

## Corporate Finance Advice

(Revised with effect from 1 October 2002)

*This Statement applies to all members in practice including affiliates, member firms and employees of member firms and members in business. The objective of this Statement is to provide ethical guidance that will ensure that recipients of corporate finance advice can rely on the objectivity and integrity of the advice given to them by members. The Statement should be read in conjunction with Statement 1.200 – Introduction and Fundamental Principles and the section of the Guide on Definitions. Some aspects of this Statement apply to all assurance engagements.*

*Members' attention is drawn to the note on application of the guidance to assurance engagements included in Statement 1.221 'Definitions'.*

### **Fundamental Principle 1 – 'Integrity'**

A *member* should behave with integrity in all professional and business relationships. Integrity implies not merely honesty but fair dealing and truthfulness. A *member's* advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties.

### **Fundamental Principle 2 – 'Objectivity'**

A *member* should strive for objectivity in all professional and business judgements. Objectivity is the state of mind which has regard to all considerations relevant to the task in hand but no other.

### **Fundamental Principle 3 – 'Competence'**

A *member* should undertake professional work only where he has the necessary competence required to carry out that work, supplemented where necessary by appropriate assistance or consultation.

### **Fundamental Principle 4 – 'Performance'**

A *member* should carry out his professional work with due skill, care, diligence and expedition and with proper regard for the technical and professional standards expected of him as a *member*.

### **Fundamental Principle 5 – 'Courtesy'**

A *member* should conduct himself with courtesy and consideration towards all with whom he comes into contact during the course of performing his work.

## Introductory Note

*The nature of corporate finance activities is so wide ranging that all the threats to objectivity and conflicts of interest identified respectively in the Introduction to the Guide to Professional Ethics and Statement 1.205, Conflicts of Interest and Confidential Information can arise when members provide corporate finance advice.*

## Categories of Corporate Finance Activity

*Categories of activity covered by this Statement are as follows:*

- *general corporate finance advice;*
- *acting as adviser in relation to takeovers and mergers;*
- *underwriting and marketing or placing securities on behalf of a client; and*
- *acting as sponsor or nominated adviser under the Listing Rules and the AIM Rules respectively.*

*Members should note that the guidance given in relation to general corporate finance advice is applicable to all categories of activity.*

## PART 1 – Applicable to all *Members*

### General Principles

#### *Statutory and Other Regulatory Requirements*

**1.1** *Members and member firms* must be aware of and comply with current legislative and regulatory measures and professional guidance governing corporate finance assignments. As a guide a list of legislative and regulatory measures current at 1 January 2002 is given in Guidance Note 1 **but members should ensure that they are aware of the most up to date legislative and regulatory requirements.**

**1.2** *Members and member firms* are required to comply with the City Code on Takeovers and Mergers ('the City Code') (see Guidance Note 2) in respect of all relevant takeover transactions involving companies governed by the City Code and should treat the general principles of the City Code as best practice guidance in respect of other takeover transactions.

**1.3** *A member or member firm* proposing to provide corporate finance advice to a client or his employer should at the outset draw attention to the legislative and regulatory responsibilities which will apply to the client or his employer. The *member* should make clear to the client or his employer that, where necessary, legal advice should be taken. The *member* should also draw attention to his own responsibilities under professional ethical guidance.

*Acquisition Searches*

**1.4** It may be appropriate for a *member* or *member firm* to conduct an acquisition search which could identify another client of himself or his employer as a target provided the search is based solely on information which is not confidential to that client.

*Interests of Shareholders and Owners*

**1.5** *Members* and *member firms* should remain aware when giving advice that they should have regard to the interests of all shareholders and owners unless they are specifically acting for a single or defined group thereof. This is particularly so when advising on a proposal which is stated to be agreed by directors and/or majority shareholders or owners.

*Preparation of Documents*

**1.6** Any document should be prepared in accordance with normal professional standards of integrity and objectivity and with a proper degree of care. All statements or observations therein must be capable, taken individually or as a whole, of being justified on an objective examination of the available facts.

**1.7** In order to differentiate the roles and responsibilities of the various advisers, *members* and *member firms* should ensure that these roles and responsibilities are clearly described in all public documents and circulars and that each adviser is named.

