

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2014/4

Post-offer undertakings and intention statements

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, Articles 2, 3 and 4 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 and sections 340A, 340B and 340C of the Companies (Guernsey) Law, 2008, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 12 January 2015, in accordance with the Appendix to this instrument.

In the Appendix, underlining indicates new text and striking-through indicates deleted text.

Guy Elliott
Chairman of the Code Committee
for and on behalf of the Code Committee

23 December 2014

APPENDIX

DEFINITIONS

Post-offer intention statement

A statement made by a party to an offer in any document, announcement or other information published by it in relation to the offer relating to any particular course of action that the party intends to take, or not take, after the end of the offer period, other than a post-offer undertaking.

Post-offer undertaking

A statement made by a party to an offer in any document, announcement or other information published by it in relation to the offer relating to any particular course of action that the party commits to take, or not take, after the end of the offer period and which is described by that party as a post-offer undertaking.

NOTE ON POST-OFFER UNDERTAKING

A commitment relating to action to be taken, or not taken, after the end of the offer period made directly to, and enforceable by, one or more identified parties (whether by name or as a member of an identified class of persons), including an undertaking given to a government or governmental agency in order to obtain an official authorisation or regulatory clearance, will not be regarded as a post-offer undertaking.

Rule 2.9

2.9 ANNOUNCEMENT OF AN OFFER OR POSSIBLE OFFER TO BE PUBLISHED VIA A RIS

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NOTES ON RULE 2.9

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2. Other Rules

Announcements made under Rules 2.11, 6.2(b), 7.1, 8 (Notes 6 and 12(a)), 9.1 (Note 9), 11.1 (Note 6), 12.2(b)(ii)(A), 17.1, 19.7(g), 19.7(h), 19.8(b), 24.1 ...

Rule 12.2**12.2 COMPETITION REFERENCE PERIODS**

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NOTES ON RULE 12.2

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2. *After a reference or initiation of proceedings*

Following the ending of an offer period on a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings, General Principle 3 and Rule 21.1 will normally continue to apply (see also Rule 19.79 and the Notes on Rules 6.1, 11.1, 11.2, 20.1, 20.2 and 38.2).

Rule 19.1**19.1 STANDARDS OF CARE**

Each document, announcement or ~~advertisement~~ other information published, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy. The language used must clearly and concisely reflect the position being described and the information given must be adequately and fairly presented. ~~This~~ These requirements apply whether it the document, announcement or other information is published, or the statement is made, by the party concerned directly or by an adviser on its behalf.

NOTES ON RULE 19.1**1. *Financial advisers' responsibility for publication of information***

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2. ~~Unambiguous language~~

The language used in documents, announcements, information, releases or advertisements must clearly and concisely reflect the position being described. In particular, the word "agreement" must be used with the greatest care. Statements must be avoided which may give the impression that persons have committed themselves to certain courses of action (eg accepting in respect of their own shares) when they have not in fact done so.

3. — Statements of intention

If a party to an offer makes a statement in any document, announcement or other information published in relation to an offer relating to any particular course of action it intends to take, or not take, after the end of the offer period, that party will be regarded as being committed to that course of action for a period of 12 months from the date on which the offer period ends, or such other period of time as is specified in the statement, unless there has been a material change of circumstances.

42. Sources

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53. Quotations

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64. Diagrams etc.

...

75. Use of other media

...

86. FSMA and the Financial Services Act 2012

...

Rule 19.7

19.7 POST-OFFER UNDERTAKINGS

(a) A party to an offer must consult the Panel in advance if it wishes to make a post-offer undertaking.

(b) A post-offer undertaking must:

(i) state that it is a post-offer undertaking;

(ii) specify the period of time for which the undertaking is made or the date by which the course of action committed to will be completed; and

(iii) prominently state any qualifications or conditions to which the undertaking is subject.

(c) The terms of any post-offer undertaking made by a party to an offer, including the course of action committed to be taken, or not taken, and the qualifications or conditions to which it is subject, must:

(i) be specific and precise;

(ii) be readily understandable and capable of objective assessment; and

(iii) not depend on subjective judgements of the party to the offer or its directors.

