PCP 2014/1 16 July 2014

THE TAKEOVER PANEL

CONSULTATION PAPER ISSUED BY THE CODE COMMITTEE OF THE PANEL

MISCELLANEOUS AMENDMENTS TO THE TAKEOVER CODE

The Code Committee of the Takeover Panel (the "**Panel**") invites comments on this Public Consultation Paper. Comments should reach the Code Committee by Friday, 12 September 2014.

Comments may be sent by e-mail to:
supportgroup@thetakeoverpanel.org.uk

Alternatively, please send comments in writing to:

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

Telephone: +44 (0) 20 7382 9026

All responses to formal consultation are made available for public inspection and published on the Panel's website at www.thetakeoverpanel.org.uk, unless the respondent explicitly requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure. Personal information, such as telephone numbers or e-mail addresses, will not be edited from responses.

Unless the context otherwise requires, words and expressions defined in the Takeover Code have the same meanings when used in this Public Consultation Paper.

CONTENTS

1. Summary

(a) Introduction

1.1 In this Public Consultation Paper ("**PCP**"), the Code Committee of the Panel (the "**Code Committee**") proposes amendments to various provisions of the Takeover Code (the "**Code**"), as summarised below.

(b) Clarification by potential competing offerors of their position

1.2 In Section 2 of the PCP, it is proposed that the deadline for a potential competing offeror to clarify its position should be a "firm" date rather than a "flexible" date which is set by the Panel on a case-by-case basis (for a date that is "on or around" 10 days prior to the final day for the fulfilment of the acceptance condition to the first offeror's offer). It is proposed that the deadline should be extended and that it should be calculated as the 53rd day after the publication of the first offeror's offer document.

1.3 Where the first offeror's offer is to be implemented by means of a scheme of arrangement, it is proposed that the normal deadline for a potential competing offeror to clarify its position should be extended to the seventh day prior to the date of the shareholder meetings, albeit that, in appropriate cases, the Panel could permit the potential competing offeror to clarify its position by no later than the seventh day prior to the date of the court sanction hearing in relation to the scheme of arrangement.

(c) Acquisitions of interests in shares by a former potential competing offeror after Day 53

1.4 In Section 3, it is proposed that, where a potential competing offeror has made a "no intention to bid" statement but nonetheless wishes to acquire interests in

shares after "Day 53", the Code should require that former potential offeror to forfeit the ability under Note 2 on Rule 2.8 to set aside its no intention to bid statement with the agreement of the board of the offeree company.

(d) When a dispensation may be granted from having to make an announcement under Rule 2.2

1.5 In Section 4, it is proposed to amend Note 4 on Rule 2.2 such that a potential offeror which has satisfied the Panel that it has ceased active consideration of an offer for the offeree company and which has been granted a dispensation from having to make an announcement under Rule 2.2 should be restricted:

(a) from doing any of the things set out in Rules 2.8(a) to (e) for a period of six months from the date on which the dispensation is granted; and, in addition

(b) from actively considering making an offer, making an approach to the board of the offeree company or acquiring any interests in shares in the offeree company for a period of three months from the date on which the dispensation is granted.

(e) Resolution of competitive situations which continue to exist on Day 46 of the second offeror's offer timetable

1.6 In Section 5, it is proposed that the default auction procedure which the Panel would normally impose in order to resolve a competitive situation which continues to exist on Day 46 of the second offeror's offer timetable should be a modified form of the existing default procedure and that that modified procedure should be incorporated into the Code as a new Appendix 8.

(f) Potential controllers which are granted a Rule 9 waiver

1.7 In Section 6, it is proposed that, where a potential new controller is granted a "whitewash" waiver under Note 1 of the Notes on Dispensations from Rule 9, the shareholder circular should be required to explain that the potential new controller will not be restricted from making an offer for the company following the approval of the proposals at the shareholders' meeting, unless it has entered into a standstill agreement with the company or has made a statement that it does not intend to make an offer (in which case, full details of the agreement or statement should be disclosed).

(g) Disclosure of irrevocable commitments, letters of intent and interests in relevant securities

1.8 In Section 7, it is proposed that changes should be made to the disclosure of irrevocable commitments, letters of intent and interests in shares, such that:

(a) any irrevocable commitment or letter of intent procured prior to an offer period should be disclosed by no later than 12 noon on the business day following the identification of the potential offeror as such;

(b) Rule 2.7 should be amended so as to reinstate the requirement, which existed prior to 2010, that an offeror, in its firm offer announcement, must disclose details of the interests and short positions in the relevant securities of the offeree company held by it, and by persons acting in concert with it, and of any irrevocable commitments and letters of intent which it has procured (these details are currently required to be disclosed in the offeror's Opening Position Disclosure);

(c) details of irrevocable commitments and letters of intent should continue to be disclosed by means of an announcement made in accordance with

Rule 2.11 but should no longer be required to be disclosed in an Opening Position Disclosure;

(d) a disclosure of an irrevocable commitment should be required to include details of any outstanding conditions to which the irrevocable commitment is subject;

(e) the application of the requirements of Note 12 on Rule 8 to potential offerors which are participating in a "formal sale process" commenced by the offeree company should be clarified;

(f) Rule 26.1(a) should be amended so as to make clear that the documents to which it applies are required to be published on a website only following the announcement of a firm offer (and not following an earlier date on which the document may have been entered into);

(g) the latest deadline for an announcement under Rule 2.10 by an offeror or offeree company of the number of relevant securities in issue should be brought forward from 9.00am to 7.15am in order to afford shareholders more time to comply with their disclosure obligations under Rule 8;

(h) when a trust makes a disclosure under Rule 8, the settlor and beneficiaries should be required to be identified, in addition to the trustee(s); and

(i) the disclosure of dealings by certain connected principal traders would be permitted to be made in an aggregated form.

(h) Redemptions and purchases by offeree companies and offerors of their own securities

1.9 In Section 8, it is proposed to make minor amendments to the Code with regard to

redemptions and purchases by offeree companies and offerors of their own securities.

(i) Circulars published by persons acting in concert with an offeror or offeree company

1.10 In Section 9, it is proposed to replace the reference in Note 4 on Rule 20.1 to information published by "brokers or advisers" to a party to the offer with a reference to "connected advisers to, or other persons acting in concert with" such a party.

(j) "No increase" and "no extension" statements

1.11 In Section 10, it is proposed that:

(a) Note 2 on Rule 32.2 and Note 2 on Rule 31.5 should be amended so as to require an offeror to consult the Panel if it wishes to include a reservation to its "no increase" or "no extension" statement; and

(b) Note 5 on Rule 32.2 and Note 5 on Rule 31.5 should be amended so as to provide that an offeror may only include a reservation to a "no increase" or "no extension" statement which relates to material new information announced by the offeree company after "Day 39" if the "no increase" or "no extension" statement is itself made after "Day 39".

(k) Independent advice provided to the board of the offeree company

1.12 Section 11 concerns the distinction that exists between (a) the role of the independent adviser appointed under Rule 3.1 to provide financial advice on the offer to the board of the offeree company and (b) the role of the board of the offeree company which is required to give its opinion on the offer to the offeree

company shareholders, having taken into account all factors which it considers relevant. Section 11 proposes amendments to Rule 3.1 and Note 3 on Rule 3.1 so as better to reflect this distinction.

(l) Aggregation of interests across a group

1.13 The proposed amendments in Section 12 would make it clear that the relief from the 30% mandatory bid threshold in Rule 9.1 for principal traders within a multi-service financial organisation, who are normally permitted to hold up to an additional 3% of a company's shares without triggering an obligation to make a mandatory bid, applies only to shares which are acquired and held by the principal trader in a client-serving capacity.

(m) Invitation to comment

1.14 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Friday, 12 September 2014 and should be sent in the manner set out at the beginning of this PCP.

1.15 The full text of the proposed amendments is set out in Appendix A. Except as otherwise stated, underlining indicates proposed new text and striking-through indicates text that is proposed to be deleted.

1.16 For ease of reference, a list of the questions that are put for consultation is set out in Appendix B.

2. Clarification by potential competing offerors of their position

(a) Introduction

2.1 Rule 2.6 provides that, where an offeror has announced a firm intention to make an offer ("**Offeror 1**"), a potential competing offeror which has been the subject of a "possible offer" announcement ("**Offeror 2**") must clarify its position, as described below:

(a) under Rule 2.6(d) and Note 3 on Rule 2.6, where Offeror 2 is a potential offeror which has been publicly identified, it must clarify its position by a date to be announced by the Panel which is normally on or around 10 days prior to the final day on which Offeror 1's offer is capable of becoming or being declared unconditional as to acceptances, by either:

(i) announcing a firm intention to make an offer under Rule 2.7; or

(ii) announcing that it has no intention of making an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies (i.e. a "**no intention to bid statement**"); and

(b) under Rule 2.6(e) and Note 3 on Rule 2.6, where Offeror 2 is a potential offeror which has not been identified, but whose existence has been announced by the offeree company following the announcement of Offeror 1's offer, it must clarify its position, also by a date to be announced by the Panel which is normally on or around 10 days prior to the final day on which Offeror 1's offer is capable of becoming or being declared unconditional as to acceptances, by either:

(i) announcing a firm intention to make an offer under Rule 2.7; or

(ii) confirming to the offeree company that it does not intend to make an offer, in which case the offeree company must promptly announce that fact and the potential competing offeror will then be treated as if it had made a no intention to bid statement.

Under Rule 2.8, a person who makes a no intention to bid statement is restricted for a period of six months from, among other things, announcing an offer for the company.

2.2 On the basis that, under Rule 31.6, an offer may not become or be declared unconditional as to acceptances after midnight on the 60th day after the initial offer document is published, the effect of these provisions is that the latest date for Offeror 2 to clarify its position is normally "on or around Day 50" of Offeror 1's offer timetable.

2.3 The rationale for the Code setting a date by which Offeror 2 must clarify its position in the manner described above is to remove uncertainty as to whether Offeror 2 will announce a competing offer in the later stages of the offer timetable prescribed by the Code, when shareholders in the offeree company are making their acceptance decision in relation to Offeror 1's offer. Such uncertainty could operate to the detriment of both shareholders in the offeree company and Offeror 1. In the event that Offeror 2 makes a no intention to bid statement on the date of the deadline, shareholders in the offeree company then have around 10 days in which to decide whether to accept Offeror 1's offer without this uncertainty. In the event that Offeror 2 announces a firm offer, the 60 day offer timetable for both offerors will be re-set by reference to the date on which Offeror 2 publishes its offer document.

2.4 In certain cases, there may be a concern that Offeror 2's decision to announce a possible offer may have been tactical, with a view to reducing the likelihood of Offeror 1's offer succeeding. However, even where this is not the case, the

imposition of a deadline by which Offeror 2 must clarify its position as described above is considered justifiable given that, by Day 50, Offeror 2 will have been on notice of Offeror 1's offer for a period of at least seven weeks, and in many cases a significantly longer period.

2.5 In addition to removing uncertainty as to whether Offeror 2 will announce a competing offer, the imposition of a deadline by which Offeror 2 must clarify its position is in keeping with the Code's objective that it should provide an orderly framework within which takeovers are conducted.

2.6 Where Offeror 1 is proceeding by way of a scheme of arrangement, Section 4 of Appendix 7 applies. In such cases, Offeror 2 must clarify its position by a date to be set by the Panel which is normally on or around 10 days prior to the date of the shareholder meetings to approve Offeror 1's offer. However, in certain cases, as set out in Section 4(b) of Appendix 7, the date for clarification may be set for a date after the shareholder meetings but before the date set for the court sanction hearing.

(b) Firm date in preference to a flexible date

2.7 The Code Committee understands from the Panel Executive (the "**Executive**") that the current approach, whereby the latest date by which Offeror 2 must clarify its position is set on a case-by-case basis, has, on occasion, caused difficulties. This is because the Code specifically contemplates that the date for clarification should normally be "on or around 10 days prior to the final day on which the first offeror's offer is capable of becoming or being declared unconditional as to acceptances" (i.e. "**Day 50**"). This creates scope for disagreement among the parties to the offer as to what the deadline should be in any particular case, with Offeror 1 arguing for a date in advance of Day 50 and Offeror 2 arguing for a date after Day 50. The position of the offeree company often varies, depending on whether it considers Offeror 2 to be welcome or unwelcome. In addition, with a

view to taking account of the particular circumstances of the case, the Executive usually makes its ruling as to the appropriate date for clarification only a short time before the deadline. As a result, the Executive's discussions with the parties on this subject take place during the crucial later stages of the offer timetable with the consequence that there would often be limited time for a hearing of the Hearings Committee if the Executive were unable to set a deadline which was acceptable to all parties. In view of these difficulties, and notwithstanding the explicit scope in Note 3 on Rule 2.6 for flexibility, the Executive generally sets the deadline as 5.00pm on Day 50 itself.

2.8 In the light of the above, the Code Committee has considered whether it would be preferable for the latest date by which Offeror 2 must clarify its position to be amended from a flexible date, which is set by the Panel on a case-by-case basis, to a firm date prescribed by the Code.

2.9 The arguments in favour of making this change are that:

(a) there would be certainty as to the date from the outset, meaning that the parties to the offer could plan their tactical arrangements accordingly; and

(b) it would avoid any scope for dispute during the crucial later stages of the offer timetable as to what the precise date should be and the time constraints that would exist in resolving any such dispute.

2.10 The argument against making this change is that the flexibility to set a date "on or around" Day 50 means that the Panel can take account of the particular circumstances of the case in setting the deadline for Offeror 2 to clarify its position. So, for example, when Day 50 falls over a weekend, the Panel can set this deadline for 7.00am on the following Monday morning.

2.11 The Code Committee is in favour of making this change and, in coming to this conclusion, notes that:

(a) none of the other dates in the offer timetable is a flexible date which is set by the Panel on a case-by-case basis; and

(b) notwithstanding the current scope for the date for clarification to be set "on or around Day 50", the Executive's normal practice, as explained in paragraph 2.7 above, is to default to Day 50 itself.

Q1 Should the latest date for a potential competing offeror to clarify its position be a firm date as opposed to a flexible date which is set by the Panel on a case-by-case basis?

(c) Extension of deadline by which clarification must take place

2.12 The Code Committee also understands from the Executive that representations have been made to it that the latest date for Offeror 2 to clarify its position should be a date which is later than Day 50. This is because it has been claimed that a deadline of Day 50 has not allowed Offeror 2 enough time to complete all the work necessary for it to be in a position to announce a firm intention to make an offer. In such cases, Offeror 2 has, reluctantly, had no alternative but to make a no intention to bid statement on the day of the deadline.

2.13 This outcome has arisen particularly where Offeror 1's offer has not been recommended. In such situations, the board of the offeree company might be unwilling to engage with Offeror 2 until it knows whether Offeror 1 has decided to revise its offer, and if so by how much. Under Rule 32.1(c), any such revision must take place by no later than 14 days prior to the final day on which the offer can become or be declared unconditional as to acceptances ("**Day 46**"). If the extent of the revision is not sufficient to secure the recommendation of the offeree company board but is sufficient for the board to consider that Offeror 1's offer

might succeed, such that the board then considers it to be in the best interests of the offeree company's shareholders for it to engage with Offeror 2, the board and Offeror 2 will then have only around four days to seek to agree the terms of a recommended offer. In certain cases, this has not been possible, but it has been argued that it would have been if an additional short period of, say, 48 hours had been available.