**1.8** *Members* and *member firms* intending to comment on published audited accounts should act in accordance with paragraph 2.9 below.

*Overseas Transactions*

**1.9** This Statement has been drafted with regard to the situation in the United Kingdom and the Republic of Ireland. *Members* and *member firms* should apply the spirit of the guidance, subject to local legislation and regulation, to overseas transactions of a similar nature.

**PART 2 – Applicable only to practising  
*members, affiliates, member firms* and, where appropriate,  
*employees of member firms***

**General Corporate Finance Advice**

**2.0** The nature of corporate finance activities is so wide ranging that all the threats to objectivity identified in Statement 1.200, *Introduction and Fundamental Principles* can arise when *members* or *member firms* provide corporate finance advice to both *assurance* and *non-assurance clients*: the self-interest threat, the self-review threat, the advocacy threat, the familiarity or trust threat and the intimidation threat.

When advising a *non-assurance client* there can be no objection to a *member* or *member firm* accepting an engagement which is designed primarily with a

view to advancing that client's case, though the *member* should be aware that the self-interest threat could arise. Where a non-*assurance client* has received advice over a period of time on a series of related or unrelated transactions it is likely that, additionally, the familiarity or trust threats may exist. But where a *member* or *member firm* advises an *assurance client* which is subject to a takeover bid or where a *member* or *member firm* acts as sponsor or nominated adviser to an *assurance client* involved in the issue of securities, the self-interest threat will become more acute and the advocacy threat will arise.

Some corporate finance activities such as marketing or underwriting of securities contain so strong an element of advocacy as to be incompatible with the objectivity required for the reporting roles of an auditor or reporting accountant. Even where the activities of an auditor or reporting accountant are restricted to ensuring their clients' compliance with the Listing Rules or the AIM Rules, it is likely that a self-review threat could arise.

**2.1** It may be in the best interests of a company for corporate finance advice to be provided by its auditor and there is nothing improper in the *member* or *member firm* supporting an *assurance client* in this way.

**2.2** A *member's* or *member firm's* objectivity may be seriously threatened if he should extend his role into management of an *assurance client*. Co-ordination tasks, such as initiating and organising meetings, issuing timetables and reporting progress, are unlikely to threaten reporting objectivity. When involved in negotiations on behalf of an *assurance client*, the *member* or *member firm* should ensure that he does not assume the role of taking decisions for a client which would prejudice reporting objectivity. Accordingly, the *member* or *member firm* should ensure that the client takes full responsibility for the final decisions arising from any such negotiations.

#### *Conflict of Interest*

**2.3** *Members* should be aware of the danger of a conflict of interest arising. All reasonable steps should be taken to ascertain whether a conflict of interest exists or is likely to arise in the future between a *member* or *member firm* and his clients, both with regard to new clients and to the changing circumstances of existing clients, and including any implications arising from the possession of confidential information.

**2.4** The attention of *members* is directed to Statement 1.205, *Conflicts of Interest and Confidential Information* and to the safeguards indicated in paragraph 2.2 of that Statement. Where there appears to be a conflict of interest between clients but after careful consideration the *member* believes that either the conflict is not material or is unlikely seriously to prejudice the interests of any of those clients and that its safeguards are sufficient, the *member* or *member firm* may accept or continue the engagement. Unless client confidentiality considerations dictate otherwise it would be advisable, if appropriate, to seek the clients' consent. Considerations that lead to a conclusion to accept or continue the engagement should be explicitly recorded.

**2.5** Where a *member* or *member firm* acts or continues to act for two or more clients having obtained consent, if appropriate, in accordance with the previous paragraphs, safeguards will need to be implemented to manage any conflict which arises. The safeguards may include:

- (i) the use of different partners and teams for different clients, each having separate internal reporting lines;
- (ii) all necessary steps being taken to prevent the leakage of confidential information between different teams and sections within the firm;
- (iii) regular review of the situation by a senior partner or compliance officer not personally involved with either client; and
- (iv) advising the clients to seek additional independent advice, where it is appropriate.

Any decision on the part of a sole practitioner should take account of the fact that the safeguards at (i) to (iii) of the above paragraph will not be available to him. Similar considerations apply to small firms where the number of partners is insufficient to spread the work as indicated above.

