusts of any of them) with the company;

~~(5) a person, the person's close relatives, and the related trusts of any of them, all with each other;~~

(5) an investment manager of or investment adviser to:

(a) an offeror;

(b) an investor in a new company (or other vehicle) formed for the purpose of making an offer; or

(c) the offeree company,

with the offeror or offeree company (as appropriate), together with any person controlling#, controlled by or under the same control as that investment manager or investment adviser;

~~(6) — the close relatives of a founder of a company to which the Code applies, their close relatives, and the related trusts of any of them, all with each other;~~

~~(7) a connected adviser with its client and, if its client is acting in concert with an offeror or the offeree company, with that offeror or offeree company respectively, in each case in respect of the interests in shares of that adviser and persons controlling#, controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or an exempt principal trader);~~

~~(8) the directors of a company which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent. (See also Note 5); and~~

(8) a person, the person's close relatives, and the related trusts of any of them, all with each other;

(9) the close relatives of a founder of a company to which the Code applies, their close relatives, and the related trusts of any of them, all with each other; and

~~(10) shareholders in a private company or members of a partnership who sell their shares in that company or interests in consideration for the issue of new shares in a company to which the Code applies, or who, following the re-registration of that company as a public company in connection with an initial public offering or otherwise, become shareholders in a company to which the Code applies.~~

For the purposes of presumptions (1) and/or (2):

(a) a reference to a company includes any other undertaking (including a partnership or a trust) or any legal or natural person;

(b) under presumption (1), interests of either 30% or more in a company's shares carrying voting rights or the majority of a company's equity share capital do not dilute through a chain of ownership;

(c) under presumption (2), interests of 30% or more in a company's equity share capital dilute through a chain of ownership;

(d) the reference in presumption (2) to a company being "indirectly" interested in the equity share capital in another company refers only to the economic rights attached to such shares and not to any voting rights carried by such shares; and

(e) except for the purposes of establishing whether a person is acting in concert with a new company (or other vehicle) formed for the purpose of making an offer (see paragraph (a) of Note 7 below), if an investor invests in a fund or company and that fund or company in turn invests in another fund or company, the investor's indirect interests in the latter fund or company will (in addition to the investor's direct interests) only be taken into account in determining whether the investor and that fund or company are presumed to be acting in concert under presumption (2) if each link in the chain of interests represents 30% or more of the relevant fund's limited partnership interests or the relevant company's equity share capital.

See also Rule 7.2.

#See Note at end of Definitions Section.

NOTES ON ACTING IN CONCERT

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6. — Consortium offers

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

~~Where the investment in the consortium is, or is likely to be, 10% or less of the equity share capital (or other similar securities) of the offeror, the Panel will normally be prepared to waive the acting in concert presumption in relation to other parts of the organisation, including any connected fund manager or principal trader, provided it is satisfied as to the independence of those other parts from the investor. Where the investment is, or is likely to be, more than 10% but less than 50%, the Panel may be prepared to waive the acting in concert presumption in relation to other parts of the organisation depending on the circumstances of the case. (See also Connected fund managers and principal traders in the Definitions Section and Rule 7.2.)~~

6. Offer by a consortium offeror

(a) Where an offeror is a new company (or other vehicle) formed for the purpose of making the offer (a "consortium offeror"):

(i) each shareholder (or other investor) in the consortium offeror; and

(ii) save as described in this Note, any person presumed to be acting in concert with that shareholder (or other investor) under presumption (1).

will be presumed to be acting in concert with the consortium offeror.

(b) Where a person presumed to be acting in concert with the consortium offeror is part of a larger organisation, the Panel may, depending on the circumstances of the case, agree to disapply the presumption in relation to the members of that larger organisation (see paragraphs (c) and (d)).

(c) Where the investment is, or is likely to be, 10% or less of the equity share capital (or other similar interests) in the consortium offeror, the Panel will normally disapply any presumption that the members of the larger organisation are acting in concert with the consortium offeror, provided it is satisfied as to their independence from the relevant person referred to in paragraph (b).

(d) Depending on the circumstances of the case, where the investment is, or is likely to be, more than 10% but less than 30% of the equity share capital (or other similar interests) in the consortium offeror, the Panel may be prepared to disapply any presumption that the members of the larger organisation are acting in concert with the consortium offeror, provided it is satisfied as to their independence from the relevant person referred to in paragraph (b).

