

## **RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS**

### **NOTES ON RULE 8**

#### **1. Cash offerors**

Shares or other securities of a cash offeror will not be treated as “relevant securities” for the purposes of Rule 8.

Following an announcement by a cash offeror that its offer is being revised to become (or that its possible offer may be) a securities exchange offer, Opening Position Disclosures and Dealing Disclosures will be required in the same way as if the announcement had been the first to identify the offeror as a securities exchange offeror.

#### **2. Timing of disclosure**

##### **(a) Disclosures by the parties to the offer**

(i) A party to the offer must make an Opening Position Disclosure by no later than 12 noon 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).

If a party to the offer deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before the deadline in the previous paragraph, it must make a Dealing Disclosure (in respect of the dealings and positions of itself alone) in accordance with Rule 8.1(b) or 8.2(b) (as appropriate) and with paragraph (ii) below. However, the party to the offer must also make an Opening Position Disclosure (in respect of the positions of itself and any persons acting in concert with it) by the deadline above.

(ii) A party to the offer must make a Dealing Disclosure (whether public or private) by no later than 12 noon on the business day following the date of the dealing.

##### **(b) Disclosures by persons with interests in securities representing 1% or more**

(i) Subject to the following paragraph, a person required to make an Opening Position Disclosure under Rule 8.3(a) must do so by no later than 3.30 pm 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 a person required to make an Opening Position Disclosure under Rule 8.3(a) deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before the deadline in the previous paragraph, it must instead make a Dealing Disclosure under Rule 8.3(b) by no later than 3.30 pm on the business day following the date of the dealing. In such a case, it will not also be

necessary to make a separate Opening Position Disclosure under Rule 8.3(a).

(ii) A person required to make a Dealing Disclosure under Rule 8.3(b) must do so by no later than 3.30 pm on the business day following the date of the dealing.

**(c) Disclosures by concert parties**

(i) A person acting in concert with a party to the offer does not need to make an Opening Position Disclosure itself. Instead, details of the person's positions should be included in the Opening Position Disclosure made by the party to the offer with which it is acting in concert (see Note 5(a)(vii) below).

(ii) A person acting in concert with a party to the offer must make a Dealing Disclosure, whether public (in the case of Rule 8.4) or private (in the case of Rule 8.7), by no later than 12 noon on the business day following the date of the dealing.

**(d) Disclosures by exempt principal traders**

(i) Subject to the following paragraph, an exempt principal trader required to make an Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b) must do so by no later than 12 noon 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 exempt principal trader required to make an Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b) deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before the deadline in the previous paragraph, it must instead make a Dealing Disclosure under Rule 8.5(c) by no later than 12 noon on the next business day. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b).

(ii) An exempt principal trader must make a Dealing Disclosure by no later than 12 noon on the business day following the date of the dealing.

**(e) Disclosures by exempt fund managers with no interests in securities of any party to the offer representing 1% or more dealing for discretionary clients**

A private Dealing Disclosure by an exempt fund manager subject to Rule 8.6(a) dealing for discretionary clients must be made by no later than 12 noon on the business day following the date of the dealing.

### **3. Method of disclosure**

#### **(a) Public disclosures**

*Public disclosures under Rule 8 must be made to a RIS in typed format by electronic delivery and may be made by the person concerned or by an agent acting on its behalf. See also the Note on Rule 30.1 with regard to unquoted public companies and relevant private companies.*

#### **(b) Private disclosures**

*Private disclosures are to the Panel only and must be sent to the Panel in electronic form.*

#### **(c) Disclosure forms**

*Specimen disclosure forms are available on the Panel's website ([www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)) or may be obtained from the Panel. Disclosures should follow the format of those forms.*

#### **(d) Redemptions and purchases of own securities**

*If the offeree company or an offeror redeems or purchases its own relevant securities, no separate disclosure will be required under Rule 8 if the information required by Note 5 on Rule 8 is included in an announcement made under Rule 2.9.*