**2.6** Where a conflict of interest is so fundamental that it cannot be managed effectively by the implementation of appropriate safeguards and is likely seriously to prejudice the interests of a client, the engagement should not be accepted or continued even if all relevant clients consent to the engagement.

**2.7** Where a *member* or *member firm* is required for any reason to disengage from an existing client, he should do so as speedily as practicable having regard to the interest of the client.

#### *Documents for Client and Public Use*

**2.8** In the case of a document prepared solely for the client and its professional advisers, it should be a condition of the engagement that the document should not be disclosed to any third party without the firm's prior written consent.

**2.9** A *member* is, in the absence of any indication to the contrary, entitled to assume that a company's published financial information that has been reported on by a *member* or *member firm* has been prepared properly and in accordance with all relevant Accounting Standards. If a *member* or *member firm* is commenting in a public document on such financial information and where scope for alternative accounting treatment exists, and the accuracy of the comment or observation is dependent on an assumption as to the actual accounting treatment chosen, that assumption must be stated, together with any other assumptions material to the commentary. Where the *member* or *member firm* is not in possession of sufficient information to warrant a clear opinion this should be declared in the document.

**2.10** A *member* or *member firm* must take responsibility for anything published under his name, provided he consented to such publication, and the published document should make clear the client for whom the *member* or

*member firm* is acting. To prevent misleading or out-of-context quotations, it should be a condition of the engagement that, if anything less than the full document is to be published, the text and its context should be expressly agreed with the *member* or *member firm*.

### Takeovers and Mergers

#### *City Code Transactions*

**3.0** *Members* are reminded that, if in doubt as to the propriety of any aspect of a City Code transaction with which they are involved, they should consult the Panel on Takeovers and Mergers ('the Takeover Panel'). (See Guidance Note 2).

**3.1** Where a *member* or *member firm* finds itself acting as auditor or reporting accountant for two or more parties involved in a transaction subject to the City Code, a perceived conflict of interest may arise. In such circumstances (subject to paragraph 3.3 below) a *member* or *member firm* may act for more than one party, including both offeror and offeree companies as auditor, as reporting accountants, and in the provision of incidental advice consistent with these roles but must implement adequate safeguards (see paragraph 2.5 above).

#### *Lead Advisers in City Code Transactions*

**3.2** For the purposes of this Statement, a 'lead adviser' is the *member* or *member firm* primarily responsible for advising on, organising and presenting an offer or the response to an offer. This definition would include an 'independent financial adviser' required under Rule 3 of the City Code.

**3.3** **In no circumstances should a *member* or *member firm* be a lead adviser to more than one party involved in a transaction subject to the City Code. Where a *member* or *member firm* finds itself acting in an auditor or reporting accountant role for any party involved in a transaction subject to the City Code, the *member* or *member firm* should not act as lead adviser for any party involved, save in the circumstances set out below in paragraphs 3.4–3.6.**

**3.4** A *member* or *member firm* who is auditor to a target company may be requested to act as lead adviser to a bidder on an offer subject to the City Code. Where the bid is hostile, it is likely that the *member's* or *member firm's* objectivity will be perceived to be prejudiced by its possession of material confidential information on the target and it will not therefore be able to advise on the offer. However, if the bid is agreed, the *member* or *member firm* may be able to act or continue to act as lead adviser to the bidder with the agreement of the target and subject to the prior approval of the Takeover Panel. **The *member* or *member firm* should obtain confirmation from its clients that their interests would not be prejudiced if the *member* or *member firms* were to act or continue to act in both capacities.**

**3.5** Where a *member* or *member firm* is acting as lead adviser to a company which is involved in a bid subject to the City Code, he could find himself with

a conflict of interest due to an existing relationship with a second or subsequent bidder. Providing that the relationship with the second or subsequent bidder is confined to that of auditor or reporting accountant, and subject to the prior approval of the Takeover Panel, the *member* or *member firm* may continue to act as lead adviser, providing that it is satisfied that the implementation of safeguards (see paragraph 2.5 above) provides the necessary level of protection to each of the clients involved.