2.14 The Code Committee is sympathetic to this point and, accordingly, considers that the latest date by which Offeror 2 must clarify its position should be extended by a few days so as to give Offeror 2 and, where appropriate, the board of the offeree company, a little more time than is currently available to seek to agree the terms of an offer, in the knowledge of Offeror 1's revised offer. Although such an extension would have the effect of reducing commensurately the amount of time that shareholders in the offeree company would have to make and process their acceptance decisions in the event that Offeror 2 made a no intention to bid statement, the Code Committee believes that this inconvenience would be outweighed by the benefit to shareholders in the offeree company of the increased prospect of a competing offer being announced.

2.15 In considering the latest date to which the deadline for Offeror 2 to clarify its position should be extended, the Code Committee has taken into account the following:

(a) the speed with which information is disseminated;

(b) the fact that, if a firm date is prescribed by the Code, shareholders in the offeree company will have sufficient notice of the deadline and should therefore be able to react promptly to a no intention to bid statement made by Offeror 2 on the date of the deadline; and

(c) the fact that elsewhere in the Code a period of seven days is considered sufficient time for shareholders in the offeree company to make and process their acceptance decisions. For example, under Rule 25.1, the board of an offeree company must send a circular to the company's shareholders within 14 days of the publication of the offer document so as to allow a minimum of seven days for shareholders to consider this information and, if appropriate, submit their acceptances so that they can be received by the first closing date (which, under Rule 31.1, must be no earlier than 21 days following the publication of the offer document).

2.16 In the light of the above, the Code Committee considers that the deadline by which Offeror 2 must clarify its position should be extended to seven days prior to the final day on which Offeror 1's offer is capable of becoming or being declared unconditional as to acceptances, rather than 10 days prior to that time.

Q2 Should the deadline by which a potential competing offeror must clarify its position be extended to seven days prior to the final day on which the first offeror's offer is capable of becoming or being declared unconditional as to acceptances, rather than 10 days prior to that time?

(d) Date to be calculated by reference to the publication of the initial offer document

2.17 As explained in paragraph 2.1 above, Note 3 on Rule 2.6 provides at present that the latest date by which Offeror 2 must clarify its position is set by reference to a number of days (i.e. "on or around 10", but proposed to be reduced to seven) "prior to the final day on which [Offeror 1's] offer is capable of becoming or being declared unconditional as to acceptances". The Code does not specify how this date should be determined where Offeror 1 elects for the "final day" to be a date prior to the 60th day following the publication of its initial offer document (being the latest date permitted under Rule 31.6) or, alternatively, where Offeror 1 makes a "no extension statement" during the course of its offer. In particular, in

these circumstances, there is a question as to whether the latest date by which Offeror 2 must clarify its position should be determined by reference to the earlier date selected by Offeror 1 or by reference to the final day on which Offeror 1's offer would otherwise be capable of becoming or being declared unconditional as to acceptances under the Code.

2.18 The argument in favour of setting the latest date for clarification by Offeror 2 by reference to the final closing date selected by Offeror 1 is that the rationale for imposing a date by which Offeror 2 should be required to clarify its position, namely to remove uncertainty as to Offeror 2's position at the time when shareholders in the offeree company are making their decisions as to whether to accept Offeror 1's offer, is equally relevant where Offeror 1 elects to foreshorten its offer timetable as in cases where it takes advantage of the maximum amount of time permitted under the Code.

2.19 The arguments in favour of setting the latest date for clarification by Offeror 2 by reference to the final closing date permitted under the Code (i.e. "**Day 60**") are as follows:

(a) to require otherwise might lead to Offeror 2 being required to clarify its position in an unrealistically short time period, thereby reducing the likelihood of Offeror 2 being able to announce a competing firm offer, which could be an outcome detrimental to the interests of shareholders in the offeree company. For example, if Offeror 1 were, on the day that the offer period commenced, to make an offer which was open for acceptance for the minimum 21 day period permitted under the Code, and which would not be extended thereafter, Offeror 2, if it announced its interest in making a competing offer also on the day that the offer period commenced, would have only 14 days in which to evaluate whether it wished to make an offer and to announce a firm intention to do so (if the proposal referred to in paragraphs 2.12 to 2.16 above is implemented);

(b) similarly, to require otherwise would enable Offeror 1, after its first closing date, to force Offeror 2 to clarify its position at a time of Offeror 1's choosing and thereby to obtain an unfair tactical advantage. For example, if Offeror 2 were to be identified on Day 21, Offeror 1 could make clear on its first closing date that its offer would be open for a further eight days but would not be extended thereafter, in which case Offeror 2 would have only one day to clarify its position (again, if the proposal referred to in paragraphs 2.12 to 2.16 above is implemented); and

(c) certain other dates in the offer timetable are not accelerated when an offeror elects to foreshorten the 60 day period – for example, in such circumstances, the latest date on which the offeree company can announce material new information under Rule 31.9 remains as "the 39th day following the publication of the initial offer document" ("**Day 39**").

2.20 The Code Committee considers that the arguments set out in paragraph 2.19 above outweigh the argument set out in paragraph 2.18 above. Furthermore, in relation to the argument made in paragraph 2.18, the Code Committee considers that it is not sustainable for Offeror 1 to argue, if it elects to foreshorten its offer timetable, that Offeror 2 should be required to clarify its position at an earlier stage than would otherwise be required in order for there to be certainty as to Offeror 2's intentions ahead of Offeror 1's foreshortened final closing date, given that the situation would only have arisen because of a conscious choice that Offeror 1 had itself made.

2.21 In the light of the above, the Code Committee proposes that Offeror 2 should be required to clarify its position by no later than 5.00pm on the 53rd day after the publication of Offeror 1's initial offer document, notwithstanding that Offeror 1 may have elected to foreshorten its offer timetable.

Q3 Should the latest date by which a potential competing offeror must clarify its position be fixed at 5.00pm on the 53rd day following the publication of the first offeror's initial offer document?

(e) Schemes of arrangement

2.22 In view of the amendments proposed above, the Code Committee also proposes that, where Offeror 1 is implementing its offer by way of a scheme of arrangement, Offeror 2 should normally be required to clarify its position by 5.00pm on the seventh day prior to the date of the shareholder meetings to approve the scheme. However, in appropriate cases, and taking into account the factors set out in Section 4(b) of Appendix 7, including the time that Offeror 2 has had to consider its position, the Code Committee considers that the Panel should continue to be able to permit Offeror 2 to clarify its position after the date of the shareholder meetings and that in such cases the deadline should be set for a date which is no later than 5.00pm on the seventh day prior to the date of the court sanction hearing. In view of this discretion granted to the Panel, the Code Committee proposes that, in cases where Offeror 1 is implementing its offer by means of a scheme of arrangement, the Panel should continue to announce the date by which Offeror 2 is required to clarify its position.

Q4 Where the first offeror is proceeding by way of a scheme of arrangement, should the latest date by which a potential competing offeror must clarify its position normally be 5.00pm on the seventh day prior to the date of the shareholder meetings?

Q5 Should the Panel, in appropriate cases, continue to be able to permit a potential competing offeror to clarify its position after the date of the shareholder meetings and, in such cases, should the deadline be set for a date which is no later than 5.00pm on the seventh day prior to the date of the court sanction hearing?

(f) Extension to Day 60

2.23 As a separate matter, the Code Committee proposes to introduce a new provision in order to make explicit in the Code the point that, where the Panel consents to an extension to Day 60, it will normally also grant an extension to, or re-set, Day 46.

2.24 The Code Committee understands from the Executive that, notwithstanding that this point was explained by the Executive in Practice Statement No 8, practitioners and market participants have remained unaware of this point, and, in particular, the fact that this means that, where:

(a) the board of an offeree company consents to a request by an offeror (or, in a potentially competitive situation, Offeror 1) that Day 60 of the offeror's offer timetable should be extended; and

(b) subject to no unreserved "no extension statement" or "no increase statement" having been made,

the offeror will normally be able to revise its offer, notwithstanding that the original Day 46 may have passed.

(g) Proposed amendments

2.25 In the light of paragraphs 2.1 to 2.22 above, the Code Committee proposes to amend Rules 2.6(d) and (e), Note 3 on Rule 2.6 and Section 4 of Appendix 7, as follows:

(a) Rules 2.6(d) and (e) and Note 3 on Rule 2.6:

"**2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT**

…

(d) When an offeror has announced a firm intention to make an offer and it has been announced that a publicly identified potential offeror might make a competing offer (whether that announcement was made prior to or following the announcement of the first offer), the potential offeror must, by a date in the later stages of the offer period ~~to be announced by the Panel~~, either:

(i) announce a firm intention to make an offer in accordance with Rule 2.7; or

(ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies.

(e) When an offeror has announced a firm intention to make an offer and the offeree company subsequently refers to the existence of a potential competing offeror which has not been identified, the potential competing offeror so referred to must, by a date in the later stages of the offer period ~~to be announced by the Panel~~, either:

(i) announce a firm intention to make an offer in accordance with Rule 2.7; or

(ii) confirm to the offeree company that it does not intend to make an offer, in which case the offeree company must promptly announce that fact and the potential competing offeror will ~~then~~ be treated as if it had <u>then</u> made a statement to which Rule 2.8 applies.

NOTES ON RULE 2.6

…

3. Date by which announcement required

Where the first offeror is proceeding by means of a contractual offer, the date by which an announcement will be required to be made by or in respect of a potential competing offeror under Rule 2.6(d) or (e) will ~~normally be a date which is on or around 10 days prior to the final day on which the first offeror's offer is capable of becoming or being declared~~

~~*unconditional as to acceptances*~~ *be 5.00 pm on the 53rd day following the publication of the first offeror's initial offer document.*

Where the first offeror is proceeding by means of a scheme of arrangement, see Section 4 of Appendix 7."; and

(b) Section 4 of Appendix 7:

"**4 HOLDING STATEMENTS**

(a) If an announcement of the kind described in Rule 2.6(d) or (e) is made during an offer period involving an offer to be implemented by means of a scheme of arrangement, the Panel will normally require the potential offeror to clarify its position by ~~a date in advance of~~ no later than 5.00 pm on the seventh day prior to the date of the shareholder meetings~~, to be announced by the Panel~~.

(b) Where appropriate, however, taking into account all relevant circumstances, including:

(i) the interests of offeree company shareholders and the desirability of clarification prior to the shareholder meetings; and

(ii) the time which the ~~offeror or~~ potential offeror has had to consider its position,

the Panel may permit clarification after the date of the shareholder meetings but ~~before~~ by no later than 5.00 pm on the seventh day prior to the date of the court sanction hearing.

(c) The Panel will announce the date by which clarification is required under paragraph (a) or (b) above.

~~***NOTE ON SECTION 4***~~

~~***Date by which announcement required***~~

~~*For the purposes of Section 4(a), the date by which a clarifying announcement will be required to be made will normally be a date which is on or around 10 days prior to the date of the shareholder meetings.*~~".

2.26 In the light of paragraphs 2.23 and 2.24 above, the Code Committee proposes to introduce a new Note 5 on Rule 32.1, as follows:

"***5. Extension to "Day 60"***

Where the Panel consents to an extension to "Day 60" in accordance with Rule 31.6(a)(ii), it will normally also grant an extension to or, if appropriate, re-set "Day 46" and "Day 53" (see Note 3 on Rule 2.6). Therefore, where the board of an offeree company consents to a request by an offeror that "Day 60" of the offeror's offer timetable should be extended, and subject to no unreserved "no extension statement" (see Rule 31.5) or "no increase statement" (see Rule 32.2) having been made, the offeror will normally be able to revise its offer, notwithstanding that the original "Day 46" may have passed.".

Q6 Do you have any comments on the proposed amendments to Rules 2.6(d) and (e), Note 3 on Rule 2.6 and Section 4 of Appendix 7?

Q7 Do you have any comments on the proposed new Note 5 on Rule 32.1 with regard to extensions to Day 60?

2.27 In addition, the Code Committee proposes to introduce a reference to "Day 53" in each of Note 3 on Rule 31.6 and Rule 31.9, as set out in Appendix A.

3. Acquisitions of interests in shares by a former potential competing offeror after Day 53

(a) Introduction

3.1 As explained in section 2 above, it is proposed that the date by which Offeror 2 should be required to clarify its position, either by announcing a firm intention to make an offer under Rule 2.7 or by making a no intention to bid statement, should be amended to a fixed date of Day 53.

3.2 As mentioned in section 2 above, under Rule 2.8, a person who makes a no intention to bid statement is restricted for a period of six months from, among other things, announcing an offer for the company. In addition, under Rule 2.8(e), the person must not take any steps in connection with a possible offer for the company where knowledge of the possible offer might be extended outside those who need to know in the potential offeror and its immediate advisers.

3.3 Under Note 2 on Rule 2.8, these restrictions can be set aside in certain circumstances, including with the agreement of the board of the offeree company. However, where the no intention to bid statement was made at any time following the announcement by a third party of a firm intention to make an offer, the statement may not normally be set aside with the agreement of the board of the offeree company unless that offer has been withdrawn or has lapsed.

(b) Acquisitions of interests in shares by the former potential offeror

(i) Approach taken by the Executive

3.4 The Code Committee understands that, occasionally, the Executive has become aware that Offeror 2 was considering purchasing shares in the offeree company following the release of a no intention to bid statement which had been made as a

result of the Panel requiring it to clarify its position in advance of the final day on which Offeror 1's offer could become or be declared unconditional as to acceptances.

3.5 The Code Committee understands that, in such circumstances, the Executive has been concerned that Offeror 2's motive might have been to create the impression that, notwithstanding that it had made a no intention to bid statement, Offeror 2 remained interested in making an offer for the offeree company and that it would be willing to do so, at the price at which it purchased the shares, once it ceased to be subject to the restrictions set out in Rule 2.8 – i.e. if Offeror 1's offer lapsed and with the agreement of the board of the offeree company.

3.6 The Code Committee understands that the Executive has, in such cases, ruled that, if Offeror 2 were to purchase shares in the offeree company at this time, it should then cease to be permitted to set aside its no intention to bid statement with the agreement of the board of the offeree company if Offeror 1's offer were to lapse. This is on the basis that Offeror 2's purchasing of shares might seem inconsistent with its no intention to bid statement in such circumstances and therefore raise the prospect that Offeror 2 might, immediately following the lapsing of Offeror 1's offer, seek to have its no intention to bid statement set aside with the consent of the offeree company board. This would cause uncertainty for shareholders in the offeree company at the time that they would be deciding whether to accept Offeror 1's offer and, as such, would be contrary to the Panel's objective in requiring Offeror 2 to clarify its position on or before Day 53.

(ii) Arguments in favour of and against amending the Code

3.7 The Code Committee has considered whether to introduce an amendment to the Code to give effect to the approach taken by the Executive, as explained above.

3.8 The arguments in favour of amending the Code in this manner are:

(a) as explained above, it would help to ensure that the objective of requiring Offeror 2 to clarify its position on or before Day 53 would not be undermined by uncertainty as to whether the decision by Offeror 2 to acquire shares in the offeree company in the last seven days of the offer timetable might be with a view to its announcing a recommended offer in the event of Offeror 1's offer lapsing; and

(b) given that the Panel's approach in this area may affect Offeror 2's tactical considerations, it is important that it be made clear in the Code. For example, in knowledge of this approach, Offeror 2 may decide to acquire shares prior to making a no intention to bid statement.

3.9 The principal argument against amending the Code in this way is that a person who has made a no intention to bid statement is generally thereafter able to acquire shares in the offeree company without restriction, for example, with a view to blocking another offeror's offer when it does not wish to make an offer itself, provided that he does not trigger an obligation to make a mandatory offer under Rule 9.1. Accordingly, it is questionable why the ability to set the no intention to bid statement aside with the agreement of the board of the offeree company should cease to apply where shares are acquired following the making of such a statement in the circumstances described, but not otherwise.