### **4. Disclosure in relation to more than one party**

#### **(a) Opening Position Disclosures**

*Subject to paragraphs (i) to (iii) below, when an Opening Position Disclosure is made, the details in Note 5 below must be disclosed in relation to the relevant securities of the offeree company and any securities exchange offeror at the same time.*

*However:*

*(i) no disclosure is required in respect of the relevant securities of any party to the offer if there are no positions to disclose;*

*(ii) (except where the disclosure is an Opening Position Disclosure by an offeror or the offeree company) no disclosure is required in respect of positions in the relevant securities of a party to the offer if full details of positions in each class of that party's relevant securities have previously been publicly disclosed under Rule 8 (and have not changed). An Opening Position Disclosure by an offeror or the offeree company, though, must include the details in Note 5 in relation to the relevant securities of the offeree company and any securities exchange offeror, even if certain details have previously been disclosed by the offeror or offeree company or persons acting in concert with the offeror or the offeree company (as the case may be), in accordance with Rule 8; and*

(iii) where a person is required to make an Opening Position Disclosure and, before the deadline for doing so in Note 2, there is a subsequent announcement that first identifies an offeror, the Opening Position Disclosure does not need to disclose details in respect of the relevant securities of that subsequently announced offeror. A separate Opening Position Disclosure must then be made in respect of the relevant securities of that offeror by the deadline established under Note 2 by reference to the subsequent announcement.

Where a person is disclosing details in respect of more than one party to the offer at the same time, a separate disclosure form must be used in respect of each such party.

**(b) Dealing Disclosures**

Subject to the following sentence, when a Dealing Disclosure is made the details in Note 5 below must be disclosed in relation to the relevant securities of the offeree company and any securities exchange offeror at the same time. However, no disclosure is required in respect of the relevant securities of a party if there are no dealings or positions to disclose or if full details of positions in each class of that party's relevant securities have previously been publicly disclosed under Rule 8 (and have not changed).

Where a person is disclosing details in respect of more than one party to the offer at the same time, a separate disclosure form must be used in respect of each such party.

The above paragraphs of this Note 4(b) do not apply to disclosures under Rule 8.7 where details only need to be given in relation to the party in whose relevant securities the dealing took place.

**5. Details to be included in the disclosure**

**(a) Public disclosures (other than Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity)**

Any public disclosure under Rule 8 (other than a Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity) must include:

(i) the identity of the person disclosing and that person's status (eg offeror, person acting in concert with the offeror, etc.);

(ii) details of any relevant securities of the offeree company or the offeror (as the case may be) in which the person making the disclosure has an interest or in respect of which it has a right to subscribe, in each case specifying the nature of the interests or rights concerned and the relevant percentages. Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a

*derivative, any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery, must also be disclosed;*

*(iii) details of any dealing arrangements of a kind referred to in Note 11(b) on the definition of acting in concert to which the person making the disclosure is a party;*

*(iv) if the disclosure is by an exempt fund manager or an exempt principal trader, the identity of the party to the offer with which the person disclosing is connected;*

*(v) confirmation whether the person making the disclosure is on the same day disclosing, or has previously disclosed, details in respect of the relevant securities of any other party or parties to the offer under Rule 8; and*

*(vi) if the disclosure is by a party to the offer or any person acting in concert with it, details of any securities borrowing and lending positions required by Note 5(l) below.*

*An Opening Position Disclosure by a party to the offer must also include:*

*(vii) similar details as in (ii) and (iii) above of any interests, short positions or rights to subscribe of any person acting in concert with that party to the offer, and of any dealing arrangements of a kind referred to in Note 11(b) on the definition of acting in concert to which any such person acting in concert with it is a party, together with (in each case) the identity of the persons concerned.*

*The interests, short positions, rights to subscribe, dealing arrangements and securities borrowing and lending positions to be disclosed under (ii), (iii), (vi) and (vii) above are those determined in accordance with Note 7(d) below.*

