

# *Hedge Fund Advisory*

## *UK Takeover Panel's disclosure regime to be significantly extended*



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The UK Takeover Panel has now published the final changes to be made to the Takeover Code to extend the regime requiring the disclosure of interests in securities. Persons subject to the regime will have to make opening position disclosures and the whole regime is to be extended to provide for extended composite disclosure. Significantly, the regime will require disclosure of positions even if no trades are made during the offer period.

### **When do the changes come in?**

Not until 19 April 2010. However, managers will need to adjust their internal reporting systems to provide for the new regime.

### **Who does this apply to?**

Any holder of a gross long interest (in physicals or derivative interests) of 1% or more in any class of relevant securities in:

- a company the subject of a UK takeover bid caught by the Code; or
- any bidder offering securities as consideration under such a bid

Additional disclosure obligations (outside the scope of this briefing) apply for managers who are connected with the bid team on any takeover situation.

### **How can we find out which companies are caught?**

The Panel maintains a disclosure table on its website which sets out details of target companies and bidders and their securities to assist with disclosures. See: <http://www.thetakeoverpanel.org.uk/disclosure>

### **What are the main changes?**

Under the current regime, significant shareholders who do not trade throughout an offer period have no disclosure requirement under the Code. The combination of the new opening position disclosure requirements and the extended composite disclosure rules will result in persons with a gross long interest of 1% or more in any class of relevant securities of the target company (or a paper bidder) having to disclose:

- even if they do not deal in the offer period: their positions (long and short) in the relevant securities of the target and any paper bidder shortly after commencement of the offer

period and, if later, an announcement that first identifies a paper bidder; and

- any dealings during the offer period (long and short) in the relevant securities of the target and any paper bidder.

Note that it is not necessary to have a 1% gross long interest in both a paper bidder and a target: such an interest in one party is enough to require disclosure as to the other as well.

### **What are the practical consequences?**

Holders in UK public companies – or overseas companies who bid for UK companies - will need to monitor the Panel's website even more closely to see which parties are considered to be in an offer period. To assist with this, from 17 December 2009 details of the dates and times at which offer periods commence, and at which offerors are first identified as such, were included in the Disclosure Table on the Panel's website.

It is likely that many managers will need to make changes to their internal systems to prepare for these changes. In addition the Panel has produced new disclosure forms for use under the new regime – also available on the website stated above. The deadline for the first opening position disclosures is 4 May 2010 (see transitional arrangements below).

### **Opening position disclosure and extended composite disclosure: further details**

Rule 8 of the Takeover Code has been substantially amended to reflect the new disclosure regime which now applies as follows:

- Persons interested (directly or indirectly) in 1% or more of any class of relevant securities in any party to the offer (other than a cash bidder) will have to make a public opening position disclosure after the commencement of the offer period and after the announcement that first identifies any bidder other than a cash bidder. This is in addition to the existing dealing disclosure regime.
- Opening position disclosures must be made by no later than 12 noon (not 3.30 p.m.) on the day following 10 business days after the commencement of the offer period (or the announcement that first identifies a bidder). Disclosures may be made before that deadline.
- The positions to be disclosed are those as at midnight on the day prior to disclosure, except in the case of a dealing disclosure made on the same day as the dealing concerned (when the interests to be disclosed are those existing or outstanding immediately following the dealing taking place).
- Persons disclosing their positions in the relevant securities

of more than one party to an offer should use a separate disclosure form in respect of each party. They will be required to confirm on their disclosure form(s) whether they are on the same day disclosing, or have previously disclosed, details of their positions in the relevant securities of any other party to the offer.

- Where, following an announcement which commences an offer period a person is required to make an opening position disclosure and, before the deadline, a subsequent announcement is made that first identifies a paper bidder, the person's opening position disclosure in respect of the relevant securities of that bidder should be made by the deadline established by reference to the second announcement.
- Where the cash offer is revised to become a securities exchange offer, then opening position and dealing disclosures will be required in the same way as if the announcement is the first to identify the offer as a paper bidder.
- Dealing arrangements or agreements (which include any indemnity or option arrangements) entered into with a bidder or target company, whether formal or informal, relating to relevant securities and which may be an inducement to deal or refrain from dealing will be caught by a new note to the definition of "acting in concert". A new note to Rule 8 of the Code requires disclosure of such a dealing arrangement.
- Although the Panel has stepped back from making more substantive amendments on the disclosure of stock lending and borrowing, amendments will be made to the rules so that persons are no longer restricted from securities borrowing and lending transactions in relation to relevant securities of the bidder, subject in the case of a paper bidder to disclosing that transaction. Entering into certain financial collateral arrangements in relation to the relevant securities of the target company during an offer period will be subject to the same restrictions as entering into secured lending transactions.
- Changes to Rule 9 will mean that intra-day securities borrowing and lending transactions will only be regarded as relevant for the purposes of the 30 % mandatory offer threshold where these transactions result in an increase in a person's net borrowing position in the company's shares at midnight on the day in question.

### Transitional provisions

The amendments will apply to all offers and possible offers from 19 April 2010. In summary:

- where dealings are undertaken on or after 19 April, the Code's disclosure regime will operate on the basis of "extended composite disclosure";
- where an offer period commences on or after 19 April, the "opening position disclosure" requirement will apply (on the basis of extended composite disclosure) with respect to the target company; and
- where a bidder is first identified as such on or after 19 April, the "opening position disclosure" requirement will apply (on

the basis of extended composite disclosure) with respect to that bidder.

Where an offer period has already commenced before 19 April 2010, or where a bidder has already been identified as such before that date, transitional arrangements shall apply so any person who is interested in 1% or more of any class of relevant securities of a party to an offer (other than a cash bidder) should make an opening position disclosure by no later than the date which is 10 business days following the implementation of the amendments to the Code. In other words, opening position disclosures should be made by Tuesday, 4 May 2010 (Monday, 3 May not being a business day in the UK), including details of long interests, short positions and rights to subscribe etc. existing or outstanding at midnight on 3 May. However, an opening position disclosure would not need to be made in relation to the relevant securities of any part to the offer in respect of which the person concerned has already disclosed details of his positions during the offer period pursuant to the Code's disclosure requirements.

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