(e) This Note 6 will also apply if one or more shareholders (or other investors) subscribes for new equity share capital (or other interests) for the purpose of the former consortium offeror (or the former offeree company) making another offer.

(f) See also: Note 7; the definition of connected fund manager and connected principal trader; and Rule 7.2.

7. Investors in limited partnerships and other investment funds

Where a limited partnership or other investment fund (a "fund") (including a fund managed by an independent investment manager):

(a) invests in a new company (or other vehicle) formed for the purpose of making an offer; or

(b) acquires an interest in shares in a company to which the Code applies.

the Panel will apply presumptions (1) and/or (2) so as to presume an investor in the fund to be acting in concert with the offeror (in the case of paragraph (a)) or the fund (in the case of paragraph (b)) if the percentage of the investor's interests in the fund is such that the presumption would apply if the fund were a company and the investor was interested in a corresponding percentage of the company's equity share capital.

78. Pension schemes

~~The presumption (3) that a company is acting in concert with any of its pension schemes will normally be rebutted if it can be demonstrated to the Panel's satisfaction that the assets of the pension scheme are managed under an agreement or arrangement with an independent third party which gives such third party absolute discretion regarding dealing, voting and offer acceptance decisions relating to any securities in which the pension scheme is interested. Where, however, the discretion given is not absolute, the presumption will be capable of being rebutted, provided that the pension scheme trustees do not exercise any powers they have retained to intervene in such decisions.~~

8. Sub-contracted fund managers

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

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Connected fund managers and connected principal traders

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

(1) an offeror or any person acting in concert with it (for example as a result of being an investor in a consortium (see also Note 6 on the definition of acting in concert));

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

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

(4) an investment manager of or investment adviser to:

(a) an offeror;

(b) an investor in a new company (or other vehicle) formed for the purpose of making an offer; or

(c) the offeree company.

See also Rule 7.2.

Control

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NOTE ON CONTROL

A reference to a company (or, where appropriate, a fund manager, a principal trader or an adviser) “controlling”, being “controlled by” or being “under the same control as” another company is to be construed in accordance with the Note on Definitions at the end of the Definitions Section.

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Dealings

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NOTES ON DEALINGS

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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 4.3 on Rule 4.6) in respect of relevant securities of a securities exchange offeror or, with the Panel’s consent, the offeree company, the transaction must be disclosed as if it were a dealing in relevant securities (see Note 5(l) on Rule 8).

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Exempt fund manager

An exempt fund manager is a ~~person who~~ fund manager who manages investment accounts on a discretionary basis and is recognised by the Panel as an exempt fund manager for the purposes of the Code (see Notes ~~under on~~ Exempt fund manager and exempt principal trader).

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NOTES ON EXEMPT FUND MANAGER AND EXEMPT PRINCIPAL TRADER

1. ~~Persons~~ Fund managers who manage investment accounts on a discretionary basis and principal traders must apply to the Panel in order to seek the relevant exempt status and will have to comply with any requirements imposed by the Panel as a condition of its granting such status.

2. When a principal trader or fund manager is connected with the offeror or offeree company, exempt status is not relevant unless the sole reason ~~for the connection is~~

~~that the~~ that it is a connected principal trader or a connected fund manager is that it is controlled# by, controls or is under the same control as a connected adviser to:

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

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

3. The effect of a principal trader or fund manager having exempt status is that presumption (76) 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.

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

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Fund manager

A fund manager is a person which manages investment accounts on behalf of another person on a discretionary basis.

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Interests in securities

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A person who has long economic exposure, whether absolute or conditional, to changes in the price of securities will be treated as interested in those securities. A person who only has a short position in securities will not be treated as interested in those securities.

~~In particular,~~ Notwithstanding the above, a person will be treated as having an interest in securities if the person:

- (1) owns them;
- (2) has the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to them or has general control of them, including as a fund manager (see Note 11);
- (3) by virtue of any agreement to purchase, option or derivative:

- (a) has the right or option to acquire them or call for their delivery; or
- (b) is under an obligation to take delivery of them,

whether the right, option or obligation is conditional or absolute and whether it is in the money or otherwise; or

- (4) is party to any derivative:
 - (a) whose value is determined by reference to their price; and
 - (b) which results, or may result, in the person having a long position in them; and
- (5) in the case of Rule 5 only, has received an irrevocable commitment in respect of them.