*Subject to the following paragraph, any Dealing Disclosure must also include:*

*(viii) the total of the relevant securities in question in which the dealing took place;*

*(ix) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5(i) below);*

*(x) if the disclosure is by a person acting in concert with a party to the offer, the identity of the party to the offer concerned; and*

*(xi) the date of the dealing.*

*However, a Dealing Disclosure by a connected principal trader where the sole reason for the connection is that the principal trader is controlled# by, controls or is under the same control as a connected adviser to an offeror, the offeree company or any person acting in concert with an offeror or the offeree company must include the information specified in Note 5(b) below. The Panel*

may, where it considers it appropriate, require the person concerned to make more detailed private disclosure to the Panel.

#See the Note on Definitions at the end of the Definitions Section.

**(b) Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity**

A Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity must include:

- (i) the identity of the person disclosing;
- (ii) the identity of the party to the offer with which the person disclosing is connected;
- (iii) total acquisitions and disposals;
- (iv) the highest and lowest prices paid and received; and
- (v) the date of the dealing.

In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5(i) below).

**(c) Private disclosures by connected exempt fund managers with no interests in securities of any party to the offer representing 1% or more**

A private Dealing Disclosure under Rule 8.6 must include the same details as a public Dealing Disclosure (see (a) above).

**(d) Private disclosures of non-discretionary dealings by parties and concert parties**

A private Dealing Disclosure made under Rule 8.7 must include:

- (i) the identity of the person disclosing;
- (ii) if the disclosure is by a person acting in concert with a party to the offer, the identity of the party to the offer concerned;
- (iii) the total of the relevant securities in question in which the dealing took place;
- (iv) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 5(i) below); and
- (v) the date of the dealing.

**(e) Related dealings**

*When a person transacts two or more separate but related dealings executed at or around the same time (for example, the entering into of a derivative referenced to relevant securities and the acquisition of such securities for the purposes of hedging) or has two or more separate but related positions in relevant securities, any disclosure must include the required information in relation to each such dealing so executed or position held.*

**(f) Owner or controller details**

*For the purpose of disclosing identity, the owner or controller of any interest or short position in securities disclosed must be specified, in addition to any other details. The naming of nominees or vehicle companies is insufficient. If the owner or controller of the interest or short position is a trust, details of the trustee(s), the settlor, the protector and the beneficiaries of the trust must be disclosed. Where the beneficiaries are a connected group, for example, members of a family, a description of the group will normally be sufficient.*

*The Panel may require additional information to be disclosed when it appears to be appropriate, for example to identify other persons who have an interest in the securities in question. However, in the case of disclosures by fund managers of dealings on behalf of, or positions held for the account of, discretionary clients, the clients need not be named.*

**(g) Specially cum or ex dividend acquisitions**

*Where an offeror or any person acting in concert with it acquires any interest in offeree company securities on a specially cum or specially ex dividend basis, details of that fact should also be disclosed.*

**(h) Percentage calculations and subscription for new securities**

*Percentages should be calculated by reference to the numbers of relevant securities given in a party's latest announcement required by Rule 2.9. In the case of a disclosure relating to a right to subscribe, or subscription, for new securities, the Panel should be consulted regarding the appropriate number of relevant securities to be used in calculating the relevant percentage.*

**(i) Options, derivatives etc.**

*In the case of agreements to purchase or sell, rights to subscribe, options or derivatives, full details should be given so that the nature of the interest, position or dealing can be fully understood. For options this should include, at least, a description of the options concerned, the number of securities under option, the exercise period (or in the case of exercise, the exercise date), the exercise price and any option money paid or received. For derivatives this should include, at least, a description of the derivatives concerned, the number of reference securities to which they relate (when relevant), the*

maturity date (or if applicable the closing out date) and the reference price (and any fee payable on entering into the derivative).