3.10 However, the Code Committee has, on balance, concluded that it is appropriate that this additional consequence should apply in relation to share acquisitions following a no intention to bid statement made in the circumstances described above, given the particular sensitivity of this seven day period and the fact that any resultant uncertainty is not easily capable of being remedied.

(c) Proposed amendment

3.11 For the reasons set out above, the Code Committee is in favour of amending the Code to provide that, if Offeror 2 acquires interests in shares in the offeree company after making a no intention to bid statement in the circumstances set out above, it should cease to have the right to set the statement aside with the agreement of the board of the offeree company in the event that Offeror 1's offer lapses. Accordingly, the Code Committee proposes to amend Note 2 on Rule 2.8, as follows:

> "***2. When ~~a statement may be set aside~~ the restrictions will no longer apply***
>
> *~~Except with the consent of the Panel, a statement to which~~ The restrictions in Rule 2.8 ~~applies may be set aside only~~ will no longer apply if:*
>
> *(a) the board of the offeree company so agrees ~~to the statement being set aside~~. However, ~~W~~where the statement was made ~~at any time following~~ after the announcement by a third party of a firm intention to make an offer, the ~~statement may not normally be set aside~~ restrictions will only cease to apply with the agreement of the board of the offeree company ~~unless~~ if:*
>
> *(i) that third party offer has been withdrawn or has lapsed; and*
>
> *(ii) in the period following the making of the statement and prior to the third party offer being withdrawn or lapsing, neither the person who made the statement nor any person acting in concert with that person has acquired an interest in any shares of the offeree company;*
>
> *(b) a third party announces a firm intention to make an offer for the offeree company;*
>
> *(c) the offeree company announces a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover;*
>
> *(d) the Panel determines that there has been a material change of circumstances; or*

(e) the statement was made outside an offer period and an event has occurred which was specified in the statement as being an event <u>following</u> which <u>the restrictions set out in Rule 2.8</u> would ~~enable the statement to be set aside (see Note 1)~~ <u>cease to apply</u>. <u>If a person wishes to specify such an event in a statement to which Rule 2.8 will apply, the Panel should be consulted.</u>

The Panel will normally regard a switch by a third party offeror from a scheme of arrangement to a contractual offer in accordance with Section 8 of Appendix 7, or an announcement of its firm intention to do so, as a material change of circumstances under paragraph (d). However, a switch from a contractual offer to a scheme of arrangement will not normally be regarded as a material change of circumstances.".

3.12 The Code Committee also proposes to make certain minor amendments to Rule 2.8 and Note 1 on Rule 2.8, as set out in Appendix A.

(d) Alternative approach

3.13 The Code Committee wishes to note that it considered whether the concern identified above could be addressed alternatively by the Panel considering that it would be a breach of the restriction in Rule 2.8(e) for Offeror 2 to acquire an interest in shares of the offeree company if it had an understanding with the board of the offeree company that the board would recommend an offer made by Offeror 2 in the event of Offeror 1's offer lapsing.

3.14 The principal argument in favour of this approach is that Offeror 2 can announce an offer in the six months following the release of its no intention to bid statement only with the agreement of the board of the offeree company. Therefore, it is arguable that the Panel should only be concerned about Offeror 2's acquiring interests in shares after making a no intention to bid statement if there is an understanding between Offeror 2 and the board of the offeree company about whether this agreement will be forthcoming (and, by contrast, that the Panel should not be concerned about the possibility of Offeror 2's acquiring interests in shares in the absence of any such understanding).

3.15 The principal argument against this approach is that, in practice, it would be extremely difficult for the Panel to establish whether any such understanding existed between Offeror 2 and the board of the offeree company, and this difficulty would be exacerbated by the fact that the Panel would be called upon to reach a determination on this issue within a very short and highly pressured time period (i.e. in the seven day window between Day 53 and Day 60).

3.16 As a result, the Code Committee concluded that, whilst there is a sound intellectual basis for this approach, it did not represent an appropriate solution in practice. Accordingly, the Code Committee concluded that the amendment to Note 2 on Rule 2.8 as proposed in paragraph 3.11 above represented the most sensible way forward.

Q8 What are your views on the proposed amendment to Note 2 on Rule 2.8?

4. When a dispensation may be granted from having to make an announcement under Rule 2.2

(a) Introduction

4.1 Under Rule 2.2(c), an announcement is required following an approach by or on behalf of a potential offeror to the board of the offeree company when the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price. Under Rule 2.2(d), an announcement is required when, after a potential offeror first actively considers an offer but before such an approach has been made, the offeree company is the subject of rumour and speculation, or there is an untoward movement in its share price, and there are reasonable grounds for concluding that it is the potential offeror's actions that have led to the situation.

4.2 Under Note 4 on Rule 2.2, the Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased active consideration of an offer for the offeree company. In the event of such a dispensation being granted, the potential offeror is restricted from actively considering making an offer for the offeree company for a period of six months and will be treated as having made a no intention to bid statement to which Rule 2.8 applies (and will therefore be subject to the restrictions set out in Rule 2.8). In certain circumstances, as set out in Note 4 on Rule 2.2, the Panel may consent to these restrictions being set aside.

4.3 Note 4 on Rule 2.2 also provides that, notwithstanding that the potential offeror may have ceased actively to consider making an offer and that the Panel may have granted a dispensation from the requirement to make an announcement, the Panel may nonetheless require an announcement to be made where:

(a) any rumour and speculation continues or is repeated; and/or

(b) the Panel considers that this is otherwise necessary in order to prevent the creation of a false market.

Where such an announcement is made by the offeree company, Note 4 provides that the announcement will not normally be required to identify the former potential offeror, unless it has been specifically identified in rumour and speculation.

4.4 Note 4 on Rule 2.2 was introduced into the Code in September 2011, following the consultation in relation to PCP 2011/1 ("Review of certain aspects of the regulation of takeover bids"). In 2012, the amendments to the Code which were introduced by RS 2011/1 following that consultation were reviewed by the Code Committee and its conclusions were set out in Statement 2012/8, which was published in November 2012. In paragraph 2.18 of Statement 2012/8, the Code Committee noted, among other matters, that it intended to keep Note 4 on Rule 2.2 under review.

4.5 The Code Committee has identified certain areas where it considers that the operation of Note 4 on Rule 2.2 could be improved as set out in the proposed amendments referred to in paragraphs 4.6 to 4.14 below.

(b) Restriction on acquiring interests in shares

4.6 There is currently no restriction on a person who has been granted a dispensation under Note 4 on Rule 2.2 from acquiring interests in shares in the offeree company during the period for which it is subject to the restrictions set out in that Note. However, on reflection, the Code Committee considers that a person who has been granted a dispensation under Note 4 on Rule 2.2 should be so restricted during the period for which it is restricted from actively considering making an offer for the company (as to which see paragraph (f) below). This is because:

(a) that person is likely to have requested the dispensation in order to avoid publicity regarding its possible interest in the offeree company. However, the acquisition of interests in shares of the company might lead to speculation regarding the person's interest in the offeree company and is therefore inconsistent with that objective; and

(b) given that the acquisition of interests in shares might lead to speculation regarding the person's interest in the offeree company, and given that a person who has been granted a dispensation under Note 4 on Rule 2.2 is not permitted to make an offer for a period of time, there is a risk that the acquisition of interests in shares at this time could lead to the creation of a false market in the shares of the offeree company.

(c) Restriction on making an approach to the offeree company

4.7 Separately, the Code Committee is aware of an argument that paragraph (a) of Note 4 on Rule 2.2 would not restrict a potential offeror from making an approach to the board of the offeree company with regard to an offer if it were able to do so without actively considering making an offer. The Code Committee is sceptical of a potential offeror's ability to make such an approach without active consideration of an offer but believes that, in order to put the matter beyond doubt, it should be made clear in Note 4 on Rule 2.2 that a potential offeror to which the Note applies is restricted from making such an approach during the period for which it is restricted from actively considering making an offer for the company (again, as to which see paragraph (f) below).

(d) Persons acting in concert with the potential offeror

4.8 The Code Committee also considers that the proposed new restrictions, together with the other restrictions referred to in paragraph 4.2 above, should apply not

only to the potential offeror but also to any person who acted, or subsequently comes to act, in concert with it.

(e) Requirement for the former potential offeror to be identified where the offeree company is required to make an announcement

4.9 Paragraph (b) of Note 4 on Rule 2.2 currently provides that if, after it has granted a dispensation under paragraph (a), the Panel requires an announcement to be made by the offeree company because any rumour and speculation continues or is repeated, and/or because the Panel considers that this is necessary in order to prevent the creation of a false market, any such announcement will not normally be required to identify the former potential offeror, unless it has been specifically identified in the rumour and speculation.

4.10 The Code Committee considers that, if the Panel requires the offeree company to make an announcement in the circumstances described in paragraph (b) of Note 4 on Rule 2.2, the announcement should normally be required to identify the potential offeror. This is on the basis that, in practice, an announcement is only likely to be required under paragraph (b) of Note 4 on Rule 2.2 in circumstances where there is speculation which has specifically identified the former potential offeror. In addition, the announcement by the offeree company will, in any event, be likely to lead to speculation as to the identity of the former potential offeror and, given the restrictions imposed by the Code, it is likely to be important for shareholders in the offeree company and other market participants to be aware of the identity of the person to whom those restrictions apply.

4.11 The Code Committee understands that it is the Executive's practice that, where an announcement is made under paragraph (b) of Note 4 on Rule 2.2 and in that announcement the former potential offeror makes a no intention to bid statement, the restrictions in Rule 2.8 will apply for a period of six months from the date of that announcement (and the restrictions in Note 4 on Rule 2.2 will then cease to

apply). However, if, in the announcement made under paragraph (b) of Note 4 on Rule 2.2, the former potential offeror or the offeree company confirms only that it was granted a dispensation under Note 4 on Rule 2.2 on the date specified in the announcement, the restrictions set out in Note 4 will continue to apply from that date.

(f) Period for which the restriction on active consideration of an offer should apply

4.12 Finally, the Code Committee considers that Note 4 on Rule 2.2 should be reformulated so as to restrict a potential offeror which would otherwise have been the subject of an announcement required under Rule 2.2(c) or Rule 2.2(d), and any person acting in concert with it:

(a) from doing any of the things set out in Rules 2.8(a) to (e) for a period of six months from the date on which the dispensation is granted; and

(b) as an anti-avoidance measure, from actively considering making an offer for a period of three months from the date on which the dispensation is granted.

4.13 The effect of this amendment, together with the other amendments referred to above, would, in practice, be as follows:

(a) during the first three months following the date on which a dispensation is granted under Note 4 on Rule 2.2, the potential offeror and any person acting in concert with it would be restricted from actively considering making an offer, from making an approach to the offeree company and from acquiring any interests in shares in the offeree company. During this first three month period, the Panel would be able to consent to these restrictions being set aside only in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8 (i.e. in the event of the announcement of a

firm offer by a third party, a whitewash transaction or a material change in circumstances) but not in the circumstances set out in paragraph (a) of Note 2 on Rule 2.8 (i.e. with the agreement of the board of the offeree company); and

(b) during the second three months following the date on which a dispensation is granted under Note 4 on Rule 2.2, the potential offeror and any person acting in concert with it would be restricted from doing any of the things set out in Rules 2.8(a) to (e), but would no longer be subject to the restrictions described in paragraph 4.13(a) above. During this second three month period, the Panel would be able to consent to the restrictions in Rule 2.8 being set aside in the circumstances set out in paragraphs (a) to (d) of Note 2 on Rule 2.8 (i.e. including with the agreement of the board of the offeree company).

(g) Proposed amendments

4.14 In the light of the above, the Code Committee proposes to amend Note 4 on Rule 2.2 as follows:

> "***4. When a dispensation may be granted***
>
> *(a) The Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. ~~After~~ If such a dispensation ~~has been~~ is granted, neither the potential offeror, nor any person who acted in concert with it, nor any person who is subsequently acting in concert with either of them, may:*
>
> > *(i) within six months of the dispensation having been granted, do any of the things set out in Rules 2.8(a) to (e); or*
> >
> > *(ii) within three months of the dispensation having been granted, ~~not~~ actively consider making an offer for the offeree company, make an approach to the board of the offeree company or acquire an*

interest in shares in the offeree company ~~for a period of six months and will be treated as having made a statement to which Rule 2.8 applies~~.

The Panel may consent to the ~~these~~ restrictions in paragraph (i) being set aside in the circumstances set out in paragraphs (a~~b~~) to (d) of Note 2 on Rule 2.8~~.~~, but the Panel may only consent to the restrictions in paragraph (ii) being set aside in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8. ~~The Panel may also, at the request of the offeree company, consent to the potential offeror recommencing active consideration of an offer but such consent will not normally be given within three months of the dispensation having been granted.~~

(b) Where a potential offeror to which a dispensation has been granted under paragraph (a) has ceased actively to consider making an offer, the Panel may nonetheless require an announcement to be made where:

(i) any rumour and speculation continues or is repeated; and/or

(ii) it considers that this is otherwise necessary in order to prevent the creation of a false market.

Any such announcement made by the offeree company will ~~not~~ normally be required to identify the former potential offeror~~, unless it has been specifically identified in rumour and speculation~~.".

Q9 Should paragraph (a) of Note 4 on Rule 2.2 be amended as proposed so as to restrict a person who is subject to that Note, together with any person who acted, or subsequently acts, in concert with it, from acquiring interests in shares of the offeree company?

Q10 Should paragraph (a) of Note 4 on Rule 2.2 be amended as proposed so as to restrict a person who is subject to that Note, together with any person who acted, or subsequently acts, in concert with it, from making an approach to the board of the offeree company?

Q11 Should paragraph (b) of Note 4 on Rule 2.2 be amended as proposed so as to require that an announcement which the Panel requires to be made by the offeree company under that paragraph (b) should normally identify the former potential offeror?

Q12 Should paragraph (a) of Note 4 on Rule 2.2 be amended as proposed to as to restrict a person who is granted a dispensation, and any person acting in concert with it, from actively considering an offer, from making an approach

and from acquiring an interest in shares of the offeree company for a period of three months following the date on which the dispensation was granted and from doing any of the things set out in Rules 2.8(a) to (e) for the following three month period?

5. Resolution of competitive situations which continue to exist on Day 46 of the second offeror's offer timetable

(a) Introduction and summary

5.1 Rule 32.5 provides that if a competitive situation continues to exist in the later stages of an offer period, and unless the Panel applies an alternative procedure which has been agreed between the competing offerors and the board of the offeree company, the Panel will normally require revised offers to be announced in accordance with an auction procedure, the terms of which will be determined by the Panel.

5.2 Rule 32.5 was introduced in 2002, following the consultation on PCP 7 ("Resolution of competitive situations"). In addition to proposing the introduction of Rule 32.5, PCP 7 outlined a procedure for an open auction process which the Code Committee considered would represent the most appropriate method of resolving competitive situations in an orderly fashion (the "**Existing Default Procedure**"). In RS 7, the Code Committee adopted the proposed Rule 32.5 and concluded that the Existing Default Procedure should be applied by the Panel in the absence of an agreement between the parties to the offer that an alternative procedure should apply. However, it had not been proposed in PCP 7 that the Existing Default Procedure should be incorporated into the Code.

