

RULE 7. CONSEQUENCES OF CERTAIN DEALINGS

7.2 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) Where a fund manager or principal trader is connected with an offeror or potential offeror, any presumption that the connected fund manager or connected principal trader is acting in concert with that offeror or potential offeror will be applied only from when:

- (i) the offeror or potential offeror is first publicly identified; or**
- (ii) the connected fund manager or connected principal trader is made aware of the possible offer to be made by the potential offeror,**

whichever is the earlier.

(b) Where a fund manager or principal trader is connected with the offeree company, any presumption that the connected fund manager or connected principal trader is acting in concert with the offeree company will be applied only from when:

- (i) the offer period commences; or**
- (ii) the connected fund manager or connected principal trader is made aware of a possible offer for the offeree company,**

whichever is the earlier.

(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

Subject to Note 2, dealings and securities borrowing and lending transactions by connected fund managers and connected principal traders prior to the relevant time specified in Rule 7.2(a) or Rule 7.2(b) will not be relevant for the

purposes of (as appropriate) Rule 4.2, Rule 4.6, Rule 5, Rule 6, Rule 9.5, Rule 11 and Rule 36.

2. “Actual” concertedness

Rule 7.2 does not apply if a connected fund manager or connected principal trader is in fact acting in concert with an offeror or with the offeree company.

3. “Book flattening” by connected principal traders

(a) With the prior consent of the Panel, after a connected principal trader is presumed to be acting in concert with an offeror or the offeree company, it may, within a time period agreed in advance by the Panel:

- (i) reduce its interests in securities of the offeree company or an offeror, or acquire interests in such securities with a view to reducing any short position, without such dealings being relevant for the purposes of Rule 4.2, Rule 4.4, Rule 5, Rule 6, Rule 9.5, Rule 11 and Rule 36; and
- (ii) pursuant to Rule 4.6, take action to unwind a securities borrowing or lending transaction in respect of relevant securities of the offeree company.

(b) Any such dealings must be disclosed under Rule 4.6, Rule 8.4, Rule 24.4 or Rule 25.4, as appropriate.

4. Dealings by connected fund managers

(a) After a connected fund manager is presumed to be acting in concert with an offeror or the offeree company, it may, with the prior consent of the Panel and within a time period agreed in advance by the Panel:

- (i) acquire an interest in securities of the offeree company, with a view to reducing any short position, without such acquisitions being relevant for the purposes of Rule 4.4, Rule 5, Rule 6, Rule 9.5, Rule 11 and Rule 36; and
- (ii) pursuant to Rule 4.6, take action to unwind a securities borrowing transaction in respect of relevant securities of the offeree company.

(b) Any such dealings must be disclosed under Rule 8.4, Rule 4.6 or Note 2 on Rule 4.6, as appropriate.

(c) After the commencement of the offer period, with the prior consent of the Panel, a connected fund manager presumed to be acting in concert with an offeror may sell offeree company securities without such sales being relevant for the purposes of Rule 4.2. Any such sale 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 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 by, non-exempt connected fund managers and non-exempt connected principal traders (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.