

**TAKEOVER BIDS DIRECTIVE (CONSEQUENTIAL AMENDMENTS)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 145 (Financial promotion rules);
 - (3) section 156 (General supplementary powers);
 - (4) section 157(1) (Guidance);
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 February 2007.

Amendments to the Handbook

- D. The sourcebooks or manuals of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this Instrument listed against them in column (2).

(1)	(2)
Glossary of definitions	Annex A
Interim Prudential Sourcebook for Investment Business (IPRU(INV))	Annex B
Conduct of Business sourcebook (COB)	Annex C
Market Conduct sourcebook (MAR)	Annex D
Supervision manual (SUP)	Annex E
Enforcement manual (ENF)	Annex F

Citation

- E. This instrument may be cited as the Takeover Bids Directive (Consequential Amendments) Instrument 2007.

By order of the Board
25 January 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

...	...
<i>SARs</i>	the Rules Governing Substantial Acquisitions of Shares issued on the authority of the <i>Takeover Panel</i>.
...	
<i>takeover or related operation</i>	<p>(a) any transaction falling within paragraph 43(b) (Companies and transactions to which the Code applies <u>Companies, Transactions and Persons subject to the Code</u>) of the introduction to the <i>Takeover Code</i> and, for this purpose, an offer for non-voting, non-equity share capital is to be regarded as falling within the <i>Takeover Code</i> even if not required by rule 15 of that Code;</p> <p>(b) any transaction subject to the SARs;</p> <p>(eb) any transaction which would have fallen within (a) were it not for the fact that the company which is the subject of the transaction does not satisfy the tests set out in paragraph 43(a) (Companies and transactions to which the Code applies <u>Companies, Transactions and Persons subject to the Code</u>) of the introduction to the <i>Takeover Code</i>;</p> <p>(d) any transaction which would have been subject to the SARs but where the shares the subject of the transaction are in a company which does not satisfy the test of residency set out in the second and third paragraphs of Section 2 (Scope) of the Introduction to the SARs;</p> <p>(ec) any offer...</p> <p>(fd) any transaction or arrangement entered into in contemplation or furtherance of any offer, transaction or arrangement falling within (a) to (ec); and</p> <p>(ge) any transaction or arrangement entered into by way of defence or protection against any offer, transaction or arrangement falling within (a) to (fd) which has taken place or which is contemplated.</p>

Annex B

Amendments to the Interim Prudential sourcebook for Investment Firms (IPRU(INV))

In this Annex, underlining indicates new text and striking through indicates deleted text.

APPENDIX 1 – GLOSSARY OF TERMS FOR IPRU(INV) 3

...

Takeover Code means the City Code on Takeovers and Mergers ~~and the Rules Governing Substantial Acquisitions of Shares~~ published by the Takeover Panel;

APPENDIX 1 (INTERPRETATION) GLOSSARY OF TERMS FOR CHAPTER 5 (FORMER IMRO FIRMS)

...

SARs means ~~the Rules Governing Substantial Acquisition of Shares issued on the authority of the Takeover Panel.~~

...

takeover or related operation means:

- (a) any transaction falling within paragraph ~~43~~(b) (~~Companies and transactions to which the Code applies~~ Companies, Transactions and Persons subject to the Code) of the introduction to the *Takeover Code* and, for this purpose, an offer for non-voting, non-equity share capital is to be regarded as falling within the *Takeover Code* even if not required by rule 15 of that Code;
- (b) ~~any transaction subject to the SARs;~~
- (eb) any transaction which would have fallen within (a) were it not for the fact that the company which is the subject of the transaction does not satisfy the tests set out in paragraph ~~43~~(a) (~~Companies and transactions to which the Code applies~~ Companies, Transactions and Persons subject to the Code) of the introduction to the *Takeover Code* and, for this purpose, an offer for non-voting, non-equity share capital is to be regarded as falling within the *Takeover Code* even if not required by

~~rule 15 of that Code;~~

- ~~(d) any transaction which would have been subject to the SARs but where the shares the subject of the transaction are in a company which does not satisfy the test of residency set out in the second and third paragraphs of Section 2 Scope of the Introduction to the SARs;~~
- (~~e~~) any offer...
- (~~f~~) any transaction or arrangement entered into in contemplation or furtherance of any offer, transaction or arrangement falling within (a) to (~~e~~); and
- (~~g~~) any transaction or arrangement entered into by way of defence or protection against any offer, transaction or arrangement falling within (a) to (~~f~~) which has taken place or which is contemplated.

