

## APPENDIX 3

### DIRECTORS' RESPONSIBILITIES AND CONFLICTS OF INTEREST GUIDANCE NOTE

#### 1 DIRECTORS' RESPONSIBILITIES

While a board of directors may delegate the day-to-day conduct of an offer to individual directors or a committee of directors, the board as a whole must ensure that proper arrangements are in place to enable it to monitor that conduct in order that each of the directors may fulfil their responsibilities under the Code. These arrangements should ensure that:

(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 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;

(b) those directors with day-to-day responsibility for the offer are in a position to justify to the board all their actions and proposed courses of action; and

(c) the opinions of advisers are available to the board where appropriate.

The above procedures should be followed, and board meetings held, as and when necessary throughout the offer in order to ensure that all directors are kept up-to-date with events and with actions taken.

Any director who has a question concerning the propriety of any action as far as the Code is concerned should ensure that the Panel is consulted.

The Panel expects directors to co-operate with it in connection with its enquiries; this will include the provision, promptly on request, of copies of minutes of board meetings and other information in their possession, or in the possession of an offeror or the offeree company as appropriate, which may be relevant to the enquiry.

#### 2 FINANCIAL ADVISERS AND CONFLICTS OF INTEREST

Instances where conflicts of interest may arise include those resulting from the possession of material confidential information or where the adviser is part of a multi-service financial organisation, as exemplified below.

***(a) Material confidential information***

A financial adviser may have the opportunity to act for an offeror or the offeree company in circumstances where the adviser is in possession of material confidential information relating to the other party, for example, because it was a previous client or because of involvement in an earlier transaction. In certain circumstances, this may necessitate the financial adviser declining to act, for example, because the information is such that a conflict of interest is likely to arise. Such a conflict may be incapable of resolution simply by isolating information within the relevant organisation or by assigning different personnel to the transaction; however, when a financial adviser has been actively advising a company which becomes an offeree company, it may be acceptable for it to continue to act.

***(b) Segregation of businesses***

It is incumbent upon multi-service financial organisations to familiarise themselves with the implications under the Code of conducting other businesses in addition to, for example, corporate finance or stockbroking. If one part of such an organisation is involved in an offer, for example, in giving advice to an offeror or the offeree company, a number of Rules of the Code may be relevant to other parts of that organisation, whose actions may have serious consequences under the Code. Compliance departments of such organisations have an important role in this respect and are encouraged to liaise with the Panel in cases of doubt.

The concepts of “exempt fund managers” and “exempt principal traders” in the Code are in recognition of the fact that fund management and principal trading may be conducted on a day-to-day basis quite separately within the same organisation; but it is necessary for such organisations to satisfy the Panel that this is the case. It is essential, therefore, that such organisations arrange their affairs to ensure not only total segregation of those operations but also that those operations are conducted without regard for the interests of other parts of the same organisation or of their clients. The Code contains a number of Rules which are designed to ensure that the principles on which these concepts are based are upheld.