22. Disclosure of dealings during offer period

22.1 Dealings by parties and by associates for themselves or for discretionary clients

(a) Own account

Dealings in relevant securities by an offeror or the offeree company, and by any associates, for their own account during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

(b) For discretionary clients

(i) Dealings in relevant securities by an offeror or the offeree company, and by any associates, for the account of discretionary investment clients during an offer period must be publicly disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

If, however, the associate is an exempt fund manager connected with an offeror or the offeree company, paragraph (ii) below will apply.

(ii) Except with the consent of the Executive, dealings in relevant securities during an offer period for the account of discretionary investment clients by an associate which is an exempt fund manager connected with an offeror or the offeree company must be privately disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

If, however, the exempt fund manager is an associate by virtue of class (6) of the definition of associate, the exempt fund manager must disclose publicly under Rule 22.1 in addition to disclosing privately.

22.2 Dealings by parties and by associates for non-discretionary clients

Except with the consent of the Executive, dealings in relevant securities during an offer period by an offeror or the offeree company, and by any associates, for the account of non-discretionary investment clients (other than an offeror, the offeree company and any associates) must be privately disclosed in accordance with Notes 5, 6 and 7 to this Rule 22.

22.3 Discretionary accounts

If a person manages investment accounts on a discretionary basis, relevant securities so managed will be treated, for the purpose of this Rule 22, as controlled by that person and not by the person on whose behalf the relevant securities are managed.

Except with the consent of the Executive, where more than one discretionary investment management operation is conducted in the same group, relevant securities controlled by all such operations will be treated for the purpose of this Rule 22 as those of a single person and must be aggregated (see Note 10 to this Rule 22 ~~below~~).

22.4 Connected exempt principal traders

Dealings in relevant securities by an exempt principal trader connected with an offeror or the offeree company should be aggregated and disclosed, in accordance with Note 6(a) to this Rule 22, not later than 10.00 a.m. on the business day following the date of the transactions, stating the following details:-

(i) total purchases and sales;

(ii) the highest and lowest prices paid and received; and

(iii) whether the connection is with an offeror or the offeree company.

In the case of dealings in options or derivatives, full details should be given so that the nature of the dealings can be fully understood (see Note 7 to this Rule 22~~below~~).

Notes to Rule 22:

1. Consultation with the Executive

In any case of doubt as to the application of this Rule 22 the Executive should be consulted.

2. Disclosure of dealings in offeror securities

Disclosure of dealings in relevant securities of an offeror is only required in the case of a securities exchange offer.

3. Offer period

This Rule 22 applies only during an offer period. Dealings by associates (other than persons acting in concert with any offeror) need not be disclosed during the period between the date when the offer becomes or is declared unconditional in all respects and the end of the offer period.

4. Relevant securities

Relevant securities for the purpose of this Rule 22 include~~-~~:-

(a) securities of the offeree company which are being offered for or which carry voting rights;

(b) equity share capital of the offeree company and an offeror;

(c) securities of an offeror which carry the same or substantially the same rights as any to be issued as consideration for the offer;

(d) securities carrying conversion or subscription rights into any of the foregoing; and

(e) options and derivatives in respect of any of the foregoing.

The taking, granting, exercising, lapsing or closing out of an option (including a traded option contract) in respect of any of the foregoing or the exercise or conversion of any security under (d) above whether in respect of new or existing securities and the acquisition of, entering into, closing out, exercise (by either party) of any rights under, or issue or variation of, a derivative will be regarded as a dealing in relevant securities (see also Notes 7 and 9 to this Rule 22~~below~~).

5. Timing of disclosure

Disclosure must be made no later than 10.00 a.m. on the business day following the date of the transaction. Where dealings have taken place on stock exchanges in the time zones of the United States and there may be difficulty in disclosing dealings by 10.00 a.m., the Executive should be consulted.

6. Method of disclosure

(a) Public disclosure

Dealings should be disclosed in writing to all offerors and the offeree company. At the same time dealings should be disclosed in electronic form to the Executive and the Stock Exchange (Listing Division), and to the relevant financial adviser, who will be responsible for distribution to the press. The Executive will arrange for the posting of the disclosure on the SFC's website. The required press distribution list will be that published by the SFC and available on its website.

Persons proposing to engage in dealings should also acquaint themselves with the disclosure requirements of the Securities (Disclosure of Interests) Ordinance (Cap. 396).

If parties to an offer and their associates choose to make press announcements regarding dealings in addition to making formal disclosures, they must ensure that no confusion results.

Public disclosure may be made by the party concerned or by an agent acting on its behalf. Where there is more than one agent (e.g. a merchant bank and a stockbroker), particular care should

be taken to ensure that the responsibility for disclosure is agreed between the parties and that it is neither overlooked nor duplicated.

(b) Private disclosure

Dealings should be disclosed in writing or in electronic form to the Takeovers and Mergers Executive - Securities and Futures Commission; they are not published.

7. Details to be included in disclosures

(a) Public disclosure (Rules 22.1(a) and 22.1(b))

A specimen disclosure form may be obtained from the Executive or the SFC's website. Disclosures should follow that format.

A disclosure of dealings must include the following information:-

(i) the total of the relevant securities in question purchased or sold, or redeemed or purchased by the company itself;

(ii) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed);

(iii) the identity of the associate or other person dealing and, if different, the owner or controller;

(iv) if the dealing is by an associate, an explanation of how that status arises;

(v) if the disclosure is made by a 5% shareholder or group of shareholders, a statement to that effect;

(vi) the resultant total amount of relevant securities owned or controlled by the associate or other person in question (including those of any person with whom there is an agreement or understanding) and the percentage which it represents; and

(vii) if relevant, details of any arrangements required by Note 8 to this Rule 22~~below~~.