5.3 Paragraph 8.4.1 of PCP 7, which described the Existing Default Procedure, provided as follows:

> "An 'open auction' procedure means a set of rules which will permit the competitive bid process which runs up to Day 46 to continue, but on an accelerated and controlled basis, after Day 46. An open auction procedure might work as follows (where a competitive situation involving two competing offerors, A and B, subsists on Day 46):

(i) any revised offer which either offeror proposes to announce after 5.00pm on Day 45 would have to be lodged with the Panel by 4.30pm on Day 46 and announced by 5.00pm that day;

(ii) if one of the offerors (say, A) chooses to announce a revised offer as contemplated in paragraph (i), the other offeror (B) would have until 5.00pm on Day 47 (or such other deadline as the Panel may specify) to announce a revised offer;

(iii) if, however, offeror A does not announce a revised offer by 5.00pm on Day 46, offeror B would not be permitted to revise its own offer after 5.00pm on Day 46;

(iv) if offeror B announces a revised offer by 5.00pm on Day 47 as contemplated in paragraph (ii), offeror A will likewise have until 5.00pm on Day 48 (or such other deadline the Panel may specify) to respond;

(v) this process will continue until one or other offeror fails to announce a revised offer within the time specified;

(vi) a revised offer need not be recommended at the time of the announcement;

(vii) posting of any revised offer should be postponed until the end of the open auction procedure (with a corresponding change to Day 60); and

(viii) the Panel would consult the offeree board with regard to any request made by the lower offeror for a dispensation from its obligation to post.".

5.4 The Code Committee's aim in formulating the Existing Default Procedure was to bring finality to a competitive situation in an orderly manner. The aim was not to identify a "winner" but to give shareholders a period of certainty in which to decide the outcome of competing offers which should be regarded as final.

5.5 In PCP 7, the Code Committee concluded that it would be unattractive to impose either sealed bid or formula offer procedures in the absence of consensus between the parties. The Code Committee also concluded that it was unnecessary for the Existing Default Procedure to require any revised offer to represent a material improvement on the value of an existing offer, or to impose a specific number of

bidding rounds. Instead, it was proposed that the Panel should have the ability to guillotine a process if it became unduly protracted. This was adopted in Note 2 on Rule 32.5.

5.6 Since the introduction of Rule 32.5 in 2002, most of the competitive situations which have continued to exist on Day 46 of the second offeror's offer timetable have been resolved by means of an auction procedure agreed between the competing offerors and the board of the offeree company in conjunction with the Executive. These procedures have usually been modified forms of the Existing Default Procedure. However:

(a) in the case of the offers by Tata Steel UK Limited and CSN Acquisitions Limited for Corus Group plc ("**Corus**") (see Statement 2007/3), the parties to the offer agreed an alternative "closed" auction procedure, involving hourly bidding rounds after market hours during the evening of Day 46; and

(b) in the case of the offers by Shell Exploration and Production (XL) B.V. and PTTEP Africa Investment Limited for Cove Energy plc (see Statement 2012/4), the parties to the offer were unable to agree an alternative auction procedure and the Executive therefore determined that the Existing Default Procedure should apply.

5.7 The perceived success of the procedure agreed to resolve the competitive situation relating to Corus and the failure of the parties to the offer to reach a consensus on an alternative procedure to resolve the competitive situation relating to Cove Energy plc have caused the Code Committee to consider whether the Existing Default Procedure remains the most appropriate procedure for the Panel to impose in the absence of agreement between the parties to the offer on an alternative procedure.

(b) Relevant provisions of the Code

5.8 Except with the consent of the Panel, the latest date on which an offer may become or be declared unconditional as to acceptances is "Day 60". Rule 31.6(a) provides as follows:

> "**31.6 FINAL DAY RULE (FULFILMENT OF ACCEPTANCE CONDITION, TIMING AND ANNOUNCEMENT)**
>
> **(a) Except with the consent of the Panel, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after midnight on the 60th day after the day the initial offer document was published. The Panel's consent will normally only be granted:**
>
> **(i) in a competitive situation (see Note 4 below); or**
>
> **(ii) if the board of the offeree company consents to an extension; or**
>
> … ".

5.9 If, during an offer, a competing offer is announced, the first offeror will normally move onto the second offeror's offer timetable, which may itself be extended in order to accommodate an auction procedure. Note 4 on Rule 31.6 provides as follows:

> "***4. Competitive situations***
>
> *If a competing offer has been announced, both offerors will normally be bound by the timetable established by the publication of the competing offer document. In addition, the Panel will extend "Day 60" in accordance with any procedure established by the Panel in accordance with Rule 32.5.*
>
> *The Panel will not normally grant its consent under Rule 31.6(a)(ii) in a competitive situation unless its consent is sought before the 46th day following the publication of the competing offer document.*".

5.10 The latest date on which an offeror may revise its offer is normally "Day 46". Rule 32.1(c) and Notes 2 and 3 on Rule 32.1 provide as follows:

> "**32.1 PUBLICATION OF REVISED OFFER DOCUMENT**
>
> …
>
> **(c) The offer must be kept open for at least 14 days following the date on which the revised offer document is published. Therefore, no revised offer document may be published in the 14 days ending on the last day the offer is able to become unconditional as to acceptances.**
>
> ***NOTES ON RULE 32.1***
>
> …
>
> ***2. When revision is required***
>
> *An offeror will normally be required to revise its offer if it, or any person acting in concert with it, acquires an interest in shares at above the offer price (see Rule 6) or it becomes obliged to make an offer in accordance with Rule 11 or to make a cash offer, or to increase an existing cash offer, under Rule 9.*
>
> ***3. When revision is not permissible***
>
> *Since an offer must remain open for acceptance for 14 days following the date on which the revised offer document is published, an offeror will generally not be able to revise its offer, and must not place itself in a position where it would be required to revise its offer, in the 14 days ending on the last day its offer is able to become unconditional as to acceptances. Nor must an offeror place itself in a position where it would be required to revise its offer if it has made a no increase statement as defined in Rule 32.2.*".

5.11 As indicated above, Rule 32.5 provides for the resolution of a competitive situation by means of an auction procedure. Rule 32.5 provides as follows:

> "**32.5 COMPETITIVE SITUATIONS**
>
> **If a competitive situation continues to exist in the later stages of the offer period, the Panel will normally require revised offers to be announced in accordance with an auction procedure, the terms of**

which will be determined by the Panel. That procedure will normally require final revisions to competing offers to be announced by the 46th day following the publication of the competing offer document but enable an offeror to revise its offer within a set period in response to any revision announced by a competing offeror on or after the 46th day. The procedure will not normally require any revised offer document to be sent to offeree company shareholders and persons with information rights before the expiry of a set period after the last revision to either offer is announced. The Panel will consider applying any alternative procedure which is agreed between competing offerors and the board of the offeree company.

NOTES ON RULE 32.5

1. Dispensation from obligation to make an offer

The Panel will normally grant a dispensation from the obligation to make a revised offer, which is lower than the final revised offer announced by a competing offeror, when the board of the offeree company consents.

2. Guillotine

The Panel may impose a final time limit for announcing revisions to competing offers for the purpose of any procedure established in accordance with this Rule taking into account representations by the board of the offeree company, the revisions previously announced and the duration of the procedure.

3. Schemes of arrangement

Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable. The Panel will then determine the date or dates on which final revisions to the competing offers must be announced and on which any auction procedure will commence, taking into account all the relevant circumstances.".

(c) Potential amendments to the Code considered by the Code Committee

5.12 The Code Committee considers that there should continue to be a default auction procedure which the Panel would normally impose under Rule 32.5 if the parties to the offer were unable to agree an alternative procedure for the resolution of a competitive situation.

5.13 The Code Committee also considers that it is unsatisfactory that the default auction procedure which the Panel will normally impose under Rule 32.5 is not set out in the Code. The Code Committee believes that the default auction procedure should be incorporated into the Code as a new Appendix 8.

5.14 The Code Committee has also considered whether such a default auction procedure should be based on the Existing Default Procedure or a new default procedure. The principal alternative procedures which the Code Committee has considered are as follows:

(a) an "open" auction process, based on the Existing Default Procedure, involving daily bidding rounds where each revision is announced publicly;

(b) a "closed" auction process, based on the procedure used to resolve the offers for Corus (the "**Corus model**"), involving hourly bidding rounds after market hours during the evening of Day 46 where each revision is communicated privately to the Panel, the offeree company and each competing offeror; and

(c) a single round, sealed bid procedure in which formula offers are allowed.

(d) Arguments in favour of and against an "open" auction process based on the Existing Default Procedure

(i) Arguments in favour

5.15 An open auction procedure provides each competing offeror with an opportunity to respond to any revision made by the other competing offeror, thus replicating the situation in the first 46 days of the offer timetable.

5.16 An open auction procedure is transparent, with each bidding round conducted in public.

5.17 The Existing Default Procedure can be applied regardless of the form of consideration offered by the competing offerors (i.e. whether cash, securities or a mixture of cash and securities).

5.18 The procedures agreed by the parties on all transactions other than the offers relating to Corus and Enodis plc (see Statement 2008/26), which involved a single round, have largely followed the main elements of the Existing Default Procedure and have been effective in resolving the competitive situations on these transactions.

(ii) Arguments against

5.19 It might be argued that, by allowing numerous revisions in 24 hour intervals after Day 46, the Existing Default Procedure adds unnecessary additional time to an already lengthy offer timetable, extending unduly the period of uncertainty in relation to the fate of the offeree company.

5.20 In addition, it is arguable that the "guillotine" approach in Note 2 on Rule 32.5 is unsatisfactory, in that it could be very difficult, in practice, for the Panel to introduce a guillotine during the course of an ongoing auction procedure.

5.21 It might be argued that a process involving daily bidding rounds is unnecessary in cases where each competing offeror is offering cash only, where the competitive situation could be resolved effectively with one round of sealed bids involving formula offers.

(e) Arguments in favour of and against a "closed" procedure based on the Corus model

(i) Arguments in favour

5.22 The Corus auction was conducted quickly and efficiently and, in the course of a single evening, brought finality to the competitive situation.

5.23 The conduct of the auction outside market hours, with the result being announced before the start of trading on Day 47, minimised the risk that potential revisions might leak during market hours.

(ii) Arguments against

5.24 The Corus model is only appropriate where the competitive situation involves two offerors which are offering cash only. In addition, the short time periods between the hourly bidding rounds may not be appropriate for all types of offerors.

5.25 In the Corus transaction, each of the parties to the offer was required to agree to a detailed set of auction rules and to be prepared to act in accordance with them. The parties accepted the operational risks and time pressures which were inherently involved in a procedure with very short intervals between bidding rounds. It would not necessarily be desirable to impose these risks and pressures on parties who were unable to agree an alternative auction procedure.

5.26 In addition, offerors and offeree companies do not generally appear to favour the Corus model: on no transaction other than Corus have the parties agreed to a closed procedure with hourly bidding intervals outside business hours.

5.27 As referred to in paragraph 5.21 above, a single round may be sufficient to resolve a competitive situation where each competing offeror is offering cash only.

(f) Arguments in favour of and against a single round, sealed bid procedure in which formula offers are allowed

(i) Arguments in favour

5.28 The arguments in favour of the Corus model referred to in paragraphs 5.22 and 5.23 above would also apply to a single round, sealed bid procedure. In addition, a single round sealed bid procedure in which formula offers are allowed should, in theory, produce the same result as an auction with multiple bidding rounds, but in a shorter time frame.

(ii) Arguments against

5.29 Sealed bid procedures with formula offers proved to be controversial in a number of transactions prior to the adoption of the Existing Default Procedure. They lack the transparency of an open auction and do not replicate the bidding process which generally takes place prior to Day 46.

(g) The Code Committee's conclusions

5.30 The Code Committee considers that the default auction procedure which the Panel would normally impose under Rule 32.5 should be a modified form of the Existing Default Procedure.

5.31 The Code Committee considers that, in the absence of the agreement of the parties to an offer, it would not be appropriate to impose on them a default auction procedure based on the Corus model or a single round sealed bid procedure. In particular, the Code Committee considers that certain features of the Corus model, for example the short time frame between rounds, the lack of transparency and the final round of sealed bids (with or without formula offers), could be features

which a competing offeror or the offeree company might find objectionable. However, the Code Committee notes that, even if the Corus model is not adopted as the new default procedure, the Panel would nevertheless be able to give effect to an agreement between the parties to an offer to adopt the same or a similar procedure in a particular case.

5.32 In summary, the Code Committee has concluded that:

(a) the principal features of the Existing Default Procedure (i.e. daily bidding in a transparent auction commencing on Day 46) should be retained;

(b) the Existing Default Procedure, modified so as to give greater certainty as to the conduct and timing of the procedure, should be incorporated into the Code as a new Appendix 8; and

(c) Rule 32.5 should continue to allow the Panel to give effect to an alternative auction procedure which may be agreed between competing offerors and the board of the offeree company.

Q13 Should the default auction procedure be based on the Existing Default Procedure? If not, is there an alternative model which would be more appropriate?

Q14 Should the default auction procedure be incorporated into the Code as a new Appendix 8?

(h) Proposed new Appendix 8

(i) Introduction

5.33 As indicated above, the Code Committee considers that the opportunity should be taken to make certain modifications to the Existing Default Procedure. The draft auction rules set out in the proposed new Appendix 8 in Appendix A (the

"**Proposed Auction Procedure**") modify the Existing Default Procedure so as to provide greater clarity to the parties to an offer and market participants as to the conduct of the procedure, whilst preserving the principal features of the Existing Default Procedure, i.e. a transparent auction with bidding rounds in 24 hour intervals.

5.34 Whilst the proposed Appendix 8 would set out the overall procedure in relation to the auction process, the Code Committee would envisage that, in each relevant case, the Executive would issue detailed instructions to each competing offeror and the offeree company in order to give effect to the auction procedure. This is referred to in paragraph 1(b) of Appendix 8.

5.35 The main features of the proposed new Appendix 8 are summarised below.

(ii) Number of bidding rounds/guillotine

5.36 The Existing Default Procedure does not specify the number of rounds that may occur before the auction is concluded. Instead, Note 2 on Rule 32.5 currently provides that the Panel may impose a final time limit for announcing revisions to competing offers, taking into account representations by the board of the offeree company, the revisions previously announced and the duration of the procedure.

5.37 Therefore, under the current regime, an auction would commence without any clarity as to its end date. The Code Committee believes that specifying the number of rounds in the auction rules themselves would be beneficial by providing certainty, at the outset of the auction, as to when the auction will be concluded.

5.38 The Code Committee believes that the benefit of providing such certainty outweighs any disadvantage caused by the loss of the flexibility which Note 2 on Rule 32.5 currently provides. The Code Committee also notes that a fixed

number of rounds has been agreed between the parties to the offer on each of the agreed auction procedures which has occurred since 2002.

5.39 In the proposed Appendix 8, the Code Committee has set out an auction procedure involving a maximum of five rounds of bidding (following any offer made on or before 5.00pm on Day 46), taking place over the five business days immediately following Day 46. The Code Committee believes that this should provide sufficient time in which to achieve a resolution of the competitive situation but without unnecessarily extending the offer timetable. The Code Committee considers that it is important that each round of bidding should take place on a business day in order to give the market(s) on which the securities of the offeree company and, where relevant, the competing offerors, are traded the opportunity to evaluate the terms of any revised offer.

Q15 Should the Proposed Auction Procedure provide for an auction process with a maximum of five rounds over five consecutive business days?

(iii) When a competing offeror is permitted to announce a revised offer

5.40 Under the Proposed Auction Procedure, either or both of the competing offerors would be permitted to announce a revised offer in the first round of the auction. However, in any subsequent round (other than in the fifth and final round), a competing offeror would be permitted to announce a revised offer only if the other competing offeror had announced a revised offer in the previous round.

5.41 In other words, if both competing offerors were to announce a revised offer on Auction Day 1, either or both of them would be permitted to announce a revised offer on Auction Day 2. If both competing offerors were then to announce a revised offer on Auction Day 2, either or both of them would be permitted to announce a revised offer on Auction Day 3. However, as soon as the competing offerors started to submit bids on alternate days, they would continue to bid alternately until the fifth and final day (if any) of the auction. For example, if

only Offeror A announced a revised offer on Auction Day 1, only Offeror B would be permitted to announce a revised offer on Auction Day 2 (and so on until Auction Day 5). If, on any day of the auction, the relevant competing offeror, or offerors, permitted to announce a revised offer on that day did not do so, the auction would then end.