**3.6** Where a *member* or *member firm* is requested to act as lead adviser to a target company in relation to a bid which is subject to the City Code from a company which is an existing *assurance client*, it may act as lead adviser to the target company only with the prior approval of the Takeover Panel.

The ethical guidance for *members* seeking to act for more than one party in a takeover transaction subject to the City Code is summarised in Guidance Note 3. Guidance Note 3 has been prepared only as a useful reference and is not intended to form part of this Statement.

#### *Transactions not subject to the City Code*

**3.7** Where a takeover is not subject to the City Code, and there is no substantial public interest involved, a *member* or *member firm* may, subject to the implementation of appropriate safeguards (see paragraphs 2.4 and 2.5 above), provide financial advice to both sides or to competing bidders. **However, the *member* or *member firm* should not act as lead adviser to both the target and a bidder in respect of such a transaction.** The *member* or *member firm* should be alive to the possibility of conflicts of interest arising in relation to minority interests and should ensure that any such conflicts are addressed. Where appropriate, the advisory client and minority interests should be advised as to the desirability of the minority interests appointing a wholly independent adviser.

#### **Underwriting and Marketing of Shares**

**4.0** A *member* or *member firm* should not underwrite or market an issue or sale to the public of shares or securities of a company on which he has reported within the last two years or is to report as auditor or as reporting accountant. Nor should the *member* or *member firm* undertake to accept nomination as auditor or reporting accountant of a company whose shares he is underwriting or marketing. Involvement of this kind would give rise to an advocacy threat, self-review threat and self-interest threat such that the *member's* or *member firm's* objectivity in the auditor and/or reporting accountant function would be endangered.

**4.1** It may be appropriate:

- for an auditor or reporting accountant otherwise to assist a client in raising capital; or
- for an auditor or reporting accountant otherwise to provide independent advice to a client, or its professional advisers, in connection with the issue or sale of shares or securities to the public; or

- for an auditor or reporting accountant otherwise to provide advice as sponsor or as an AIM nominated adviser to a company as set out below.

In these situations the *member* or *member firm* should adopt steps similar to those described in paragraph 2.2 of Statement 1.205, *Conflicts of Interest and Confidentiality* and, additionally, set up procedures to review and identify any potential conflicts of interest which could compromise the *member's* objectivity.

### **Sponsors and Nominated Advisers**

**5.0** *Members'* attention is drawn to:

- the UK Listing Authority's Listing Rules when a firm accepts the responsibilities of a sponsor;
- the London Stock Exchange's Alternative Investment Market ('AIM') Rules and, in particular, the Nominated Adviser Eligibility Criteria when acting as a nominated adviser defined by the AIM Rules. AIM's requirement is that for AIM companies to maintain their trading facility they should have a nominated adviser at all times. In this context *members* should have in place procedures to enable them to identify whether any conflicts exist or are likely to arise in the future before acting as a nominated adviser. *Members* should note the policy of the London Stock Exchange that it will not normally allow a nominated adviser to be the reporting accountant to the issuer unless appropriate safeguards are in place as set out in paragraph 2.5 above. Furthermore, *members* should note that the London Stock Exchange does not permit a nominated adviser to act for any other party to a transaction or takeover other than its AIM client company. In cases of doubt *members* should consult the London Stock Exchange.

**5.1** Considerable care needs to be taken if a *member* or *member firm* is also to act as sponsor or nominated adviser to an *assurance client*. A threat to the objectivity of the auditor or reporting accountant can arise as the duties of a sponsor or nominated adviser are different from those of an auditor or reporting accountant and are owed to a different party. Although it is quite possible that no conflict will arise between the two roles, *members* need to recognise the possibility of conflicts arising, particularly if the role of sponsor or nominated adviser is to include any advocacy of the directors' views or if the transaction is to involve any issue of securities. **To comply with the requirements of paragraph 4.0 above, where there is an issue of securities associated with such a transaction, a separate broker should be appointed to take responsibility for any underwriting or marketing of the company's shares.**

## GUIDANCE NOTE 1

January 2002

**Information on Statutory and Other Regulatory  
and Professional Requirements**

For the assistance of *members* a list of the relevant legislative and regulatory measures and professional guidance is set out below. This reflects the position as at 1 July 2001. *Members* should be aware that this list may be subject to variation in the future and when undertaking corporate finance assignments *members* should ensure they are aware of the current status of the list.