In addition, if there exists any agreement, arrangement or understanding, formal or informal, between the person disclosing and any other person relating to the voting rights of any relevant securities under option or relating to the voting rights or future acquisition or disposal of any relevant securities to which a derivative is referenced (as the case may be), full details of such agreement, arrangement or understanding, identifying the relevant securities in question, must be included in the disclosure. If there are no such agreements, arrangements or understandings, this fact should be stated. Where such an agreement, arrangement or understanding is entered into at a later date than the derivative or option to which it relates, it will be regarded as a dealing in relevant securities.

**(j) Futures contracts and covered warrants**

For the purpose of any disclosure, a futures contract or covered warrant for which exercise includes the possibility of delivery of the underlying securities is treated as an option. A futures contract or covered warrant which does not include the possibility of delivery of the underlying securities is treated as a derivative.

**(k) Transfers in and out**

If, following a public disclosure made under Rule 8, interests in relevant securities are transferred into or out of a person's management, a reference to the transfer must be included in the next public disclosure made by that person under Rule 8.

**(l) Securities borrowing and lending**

An Opening Position Disclosure by a party to the offer must include details of any relevant securities of the offeree company and any securities exchange offeror which the party making the disclosure 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. In addition, a Dealing Disclosure by a party to the offer or any person acting in concert with a party to the offer must include details of any relevant securities of the offeree company and any securities exchange offeror which the person making the disclosure has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold.

Where a party to the offer or any person acting in concert with it enters into, or takes action to unwind, a securities borrowing or lending transaction in respect of relevant securities of an offeror or, with the Panel's consent under Rule 4.6(a), the offeree company, a Dealing Disclosure must be made by that person.



*The provisions of this Note also apply in respect of any financial collateral arrangements of the kind referred to in Note 3 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.*

*In all cases referred to above, all relevant details should be given and the disclosure must be made in a form agreed by the Panel.*

## **6. Indemnity and other dealing arrangements**

*(a) Where a dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert is entered into during the offer period by an offeror, the offeree company or a person acting in concert with an offeror or the offeree company, that person must make an immediate announcement, giving all relevant details of the dealing arrangement.*

*(b) Where a person acting in concert with the offeree company has entered into such a dealing arrangement before the start of the offer period or a person acting in concert with an offeror has entered into such a dealing arrangement before the announcement that first identifies the offeror, that person must make an announcement, giving all relevant details of the dealing arrangement as soon as possible after the commencement of the offer period or the announcement that first identifies the offeror (as the case may be).*

*(c) Details of dealing arrangements must also be included in Opening Position Disclosures and Dealing Disclosures as required by Note 5 above.*

## **7. Time for calculating a person's interests etc.**

*(a) Under Rule 8.3(a), an Opening Position Disclosure is required if the person is interested in 1% or more of any class of relevant securities of the offeree company or any securities exchange offeror at the time of the announcement that commences the offer period or the time of the announcement that first identifies an offeror (as the case may be).*

*(b) Under Rule 8.3(b), a Dealing Disclosure is required if the person dealing is interested in 1% or more of any class of relevant securities of the offeree company or any securities exchange offeror at midnight on the date of the dealing or was so interested at midnight on the previous business day.*

*(c) A person will be treated as interested in relevant securities for the purposes of this Note 7, and Rule 8 generally, if it has disposed of an interest in relevant securities before midnight on the date in question but there exists an agreement, arrangement or understanding, formal or informal, of any nature (but not itself amounting to an interest in the securities) as a result of which the person is entitled, or would expect to be able, to acquire an interest in the securities concerned (or equivalent securities) thereafter.*

*(d) The interests, short positions, rights to subscribe, dealing arrangements and securities borrowing and lending positions to be disclosed under paragraphs (ii), (iii), (vi) and (vii) of Note 5(a) on Rule 8 are those existing or outstanding at midnight on the day immediately preceding the date on which the disclosure is made (except in the case of a Dealing Disclosure made on the same day as the dealing concerned, when the interests etc. to be disclosed are those existing or outstanding immediately following the dealing taking place).*