5.42 Therefore, it would be possible for both competing offerors to announce revised offers in all five rounds of the auction. However, a competing offeror would not be permitted to announce a revised offer in the second, third or fourth rounds if the other competing offeror had not announced a revised offer in the previous round. This would ensure that a competing offeror could not simply continue to increase its offer incrementally in each round where the other competing offeror had not announced any revision to its offer. The Code Committee considers that the auction process may be undermined if a competing offeror could keep the process alive by simply making minor revisions to its offer which are not made in response to a revision made by the other competing offeror.

5.43 As regards Auction Day 5, the Code Committee believes that, if the auction has not ended by then, both competing offerors should be permitted to announce a revised offer in the fifth and final round of the auction. Accordingly, provided that a competing offeror which was permitted to announce a revised offer on Auction Day 4 did so, both competing offerors would be permitted to announce a revised offer on Auction Day 5. This would ensure that there would be no advantage afforded to any competing offeror who might otherwise be entitled to go last.

5.44 An alternative to the procedure set out in paragraphs 5.40 to 5.43 above would be to provide that only the competing offeror with the "lowest" offer on Day 46 may announce a revised offer on Auction Day 1, with sequential bidding then following in the subsequent rounds. However, whilst it may be possible to determine the "lowest" offer in the case of competing offers which are both for

100% cash consideration, this may be more difficult where one or more of the competing offers is for non-cash consideration. Given the desire for the auction procedure to apply universally to competing offers involving all forms of consideration, the Code Committee favours the approach set out in paragraphs 5.40 to 5.43 above.

Q16 Should both of the competing offerors be permitted to announce a revised offer in the first round of the auction?

Q17 In the second, third and fourth rounds, should a competing offeror be permitted to announce a revised offer only if the other competing offeror has announced a revised offer in the previous round?

Q18 Should both of the competing offerors be entitled to announce a revised offer in the fifth and final round?

(iv) Minimum increments

5.45 The Code Committee has considered, but dismissed, the idea that the Proposed Auction Procedure should require that any revised offer announced by a competing offeror should incorporate a minimum incremental increase above the value of the last revised offer announced by the other competing offeror. This is because the Code Committee does not believe that the Panel should be required to make commercial judgements as to what the appropriate minimum incremental increase should be in any particular case. The Code Committee notes the risk that the competing offerors might not make significant revisions until the final round of the auction, resulting in the early rounds being largely inconsequential, but considers that this should not be the Panel's concern.

5.46 In addition, where one or more of the competing offerors is offering securities as consideration, it may not be possible readily to identify which is the "higher" and which the "lower" bidder (particularly given that the market value of the securities may be constantly fluctuating) or to stipulate a minimum incremental increase.

The Code Committee considers that the Proposed Auction Procedure should be capable of being applied to all competitive situations, regardless of the consideration being offered by the competing offerors and considers that it would be unsatisfactory if, say, the Proposed Auction Procedure were to require minimum incremental increases to revised offers where both offers were in cash but not where one of the competing offerors was offering non-cash consideration.

Q19 Do you agree that the Proposed Auction Procedure should not require revised offers to incorporate minimum incremental increases to previous offers?

(v) Formula offers

5.47 An auction procedure which permits a competing offeror to price its offer by reference to the value of the other competing offeror's offer (subject to a maximum price) has the attraction of producing an outcome which ought to be the same as an open auction (where the winner is the bidder prepared to pay the highest price, although this may not be its maximum price), but does so on an accelerated basis. However, a formula offer procedure lacks the transparency of an open auction and is not easily applicable where non-cash consideration is being offered. Therefore, the Code Committee considers that the Proposed Auction Procedure should include a provision (in paragraph 2(f) of Appendix 8) expressly prohibiting competing offerors from increasing the value of the consideration offered by reference to such a formula.

5.48 The Code Committee considers that it should be open to the parties to an offer to permit such formula offers in any alternative auction procedure which they are able to agree. However, the Code Committee notes that such formula offers have been expressly prohibited in all of the alternative auction procedures agreed since 2002, other than in the case of Corus.

Q20 Should the Proposed Auction Procedure prohibit the announcement of a revised offer where the consideration is calculated by reference to a formula that is determinable by reference to the value of a revised offer by the other competing offeror (in the absence of agreement between the parties that such formula offers should be permitted)?

(vi) Fifth and final round: conditional offers

5.49 Given that both competing offerors would be entitled to announce revised offers in the fifth and final round, a competing offeror might run the risk of bidding against itself in that round (i.e. announcing a revised offer when no revised offer is announced by the other competing offeror). To address this, the Code Committee considers that the Proposed Auction Procedure should provide that, in the fifth and final round only, a competing offeror ("**Offeror A**") should be entitled to submit its revised offer to the Panel subject to the condition that the offer will only be required to be announced in the event that the other competing offeror ("**Offeror B**") also submits a revised offer to the Panel.

5.50 The Code Committee considered whether it would be appropriate for the Proposed Auction Procedure to allow Offeror A to submit its final revised offer to the Panel subject to the condition that its offer would only be required to be announced in the event that Offeror B submitted a revised offer which was higher than Offeror A's previous offer (or some other means of valuation). However the Code Committee believes that such conditions would be undesirable as they could give rise to difficulties regarding the valuation of offers which involve non-cash consideration when determining whether such a condition had been satisfied. Accordingly, the Code Committee considers that the only condition to which the announcement of a revised offer in the final round may be subject should be the condition referred to in paragraph 5.49 above.

Q21 Should a competing offeror be permitted to submit a revised offer to the Panel in the fifth and final round subject to the condition that it will be announced only if the other competing offeror also submits a revised offer?

(viii) New forms of consideration

5.51 The Code Committee has considered whether the Proposed Auction Procedure should prohibit the introduction of new forms of consideration during the auction (i.e. after 5.00pm on Day 46). The principal purpose of such a prohibition would be to ensure that a competing offeror would not be required within an unreasonably short period of time to evaluate any new form of consideration offered by the other competing offeror and decide how to respond.

5.52 The Code Committee believes that a prohibition on the introduction of new forms of consideration would not be in the interests of offeree company shareholders and considers that offeree company shareholders will have sufficient time to evaluate any new consideration offered, given that the relevant offer(s) will be open for acceptance for 14 days from the publication of the revised offer document. In addition, the Code Committee considers that the period of at least 24 hours between auction rounds (which will take place only on business days) will provide sufficient time for a competing offeror to evaluate any new form of consideration introduced by the other competing offeror.

Q22 Do you agree that the introduction of new forms of consideration during the auction should not be prohibited?

(ix) Dealing in shares and procuring irrevocable commitments and letters of intent

5.53 The rules of previous auctions have generally been consistent in prohibiting the parties to the offer, and persons acting in concert with them, from dealing in relevant securities of the offeree company and from procuring (or amending) irrevocable commitments or letters of intent in relation to either offeror's offer during the auction procedure. These prohibitions have been imposed in addition to the provisions in the Code which otherwise restrict dealings in relevant securities during an offer period or which provide that certain dealings may give

rise to certain consequences (such as a requirement for an offeror to increase the value of its offer or to offer a particular type of consideration).

5.54 The Code Committee notes that the introduction of a prohibition on dealings in relevant securities and the procuring of irrevocable commitments or letters of intent might have an impact on an offeror's willingness to announce a revised offer during the auction procedure. However, the Code Committee considers that any concerns in this regard are outweighed by the need to ensure that the auction procedure is conducted in the context of an orderly framework. The Code Committee therefore considers that the Proposed Auction Procedure should prohibit the parties to the offer and persons acting in concert with them from dealing in the relevant securities of the offeree company, and from procuring or amending irrevocable commitments and letters of intent, during the auction procedure, notwithstanding that such activities are not generally prohibited during the course of an offer.

Q23 Should the terms of the Proposed Auction Procedure prohibit dealings in the relevant securities of the offeree company by the parties to the offer and persons acting in concert with them, and the procuring of irrevocable commitments and letters of intent, during the auction procedure?

5.55 In addition, the Code Committee considers that the Proposed Auction Procedure should prohibit a competing offeror, and persons acting in concert with it, from acquiring interests in the shares of the offeree company after the end of the auction procedure on better terms than the terms of that competing offeror's offer at that time. The auction procedure is designed to bring finality to the competitive situation and the Code Committee considers that a competing offeror should not therefore put itself into a position where it would be obliged to revise its offer after the end of the auction procedure as a result of acquiring interests in shares at above its then offer price.

5.56 The Code Committee notes that, under Note 3 on Rule 32.1, an offeror is not generally able to revise its offer, or place itself in a position where it would be required to revise its offer, in the 14 days ending on the last day on which its offer is able to become unconditional as to acceptances. However, the Code Committee notes that Note 3 on Rule 32.1 would not strictly apply in the period of time between the end of the auction procedure and the publication by a competing offeror of its revised offer document and therefore considers that an equivalent provision should be introduced into the Proposed Auction Procedure.

Q24 Should the terms of the Proposed Auction Procedure provide that, between the end of the auction procedure and the end of the offer period, a competing offeror and any person acting in concert with it must not acquire any interest in the shares of the offeree company if it would then be required to revise its offer?

(x) Announcements during the auction process

5.57 The purpose of the auction is to achieve finality, in an orderly manner, in relation to the financial terms of each competing offeror's offer. The Code Committee considers that there is a risk that the achievement of this aim could be compromised by announcements made by competing offerors which include comments or argumentation regarding the auction procedure or the financial terms or other aspects of a competing offeror's offer. Accordingly, the Code Committee believes that the only offer-related announcements that should be made by the competing offerors and the offeree company during the period of the auction should be the revised offer announcements which the competing offerors are permitted to make under the terms of the Proposed Auction Procedure. The form of these announcements would be agreed between the Panel and the parties before the commencement of the auction and the contents of the announcements would be limited to the matters required by Rule 2.7.

5.58 The Code Committee proposes to include a provision in the Proposed Auction Procedure (paragraph 2(h) of Appendix 8) which would prohibit other

announcements which related to, or could reasonably be expected to affect the orderly operation of, the auction procedure or which related to the terms of either competing offeror's offer. However, the Code Committee does not envisage that the proposed prohibition would be applied so as to restrict the release of announcements which were required to be made pursuant to the parties' regulatory obligations.

Q25 Should the terms of the Proposed Auction Procedure prohibit announcements by the competing offerors or the offeree company (or persons acting in concert with them) which relate to, or could reasonably be expected to affect the orderly operation of, the auction procedure or which relate to the terms of either competing offeror's offer?

(i) Proposed amendments

5.59 The Code Committee proposes to amend Rule 32.5, and to introduce the proposed new Appendix 8, as set out in Appendix A.

Q26 Do you have any comments on the proposed amendments to Rule 32.5 or the proposed new Appendix 8?

6. Potential controllers which are granted a Rule 9 waiver

(a) Introduction

6.1 Note 1 of the Notes on Dispensations from Rule 9 provides that, when the issue of new securities as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make a mandatory offer for a company under Rule 9.1, the Panel will normally waive the obligation if there is a vote of independent shareholders in general meeting (a "**Rule 9 waiver**"). Appendix 1 sets out the procedure to be followed where the Panel is asked to grant a Rule 9 waiver as a result of such a transaction (a "**whitewash transaction**").

6.2 Where a person or group of persons acting in concert is granted a Rule 9 waiver, the Code does not restrict the person or group from thereafter making an offer for the company. In particular, the restrictions in Rule 35.1 and Rule 35.2 do not apply following a whitewash transaction. Under Rules 35.1 and 35.2, an offeror is prohibited from making a further offer for 12 months if it has made a general offer which has lapsed or if it has made a partial offer which could result in the offeror and persons acting in concert with it being interested in shares carrying not less than 30% but not holding shares carrying more than 50% of the voting rights of the offeree company (whether successful or not).

6.3 In the light of concerns raised in the context of a recent case, the Code Committee has considered whether the Code should be amended so as to require that a person or group of persons acting in concert which has been granted a Rule 9 waiver should be restricted from making an offer for the company for a period following the grant of the waiver or, alternatively, whether a person or group of persons acting in concert which has obtained a Rule 9 waiver should be required to make a no intention to bid statement in the whitewash transaction circular with the result that, under Rule 2.8, it would then be restricted from making an offer for six months.

(b) Arguments in favour of and against introducing a restriction

6.4 The principal argument in favour of introducing amendments to the Code of the type described in paragraph 6.3 above is that the future intentions of a person or group of persons the subject of a Rule 9 waiver might represent material information for shareholders in the offeree company in their decision whether to approve the whitewash transaction. Such shareholders may be prepared for control of the offeree company to pass in the manner contemplated by the whitewash transaction, but only on the condition that the person or group of persons the subject of the Rule 9 waiver is not at the time of the whitewash transaction contemplating making an offer for the company or in a position shortly thereafter to use the stake thereby acquired as a platform for making an offer (which offer would be more likely to succeed by virtue of the offeror's increased shareholding).

6.5 The principal argument against introducing amendments to the Code of the type described in paragraph 6.3 above is that a Rule 9 waiver can be granted by the Panel only with the agreement of the board of the offeree company which can, accordingly, set the terms upon which it is willing for the whitewash transaction to proceed. Therefore, a board of an offeree company which has any concerns that the person or group of persons the subject of the Rule 9 waiver might wish to make an offer shortly thereafter could make it a condition of its seeking the waiver that that person(s) should, for example, either enter into a "standstill agreement" with the company or, alternatively, make a no intention to bid statement in the whitewash transaction circular, thereby triggering the restrictions set out in Rule 2.8.

(c) Conclusion

6.6 The Code Committee believes that the Code should require that the whitewash transaction circular should explain that the potential new controller will not be

restricted from making an offer for the company following the approval of the proposals at the shareholders' meeting, unless it has entered into a standstill agreement with the company or has made a no intention to bid statement (in which case the Code Committee considers that full details of the agreement or statement should be disclosed).

6.7 The Code Committee considers that this proposal would have the following advantages:

(a) it would ensure that shareholders in the offeree company were on notice of the possibility of the potential new controller announcing an offer or possible offer at any stage following the shareholders' meeting to approve the Rule 9 waiver. As a result, shareholders could take this matter into account in making their decision as to whether to approve the waiver and they could, for example, make clear to the board of the offeree company that their approval would only be forthcoming if appropriate safeguards were put in place to prevent this from happening (such as the potential new controller entering into a standstill agreement); and

(b) it would remind the board of the offeree company (and its advisers) that there is no restriction under the Code on its requiring, as a condition of its seeking a Rule 9 waiver from the Panel, that the potential new controller be restricted from making an offer or from acquiring further interests in shares and that the company might therefore wish to consider introducing appropriate safeguards in order to protect shareholders' interests. Whether any restriction should be imposed and, if so, the form it should take and the period for which it should apply would be for the board to determine on a case by case basis taking into account, among other things:

(i) the particular circumstances of the Rule 9 waiver, including the rationale for the whitewash transaction;

(ii) the identity of the potential new controller;

(iii) the size of the potential controlling stake; and

(iv) the time at which the person will or might come to hold that stake.

6.8 The Code Committee is therefore proposing to amend Note 1 of the Notes on Dispensations from Rule 9 and Section 4 of Appendix 1, as set out in paragraph 6.10 below.

6.9 In addition, the Code Committee proposes to amend Note 5 on the definition of "acting in concert", which relates to standstill agreements, so as to codify the Executive's application of that Note, as described in Practice Statement No 16. If the proposed amendments, as set out in paragraph 6.11 below, were to be adopted, the Code Committee understands that the Executive would then withdraw Practice Statement No 16.