1. The Financial Services and Markets Act 2000, the Companies Act 1985 as amended, the Company Securities (Insider Dealing) Act 1985 and, where applicable, the requirements of the Financial Services Authority's rulebook or the Institute's Designated Professional Body Handbook.
2. The City Code on Takeovers and Mergers (the 'City Code') and its rules governing the Substantial Acquisition of Shares (the 'SARs') or the Takeover Rules pertaining to the Republic of Ireland;
3. The Public Offers of Securities Regulations;
4. The UK Listing Authority's Listing Rules or The Listing Rules of the Irish Stock Exchange and the Rules of the Alternative Investment Market;
5. The AIM authority's Nominated Adviser Eligibility Criteria;
6. The Admission and Disclosure Standards of the London Stock Exchange;
7. The DCM Rule Book (in the Republic of Ireland);
8. The European Communities (Transferable Securities and Stock Exchange) Regulations, 1992 (RoI);
9. The European Communities (Stock Exchange) Regulations 1984 (RoI).

**GUIDANCE NOTE 2****Compliance with the City Code on Takeovers and Mergers**

(See paragraph 1.1 of Statement 1.203.)

**1.0** A *member* or *member firm* who provides takeover services for clients is required to comply with the City Code on Takeovers and Mergers ('the City Code'), and the Rules Governing Substantial Acquisitions of Shares ('the SARs'), and with all rulings made and guidance issued under them by the Panel on Takeovers and Mergers ('the Takeover Panel').

**1.1** Accordingly a *member* or *member firm* proposing to provide takeover services to a client should at the outset:

- explain that these responsibilities will apply; and
- include in the terms of the engagement recognition of the *member's* or *member firm's* obligation to comply with the City Code and the SARs including any steps which the *member* or *member firm* may be obliged to take in performing those responsibilities. A specimen clause for the engagement letter is set out in paragraph 1.2 below.

**Specimen Clause for Engagement Letters**

**1.2** *The Client agrees and acknowledges that where the services provided by [the member] relate to a transaction within the scope of the City Code on Takeovers and Mergers ('the City Code'), or the Rules Governing Substantial Acquisitions of Shares ('the SARs'), the Client and [the member] will comply with the provisions of the City Code and the SARs and will observe the terms of the Guidance Note published by the Institutes of Chartered Accountants relevant to such services or transactions. In particular, the Client acknowledges that:*

- (a) if the Client or its advisers or agents fail to comply with the City Code or the SARs then the member may withdraw from acting for the Client; and*
- (b) the member is obliged to supply to the Takeover Panel any information, books, documents or other records concerning the services or transaction which the Takeover Panel may require.*

**Scope of Takeover Services**

**2.0** 'Takeover services' means any professional services provided by a *member* or *member firm* to a client in connection with a transaction to which the City Code or the SARs applies.

**2.1** The kinds of activities most commonly relevant for this purpose include:

- acting as financial adviser to one of the parties (for example, as 'Rule 3 adviser' to the offeree company);
- reporting on profit forecasts and/or valuations for the purposes of takeover documents;

- approving financial promotions issued in connection with a takeover transaction for the purposes of s.21 of the Financial Services and Markets Act 2000;
- conducting acquisition searches for clients, and introducing clients to other parties with a view to effecting transactions; and
- advising in relation to acquisitions and disposals of securities of companies which are subject to City Code and/or the SARs.

**2.2** Whilst the City Code does not define precisely the range of activities and transactions within its scope, paragraph 4 of the Introduction to the City Code describes the companies and transactions which are subject to the City Code. In practice, those engaged in providing takeover services rarely experience difficulty in determining whether the City Code is or may be relevant to the activities proposed to be undertaken for any particular client. Paragraph 2 of the Introduction to the SARs describes the scope of the SARs. In cases of any doubt the Takeover Panel should be consulted.

### Special Responsibilities

**3.0** A *member* or *member firm* who has provided or is providing takeover services to a client should:

- supply to the Takeover Panel any information, books, documents or other records concerning the relevant transaction or arrangement which the Takeover Panel may properly require and which are in the possession or under the control of the *member* or *member firm*; and
- otherwise render all such assistance as the *member* or *member firm* is reasonably able to give to the Takeover Panel, provided that in each case the relevant information, books, documents or other records were acquired by the member in the course of the member providing the relevant takeover services.

