
STATUTORY INSTRUMENTS

2008 No. 3073

BANKS AND BANKING

The Takeover Code (Concert Parties) Regulations 2008

<i>Made</i>	- - - -	<i>at 10.00 a.m. on 28th November 2008</i>
<i>Laid before Parliament</i>		<i>at 11.00 a.m. on 28th November 2008</i>
<i>Coming into force</i>	- -	<i>at 12.00 p.m. on 28th November 2008</i>

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to credit and financial institutions and the taking of deposits or other repayable funds from the public⁽²⁾.

In exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972, the Treasury make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Takeover Code (Concert Parties) Regulations 2008 and come into force 12.00 p.m. on 28th November 2008.

(2) In these Regulations—

- (a) “the Takeover Code” means the rules made by the Panel on Takeovers and Mergers under section 943 of the Companies Act 2006⁽³⁾ otherwise known as the City Code on Takeovers and Mergers;
- (b) “shares” means equity securities within the meaning of section 560 of the Companies Act 2006 and other transferable securities carrying voting rights;
- (c) “recapitalisation scheme” means the facility announced by the Chancellor of the Exchequer on 8 October 2008 to make available capital to certain financial institutions in order to strengthen their resources in the interests of financial stability;
- (d) “UKFI” means UK Financial Investments Limited, company registered number 06720891.

(1) 1972 c. 68.

(2) S.I. 2001/3495.

(3) 2006 c.46.

Application of Rule 9 of the Takeover Code

2.—(1) For the purposes of Rule 9 of the Takeover Code the following persons are not to be regarded as acting in concert with each other or the Treasury or the Secretary of State or UKFI by virtue of the Treasury holding (through a nominee or otherwise) shares in each of those persons—

- (a) a person some or all of the shares in which are held by a nominee of the Treasury or a company wholly owned by the Treasury as a result of the exercise of powers under the Banking (Special Provisions) Act 2008⁽⁴⁾;
- (b) a person participating in the recapitalisation scheme.

(2) For the purposes of Rule 9 of the Takeover Code, the Treasury, the Secretary of State and UKFI are not to be regarded as acting in concert with each other by virtue of the Treasury's relationship with, and the Secretary of State's and UKFI's functions in relation to, a person listed in paragraph (1) (a) or (b).

28th November 2008

Frank Roy
Steve McCabe
Two of the Lords Commissioners of Her
Majesty's Treasury

(4) 2008 c.2.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify the application of Rule 9 of the City Code on Takeovers and Mergers (“the Takeover Code”).

Rule 9 of the Takeover Code requires, in certain cases, a mandatory offer to be made by a person for the shares of a company. In assessing whether a mandatory offer should be made regard is to be had to the shareholdings of the person and any person acting in concert with that person.

Regulation 2(1) specifies that certain persons are not to be regarded as acting in concert with the Treasury, the Secretary of State, UKFI or with one another.

Regulation 2(2) specifies that the Treasury, the Secretary of State and UKFI are not to be regarded as acting in concert with one another by virtue of their relationship to, or functions in connection with, certain persons.

A full Regulatory Impact Assessment has been prepared. It may be obtained from the Financial Stability Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. It is also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of the document have been placed in the libraries of both Houses of Parliament.