(d) Proposed amendments

6.10 The proposed amendments to Note 1 of the Notes on Dispensations from Rule 9 and Section 4 of Appendix 1 are as follows:

(a) Note 1 of the Notes on Dispensations from Rule 9:

"***1. Vote of independent shareholders on the issue of new securities ("Whitewash")***

…

The appropriate provisions of the Code apply to whitewash proposals. Full details of the potential number and percentage of shares in which the person or group of persons acting in concert might become interested (together with details of the different interests concerned) must be

disclosed in the document published in connection with the issue of the new securities, which must also include competent independent advice on the proposals which the shareholders are being asked to approve, together with a statement that the Panel has agreed to waive any consequent obligation under this Rule to make a general offer. The resolution must be made the subject of a poll. In addition, unless the person or group of persons acting in concert has entered into an agreement with the company not to make an offer, or has made a statement in the document that it does not intend to make an offer, the document must contain a statement that the person or group will not be restricted from making an offer for the company in the event that the proposals are approved at the shareholders' meeting. The Panel must be consulted and a proof document submitted at an early stage."; and

(b) Section 4 of Appendix 1:

"**4 WHITEWASH CIRCULAR**

The circular must contain the following information and statements and comply appropriately with the Rules of the Code as set out below:

…

(f) a statement that, in the event that the proposals are approved at the shareholders' meeting, the potential controllers will not be restricted from making an offer for the offeree company, unless the potential controllers have either:

(i) entered into an agreement with the company not to make an offer (see Note 5 on the definition of acting in concert); or

(ii) made a statement that they do not intend to make an offer (see Rule 2.8),

in which case full details of such agreement or statement must be included in the circular and the agreement or statement published on a website in accordance with Rule 26.2;".

6.11 The proposed amendments to Note 5 on the definition of "acting in concert" are as follows:

"***5. Standstill agreements***

Agreements between a company, or the directors of a company, and a person which restrict that person or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing the number of shares in which he or they are interested, may be relevant for the purpose of this definition. However, the Panel will not normally consider the parties to the agreement to be acting in concert provided that the agreement does not restrict any of the parties from either:

(a) accepting an offer for the company's shares at any stage; or

(b) agreeing to accept any offer for the company's shares either before or after its announcement.

The same approach will normally apply to an agreement to which the company's financial adviser or nominated adviser and/or its sponsor and/or underwriter, rather than the company itself (and/or its directors), is a party, for example, an agreement entered into at the time of an equity offering with a view to ensuring an orderly aftermarket in the company's shares.

Where parties intend to enter into standstill agreements to which neither the company (and/or its directors) nor its financial adviser or nominated adviser, its sponsor or underwriter is a party (for example, an agreement between two shareholders), or in any other cases of doubt, the Panel should be consulted in advance.

~~*In cases of doubt, the Panel should be consulted.*~~".

Q27 Should the Code be amended so as to require a whitewash transaction circular to state that potential controllers which are granted a Rule 9 waiver are not restricted from making an offer for the company?

Q28 Do you have any comments on the proposed amendments to Note 1 of the Notes on Dispensations from Rule 9, Section 4 of Appendix 1 and Note 5 on the definition of "acting in concert"?

7. Disclosure of irrevocable commitments, letters of intent and interests in relevant securities

(a) Current disclosure requirements[1]

(i) Rule 2.11(a)

7.1 Rule 2.11(a) provides that if, during an offer period, a party to the offer, or any person acting in concert with it, procures an irrevocable commitment or a letter of intent, that party must publicly disclose the details in accordance with the Notes on Rule 2.11. In summary, the Notes on Rule 2.11 provide as follows:

(a) Note 1 on Rule 2.11 requires a disclosure under Rule 2.11(a) to be made by no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured. In addition, Note 1 provides that, where an offeror announces a firm intention to make an offer under Rule 2.7 by that deadline, the details required under Rule 2.11(a) may be included in that announcement and are not required to be the subject of a separate disclosure;

(b) Note 2 on Rule 2.11 requires the disclosure to be made via a Regulatory Information Service and otherwise in accordance with the requirements of Rule 2.9; and

(c) Note 3 on Rule 2.11 describes the details which must be included in a disclosure made under Rule 2.11. In the case of an irrevocable commitment or a letter of intent procured by a potential offeror prior to the announcement of a firm intention to make an offer, the disclosure must

[1] A summary of the current and proposed disclosure requirements under the Code for irrevocable commitments is set out in Appendix C.

include the value of the possible offer, which value the potential offeror will then be bound to in accordance with Rule 2.5(a).

7.2 The Definitions Section of the Code defines "irrevocable commitments and letters of intent" as including irrevocable commitments and letters of intent:

(a) to accept or not to accept (or to procure that any other person accept or not accept) an offer; or

(b) to vote (or to procure that any other person vote) in favour of or against a resolution of an offeror or the offeree company (or of its shareholders) in the context of an offer, including a resolution to approve or to give effect to a scheme of arrangement.

7.3 As indicated above, the requirements of Rule 2.11 apply to any party to the offer. "Parties to the offer" are defined in the Definitions Section as being the offeree company (or potential offeree company) and any offeror (or potential offeror) whose identity has been publicly announced. Therefore, an irrevocable commitment or a letter of intent which is procured during an offer period by a person who has not been publicly identified as a potential offeror will not fall to be disclosed under Rule 2.11(a).

7.4 However, under Rule 2.11(c), if a party to the offer is required under Rule 2.11(a) to disclose an irrevocable commitment or a letter of intent which has been procured during an offer period, that disclosure must include details of any irrevocable commitment or letter of intent which that person has previously procured and which has not previously been disclosed either under Rule 2.11(a) or in the person's Opening Position Disclosure (for example, it might not have previously been disclosed because it was procured either (i) prior to the offer period or (ii) during the offer period but at a time when the person had not been publicly identified as a potential offeror).

(ii) Opening Position Disclosures

7.5 In addition to any disclosure requirement under Rule 2.11(a), a party to an offer may be required to disclose any irrevocable commitment or letter of intent procured by it, or by any person acting in concert with it, in that party's Opening Position Disclosure. As explained at the beginning of Rule 8, an Opening Position Disclosure is, in summary, an announcement containing details of interests or short positions in relevant securities which is required to be made by a person subject to the requirements of Rule 8. An offeror is required to make an Opening Position Disclosure with regard to itself and any person acting in concert with it under Rule 8.1(a) and an offeree company is required to make an Opening Position Disclosure with regard to itself and any person acting in concert with it under Rule 8.2(a). Under paragraph (viii) of Note 5(a) on Rule 8, an Opening Position Disclosure by a party to an offer is required to include not only details of interests and short positions in relevant securities but also details of any irrevocable commitments or letters of intent which it, or any person acting in concert with it, has procured.

7.6 Under Note 2(a) on Rule 8, an Opening Position Disclosure is normally required to be made within 10 business days of:

(a) the commencement of an offer period; or

(b) if later, the announcement which first publicly identifies an offeror.

However, if an offeror announces a firm intention to make an offer before the end of that period of 10 business days, the offeror's deadline is, in effect, accelerated and it must make its Opening Position Disclosure at the same time as it makes its firm offer announcement.

7.7 Under Rule 2.11(b), if a party to the offer, or any person acting in concert with it, has procured an irrevocable commitment or a letter of intent prior to:

(a) the commencement of the offer period; and/or

(b) the publication of its Opening Position Disclosure,

the relevant details must be disclosed in the Opening Position Disclosure made by the party to the offer.

(iii) Rule 2.7

7.8 Rule 2.7(c) sets out the details which must be disclosed when an offeror announces its firm intention to make an offer. Rule 2.7(c)(viii) provides that the announcement must include a confirmation that the offeror is on the same day disclosing, or has previously disclosed, the details required to be disclosed by it in an Opening Position Disclosure under Rule 8.1(a).

7.9 Rule 2.7(c) and Rule 8.1(a) were introduced into the Code in their current forms in April 2010, following the consultation on PCP 2009/1 ("Extending the Code's disclosure regime"). Prior to that time, the then Rule 2.5(b)(iii) required details of the offeror's interests and short positions in the relevant securities of the offeree company, and those of persons acting in concert with it, to be disclosed in the firm offer announcement itself. In addition, Rule 2.5(b)(iv) required the firm offer announcement to disclose details of any irrevocable commitments or letters of intent procured by the offeror or its associates.

(b) Summary of the principal proposed amendments

7.10 The Code Committee has reviewed the operation and interaction of the provisions of the Code summarised above. The Code Committee believes that a number of

amendments should be introduced in order to improve the disclosure prior to the publication of the offer document and/or the offeree board circular of:

(a) irrevocable commitments and letters of intent procured by the parties to an offer or persons acting in concert with them; and

(b) the interests in relevant securities and short positions of the parties to an offer and persons acting in concert with them.

7.11 In summary, the Code Committee considers that:

(a) any irrevocable commitment or letter of intent procured by a potential offeror prior to an offer period should be disclosed by no later than 12 noon on the business day following the identification of the potential offeror;

(b) Rule 2.7 should be amended so as to reinstate the requirement for an offeror to disclose in its firm offer announcement details of the interests and short positions in the relevant securities of the offeree company held by it and persons acting in concert with it, and of any irrevocable commitments and letters of intent which it has procured; and

(c) details of irrevocable commitments and letters of intent should no longer be required to be disclosed in an Opening Position Disclosure but should continue to be disclosed by means of an announcement made in accordance with Rule 2.11 or Rule 2.7 (as appropriate).

(c) Irrevocable commitments and letters of intent procured prior to an offer period

7.12 The Code Committee considers that any irrevocable commitment or letter of intent procured by a potential offeror, or a person acting in concert with it, prior to

an offer period should be disclosed by no later than 12 noon on the business day following the identification of the potential offeror as such.

7.13 The Code Committee therefore proposes to delete Rule 2.11(c) and to amend Rule 2.11(b), as follows:

> "**(b) If ~~a party to the offer~~ an offeror, or any person acting in concert with it, has procured an irrevocable commitment or a letter of intent prior to the commencement of the offer period, it must publicly disclose the details in accordance with the Notes on this Rule 2.11 by no later than 12 noon on the business day following the date of the announcement that first identifies it as an offeror. ~~and/or prior to midnight on the day before an Opening Position Disclosure is made under Rule 8.1(a) or 8.2(a), the details must be disclosed in the Opening Position Disclosure made by the relevant party to the offer (see Note 5(a) on Rule 8 and the Notes on this Rule 2.11).~~**".

7.14 In addition, the Code Committee proposes to move the timing requirement for a disclosure made under Rule 2.11(a) out of Note 1 on Rule 2.11 and into Rule 2.11(a) itself, as set out in Appendix A.

Q29 Should Rule 2.11(b) be amended so as to require irrevocable commitments and letters of intent procured prior to an offer period to be disclosed following the identification of the offeror as such, and Rule 2.11(c) deleted, as proposed?

(d) Firm offer announcements

7.15 The Code Committee considers that the previous requirement for an offeror to disclose in its firm offer announcement details of the interests and short positions in the relevant securities of the offeree company held by it and persons acting in concert with it, and of any irrevocable commitments and letters of intent which it has procured, should be reinstated. In addition, the Code Committee considers that the requirement for an offeror to make an Opening Position Disclosure under Rule 8.1(a) should be retained. However, the Code Committee considers that where, at the time of its firm offer announcement, the offeror has not already

made an Opening Position Disclosure, it would be unnecessary for the offeror to make an Opening Position Disclosure immediately, as is currently the case, and that the usual "10 business days" deadline for Opening Position Disclosures should apply in such circumstances.

7.16 The Code Committee recognises that where an offeror announces a firm intention to make an offer at the same time as or shortly after it has first been publicly identified it may not be practicable in the time available to have made enquiries of all persons acting in concert with it in order to include all relevant details in respect of such persons in the announcement. In such circumstances, the Code Committee considers that this fact should be stated in the firm offer announcement and all relevant details included in the subsequent Opening Position Disclosure. This approach would be similar to that currently adopted in Note 2(a)(i) on Rule 8, which recognises that where an offeror's Opening Position Disclosure deadline is brought forward by its announcement of a firm intention to make an offer, it may not be practicable in the time available to obtain all relevant details for all persons acting in concert with it.

7.17 The Code Committee therefore proposes to amend Rule 2.7, and to introduce a new Note 3 on Rule 2.7 (in substitution for the provisions currently in the second paragraph of Note 2(a)(i) on Rule 8), as follows:

> "**2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER**
>
> …
>
> **(c) When a firm intention to make an offer is announced, the announcement must state:**
>
> …
>
> **<u>(v) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which it has a right to subscribe, in</u>**

each case specifying the nature of the interests or rights concerned (see Note 5 on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell, any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(vi) details of any irrevocable commitment or letter of intent procured by the offeror or any person acting in concert with it (see Note 3 on Rule 2.11);

(vii) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold and details of any financial collateral arrangements which the offeror or any person acting in concert with it has entered into (see Note 4 on Rule 4.6);

…

~~**(viii) confirmation that the offeror is on the same day disclosing, or has previously disclosed, the details required to be disclosed by it under Rule 8.1(a) and, where such disclosure is being made on the same day but (in accordance with Note 2(a)(i) on Rule 8) may not include all relevant details in respect of all persons acting in concert with the offeror, confirmation that a further disclosure in accordance with Rule 8.1(a) and Note 2(a)(i) on Rule 8 will be made as soon as possible; and**~~

…

NOTES ON RULE 2.7

…

3. Persons acting in concert with the offeror

If an offeror announces a firm intention to make an offer before the deadline for its Opening Position Disclosure (see Note 2(a)(i) on Rule 8), it may not be practicable in the time available to have made enquiries of all persons acting in concert with it in order to include all relevant details in respect of such persons in the announcement. In such circumstances, this fact should be stated and all relevant details included in the Opening Position Disclosure. The Panel should be consulted in all such cases.".

Q30 Should Rule 2.7 be amended so as to require details of interests and short positions in relevant securities of the offeree company, and irrevocable commitments and letters of intent, to be included in the announcement of a firm intention to make an offer, and the new Note 3 on Rule 2.7 introduced, as proposed?

7.18 In addition, the Code Committee proposes to amend Note 2(a)(i) on Rule 8, as follows:

> "***2. Timing of disclosure***
>
> ***(a) Disclosures by the parties to the offer***
>
> *(i) ~~Subject to the following paragraph, a~~ A party to the offer must make an Opening Position Disclosure by no later than 12 noon on the day falling 10 business days after the commencement of the offer period or the announcement that first identifies an offeror (as the case may be).*
>
> *~~However, if an offeror announces a firm intention to make an offer before the deadline in the previous paragraph, it must at the same time make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). In such a case, it may not be practicable in the time available to have made enquiries of all persons acting in concert with the offeror in order to include all relevant details in respect of such persons in the Opening Position Disclosure. In such circumstances, this fact should be stated and a further Opening Position Disclosure, containing all relevant details, should be made as soon as possible thereafter and in any event (except with the consent of the Panel) before the deadline in the previous paragraph. The Panel should be consulted in all such cases.~~*
>
> *If a party to the offer deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before the ~~relevant~~ deadline in the previous paragraph~~s above~~, it must make a Dealing Disclosure (in respect of the dealings and positions of itself alone) in accordance with Rule 8.1(b) or 8.2(b) (as appropriate) and with paragraph (ii) below. However, the party to the offer must also make an Opening Position Disclosure (in respect of the positions of itself and any persons acting in concert with it) by the ~~relevant~~ deadline above.*".

