**Disclosure of dealings under the Takeover Code**

This element looks at the rules which govern stakebuilding under the Takeover Code; it goes on to examine the disclosure rules in terms of dealings.

**Introduction**

Rule 8 of the Takeover Code provides for disclosure of dealings in relevant securities at the start of and during an offer period. These obligations are in addition to any disclosure obligation a person may have under UK MAR or DTR5.

The Rule 8 disclosures apply to a takeover, regardless of the structure which the bidder plans to pursue.

**Rule 8: opening position disclosure**

An Opening Position Disclosure (an ‘**OPD’**) is an announcement which provides details of a person’s interests in (or short positions in, or rights to subscribe for) any relevant securities of any party to the bid. The only exception to this is that no OPD is required in relation to the securities of a cash bidder.

An OPD must therefore be made in relation to shares in the target (regardless of the nature of the proposed consideration for the bid) and also in relation to shares in the bidder if the bidder is offering shares in itself as consideration for its bid.

The OPD must be made by:

* the bidder (after its identity is first publicly disclosed) (Rule 8.1(a));
* the target company (Rule 8.2(a)); and
* by any person that is interested in 1% or more of any class of relevant securities of any party to the bid (other than a cash bidder) (Rule 8.3(a)).

The party making the OPD must include, alongside its own interests, details of all of its concert parties’ positions (a concert party is not required to make its own, individual OPD). Producing the OPD can be an onerous task as the disclosing party must gather all the relevant information from all of its advisers and concert parties.

The OPD must be made no later than 12 noon on the day falling 10 business days after the commencement of the offer period or (as the case may be) after the announcement that first identifies a bidder.

As a reminder, the concept of “offer period” is defined in the Code: in broad terms, an offer period commences in respect of a target when the first announcement is made of a bid or a possible bid for the company.

The Opening Position Disclosure should be notified to an RIS and the Panel.

**Rule 8: public dealing disclosure**

A Public Dealing Disclosure is an announcement which provides details of dealings in relevant securities by:

* the bidder (Rule 8.1(b));
* the target (Rule 8.2(b));
* any persons with a 1% or greater interest in any class of relevant securities (Rule 8.3(b)); and
* a person acting in concert with any party to a bid (Rule 8.4).

A Public Dealing Disclosure must be made in respect of any dealing by the bidder (or a person acting in concert with the bidder) in the shares of the target, regardless of the number of shares involved and regardless of the form of consideration being offered.

Note that, in contrast to the OPD, each of the bidder/target and their respective concert parties has a separate obligation in relation to these disclosures. Any other person who has a 1% or greater interest in the target’s shares must also disclose their dealings.

Dealings in the shares of the bidder need only be disclosed under Rule 8 if the bidder is offering shares in itself as consideration for its bid (i.e. it is a “securities exchange” bidder).

Public Dealing Disclosures must be made by no later than 12 noon (or 3.30pm for persons disclosing under Rule 8.3(b)) on the business day following the date of the dealing and should be notified to an RIS and the Panel. This means that a Public Dealing Disclosure for a dealing made early in the offer period may need to be disclosed before the OPD is due to be made. In fact, these disclosure requirements are not limited to purchases and sales of shares in the traditional sense. The Rule 8 requirement for “Dealing Disclosures” is wide enough to catch, for example, dealings in derivatives the price of which depends on the price of the shares and in contracts for difference.

**Rule 8: pro forma announcements**

The Panel’s website provides pro forma disclosures under Rule 8.

<https://www.thetakeoverpanel.org.uk/disclosure/disclosure-forms>

**DTR 5 disclosure reminder**

In addition to the specific disclosure requirements that apply under Rule 8 during an offer period, a bidder will also have to consider whether it is required to make any disclosures under the general provisions of DTR 5.1.2 (notification of interests of 3% or over). Any notifications made to the target under this provision will then require the target to make an announcement to the market under DTR 5.8.12.

**Summary**

* Rule 8 provides a series of dealing disclosure obligations which apply in addition to those under UK MAR and DTR 5.
* The bidder and the target must make an opening position disclosure within 10 business days of the start of the offer period; the obligation also falls on holders of 1% or more in shares.
* Public dealing disclosures must be made by the parties to the transaction, holders of 1% or more and also by persons acting in concert with any party to the bid.
* Disclosures need only be made in respect of the shares in the bidder if they are being offered as part of the consideration for the bid.