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).

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
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<tbody>
<tr>
<td>Glossary of definitions</td>
<td>Annex A</td>
</tr>
<tr>
<td>Interim Prudential Sourcebook for Investment Business (IPRU(INV))</td>
<td>Annex B</td>
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<tr>
<td>Conduct of Business sourcebook (COB)</td>
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<td>Market Conduct sourcebook (MAR)</td>
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<td>Supervision manual (SUP)</td>
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<tr>
<td>Enforcement manual (ENF)</td>
<td>Annex F</td>
</tr>
</tbody>
</table>

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.

... ...

SARs the Rules Governing Substantial Acquisitions of Shares issued on the authority of the Takeover Panel.

... 

takeover or related operation

(a) any transaction falling within paragraph 42(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 42(a) (Companies and transactions to which the Code applies Companies, Transactions and Persons subject to the Code) of the introduction to the Takeover 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;

(ec) any offer...

(fd) any transaction or arrangement entered into in contemplation or furtherance of any offer, transaction or arrangement falling within (a) to (ec); and

(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.
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;

(eg) any offer…

(fd) any transaction or arrangement entered into in contemplation or furtherance of any offer, transaction or arrangement falling within (a) to (eg); and

(eg) 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.

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

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

<table>
<thead>
<tr>
<th>SAR provisions:</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timing of disclosure</td>
<td>4.1(a) and (e), 4.3, 4.4</td>
</tr>
<tr>
<td>Content of announcements</td>
<td>4.2</td>
</tr>
</tbody>
</table>

…
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 rules 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

<table>
<thead>
<tr>
<th>Part of Handbook</th>
<th>Applicability to ATSs</th>
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<tbody>
<tr>
<td>…</td>
<td>…</td>
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<tr>
<td>Business standards</td>
<td>…</td>
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<td>…</td>
<td>…</td>
</tr>
<tr>
<td>Market Conduct sourcebook (MAR)</td>
<td>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 ATS operator. …</td>
</tr>
</tbody>
</table>
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 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 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 are 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, 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 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;

(2) 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;

(4) 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;

(6) where the behaviour extends to securities or a class of securities which may be outside the Takeover Panel’s jurisdiction;

(7) where the behaviour threatens or has threatened the stability of the financial system; and

(8) 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]