NOTES ON INTERESTS IN SECURITIES

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4. Securities borrowing and lending

If a person has borrowed or lent securities, the person will normally be treated as interested in any securities which it has lent but (except in the circumstances set out in Note 4716 on Rule 9.1) will not normally be treated as interested in any securities which it has borrowed. If a person has on-lent securities which it has borrowed, it will not normally be treated as interested in those securities.

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11. Fund managers

(a) A fund manager will be treated as having an interest in securities which it manages for a client on a discretionary basis.

(b) A client will not be treated as having an interest in securities if it has given to an independent fund manager absolute discretion regarding dealing, voting and offer acceptance decisions. If the discretion is not absolute, the client will not normally be treated as having an interest in securities provided that it does not exercise any powers it has retained to intervene in such decisions.

(c) Where a fund manager sub-contracts discretionary management of funds to another independent fund manager, the same approach will be applied, i.e. the sub-contracted fund manager, and not the original fund manager, will be treated as having an interest in securities provided that the sub-contracted fund manager has been given absolute discretion regarding dealing, voting and offer acceptance decisions (and, if the discretion is not absolute, the originally contracted fund manager will not normally be treated as having an interest in securities provided that it does not exercise any powers it has retained to intervene in such decisions).

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Recognised intermediary

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NOTES ON RECOGNISED INTERMEDIARY

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2. ~~Recognised intermediary status is relevant only for the purposes of Note 4615 on Rule 9.1, Note 1(c) on Rule 7.2, Rule 8.3(ed) 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; (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 (ec); 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.~~

3. ~~Where a recognised intermediary is, or forms part of, a principal trader connected either with an offeror or potential offeror or with the offeree company, the recognised intermediary will not benefit from the dispensations afforded by Note 4615 on Rule 9.1 and Note 1(c) on Rule 7.2 after the time at which the principal trader is presumed to be acting in concert with either the offeror or potential offeror or with the directors of the offeree company (as the case may be) in accordance with Rule 7.2(a) and Rule 7.2(b) respectively. However, in accordance with Rule 7.2(c), where a recognised intermediary is, or forms part of, an exempt principal trader which is connected with either an offeror or potential offeror or with the offeree company for the sole reason that it is controlled by, controls or is under the same control as a connected adviser to that party, the recognised intermediary will not be presumed to be acting in concert with that party and will therefore continue to benefit from the dispensations afforded by Note 16 on Rule 9.1 and Note 1(c) on Rule 7.2.~~

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

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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 4615 on Rule 9.1, Note 1(c) on Rule 7.2, Rule 8.3(ed) 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.~~

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NOTE ON DEFINITIONS

~~The normal test for whether a person is controlled by, controls or is under the same control as another person will be by reference to the definition of control. There may be other circumstances which the Panel will regard as giving rise to such a relationship (eg~~

~~where a majority of the equity share capital is owned by another person who does not have a majority of the voting rights); in cases of doubt, the Panel should be consulted.~~

A company (or, where appropriate, a fund manager, a principal trader or an adviser) will be regarded as "controlling" another company if it is interested in:

(a) shares carrying 30% or more of the voting rights of that other company; or

(b) a majority of the equity share capital in that other company.

and references to a company being "controlled by" or "under the same control as" another company are to be construed accordingly.

In this Note, a reference to a company includes any other undertaking (including a partnership or a trust) or any legal or natural person.