APPENDIX 1 – GLOSSARY OF TERMS FOR IPRU(INV) 10

...

Takeover Code means the City Code on Takeovers and Mergers ~~and the Rules Governing Substantial Acquisitions of Shares~~ published by the Takeover Panel;

Annex C

Amendments to the Conduct of Business sourcebook (COB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

COB 1.6.5 G ~~*Firms* should, when relevant, make reference to MAR 4 (Endorsement of the Takeover Code). The effect of this endorsement in MAR 4, is that, should a *firm* to whom the endorsement applies fail to comply with the City Code on Takeovers and Mergers ('*Takeover Code*'), the Rules Governing Substantial Acquisition of Shares ('*SARs*') or rulings or requirements made by the *Takeover Panel*, the *Takeover Panel* can request the FSA to take enforcement action against that *firm*.~~

...

COB 3.2.5 R Exemptions

This table belongs to COB 3.2.4 R

Exemptions	
This chapter does not apply to the following:	
(1)	...
(7)	a <i>financial promotion</i> which is subject to the <i>Takeover Code</i> or the <i>SARs</i> (or exempted from complying with the <i>Takeover Code</i> or the <i>SARs</i> by that Code, those rules , or by a ruling of the <i>Takeover Panel</i>) or to the requirements relating to <i>takeovers</i> or <i>related operations</i> in another <i>EEA State</i> ;
...	

Annex D

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

MAR 1.5.7 E Factors to be taken into account: standards of behaviour

In the opinion of the FSA, ...

(1) ...

(a) information which is required to be disseminated under the *Takeover Code* ~~or SARs~~ (or its ~~their~~ equivalents in the relevant jurisdiction) on, or in relation to, *qualifying investments*; or

(b) ...

...

MAR 1.10.3 G Takeover Code ~~and SARs~~

There are no rules in the *Takeover Code* ~~or the SARs~~, which permit or require a *person* to behave in a way which amounts to *market abuse*.

MAR 1.10.4 C *Behaviour* conforming with any of the rules of the *Takeover Code* ~~or SARs~~ about the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information, does not, of itself, amount to *market abuse*, if:

...

MAR 1.10.5 C Table: Provisions of the *Takeover Code* ~~or SARs~~ conformity with which will not, of itself, amount to market abuse (This table belongs to MAR 1.10.4C):

...	
<u>SAR provisions:</u>	
<u>Timing of disclosure</u>	3 4.1(a) and (e), 4.3, 4.4
<u>Content of announcements</u>	4.2

...

MAR 4.1 Application and purpose

Application

...

MAR 4.1.3 G ~~The *Takeover Code* and the *SARs* provide valuable regulation in the areas of takeovers, mergers and substantial acquisition of *shares* of companies. The purpose of endorsing the *Takeover Code* and the *SARs* is to provide them with statutory support. The other requirements in this chapter provide further support for the functions of the *Takeover Panel*.~~

MAR 4.1.4 G ~~Endorsing the *Takeover Code* and the *SARs* and imposing the other requirements in this chapter furthers the FSA's *regulatory objectives*, and in particular the objectives of market confidence and protection of consumers.~~

MAR 4.2 [deleted]

MAR 4.3 ~~Further~~ Support of the Takeover Panel's functions

MAR 4.3.1 R A *firm* must not act, or continue to act, for any *person* in connection with a transaction to which the *Takeover Code* ~~or the *SARs*~~ applies (including a ~~rule 8~~ transaction subject to rule 8 (Disclosure of dealings during the offer period; also indemnity and other arrangements) of the *Takeover Code*) if the *firm* has reasonable grounds for believing that the *person* in question, or his principal, is not complying or is not likely to comply with the *Takeover Code* ~~or the *SARs*~~.