### **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.*

### **9. Recognised intermediaries**

*(a) The exceptions in this Rule in relation to recognised intermediaries must not be used to avoid or delay disclosures. For example, a dealing in relevant securities by a recognised intermediary, backed by a firm commitment by a person to purchase the relevant securities from the recognised intermediary, will be regarded as a dealing by that person. A commitment may effectively be firm even if not legally binding, for example because of market practice. Such arrangements, therefore, should not be entered into unless appropriate disclosures are to be made. In addition, if such an arrangement is entered into with an offeror or a person acting in concert with the offeror, it might mean that the recognised intermediary is acting in concert with the offeror and normal concert party consequences might follow (such as the application of Rule 4, Rule 5, Rule 6, Rule 7, Rule 9, Rule 11 and Rule 24 and disclosure of dealings by the recognised intermediary under Rule 8.4).*

*(b) Where a desk with recognised intermediary status deals, or has any interest or short position in, or right to subscribe for, relevant securities in a proprietary capacity, it should aggregate the interests, short positions and rights to subscribe which it holds in a proprietary capacity with those of the rest of the group. However, in making such disclosures, it need not aggregate and disclose details of any interests, short positions or rights to subscribe which it holds in a client-serving capacity. Where a desk with recognised intermediary status re-books a position which was acquired in a client-serving capacity so as to hold it in a proprietary capacity, it will be regarded as a dealing in a proprietary capacity.*

*(c) Recognised intermediaries which are principal traders connected with a party to the offer and to which exempt principal trader status is not applicable should disclose dealings under Rule 8.4.*

## **10. Responsibilities of intermediaries**

*Intermediaries are expected to co-operate with the Panel in its enquiries. Therefore, those who deal in relevant securities, or who have relevant interests, short positions or rights to subscribe, should appreciate that intermediaries will supply the Panel with relevant information as to those dealings and positions, including identities of clients and full client contact information, as part of that co-operation.*

## **11. Unquoted public companies and relevant private companies**

*The requirements to disclose dealings and positions under Rule 8 apply also in respect of the relevant securities of public companies whose securities are not admitted to trading and of relevant private companies. See also the Note on Rule 30.1.*

## **12. Potential offerors**

*(a) If a potential offeror has been referred to in an announcement by the offeree company but has not been publicly identified as such, or if it is a participant in a formal sale process announced by the offeree company (regardless of whether it was a participant at the time of the announcement), the potential offeror and persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement (or, if later, after the time at which it becomes a participant in the formal sale process) in accordance with Rule 8.1(b) or Rule 8.4 respectively.*

*At the same time as or before any such Dealing Disclosure, the potential offeror must also make an announcement that it is considering making an offer, or that it is a participant in the formal sale process (see also Rule 7.1(a) for when an immediate announcement will be required). The announcement must include a summary of the provisions of Rule 8 (see [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)).*

*(b) If a potential offeror has not been identified as such, it will not need to make an Opening Position Disclosure under Rule 8.1(a)(i) or (ii) until after the announcement that first identifies it as a potential offeror. However, before that time, the potential offeror and persons acting in concert with it will need to make Opening Position Disclosures in accordance with Rule 8.3(a), if applicable. If members of an offer consortium that has not been identified as such might be subject to Rule 8.3(c), the Panel should be consulted. In such cases, the consortium members will not normally be required to make a joint Opening Position Disclosure which could identify them as such, although any member who is interested in 1% or more of a class of relevant securities of the offeree company will be required to make an individual Opening Position Disclosure.*

*(c) After the announcement that first identifies a potential offeror as such, it will be required to make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). Such disclosure must include details in relation to the relevant securities of the offeree company or any securities exchange offeror, even if certain details have previously been disclosed by the potential offeror or persons acting in concert with it in accordance with Rule 8.3.*

### **13. Amendments**

*If details included in a disclosure under Rule 8 are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.*

### **14. Irrevocable commitments and letters of intent**

*See Rule 2.7(c)(x) and Rule 2.10.*