Rule 2.7

2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

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(c) When a firm intention to make an offer is announced, the announcement must include:

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(xi) 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 relevant securities which have been either on-lent or sold and details of any financial collateral arrangements which the offeror or any person acting in concert with it has entered into (see Note 43 on Rule 4.6);

Rule 4

4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR

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NOTES ON RULES 4.1 and 4.2

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~~6. Discretionary fund managers and principal traders~~

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

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

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

~~(a) either for its own account or on behalf of discretionary clients acquire any interest in offeree company shares; or~~

~~(b) make any loan to a person to assist the person in acquiring any such interest save for lending in the ordinary course of business and on normal commercial terms to persons with which they have an established customer relationship; or~~

~~(c) enter into any indemnity or option arrangement or any arrangement, agreement or understanding, formal or informal, of whatever nature, which may be an inducement for a person to retain, deal or refrain from dealing in relevant securities of the offeree company.~~

**4.4 DEALINGS IN OFFEREE COMPANY SECURITIES BY CERTAIN PERSONS
ACTING IN CONCERT WITH THE OFFEREE COMPANY**

(a) Except with the consent of the Panel, during the offer period, none of:

(i) a connected adviser to the offeree company;

(ii) a connected fund manager or connected principal trader (other than an exempt fund manager or exempt principal trader) which is connected with the offeree company; or

(iii) any person controlling#, controlled by or under the same control as any such connected adviser, connected fund manager or connected principal trader.

may take any of the actions specified in paragraph (b).

(b) The actions referred to in paragraph (a) are:

(i) acquiring any interest in securities of the offeree company;

(ii) making any loan to assist a person to acquire any interest in securities in the offeree company, other than a loan to an existing customer in the ordinary course of business and on normal commercial terms; and

(iii) entering into any dealing arrangement of the kind referred to in Note 11 of the definition of acting in concert in relation to relevant securities in the offeree company.

NOTE ON RULE 4.4***Irrevocable commitments and letters of intent***

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

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4.6 SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND THEIR CONCERT PARTIES

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NOTES ON RULE 4.6

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

~~*Securities borrowing or lending transactions by non-exempt discretionary fund managers and principal traders will be treated in accordance with Rule 7.2.*~~

~~**43. Financial collateral arrangements**~~

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Rule 5.1**5.1 RESTRICTIONS**

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NOTES ON RULE 5.1

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~~**6. Discretionary fund managers and principal traders**~~

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

~~**76. Gifts**~~

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Rule 6

RULE 6. ACQUISITIONS RESULTING IN AN OBLIGATION TO OFFER A MINIMUM LEVEL OF CONSIDERATION

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NOTES ON RULE 6

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2. **Acquisitions prior to the three month period**

The discretion given to the Panel in Rule 6.1(e)(a)(iii) will not normally be exercised unless the vendors, or other parties to the transactions giving rise to the interests, are directors of, or other persons closely connected with, the offeror or the offeree company.

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~~8. Discretionary fund managers and principal traders~~

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

~~98. Offer period~~

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Rule 7.2

7.2 **DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS** **TIME FROM WHICH PRESUMPTIONS OF ACTING IN CONCERT APPLY**

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

(a) Discretionary—Where a fund managers and/or principal traders who, in either case, are is connected with an offeror or potential offeror, will not normally be presumed to be any presumption that the connected fund manager or connected principal trader is acting in concert with that person until offeror or potential offeror will be applied only from when:

(i) its identity as an the offeror or potential offeror is first publicly announced identified; or, if prior to that,

(ii) the time at which the connected party fund manager or connected principal trader is made aware of the possible offer to be made by the potential offeror had actual knowledge of the possibility of an offer being made by a person with whom it is connected,

whichever is the earlier.

~~Rules 5, 6, 9, 11 and 36 will then be relevant to acquisitions of interests in offeree company securities and Rule 4.2 to sales of offeree company securities by such persons. Rule 4.6 will be relevant to securities borrowing and lending transactions.~~

(b) Similarly, discretionary—Where a fund managers and/or principal traders who, in either case, are is connected with the offeree company, will not normally be presumed to be any presumption that the connected fund manager or connected principal trader is acting in concert with the offeree company until will be applied only from when:

~~(i) the commencement of the offer period commences; or, if prior to that,~~

~~(ii) the time at which the connected party fund manager or connected principal trader had actual knowledge of the possibility is made aware of an possible offer being made for the offeree company and that it was connected with the offeree company,~~

whichever is the earlier.

~~Rules 4.4, 5 and 9 may then be relevant to acquisitions of interests in offeree company securities. Rule 4.6 will be relevant to securities borrowing and lending transactions.~~

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

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

(c) Notwithstanding Rule 7.2(a) and Rule 7.2(b), Rule 9.1 will apply on an ongoing basis to a fund manager or principal trader and to any person with which it is presumed to be acting in concert. See also Note 15 on Rule 9.1.