MAR 4.3.2 G (1) The *Takeover Panel* publishes notices regarding compliance with the *Takeover Code* ~~and *SARs*~~. It may also, from time to time, name in those notices *persons* as *persons* that, in the *Takeover Panel's* opinion, are not likely to comply with the *Takeover Code* ~~or the *SARs*~~. Any notices of this type will be available on the *Takeover Panel's* website (www.thetakeoverpanel.org.uk).

...

MAR 4.3.3 G (1) Where a restriction under MAR 4.3.1 R applies, among other things the *firm* is prevented from carrying on any *designated investment business* activity, or *communicating* or *approving* any *financial promotion*, in connection with a transaction to which the *Takeover Code* ~~or the *SARs*~~ applies.

- (2) Where a restriction under MAR 4.3.1 R applies, the *firm* is not prevented from carrying on other activities (including *regulated activities*) in relation to that *person*. This includes *designated investment business* activity which is not in connection with a transaction to which the *Takeover Code* ~~or the SARs~~ applies.

...
MAR 4.3.4 G ...

- (2) While the *FSA* recognises the duty of *authorised professional firms* to act in the best interests of their clients, the duty cannot override the provisions of the *Takeover Code* ~~or SARs~~ so as to require the *authorised professional firm* to provide services in breach of, or enable breach of, the *Takeover Code* ~~or SARs~~.

...

MAR 5.5.3 G Handbook provisions applicable to ATSS

	Part of Handbook	Applicability to ATSS
	...	
Business standards	...	
	...	
	Market Conduct sourcebook (<i>MAR</i>)	The Code of Market Conduct (The Code of Market Conduct) applies. Price Stabilising Rules (Price Stabilising Rules) and Endorsement of the Takeover Code (Endorsement of the Takeover Code) are likely to be of limited relevance to the business of an <i>ATS operator</i>
	...	

Annex E

Amendments to the Supervision Manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- SUP 11.4.11 G The steps that the *FSA* expects a *firm* to take ...
- ...
 - (3) monitoring public announcements made under the relevant disclosure provisions of the *Takeover Code* or other rules made by the *Takeover Panel* (~~for example the *SARs*~~);
 - ...

Annex F

Amendments to the Enforcement Manual (ENF)

In this Annex, underlining indicates new text and striking through indicates deleted text.

ENF 11.8 Action involving other regulatory authorities

ENF 11.8.1 G Some types of breach committed by *firms* and *approved persons* may potentially result not only in disciplinary action by the *FSA*, but also action by other regulatory authorities. These authorities could include, for example, the *RIEs*, the *designated professional bodies*, the *Takeover Panel* and the *Society*, as well as overseas authorities (action concerning criminal offences and liaison with other prosecuting authorities is dealt with separately in ENF 15).

...

ENF 14.5 Factors determining whether the *FSA* may impose a financial penalty in market abuse cases

ENF 14.5.1 G The factors which the *FSA* may take into account ...

(1) ...

(d) whether, and if so to what extent, the *behaviour* complied with the rules of any relevant *prescribed market* or any other relevant market or other regulatory requirements (including the *Takeover Code* ~~or the *SARs*~~) or any relevant codes of conduct or best practice;

(2) ...

(e) whether, and if so to what extent, the *behaviour* complied with the rules of any relevant *prescribed market* or any other relevant market or other regulatory requirements (including the *Takeover Code* ~~or the *SARs*~~) or any relevant codes of conduct or best practice.

...

ENF 14.9 Action involving other UK regulatory authorities

ENF 14.9.1 G As stated in ENF 11.8 (Action involving other regulatory authorities), some *market abuse* cases may involve not only potential action by the *FSA*, but also potential action by other regulatory authorities, such as the *Takeover Panel* or an *RIE*. Thus, for example, in relation to *behaviour* which may have occurred or be occurring on a *prescribed market*, the *FSA* will refer to the relevant *RIE* and give due weight to its views. In a case where the *FSA* considers that it would be appropriate to bring action against a *person* under the *market abuse regime*, the relevant *RIE* may also wish to bring action against the *person* for breaches of its own rules. In each case, the *FSA* will coordinate action with the *RIE* concerned to ensure that cases are dealt with effectively and fairly, under operating arrangements [to be agreed] between the *FSA* and the *RIEs*. The *FSA* will have regard to all the circumstances of the case, including whether the other regulatory authorities have adequate powers to address the *behaviour* in question. The *FSA* will, where appropriate, adopt a similar approach in respect of other regulatory authorities.