**3.1** Except with the consent of the Takeover Panel, a *member* or *member firm* should not provide or continue to provide any takeover services to any person if the Takeover Panel has stated that it considers that such a person is not likely to comply with the standards of conduct for the time being expected in the United Kingdom concerning the practices of those involved in takeovers, mergers or substantial acquisitions of shares and the Takeover Panel has not subsequently indicated a change in this view. A person to whom this paragraph applies will normally have been named in a statement published by the Takeover Panel, inter alia, for the purposes of Rule 4.3.1 of the Financial Services Authority's Conduct of Business sourcebook.

**3.2** If *members* or *member firms* have included in the engagement letter agreed with the client a provision as outlined in paragraph 1.2 above, they will be able to discharge their responsibilities under paragraph 3.0 and/or 3.1 above, without any breach of confidentiality or duty to the client. While members should include such a provision, it is recognised that, on occasion, compliance with such responsibilities may still involve a breach of confidentiality to a third party or a breach of some other duty owed to the client. In such circumstances this Guidance Note is not applicable.

**The Financial Services and Markets Act 2000**

**4.0** The provision of corporate finance services may require authorisation by the Financial Services Authority or a licence under the Designated Professional Body arrangements. However, this Guidance Note applies to all *members* and *member firms* whether authorised/licensed or not.

## GUIDANCE NOTE 3

This table is intended for illustrative purposes only and should be read in conjunction with Statement 1.203, Corporate Finance Advice.

**Guidance for Firms Seeking to Act for more than  
One Party in a Takeover Subject to the  
City Code**

	<b>Bid Situation</b>	<b>Target</b>	<b>Bidder</b>	<b>Subsequent Bidder</b>	<b>Comments</b>
A	Agreed – relationship with one bidder	Ass	Ass	–	Permitted – paragraph 3.1
B		Adv	Ass	–	Permitted by agreement with the Takeover Panel – see paragraph 3.6
C		Ass	Adv	–	Permitted with conditions – see paragraph 3.4
D		Adv	Adv	–	Prohibited – see paragraph 3.3
E	Hostile – one bidder	Ass	Ass	–	Permitted with conditions – see paragraph 3.1
F		Adv	Ass	–	Permitted by agreement with the Takeover Panel – see paragraph 3.6
G		Ass	Adv	–	Prohibited – see paragraph 3.3 and 3.4
H		Adv	Adv	–	Prohibited – see paragraph 3.3

I	Subsequent bidder emerges	Ass	Ass	Ass	Permitted – see paragraph 3.1
J		Ass	–	Ass	Permitted – see paragraph 3.1
K		Adv	–	Ass	Permitted – see paragraph 3.5
L		Ass	–	Adv	Prohibited – see paragraph 3.3
M		Adv	–	Adv	Prohibited – see paragraph 3.3
N	Acting for rival bidders	–	Ass	Ass	Permitted – see paragraph 3.1
O		–	Adv	Ass	Permitted – see paragraph 3.5
P		–	Ass	Adv	Prohibited – see paragraph 3.3
Q		–	Adv	Adv	Prohibited – see paragraph 3.3

In all of the above cases where a member or *member firm* may be permitted to act for more than one party, *members* must consider the potential threats and put in place the appropriate safeguards as set out in paragraph 2.5. Furthermore, where stated, permission for the *member* or *member firm* to act for more than one party should be obtained from the Takeover Panel.

*Key*

Adv *Member* or *member firm* acts as lead adviser (see paragraph 3.2)

Ass *Member* or *member firm* acts as auditor or reporting accountant.

As regards the application of this guidance to non-audit assurance engagements, members' attention is drawn to the explanatory note contained in Statement 1.221 'Definitions'

*Notes*

- (1) This matrix does not address a reverse takeover situation, where the offeror is required by the City Code to appoint advisers.
- (2) The matrix does not cover the takeover of private companies, except those which are subject to the City Code. Private companies are subject to the general requirements of the Guide to Professional Ethics.