(d) In certain circumstances, the Panel may be prepared to apply the treatment afforded by Rule 7.2(a) or Rule 7.2(b) to a person who is presumed to be acting in concert with an offeror or the offeree company but who is not a connected fund manager or connected principal trader. Where such treatment is sought, the Panel should be consulted at the earliest opportunity.

NOTES ON RULE 7.2

1. Previous 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, Subject to Note 2, dealings and securities borrowing and lending transactions by discretionary connected fund managers and connected principal traders connected with an offeror or potential offeror prior to the relevant time specified in Rule 7.2(a) or Rule 7.2(b) will not normally be relevant for the purposes of (as appropriate) Rules 4.2, 4.6, 5, 6, 9.5, 11 and 36 before the identity of the offeror or potential offeror has been publicly announced or, if prior to that, the time at which the connected party had actual knowledge of the possibility of an offer being made by a person with whom it is connected.~~

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

~~(c) — Rule 9 will, however, be relevant if the aggregate number of shares in which any person and all persons controlling# it, controlled by or under the same control as that person (including any exempt fund manager or exempt principal trader) are interested carry 30% or more of the voting rights of a company. However, provided that recognised intermediary status has not fallen away (see Note 3 on the definition of~~

~~recognised intermediary), a recognised intermediary acting in a client-serving capacity will not be treated 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 (other than those held in a proprietary capacity) for these purposes.~~

~~If such a group of persons includes a principal trader and the aggregate number of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire interests in shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period, the shares are acquired in a client-serving capacity and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.~~

2. Qualifications “Actual” concertedness

~~(a) — Rule 7.2 does not apply if a connected discretionary fund manager or connected principal trader is in fact acting in concert with an offeror or with the offeree company, the usual concert party consequences will apply irrespective of whether the offeree company is in an offer period or the identity of the offeror or potential offeror has been publicly announced.~~

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

3. Dealings “Book flattening” by connected principal traders

~~(a) With the prior consent of the Panel, aAfter a connected principal trader is presumed to be acting in concert with an offeror or the offeree company by virtue of Rules 7.2(a) or (b), it may stand down from its dealing activities. In such circumstances, with the prior consent of, within a time period agreed in advance by the Panel, the principal trader may:~~

~~(i) reduce its interests in securities of the offeree company securities or an offeror securities, or may acquire interests in such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rules 4.2, 4.4, 5, 6, 9, 11 and 36; and, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally,~~

~~(ii) pursuant to Rule 4.6, consent to connected principal trader taking take action to unwind a securities borrowing or lending transaction in respect of relevant securities of the offeree company in such circumstances.~~

~~(b) The Panel will not normally require Any such dealings to must be disclosed under Rules 4.6, 8.4, 24.4 or 25.4, as appropriate. Any such dealings must take place within a time period agreed in advance by the Panel.~~

4. Dealings by discretionary connected fund managers

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

~~However, with the prior consent of the Panel, a discretionary fund manager connected with either the offeree company or an offeror or potential offeror will normally be permitted to do so, with the prior consent of the Panel and within a time period agreed in advance by the Panel:~~

~~(i) acquire an interest in offeree company securities of the offeree company, with a view to reducing any short position, without such acquisitions being relevant for the purposes of Rules 4.4(a), 5, 6, 9.5, 11 and 36; and, notwithstanding the usual application of the presumptions of acting in concert and Rules 7.2(a) and (b). The Panel will also normally,~~

~~(ii) pursuant to Rule 4.6, consent to connected discretionary fund managers taking take action to unwind a securities borrowing transactions in respect of relevant securities of the offeree company in such circumstances.~~

~~(b) Any such acquisitions or unwinding arrangements dealings must take place within a time period agreed in advance by the Panel and should be disclosed pursuant to under Rule 8.4, Rule 4.6 or Note 2 on Rule 4.6, as appropriate.~~

~~(bc) After the commencement of the offer period, with the prior consent of the Panel, a discretionary connected fund manager connected presumed to be acting in concert with an offeror will normally be permitted to may 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 must be disclosed under Rule 8.4.~~

5. Rule 9

The Panel should be consulted if, once the identity of the offeror or potential offeror is publicly known, it becomes apparent that the number of shares in which the offeror or potential offeror and persons acting in concert with it, including any connected discretionary fund managers and connected principal traders to which Rule 7.2(a) applies, are interested carry in aggregate 30% or more of the voting rights of the offeree company.