(d) Any post-offer undertaking made by a party to an offer other than in a document published by that party in connection with the offer must be included in the next such document published by that party. The Panel may, in addition, require a document to be sent to the offeree company's shareholders and persons with information rights and made readily available to its and the offeror's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s). Any subsequent reference by the party to the offer concerned to any post-offer undertaking which it has made must be accompanied by a reference to any qualifications or conditions to which the undertaking is subject or to the relevant sections of the document, announcement or other information in which they were included.

(e) A party to an offer must comply with the terms of any post-offer undertaking for the period of time specified in the undertaking and must complete any course of action committed to by the date specified in the undertaking.

(f) A party to an offer will be excused compliance with the terms of a post-offer undertaking only if a qualification or condition set out in the undertaking applies. If a party to an offer wishes to rely on a qualification or condition to a post-offer undertaking in order to take, or not take, a course of action otherwise than in compliance with the terms of that undertaking, that party must consult the Panel in advance and obtain the Panel's consent to rely on that qualification or condition.

(g) Except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate) with the Panel's consent, the party must promptly make an announcement in accordance with the requirements of Rule 2.9 describing the course of action it has taken, or not taken, and explaining how and why the relevant qualification or condition applies.

(h) A party to an offer which has made a post-offer undertaking must submit written reports to the Panel after the end of the offer period at such intervals and in such form as the Panel may require. Such reports must, as appropriate:

(i) indicate whether any course of action that the party has committed to take has been implemented or completed within the specified period of time and, if not, the progress made to date and the steps being taken to implement or complete the course of action and the expected timetable for completion;

(ii) confirm that any course of action that the party has committed not to take has not been taken;

(iii) include such other documents or information as the Panel may require; and

(iv) if so required by the Panel, be published, in whole or in part, in accordance with the requirements of Rule 2.9.

(i) The Panel may require a party to an offer which has made a post-offer undertaking to appoint a supervisor to:

(i) monitor compliance by that party with that undertaking; and

(ii) submit written reports to the Panel, at such intervals and in such form as the Panel may require, as to the compliance by that party with that undertaking,

in accordance with arrangements made between the Panel and the supervisor. The party to the offer must comply with any obligations imposed on it in the supervisor's terms of appointment.

NOTES ON RULE 19.7

1. Commitments which are not regarded as post-offer undertakings

(a) The Panel may decide not to permit a party to an offer to make a post-offer undertaking where the Panel determines that the proposed commitment would more appropriately be given in a different form (including, for example, a commitment to a specified person which could be included in a private contract with that person).

(b) A party to an offer which proposes to make a commitment to take, or not take, any particular course of action after the end of the offer period other than by means of a post-offer undertaking must consult the Panel in advance. The Panel will then consider whether the proposed commitment would more appropriately be made as a post-offer undertaking. If, with the agreement of the Panel, the party to the offer makes that commitment by the proposed means, the Panel will normally require any reference to the commitment in any document, announcement or other information published by it in relation to the offer to make clear that the commitment has not been made as a post-offer undertaking in accordance with the requirements of Rule 19.7 and that

the commitment will therefore not be enforceable by the Panel as a post-offer undertaking.

2. Qualifications or conditions

A party to an offer which has made a post-offer undertaking subject to a qualification or condition must not take any action, or omit to take any action, which would cause an event, act or circumstance referred to in a qualification or condition to occur. In addition, if the Panel determines that a party has taken action, or omitted to take action, which has caused an event, act or circumstance referred to in a qualification or condition to occur, the party will not normally be permitted to rely on that qualification or condition in order to avoid compliance with the post-offer undertaking.

3. Responsibility for written reports

Any written report submitted to the Panel in accordance with Rule 19.7(h) must state that the report has been approved by the board of directors (or equivalent body) of the party to the offer concerned and must be signed on its behalf by a duly authorised director (or equivalent person).

4. Appointment of supervisor

A supervisor appointed under Rule 19.7(i) must be independent of the party to the offer concerned, and any person acting in concert with it, and must have the skills and resources necessary to perform the functions of a supervisor. The identity of the supervisor and the terms of appointment must be agreed by the Panel. The costs of the supervisor will be met by the party to the offer which has made the post-offer undertaking.