ENF 14.9.2 G In relation to *behaviour* which may have happened or be happening in the context of a *takeover bid* ~~or to which the *SARs* are relevant~~, the *FSA* will refer to the *Takeover Panel* and give due weight to its views in the context of the *Takeover Panel's* powers and responsibilities. Where the *Takeover Code* ~~or *SARs*~~ have procedures for complaint about any *behaviour*, the *FSA* expects parties to exhaust those procedures. The *FSA* will not, save in exceptional circumstances, take action under any of section 123 (*FSA's* power to impose penalties), section 129 (Power of court to impose penalties), section 381 (Injunctions - see ENF 6), sections 383 or 384 (Restitution - see ENF 9) in respect of *behaviour* to which the *Takeover Code* ~~or *SARs*~~ is relevant before the conclusion of the procedures available under the *Takeover Code* ~~or the *SARs*~~, ~~as the case may be.~~

...

ENF 14.9.4 G If any of the circumstances in ENF 14.9.6 G apply, and the *FSA* considers that the use of its disciplinary powers under section 123 or 129, or of its injunctive powers under section 381 or of its powers relating to restitution under section 383 or 384 is appropriate, it will not take action during an offer to which the *Takeover Code* ~~or *SARs*~~ applies except in the circumstances set out in ENF 14.9.7 G.

ENF 14.9.5 G In any case where the *FSA* considers that the use of its powers under any of sections 123, 129, 381, 383 or 384 of the *Act* may be appropriate, if that use may affect the timetable or outcome of a *takeover bid* ~~or a tender offer governed by the *SARs*~~ or where it is appropriate in the context of any exercise by the *Takeover Panel* of the Panel's powers and authority, ~~it~~ the *FSA* will consult the *Takeover Panel* before using any of those powers.

ENF14.9.6 G Where the *behaviour* of a *person* which amounts to *market abuse* is *behaviour* to which the *Takeover Code* or the *SARs* are is relevant, the use of the *Takeover Panel's* ~~informal~~ powers will often be sufficient to address the relevant concerns. In cases where this is not so, the *FSA* will need to consider, against the background of this manual, whether it is appropriate to use any of its own powers under the *market abuse regime*. The principal circumstances in which the *FSA* is likely to consider such exercise are:

- (1) ~~where the *Takeover Panel* is unable to investigate properly due to lack of cooperation by the relevant *person*;~~
- (21) where the *behaviour* falls within sections 118(2)(a), 118(3) or 118(4) of the *Act*;
- (3) ~~where a *person* has deliberately or recklessly failed to comply with a *Takeover Panel* ruling;~~
- (42) where the *FSA's* approach in previous similar cases (which may have happened otherwise than in the context of a *takeover bid*) suggests that a financial penalty should be imposed (see ENF 14.6.2 G (4));
- (5) ~~where the *Takeover Panel* asks the *FSA* to consider the use of its powers to impose a financial penalty;~~
- (63) where the *behaviour* extends to *securities* or a class of *securities* which may be outside the *Takeover Panel's* jurisdiction;
- (74) where the *behaviour* threatens or has threatened the stability of the *financial system*; and
- (85) where for any other reason the *Takeover Panel* asks the *FSA* to consider the use of any of its powers referred to in ENF 14.9.2 G.

ENF 14.9.7 G The exceptional circumstances in which the *FSA* will consider the use of powers during a *takeover bid* are listed in ENF 14.9.6 G (1), ~~to~~ ENF 14.9.6 G (3), ~~ENF 14.9.6 G (6)~~, ENF 14.9.6 G (74) and, depending on the circumstances, ENF 14.9.6 G (85).

...

ENF 14.10 [deleted]