Q31 Should Note 2(a)(i) on Rule 8 be amended such that the "10 business days" deadline would apply to an offeror's Opening Position Disclosure, regardless of when it announced its firm intention to make an offer?

7.19 The Code Committee also proposes:

(a) to amend Note 1 on Rule 2.11, as follows:

> "***1. ~~Timing of d~~Disclosure in firm offer announcement***
>
> …
>
> *~~No separate disclosure by an offeror is required under Rule 2.11(a) w~~Where the ~~relevant information is~~ details required to be disclosed under Note 3 on Rule 2.11 are, pursuant to Rule 2.7(c)(vi), included in an announcement of a firm intention to make an offer ~~made under Rule 2.7~~ which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured, no separate disclosure is required under Rule 2.11(a) or (b).*
>
> *Similarly, where the details required to be disclosed under Note 3 on Rule 2.11 are included in an announcement of a possible offer which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured, no separate disclosure is required under Rule 2.11(b).*"; and

(b) to make consequential amendments to Note 11(c) on the definition of "acting in concert", Note 15 on Rule 8 and the Note on Rule 19.3, as set out in Appendix A.

Q32 Should Note 1 on Rule 2.11 be amended so as to make clear that no separate disclosure is required when details of irrevocable commitments and letters of intent are disclosed in a firm or possible offer announcement made by no later than 12 noon on the business day following the date on which they are procured?

(e) Removal of requirement to disclose details of irrevocable commitments and letters of intent in an Opening Position Disclosure

7.20 Where details of irrevocable commitments and letters of intent procured by an offeror have been disclosed in a firm offer announcement under Rule 2.7, or otherwise disclosed by means of an announcement required by Rule 2.11, the Code Committee considers that this would represent a sufficient level of disclosure and that it would be unnecessarily duplicative for those details also to be disclosed in the offeror's Opening Position Disclosure.

7.21 The Code Committee therefore proposes to delete paragraph (viii) of Note 5(a) on Rule 8.

Q33 Should paragraph (viii) of Note 5(a) be deleted so as to remove the requirement to disclose details of irrevocable commitments and letters of intent in an Opening Position Disclosure?

(f) Conditions to irrevocable commitments

7.22 Paragraph (c) of Note 3 on Rule 2.11 provides that the disclosure of an irrevocable commitment must include details of the circumstances (if any) in which it will cease to be binding. The Code Committee considers that, in addition, the disclosure should include details of any outstanding conditions to which the irrevocable commitment is subject.

7.23 The Code Committee therefore proposes to amend Note 3 on Rule 2.11, as follows:

> *"**3. Contents of disclosure***
>
> *A disclosure of the procuring of an irrevocable commitment or a letter of intent must provide full details of the nature of the commitment or letter including:*

…

(c) in respect of an irrevocable commitment, <u>any outstanding conditions to which it is subject and</u> the circumstances (if any) in which it will cease to be binding; and".

Q34 Should Note 3 on Rule 2.11 be amended so as require the disclosure of any outstanding conditions to which an irrevocable commitment is subject?

(g) Potential offerors

7.24 Note 12 on Rule 8 provides that, if a potential offeror has been referred to in an announcement by the offeree company but has not been publicly identified as such, the potential offeror and persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement in accordance with Rule 8.1 (which applies to disclosures by an offeror) or Rule 8.4 (which applies to disclosures by persons acting in concert with an offeror), as appropriate. In other words, the Panel takes the view that, even though it has not previously been publicly identified as a potential offeror, it is not appropriate for the potential offeror either:

(a) to disclose the dealings under Rule 8.3 (which applies to persons interested in 1% or more of any class of relevant securities); or

(b) not to disclose the dealings at all (i.e. if the potential offeror is not interested in 1% or more of any class of relevant securities).

7.25 Note 12 on Rule 8 also provides that, in addition to making a Dealing Disclosure, the previously unidentified potential offeror must make an announcement that it is considering making an offer for the offeree company.

7.26 The Code Committee notes that, as currently drafted, Note 12 on Rule 8 might be interpreted as not applying to a potential offeror which is participating in a formal

sale process commenced by the offeree company (as referred to in Note 2 on Rule 2.6), for example, if the potential offeror had not been a participant in the formal sale process at the time of an announcement by the offeree company in which it referred, in general terms, to the existence of the then participants in the process. However, the Code Committee considers that Note 12 on Rule 8 should apply to any potential offeror which is participating in a formal sale process, regardless of whether the potential offeror was so participating at the time of the relevant announcement by the offeree company.

7.27 The Code Committee therefore proposes to amend Note 12 on Rule 8, as follows:

> "***12. Potential offerors***
>
> *(a) If a potential offeror has been referred to in an announcement by the offeree company but has not been publicly identified as such, or if it is a participant in a formal sale process announced by the offeree company (regardless of whether it was a participant at the time of the announcement), the potential offeror and persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement in accordance with Rule 8.1(b) or Rule 8.4 respectively.*
>
> *At the same time as or before any such Dealing Disclosure, the offeror must also make an announcement that it is considering making an offer, or that it is a participant in the formal sale process, in accordance with Rule 2.9 (see also the Note on Rule 7.1 for when an immediate announcement will be required). The announcement must include a summary of the provisions of Rule 8 (see www.thetakeoverpanel.org.uk).*".

7.28 In addition, the Code Committee proposes to make consequential amendments to Note 1 on Rule 2.4, Note 2 on Rule 2.6 and the Note on Rule 7.1, as set out in Appendix A.

Q35 Should Note 12 on Rule 8 be amended so as to make clear that it applies to any participant in a formal sale process, and should consequential amendments be made to Note 1 on Rule 2.4, Note 2 on Rule 2.6 and the Note on Rule 7.1, as proposed?

(h) Documents to be published on a website

7.29 Rule 26.1 provides that copies of certain documents, including irrevocable commitments and letters of intent, must be published on a website following the announcement of a firm intention to make an offer. As currently drafted, Rule 26.1 could be interpreted as requiring copies of the specified documents to be published on a website as soon as possible after they have been entered into. However, this is only the case where the documents are entered into following the firm offer announcement.

7.30 In order to clarify this point, the Code Committee proposes to amend Rule 26.1, as follows:

> "**26.1 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE ANNOUNCEMENT OF A~~N~~ FIRM OFFER**
>
> **Except with the consent of the Panel, copies of the following documents must be published on a website ~~as soon as possible and in any event~~ by no later than 12 noon on the business day following the announcement of a firm intention to make an offer (or, if later, the date of the relevant document) until the end of the offer (including any related competition reference period):**".

Q36 Should Rule 26.1 be amended so as to make clear that the specified documents are required to be published on a website by no later than 12 noon on the business day following a firm offer announcement (or, if later, the date of the relevant document)?

(i) Announcement of numbers of relevant securities in issue

7.31 Under Rule 2.10, when an offer period begins, an offeree company must announce, as soon as possible and in any case by 9.00am on the next business day, details of all classes of relevant securities issued by the company. In addition, an offeror or publicly identified potential offeror must make a similar announcement by 9.00am on the business day following any announcement

identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.

7.32 The Disclosure Table published by the Panel contains details of all offeree companies and offerors currently in an offer period and includes the information required to be announced under Rule 2.10. The Panel publishes the initial version of the Disclosure Table between 7.30am and 8.00am on each business day. This initial version takes into account any relevant announcements that are made when (or shortly after) the Regulatory Information Services open at 7.00am.

7.33 Persons who have an obligation to make a disclosure in accordance with the requirements of Rule 8 will rely on the information contained in the Disclosure Table to ensure that they are correctly complying with those requirements. If persons who are subject to Rule 8.3 deal in relevant securities on the first day of an offer period then they must make a disclosure by 3.30pm on the next business day. If an offeree company or an offeror does not make the announcement required by Rule 2.10 until shortly before the 9.00am deadline, it can be difficult for a person with a disclosure obligation under Rule 8.3 to comply with that obligation in a timely manner. The Code Committee therefore proposes that the current deadline of 9.00am should be brought forward to 7.15am.

7.34 The Code Committee therefore proposes to amend the first paragraph of Rule 2.10, as follows:

> "**2.10 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE**
>
> **When an offer period begins, the offeree company must announce, as soon as possible and in any case by ~~9.00~~ 7.15 am on the next business day, details of all classes of relevant securities issued by the company, together with the numbers of such securities in issue. An offeror or publicly identified potential offeror must also announce the same details relating to its relevant securities as soon as possible and in any case by ~~9.00~~ 7.15 am on the business day following any announcement**

identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.".

7.35 The Code Committee emphasises that the primary obligation under Rule 2.10 is to announce the relevant details "as soon as possible". Accordingly, offeree companies and offerors should endeavour to publish announcements required under Rule 2.10 expeditiously and should not simply rely on the latest deadline specified in the rule.

Q37 Should Rule 2.10 be amended so as to bring forward the latest deadline for announcements of the numbers of relevant securities in issue from 9.00am to 7.15am?

(j) Disclosure of interests held by trusts

7.36 Note 5(f) on Rule 8 provides as follows:

> "***(f) Owner or controller details***
>
> *For the purpose of disclosing identity, the owner or controller of any interest or short position in securities disclosed must be specified, in addition to any other details. The naming of nominees or vehicle companies is insufficient. The Panel 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. However, in the case of disclosures by fund managers of dealings on behalf of, or positions held for the account of, discretionary clients, the clients need not be named.*".

7.37 On occasion, the question has arisen as to how a trust arrangement should be disclosed in the context of the requirements of Note 5(f) on Rule 8. The Code Committee understands that, in such cases, the Executive's experience has been that, whilst the trustee(s) may have discretion with respect to decisions concerning the trust's positions or dealings in relevant securities, the settlor and/or the beneficiaries of the trust may have significant influence over such decisions. Therefore, it is the Executive's practice to require that, when the owner or

controller of any interest or short position in securities who has a disclosure obligation under Rule 8 is a trust, the disclosure must contain details of the trustee(s), the settlor and the beneficiaries. However, where the beneficiaries are a defined group, for example, members of a family, it is the Executive's practice to agree that a description of the group can be used, rather than requiring all beneficiaries to be named individually.

7.38 The Code Committee believes that the Executive's practice should be codified and therefore proposes to introduce new wording into Note 5(f) on Rule 8, as follows:

> "***(f) Owner or controller details***
>
> *For the purpose of disclosing identity, the owner or controller of any interest or short position in securities disclosed must be specified, in addition to any other details. The naming of nominees or vehicle companies is insufficient. If the owner or controller of the interest or short position is a trust, details of the trustee(s), the settlor and the beneficiaries of the trust must be disclosed. Where the beneficiaries are a defined group, for example, members of a family, a description of the group will normally be sufficient.*
>
> *The Panel 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. However, in the case of disclosures by fund managers of dealings on behalf of, or positions held for the account of, discretionary clients, the clients need not be named.*".

Q38 Should Note 5(f) on Rule 8 be amended so as to require that, where the owner or controller of an interest or short position is a trust, details of the trustee(s), the settlor and the beneficiaries of the trust must be disclosed?

(k) Aggregation of dealings by connected principal traders

7.39 Note 5 on Rule 8 specifies the details that must be included in a disclosure under Rule 8. Note 5(a) on Rule 8 provides that a person with a disclosure obligation under Rule 8 is generally required to include in a Dealing Disclosure the total of

the relevant securities in question in which the dealing took place and the prices paid or received (in the case of an average price bargain, each underlying trade must be disclosed). However, under Note 5(b) on Rule 8, an exempt principal trader with recognised intermediary status dealing in a client-serving capacity is required to include in a Dealing Disclosure only the total acquisitions and disposals and the highest and lowest prices paid and received. The effect of Note 5 on Rule 8 is that:

(a) an exempt principal trader with recognised intermediary status but not dealing in a client-serving capacity;

(b) an exempt principal trader without recognised intermediary status; or

(c) a connected principal trader that does not have exempt status,

can aggregate its dealings for the purpose of disclosing under Rule 8 only to the extent the dealings were at the same price.

7.40 The Code Committee is aware that, in general, trading volumes have increased since the current disclosure regime under Rule 8 was introduced. It is conscious that, for a disclosure regime to be effective, it is important that the information disclosed is presented in a manner that can be readily understood. It believes that it would be beneficial for market participants if the length of some of the disclosures made under Rule 8 were reduced by aggregating the information. It proposes to achieve this by requiring a Dealing Disclosure by a connected principal trader to provide information on an aggregated basis, specifying only the highest and lowest prices paid and received where the sole reason for the connection is that the principal trader is controlled by, controls or is under the same control as a connected adviser to the offeror, the offeree company or a person acting in concert with the offeror or with the offeree company. However, the Code Committee believes that a person making a disclosure on an aggregated

basis should still be required to provide full trading information to the Panel, if asked to do so. Accordingly, the Code Committee proposes that Note 5(a) on Rule 8 should be amended as follows:

"***5. Details to be included in the disclosure***

(a) Public disclosures (other than Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity)

…

Subject to the following paragraph, a~~A~~ny Dealing Disclosure must also include:

…

However, a Dealing Disclosure by a connected principal trader where the sole reason for the connection is that the principal trader is controlled# by, controls or is under the same control as a connected adviser to an offeror, the offeree company or any person acting in concert with an offeror or the offeree company must include the information specified in Note 5(b) below. The Panel may, where it considers it appropriate, require the person concerned to make more detailed private disclosure to the Panel.

#See Note at end of Definitions Section.

(b) Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity

A Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity must include:

(i) the identity of the person disclosing;

(ii) the identity of the party to the offer with which the person disclosing is connected;

(iii) total acquisitions and disposals;

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

(v) the date of the dealing.

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 5(i) below).".

Q39 Should Note 5(a) on Rule 8 be amended to provide for aggregated disclosure by a connected principal trader where the sole reason for the connection is that the principal trader is controlled by, controls or is under the same control as a connected adviser to an offeror, the offeree company or any person acting in concert with the offeror or the offeree company?

(l) New disclosure forms

7.41 If paragraph (viii) of Note 5(a) on Rule 8 were to be deleted, as proposed above, so as to remove the requirement for details of irrevocable commitments and letters of intent to be included in an Opening Position Disclosure, the relevant disclosure form, Form 8 (OPD), would need to be amended accordingly. In addition, if Note 5(a) on Rule 8 were to be amended, as proposed above, to provide for aggregated disclosure by certain connected principal traders, the relevant disclosure forms, Form 8 (DD) and Form 8 (EPT/NON-RI), would need to be amended accordingly.

7.42 The Executive has informed the Code Committee that, in addition to amending Form 8 (OPD), Form 8 (DD) and Form 8 (EPT/NON-RI) as described above, it intends to take the opportunity to make various other minor amendments to the Panel's disclosure forms when the amendments proposed in this PCP come into effect. The proposed amended version of Form 8 (OPD) and Form 8 (DD) can be found in Appendix D and a full set of the proposed new forms can be found in the "Disclosure" section of the Panel's website at www.thetakeoverpanel.org.uk.

8. Redemptions and purchases by offeree companies and offerors of their own securities

(a) Rule 37.3(a)

8.1 Rule 37.3(a) provides as follows:

> "**37.3 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEREE COMPANY**
>
> ***(a) Shareholders' approval***
>
> **During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, no redemption or purchase by the offeree company of its own shares may be effected without the approval of the shareholders at a general meeting. The notice convening the meeting must include information about the offer or anticipated offer. Where it is felt that the redemption or purchase is in pursuance of a contract entered into earlier or another pre-existing obligation, the Panel must be consulted and its consent to proceed without a shareholders' meeting obtained (Notes 1 and 9 on Rule 21.1 may be relevant).**".