6. Disclosure of dealings in offer documentation

~~Interests in relevant securities of, and dealings (whether before or after the presumptions in Rules 7.2(a) and (b) apply) by, non-exempt connected discretionary fund managers and non-exempt connected principal traders (unless exempt) (whether before or after the time referred to in Rule 7.2(a) or (b)) must be disclosed in any offer document in accordance with Rule 24.4 and in any offeree board circular in accordance with Rule 25.4, as the case may be. This will not apply in respect of a dealing that has been permitted by Note 3 above and has not been required to be disclosed.~~

7. Consortium offers

~~See also Note 6 on the definition of acting in concert where the connected fund manager or principal trader is part of the same organisation as an investor in a consortium.~~

Rule 8

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

...

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

...

~~(d) If a person manages investment accounts on a discretionary basis, that person, 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).~~

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

(fe) 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.

...

NOTES ON RULE 8

...

5. Details to be included in the disclosure

...

(l) Securities borrowing and lending

...

The provisions of this Note also apply in respect of any financial collateral arrangements of the kind referred to in Note 43 on Rule 4.6 entered into or unwound by a party to the offer or any person acting in concert with it as if such arrangements were securities lending transactions.

...

~~8. Discretionary fund managers~~

~~The principle normally applied by the Panel is that where the investment decision is made by a discretionary fund manager, the discretionary fund manager, 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 it manages for the purpose of determining whether it has an obligation to disclose. The beneficial owner would not normally, therefore, be concerned with disclosure to the extent that the 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.~~

8. Fund managers

(a) See Note 11 on the definition of interests in securities.

(b) Except with the consent of the Panel, where more than one discretionary fund management operation is conducted in the same group, the interests in relevant securities of all such operations will be treated for the purposes of Rule 8 as those of a single person and must be aggregated.

Rule 9.1

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

...

NOTES ON RULE 9.1

...

5. Employee benefit trusts

...

~~No presumption of concertedness will.~~ The above does not apply in respect of shares held within the EBT but controlled by the beneficiaries.

...

10. Convertible securities, warrants and options

...

(See also Note ~~4413~~ on Rule 9.1.)

...

~~13. Discretionary fund managers and principal traders~~

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

1413. Allotted but unissued shares

...

4514. Treasury shares

...

4615. Aggregation of interests across a group and recognised intermediaries

Rule 9.1 will be relevant if the aggregate number of shares in which any person and all persons ~~controlling~~, controlled by or under the same control as that person with which it is presumed to be acting in concert (including any ~~exempt~~ fund manager or ~~exempt~~ principal trader which has been granted exempt status) are interested carry 30% or more of the voting rights of a company.

...

4716. Borrowed or lent shares

...

4817. Changes in the nature of a person's interest

...

4918. Bank recovery and resolution

...

Rule 11**11.1 WHEN A CASH OFFER IS REQUIRED**

...

NOTES ON RULE 11.1

...

~~7. Discretionary fund managers and principal traders~~

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

87. Allotted but unissued shares

...

98. Dividends

...

409. Convertible securities, warrants and options

...

4110. Offer period

...

11.2 WHEN A SECURITIES OFFER IS REQUIRED

...

NOTES ON RULE 11.2

...

6. **Acquisitions in exchange for securities to which selling restrictions are attached**

Where an offeror and any person acting in concert with it has acquired interests in shares representing 10% or more of any class of shares in issue in the offeree company during the offer period and within 12 months prior to its commencement and the consideration received or receivable by the vendor or other party to the transaction giving rise to the interest includes shares to which selling restrictions of the kind set out in ~~the second sentence of Rule 11.2(b)~~ are attached, the Panel should be consulted.

7. **Applicability of the Notes on Rule 11.1 to Rule 11.2**

See Notes 2, 5, 6, 7, 8, ~~10-9~~ and ~~11-10~~ on Rule 11.1 which may be relevant.

Rule 20

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

...

(b) Except with the consent of the Panel, and subject to the Notes on Rule 20.1, if any material new information or significant new opinion relating to an offer or a party to an offer is:

...

