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BY POST AND BY E-MAIL

19 January 2007

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London EC4M 7DY

E-mail: supportgroup@thetakeoverpanel.org.uk

Dear Sir/Madam,

Review of the Panel's Derivatives and Options Regime

The International Swaps and Derivatives Association, Inc. (ISDA)¹ thanks the Code Committee of The Takeover Panel for the opportunity to comment on the implementation of the disclosure regime for derivatives and options.

Overall, ISDA believes that it is too early to categorically determine how the regime is working. Clearly, members have incurred costs in order to be able to comply with it. It is also appears that no major problems have yet been identified with the regime.

Accordingly, we urge the Panel to keep an open mind about whether the regime is a) practicable and b) justified, given the potential for future events to test its effectiveness more fully. We do this mainly in the light of the concerns we highlighted when first commenting on the regime as a proposal. Notably, these concerns include the broad scope of the disclosure requirements; for instance, relating to the treatment of deep out-of-the-money puts as equivalent to cash equity positions. Similarly, we would wish to see more evidence as to whether the rules on mandatory bids are appropriately framed.

One more immediate issue is the potential for confusion or over-reporting, arising from the situation where a market participant holds more than 1% of a given *class* of shares in a relevant company but where, because of the share structure of that company, they might hold considerably less than 1% of the overall issuance. We believe that this issue merits some attention from the Panel.

¹ ISDA is the trade association representing leading participants in the privately negotiated (or over-the-counter, 'OTC') derivatives industry. Its membership comprises more than 700 firms, including the world's largest commercial, investment and universal banks, corporations, government entities and other interested parties. ISDA was chartered in 1985 and today represents institutions from 47 countries around the world. OTC derivatives include swaps, options and forwards on interest rates, currencies, commodities, equity and credit.

Some members do report some informational benefits from the regime – at least from the perspective of some desks within their firms. Whether this is a justification for any regime is, of course, another matter. Of more concern is the following. Others report that, over and above the regime per se, they receive (what are notionally ad hoc but in practice regular, weekly) requests for deal information. While they understand why the Panel might wish to seek such information, it should be noted that this poses an additional burden, particularly given the time frame within which the information is typically required.

We thank you once again for the opportunity to respond and, as ever, would be happy to provide any background information you might find helpful. If you have any questions or comments regarding this letter, please do not hesitate to contact us at (please note, new phone number) 3088 3550 / rmetcalfe@isda.org.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'R. Metcalfe', with a stylized flourish at the end.

Richard Metcalfe
Senior Director, Policy