Rule 19.8

19.8 POST-OFFER INTENTION STATEMENTS

(a) Any post-offer intention statement made by a party to an offer must be:

(i) an accurate statement of that party's intention at the time that it is made; and

(ii) made on reasonable grounds.

(b) If a party to an offer has made a post-offer intention statement and, during the period of 12 months from the date on which the offer period ended, or such other period of time as was specified in the statement, that party decides either:

(i) to take a course of action different from its stated intentions; or

(ii) not to take a course of action which it had stated it intended to take,

it must consult the Panel. Except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate), the party must promptly make an announcement in accordance with the requirements of Rule 2.9 describing the course of action it has taken, or not taken, and explaining its reasons for taking, or not taking, that course of action (as appropriate).

Rule 19.9

19.79 INFORMATION PUBLISHED FOLLOWING THE ENDING OF AN OFFER PERIOD PURSUANT TO RULE 12.2

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Rule 24

24.2 INTENTIONS OF THE OFFEROR WITH REGARD TO THE BUSINESS, EMPLOYEES AND PENSION SCHEME(S)

(a) In the offer document, the offeror must explain the long-term commercial justification for the offer and must state:

(i) its intentions with regard to the future business of the offeree company; and explain the long-term commercial justification for the offer. In addition, it must state:

(ii) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment;

(iii) its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business;

~~(iiiiv)~~ its intentions with regard to employer contributions into the offeree company's pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;

(iv) its intentions with regard to any redeployment of the fixed assets of the offeree company; and

(vi) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.

(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(ii) to (iv) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business, it must make a statement to that effect.

(c) Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also state its intentions with regard to its future business and comply with (a)(ii) and (iii) with regard to itself.

24.3 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER

Except with the consent of the Panel:

...

(d) the offer document (including, where relevant, any revised offer document) must include:

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(xv) any post-offer undertaking made by the offeror (see Rule 19.7);

(xvi) ...

(xvii) ...

(xviii) ...

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24.16 FEES AND EXPENSES

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NOTES ON RULE 24.16

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3. Fees payable to supervisors appointed under Rule 19.7(i)

There is no requirement to disclose an estimate of any fees and expenses expected to be incurred in relation to a supervisor appointed under Rule 19.7(i).

Rule 25

25.7 OTHER INFORMATION

The offeree board circular must contain:

...

(c) any post-offer undertaking or post-offer intention statement made by the offeree company (see Rules 19.7 and 19.8);

(ed)

(de) ...

Rule 27

27.2 SUBSEQUENT DOCUMENTS

(a) If, following the publication of the initial offer document or offeree board circular (as appropriate) and before the end of the offer period, an offeror or the offeree company publishes any subsequent document in connection with the offer, that document must include:

...

(ii) details of any material changes to the matters listed in Rule 27.2(b) (in the case of an offeror) or in Rule 27.2(c) (in the case of the offeree company) which have occurred since the publication of any previous document published by it in connection with the offer (or a statement that there have been no such material changes).

(b) In the case of an offeror, the matters referred to in Rule 27.2(a)(ii) are as follows:

...

(viii) post-offer undertakings (Rule 24.3(d)(xv));

(~~viii~~ix) any offer-related arrangements etc. permitted under, or excluded from, Rule 21.2 (Rule 24.3(d)(xvi));

~~(ix)~~ **profit forecasts and quantified financial benefits statements (Rule 24.3(d)(xviii));**

~~(xi)~~ ... ;

~~(xii)~~ ... ;

~~(xiii)~~ ... ;

~~(xiiiiv)~~ ... ;

~~(xivv)~~ ... ;

~~(xvi)~~ ... ; and

~~(xvii)~~

(c) In the case of the offeree company, the matters referred to in Rule 27.2(a)(ii) are as follows:

...

~~(ix)~~ **post-offer undertakings and post-offer intention statements (Rule 25.7(c));**

~~(ix)~~ **profit forecasts and quantified financial benefits statements (Rule 25.7(~~de~~)); and**

~~(xi)~~