(ii) provided by or on behalf of an offeror or the offeree company to any shareholder in, or other person interested in any relevant securities of, an offeror or the offeree company, or to any ~~investment manager, investment adviser~~ fund manager or investment analyst; or

...

that material new information or significant new opinion must, at the same time, be published in an announcement in accordance with Rule 30.1.

...

20.2 MEETINGS AND TELEPHONE CALLS WITH SHAREHOLDERS AND OTHERS

(a) This Rule 20.2 applies to meetings (including any telephone call or meeting held by electronic means) attended by:

...

(ii) any shareholder in, or other person interested in any relevant securities of, an offeror or the offeree company, or any ~~investment manager, investment adviser~~ fund manager or investment analyst,

which take place during an offer period or prior to the commencement of an offer period (but, in the case of the latter, only if the meeting relates to a possible offer or would not be taking place but for the possible offer).

Rule 24.3

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

Except with the consent of the Panel:

...

(b) if the offeror is other than a company referred to in (a) above, the offer document must contain:

(i) in respect of the offeror, the information described in (a) above (so far as appropriate) and such further information as the Panel may require ~~in the particular circumstances of the case~~ (see Note 2);

(ii) in respect of any person who has made (or proposes to make or increase) an investment in the offeror for the purposes of the offer such that the person ~~has or will have a potential direct or an~~ indirect interest in any part of the equity share capital of the offeree company ~~which the Panel regards as equity capital~~, details of the person's identity and interest in the offeror and such further information as the Panel may require ~~in the particular circumstances of the case~~ (see Note 2); and

(iii) in respect of any person not included in (ii) above whose pre-existing interest in the offeror is such that the person has a potential direct or indirect interest of 5% or more in any part of the equity share capital of the offeree company ~~which the Panel regards as equity capital~~, details of the person's identity and interest in the offeror and such further information as the Panel may require ~~in the particular circumstances of the case~~ (see Note 2);

...

NOTES ON RULE 24.3

...

2. Further information requirements

(a) ~~For the purposes of paragraphs (ii) and (iii) of Rule 24.3(b), the expression "person" will normally include the ultimate owner(s), and persons having control (as defined), of the offeror if not already included under paragraphs (ii) or (iii). Whilst the precise nature of the further information which may be required to be disclosed under paragraphs (i), (ii) or (iii) of Rule 24.3(b) in any particular case will depend on the circumstances of that case, the Panel would it should normally expect it to include a general description of the business interests of the offeror and/or other person(s) concerned and details of those assets which the Panel considers may be relevant to the business of the offeree company.~~

(b) Where a person has a potential indirect interest of 5% or more in the equity share capital of the offeree company solely as a result of being an investor in a limited partnership or other investment fund which is interested in the securities of the offeror, the details specified in paragraph (iii) of Rule 24.3(b) will be required to be disclosed in the offer document only if that person is, or is presumed to be, acting in concert with the offeror.

~~(bc) The Panel must be consulted in advance in any case to which Rule 24.3(b) applies, or may apply regarding the application of its provisions to that particular case.~~

(d) Where information is incorporated into the offer document by reference to another source, the Panel will normally require that information to be available in the English language.

Rule 24.4

24.4 INTERESTS AND DEALINGS

(a) The offer document must state:

...

(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 43 on Rule 4.6), save for any borrowed shares which have been either on-lent or sold.

...

NOTES ON RULE 24.4

...

3. Discretionary Connected fund managers and connected principal traders

Interests in relevant securities and short positions of non-exempt ~~discretionary connected~~ fund managers and connected principal traders ~~which are connected with the offeror~~ and their dealings since the date 12 months prior to the offer period will need to be disclosed under Rules 24.4(a)(ii)(b) and 24.4(c) respectively.

Rule 25.4

25.4 INTERESTS AND DEALINGS

(a) The offeree board circular must state:

...

(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 43 on Rule 4.6), save for any borrowed shares which have been either on-lent or sold; and

Rule 36.3

36.3 ACQUISITIONS DURING AND AFTER THE OFFER

...

NOTES ON RULE 36.3

~~1. — Discretionary fund managers and principal traders~~

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

~~2. — Partial offer resulting in an interest of less than 30%~~

...