

takeover code amendments come into force *

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Amendments to the Takeover Code came into effect on **20 May 2006**. The amendments arise from four different consultations and relate to:

- dealings in derivatives and options (control issues);
- the proposed abolition of the SARs;
- miscellaneous amendments to the Code; and
- the implementation of the Takeover Directive.

The amendments also apply to transactions which were ongoing at 20 May except where the effect of doing so would be retroactive. In such cases, the Panel should be consulted.

Dealings in derivatives and options (control issues) (Response Statement 2005/3)

The main impact of this rule change is on dealings in derivatives and options by:

- offerors and potential offerors (and persons acting in concert with them); and
- persons whose interests (and those of any concert party) fall into the 30-50% band.

The Panel has adopted what it calls the broad approach. All long derivative and option transactions will be treated as dealings in the underlying securities.

Recognised intermediary status

Trading desks of investment banks and securities houses which trade as principal primarily for client-

serving purposes can apply to the Panel for "recognised intermediary" status. Grant of that status exempts the trading desk (in respect of derivative and option positions held in a client-serving capacity) from the requirement under Rule 9.1 to make a mandatory offer. The Panel will look at the client-serving nature of the relevant trading desk when considering whether or not to grant recognised intermediary status.

Minimum price obligations

In cases where the Code specifies the price at which an offer must be made (Rules 6, 9.5 and 11), the changes to the Code set out the price at which persons dealing in long derivatives and options during the relevant period will be treated as having acquired shares. In the case of derivatives, the price paid will be the initial reference price paid on entering into the derivative. In the case of options, the Code differentiates between call options which remain unexercised, call options which have been exercised and written put options whether exercised or not. See new Note 2(a) to Rule 9.5 of the Code for details.

Acceptance condition to mandatory offer

Interests in shares arising by reason of derivatives and options **will not** be taken into account for the purposes of satisfying an offeror's acceptance condition in the case of a mandatory offer under Rule 9.

Lapsed mandatory offers

If, following the lapsing of a mandatory offer, a person subsequently changes the nature of its interest by, say, closing out a derivative or option position and acquiring underlying shares which did not accept the original offer, it will have to make a further mandatory offer. The offer price must be no less than that of the original offer.

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Rule 35.1, which prevents a lapsed offeror from making a further offer for 12 months, will apply in the above circumstances to prohibit a person from acquiring shares underlying a derivative or option position if that would result in the person owning or controlling 30% or more of the voting rights.

Single shareholder exemption

This exemption permits the acquisition of an interest in shares which would otherwise be restricted, where the acquisition is from a single shareholder. The exemption has been extended to include a disposal by a single shareholder by way of a derivative position provided the single shareholder actually holds the shares, not just an interest in those shares.

Proposed abolition of the SARs (Response Statement 2005/4)

The SARs have been abolished.

The Panel states that its approach to share dealings is permissive rather than restrictive. As a consequence, the Code will restrict the acquisition of shares only in particular circumstances, eg where the acquisition would result in the person's interests in shares reaching 30% or more. At below the 30% level, the Panel believes that it is no longer appropriate to restrict the speed at which interests in shares may be acquired and, as a consequence, the ability of shareholders to sell their shares.

The rules regarding tender offers currently in SAR 4 have been retained and appear in new Appendix 5 of the Code.

Miscellaneous amendments (Response Statement 2006/1)

The majority of the miscellaneous amendments to the Code are uncontroversial and do not affect the substance of the rules. Many of the amendments have been introduced to reflect changes to the Listing Rules and the introduction of the Prospectus Rules and the Disclosure Rules.

The following amendments are noteworthy.

- The definition of "dealings" has been amended. The disposal of voting control constitutes a dealing (even if conditional) and must be disclosed.
- The first major circular from the board of an offeree must contain full details of each of the offeree directors' remuneration on an individual, not aggregated, basis.
- The first major circular from the board of an offeree must include a statement that there has been no material change since the last published audited accounts or details of all material changes. The same statement, or information, must appear in any circular to shareholders where the Panel is being asked to waive the requirement to make a mandatory offer under Rule 9.

The implementation of the Takeover Directive (Response Statement 2005/5)

See our separate e-brief on the implementation of the Takeover Directive.

The revised Code is available on the Panel's website at:

<http://www.thetakeoverpanel.org.uk/new/codesars/DATA/code.pdf>

A copy of the consolidated amendments to the Code, showing the changes resulting from all four response statements, is available on the Panel's website at:

<http://www.thetakeoverpanel.org.uk/new/codesars/DATA/Changes20.05.06.pdf>.

If you would like any further information, please contact Ailsa Buchan by email at ailsa.buchan@blplaw.com or your usual Berwin Leighton Paisner contact.

**This briefing is a general guide only. It is not comprehensive.
Specific legal advice should be sought in relation to the particular facts of a given situation.**

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