For the purpose of disclosing identity, the ultimate beneficial owner or controller must be specified, in addition to the person dealing. The naming of nominees or vehicle companies is insufficient. The Executive may require additional information to be disclosed when it appears to be appropriate, for example to identify other persons who have an interest in the securities in question. Subject to Note 10 to this Rule 22~~below~~, in the case of

disclosure of dealings by fund managers on behalf of discretionary clients, the clients need not be named.

In the case of option business or dealings in options or derivatives full details should be given so that the nature of the dealings can be fully understood. For options this should include the number of securities under option, the exercise period (or in the case of exercise, the exercise date), the exercise price and any option money paid or received. For derivatives this should include, at least, the number of reference securities to which they relate (when relevant), the maturity date (or if applicable the closing out date) and the reference price.

If an associate is an associate for more than one reason (for example because he falls within classes (6) and (7) of the definition of associate), all the reasons must be specified.

(b) Private disclosure (Rules 22.1(b)(ii) and 22.2)

Private disclosure under Rule 22.1(b)(ii) by exempt fund managers connected with an offeror or the offeree company must be in the form required by the Executive. A specimen disclosure form may be obtained from the Executive or the SFC website.

A private disclosure under Rule 22.2 must include the identity of the associate dealing, the total of relevant securities purchased or sold and the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). A specimen disclosure form may be obtained from the Executive. Rule 22.2 disclosures should follow that format. In the case of dealings in options or derivatives the same information as specified in Note 7(a) to this Rule 22 is required.

8. Indemnity and other arrangements

For the purpose of this Note, an arrangement includes indemnity or option arrangements, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or refrain from dealing.

If any person is party to such an arrangement with any offeror or an associate of any offeror, whether in respect of relevant securities of that offeror or the offeree company, not only will that render such person an associate of that offeror but is also likely to mean that such person is acting in concert with that offeror; in that case Rules 21, 23, 24, 25 and 26 and paragraph 4 of Schedule I will be relevant. If any person is party to such an arrangement with an offeree company or an associate of an offeree company, not only will that render such person an associate of the offeree company but Note 5 to Rule 26.1 and paragraph 2 of Schedule II may be relevant.

When such an arrangement exists with any offeror, with the offeree company or with an associate of any offeror or the offeree company, details of the arrangement must be publicly announced and disclosed in the relevant circular, whether or not any dealing takes place. (See also Rule 21.5.)

9. *Dealings in options and derivatives*

A disclosure of dealings in options or derivatives is only required if the person dealing in such options or derivatives owns or controls 5% or more of the class of securities which is the subject of the option or to whose price the derivative is referenced.

10. *Discretionary fund managers*

The principle normally applied by the Executive is that where the investment decision is made by a discretionary fund manager the relevant securities are treated as controlled by him and not by the person on whose behalf the fund is managed. For that reason, Rule 22.3 requires a discretionary fund manager to aggregate the investment accounts which he manages for the purpose of determining whether he has an obligation to disclose. The beneficial owner would not normally, therefore, be concerned with disclosure to the extent that his investment is managed on a discretionary basis.

This approach assumes that the discretionary fund manager does not take instructions from the beneficial owner on the dealings in question and that fund management arrangements are not established or used to avoid disclosure.

Where a transaction is carried out by a discretionary fund manager for the account of a person who is acting in concert with the offeror or the offeree company or a 5% shareholder, disclosure is also required by the discretionary fund manager of that person's dealings.

11. *Responsibilities of stockbrokers, banks and other intermediaries*

Stockbrokers, banks and others who deal in relevant securities on behalf of clients have a general duty to ensure, so far as they are able, that those clients are aware of the disclosure obligations attaching to associates and other persons under Rule 22 and that those clients are willing to comply with them. Principal traders and dealers who deal directly with investors should, in appropriate cases, likewise draw attention to the relevant Rules. However, this does not apply when the total value of dealings (excluding stamp duty and commission) in any relevant security undertaken for a client during any 7 day period is less than $1 million.

This dispensation does not alter the obligation of principals, associates and other persons themselves to initiate disclosure of their own dealings, whatever total value is involved.

Intermediaries are expected to co-operate with the Executive in its dealings enquiries. Therefore, those who deal in relevant securities should appreciate that stockbrokers and other intermediaries will supply the Executive with relevant information as to those dealings, including identities of clients, as part of that co-operation.

12. *Unlisted public companies*

The requirements to disclose dealings apply also to dealings in relevant securities of unlisted public companies.

13. *Potential offerors*

If a potential offeror has been the subject of an announcement that talks are taking place (whether or not the potential offeror has been named) or has announced that he is considering making an offer, the potential offeror and his associates must disclose dealings in accordance with this Rule 22, and such disclosure must include the identity of the potential offeror.

However if a potential offeror is not named in such an announcement and so long as the identity of this potential offeror remains undisclosed to the public, with the consent of the Executive, a person who is an associate of an offeror solely by virtue of class (2) of the definition of associate may be exempted from strict compliance with this Rule 22 in the following manner:-

(a) With respect to dealings for discretionary clients (whether or not the associate is an exempt fund manager), the associate may disclose its dealings privately under Rule 22.1.

(b) With respect to dealings by an exempt principal trader not prohibited by Rule 35, the associate may disclose its dealings privately under Rule 22.4.

(c) With respect to proprietary dealings (other than those covered by paragraph (b) above), if these dealings are permitted under Rule 21.2 and may not result in an obligation under Rules 23 or 24, an associate may disclose these dealings privately under this Rule 22. Any other proprietary dealings must be disclosed publicly under this Rule 22.

Once the identity of the potential offeror is publicly disclosed, these exemptions will no longer apply and the associate will be required to comply fully with this Rule 22.