

Chapter 4

Support of the Takeover Panel's Functions

4.3 Support of the *Takeover Panel's* Functions

- 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* applies (including a *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*.
- 4.3.2** **G**
- (1) The *Takeover Panel* publishes notices regarding compliance with the *Takeover Code*. 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*. Any notices of this type will be available on the *Takeover Panel's* website (www.thetakeoverpanel.org.uk).
 - (2) A *firm* should keep itself informed of *Takeover Panel* notices and take them into account in seeking to comply with **MAR 4.3.1 R**. If the *Takeover Panel* were to name such a *person* in such a notice, the *FCA* would expect a *firm* to comply with **MAR 4.3.1 R** by not acting or continuing to act for that *person*.
 - (3) The *FCA* would not regard a *firm* as in breach of **MAR 4.3.1 R** where the *Takeover Panel* has indicated that it is content for the *firm* to act in relation to that transaction.
- 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* 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* applies.
- 4.3.4** **G**
- (1) Where a restriction under **MAR 4.3.1 R** applies, an *authorised professional firm* is not prevented from providing professional advice or representation in any proceedings to the *person* where that falls within section 327(8) of the *Act*. This means that the *person* can obtain legal advice or representation in any proceedings from a law

firm and accounting advice from an accounting firm: see
■ MAR 4.4.1 R (2).

- (2) While the *FCA* 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* so as to require the *authorised professional firm* to provide services in breach of, or enable breach of, the *Takeover Code*.

4.3.5 **R** A firm must provide to the *Takeover Panel*:

- (1) any information and documents in its possession or under its control which the *Takeover Panel* requests to enable the *Takeover Panel* to perform its functions; and
- (2) such assistance as the *Takeover Panel* requests and as the *firm* is reasonably able to provide to enable the *Takeover Panel* to perform its functions.

4.3.6 **G** In ■ MAR 4.3.5 R, "documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to providing documents include references to producing a copy of the information in legible form.

4.3.7 **G** As a result of section 413 of the *Act* (Limitation on powers to require documents), ■ MAR 4.3.5 R does not require a *firm* or an *authorised professional firm* to produce, disclose or permit the inspection of *protected items*.