8.2 The predecessor rule to Rule 37.3(a) was introduced at the time that the Companies Act 1981 was amended to allow a company to purchase its own shares. At that time, it was identified that the purchase by an offeree company of its own securities could frustrate an offer by keeping the price of the offeree company's shares above the offer price. It was therefore decided that the offeree company should be required to obtain a further specific approval from its shareholders before it was permitted to purchase or redeem its own securities during the course of an offer or where the board had reason to believe that a bona fide offer might be imminent.

8.3 At the time that the Code was reorganised in 1985, it was decided that this rule should be included in Rule 37, which addressed all matters to do with the redemption or purchase by a company of its own shares.

8.4 The Code Committee considers that, as the purpose behind Rule 37.3(a) is to require shareholder approval for the purchase or redemption by an offeree company of its own shares, on the basis that this might comprise "frustrating action" by the board of the offeree company, it would be more appropriate for the provisions of Rule 37.3(a) to be included in Rule 21.1(b), which specifies the other actions that require shareholder approval during the course of an offer or where the board has reason to believe that a bona fide offer might be imminent. In particular, the Code Committee considers it appropriate that the offeree company should be able to seek the consent of the Panel to proceed without a shareholders' meeting in the circumstance where a decision to purchase or redeem its own shares has been taken before the beginning of the period specified in Rule 21.1. The Code Committee therefore proposes to delete Rule 37.3(a) and to introduce additional wording into paragraph (i) of Rule 21.1(b), as follows:

> "**21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED**
>
> **During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board must not, without the approval of the shareholders in general meeting:**
>
> …
>
> **(b) (i) issue any shares or transfer or sell, or agree to transfer or sell, any shares out of treasury or effect any redemption or purchase by the company of its own shares;**".

(b) Rules 37.3(b) and 37.4(a)

8.5 Rule 37.3(b) provides as follows:

"***(b) Public disclosure***

For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company.".

8.6 Rule 37.4(a) provides as follows:

"***(a) Public disclosure***

For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by an offeror.".

8.7 These provisions mean that, in the event that the offeree company or an offeror redeems or purchases, or takes or exercises an option over, its own securities during an offer period, the offeree company or the offeror is required to make a disclosure under Rule 8.2(b) or Rule 8.1(b), respectively, using Form 8 (DD).

8.8 The redemption or purchase of its own relevant securities by the offeree company or an offeror will result in the shares redeemed or purchased either being cancelled or being held in treasury. In these circumstances, the offeree company or the offeror is required to make an announcement under Rule 2.10 of the number of relevant securities in issue following the redemption or purchase.

8.9 The Code Committee understands that it is the Executive's practice to grant a dispensation to an offeree company or an offeror that has redeemed or purchased its own relevant securities from having to make a dealing disclosure using Form 8 (DD), provided that it includes in the announcement under Rule 2.10, regarding the change in the number of relevant securities in issue, details of the total number of relevant securities redeemed or purchased and the prices paid. In the case of an average price bargain, details of each underlying trade must be disclosed.

8.10 In order to clarify the application of the Code to redemptions and purchases by a company of its own securities, and to codify the Executive's practice, as described above, the Code Committee proposes to:

(a) delete Rules 37.3(b) and 37.4(a);

(b) amend the definition of "dealings" by inserting the following:

"**Dealings**

A dealing includes the following:

…

(g) the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company or an offeror;"; and

(c) insert a new paragraph (d) into Note 3 on Rule 8 as follows:

"***3. Method of disclosure***

…

(d) Redemptions and purchases of own securities

If the offeree company or an offeror redeems or purchases its own relevant securities, no separate disclosure will be required under Rule 8 if the information required by Note 5 on Rule 8 is included in an announcement made under Rule 2.10.".

(c) Rules 37.3(c) and 37.4(b)

8.11 Rule 37.3(c) provides as follows:

"***(c) Disclosure in the offeree board circular***

Any offeree board circular published in connection with an offer must state the amount of relevant securities of the offeree company which the offeree company has redeemed or purchased during the period commencing 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the document, and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.".

8.12 Rule 37.4(b) provides as follows:

"***(b) Disclosure in the offer document***

The offer document must state (in the case of a securities exchange offer only) the number of relevant securities of the offeror which the offeror has redeemed or purchased between the start of the offer period and the latest practicable date prior to the publication of the offer document and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.".

8.13 Rule 24 specifies the information that must be included in an offer document and Rule 25 specifies the information that must be included in an offeree board circular. Rule 24.4(d) cross-refers to Rule 37.4(b) and Rule 25.4(d) cross-refers to Rule 37.3(c).

8.14 Rule 24.4(c) provides that, in the case of a securities exchange offer, if the offeror or any person acting in concert with it has dealt in the relevant securities of the offeror during the period beginning 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the offer document, the details, including dates, must be stated.

8.15 Rule 25.4(c) provides that, if the offeree company or any person acting in concert with it has dealt in the relevant securities of the offeree company between the start

of the offer period and the latest practicable date prior to the publication of the circular, the details, including dates, must be stated.

8.16 The Code Committee considers that, if the definition of "dealing" is amended as proposed above, the redemption or purchase by the offeree company or an offeror of its own securities will be required to be disclosed in the offer document or the offeree board circular under Rule 24.4(c) or Rule 25.4(c), respectively, and that there will be no reason to include Rules 37.3(c) and 37.4(b) in the Code any longer.

8.17 Therefore, the Code Committee proposes to delete Rules 37.3(c) and 37.4(b) and the cross-references to them in Rules 24.4(d) and 25.4(d).

Q40 Should the Code be amended as proposed in respect of matters relating to the redemptions and purchases by offeree companies and offerors of their own securities?

9. Circulars published by persons acting in concert with an offeror or offeree company

9.1 Rule 20.1 provides as follows:

> "**20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS**
>
> **Information about parties to an offer must be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.**".

9.2 The first and fourth paragraphs of Note 4 on Rule 20.1 provide as follows:

> "***4. Information published by concert parties (eg brokers)***
>
> *Rule 20.1 does not prevent brokers or advisers to any party to the offer sending circulars during the offer period to their own investment clients provided such publication has previously been approved by the Panel.*
>
> …
>
> *Attention is drawn to paragraph (5) of the definition of acting in concert, as a result of which, for example, this Note will be relevant to brokers who, although not directly involved with the offer, are presumed to be acting in concert with an offeror or the offeree company because the broker is in the same group as the financial adviser to an offeror or the offeree company.*".

9.3 Paragraph (5) of the definition of "acting in concert", to which the fourth paragraph of Note 4 on Rule 20.1 refers, provides as follows:

> "… the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:
>
> …
>
> (5) a connected adviser with its client and, if its client is acting in concert with an offeror or with the offeree company, with that offeror or with that offeree company respectively, in each case in respect of the

interests in shares of that adviser and persons controlling#, controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or an exempt principal trader)".

9.4 Paragraph (1) of the definition of "connected adviser" provides as follows:

"**Connected adviser**

Connected adviser normally includes only the following:

(1) in relation to the offeror or the offeree company:

(a) an organisation which is advising that party in relation to the offer; and

(b) a corporate broker to that party …".

9.5 The Code Committee considers that the reference to "brokers and advisers" in the first paragraph of Note 4 on Rule 20.1 should be replaced with a reference to "connected advisers", given that "connected adviser" is a term defined in the Code and that it includes both an organisation which is advising a party to an offer and (even if it is not so advising) its corporate broker. The Code Committee considers that the fourth paragraph of Note 4 would then become redundant. In addition, the Code Committee considers that certain improvements could be made to the drafting of the Note.

9.6 Accordingly, the Code Committee proposes to amend Note 4 on Rule 20.1, as follows:

"***4. ~~Information~~ Circulars published by ~~concert parties (eg brokers)~~ connected advisers etc.***

Rule 20.1 does not prevent ~~brokers or~~ connected advisers to, or other persons acting in concert with, the offeree company or an offeror from ~~any party to the offer~~ sending circulars during the offer period to their own investment clients provided ~~such~~ their publication has ~~previously~~ been approved by the Panel in advance. A draft must be sent to the Panel as

early as possible and the final version must be sent to the Panel at the time of publication.

~~*In giving to their own clients material on the companies involved in an offer, persons acting in concert with any party to the offer must bear in mind the essential point that new information must not be restricted to a small group. Accordingly, such material*~~ *Circulars must not include any statements of fact or opinion derived from information not generally available. Profit forecasts, quantified financial benefits statements, asset valuations and estimates of other figures key to the offer* ~~*should*~~ *must be avoided (unless, and then only to the extent that, the offer document*~~*s*~~ *or the offeree board circular*~~*s themselves*~~ *contain*~~*s*~~ *such forecasts, statements, valuations or estimates). The status of the person issuing the circular as a person acting in concert with the offeree company or an offeror must be clearly disclosed.* ~~*Clearance before publication may in many cases be effected by telephone but where there is doubt a draft must be sent to the Panel as early as possible. In all cases, copies of the final version of circulars must be sent to the Panel at the time of publication. Where relevant, the requirements of this Note apply to screen displays.*~~

~~*Attention is drawn to paragraph (5) of the definition of acting in concert, as a result of which, for example, this Note will be relevant to brokers who, although not directly involved with the offer, are presumed to be acting in concert with an offeror or the offeree company because the broker is in the same group as the financial adviser to an offeror or the offeree company.*~~

…".

9.7 In addition, the Code Committee proposes to amend the references to a "broker" in Note 5 on Rule 19.1 and Section 6 of Appendix 2 so as to refer to an "investment analyst", as set out in Appendix A.

Q41 Should Note 4 on Rule 20.1, Note 5 on Rule 19.1 and Section 6 of Appendix 2 be amended as proposed?

10. "No increase" and "no extension" statements

(a) Introduction

10.1 Rule 32.2 provides as follows:

> "**32.2 NO INCREASE STATEMENTS**
>
> **If statements in relation to the value or type of consideration such as "the offer will not be further increased" or "our offer remains at xp per share and it will not be raised" ("no increase statements") are included in documents or announcements published in connection with an offer, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to amend the terms of its offer in any way even if the amendment would not result in an increase of the value of the offer (eg the introduction of a lower paper alternative) except where the right to do so has been specifically reserved.**".

10.2 Note 2 on Rule 32.2 explains, among other things, that a "**no increase statement**" can be set aside only if an appropriate reservation was made at the time that the statement was made and the circumstances specified in the statement have subsequently arisen. The Note provides as follows:

> "***2. Reservation of right to set statements aside***
>
> *A no increase statement may be set aside only if the offeror has specifically reserved the right at the time the statement was made to set it aside in the circumstances which subsequently arise; this applies whether or not the offer was recommended at the outset. The first document published in connection with an offer in which mention is made of the no increase statement must contain prominent reference to this reservation (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no increase statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details. If the right to set aside the no increase statement has not been specifically reserved as set out above, only in wholly exceptional circumstances will the offeror be allowed to increase its offer after a no increase statement, even if a*

recommendation from the board of the offeree company is forthcoming or if the offer is unconditional in all respects.".

10.3 Notes 3, 4 and 5 on Rule 32.2 refer to three specific reservations which an offeror may consider making to a no increase statement, being, respectively:

(a) the announcement of a competing offer or possible offer;

(b) the recommendation of an increased or improved offer by the board of the offeree company; and

(c) the announcement by the offeree company of material new information after Day 39.

10.4 Rule 31.5 and Notes 2 to 5 on Rule 31.5 are written in similar terms to Rule 32.2 and the Notes on Rule 32.2 in relation to a statement that an offer will not be extended (a "**no extension statement**").

(b) Reservation of right to set statements aside – Note 2 on Rule 32.2 and Note 2 on Rule 31.5

10.5 The Code Committee considers that Note 2 on Rule 32.2 should be amended so as to provide that a no increase statement must not be subject to a reservation which depends solely on subjective judgements of the offeror or its directors or the fulfilment of which is in their hands. This is the test which governs the acceptability of conditions and pre-conditions to an offer, as set out in Rule 13.1. In addition, the Code Committee considers that the Code should require the Panel to be consulted if an offeror wishes to include a reservation to a no increase statement. The proposed consultation requirement would be consistent with the position in relation to reservations to no intention to bid statements in Rule 2.8.

10.6 In the light of the above, the Code Committee proposes to amend Note 2 on Rule 32.2 as follows:

> *"**2. Reservation of right to set statements aside***
>
> *A no increase statement may be set aside only if the offeror has specifically reserved the right at the time the statement was made to set it aside in the circumstances which subsequently arise; this applies whether or not the offer was recommended at the outset. However, the no increase statement must not be subject to a reservation which depends solely on subjective judgements of the offeror or its directors or the fulfilment of which is in their hands. If an offeror wishes to include a reservation to a no increase statement, the Panel must be consulted. …".*

10.7 The Code Committee also proposes to make a similar amendment to Note 2 on Rule 31.5 in relation to no extension statements, as set out in Appendix A.

Q42 Do you have any comments on the proposed amendments to Note 2 on Rule 32.2 and Note 2 on Rule 31.5?

(c) Rule 31.9 announcements – Note 5 on Rule 32.2

10.8 Under Rule 31.9, the board of the offeree company should not, except with the consent of the Panel, announce material new information after Day 39. However, where this is not practicable, or where the matter arises after Day 39, the Panel will normally give its consent to a later announcement subject to there being a corresponding extension to Day 46 (the latest date for the offeror to revise its offer – see Rule 32.1(c)) and Day 60 (the final date for the satisfaction of the acceptance condition – see Rule 31.6).

10.9 Note 5 on Rule 32.2 provides as follows:

> *"**5. Rule 31.9 announcements***
>
> *Subject to Note 2 above, if the offeree company makes an announcement of the kind referred to in Rule 31.9 after the 39th day and after a no increase*

statement has been made, the offeror can choose not to be bound by that statement and to be free to revise its offer if permitted by the Panel under Rule 31.9, provided that notice to this effect is published as soon as possible (and in any event within 4 business days after the date of the offeree company announcement) and a notification is sent to offeree company shareholders and persons with information rights at the earliest opportunity.".

10.10 The rationale for introducing Note 5 on Rule 32.2 (and Note 5 on Rule 31.5, which provides in similar terms in relation to no extension statements) was explained in paragraphs 6.1.4 and 6.1.5 of PCP 12 ("Questions as to the possible amendment of Rule 31.9 and related Rules") in the following terms:

"6.1.4 In order to preserve an orderly market, no extension/increase statements must be capable of being relied upon by offeree company shareholders and the market as an accurate statement of the offeror's intentions as regards the conduct of the offer. Accordingly, the Code Committee believes that an offeror making an unqualified no extension or no increase statement does so at its own risk and should not be permitted to renege on such statement as a result of the offeree company making an announcement caught by Rule 31.9 after Day 39 of the offer timetable. The Code Committee believes that the Panel should, therefore, not normally reset Day 46 or Day 60 … in these circumstances.

6.1.5 An offeror would be able, however, specifically to reserve the right when it made a no extension statement or no increase statement not to be bound by it in the event of the release (with the consent of the Panel, as required by Rule 31.9) by the offeree company of material new information after Day 39.".

10.11 The Code Committee considers that, in the event of the offeree company announcing material new information after Day 39, an offeror should be permitted to set aside a no increase statement (assuming that an appropriate reservation was included) only if the no increase statement was <u>itself</u> made after Day 39, and that this should be made clear in Note 5 on Rule 32.2.

10.12 This is because an offeror can claim to have been disadvantaged by the "late" announcement by the offeree company, and to have made its no increase statement in the legitimate (and now incorrect) expectation that the offeree

company would not thereafter announce any material new information, only if the no increase statement was itself made after the deadline for the offeree company announcing material new information – i.e. after Day 39. In other words, any no increase statement made by the offeror prior to the deadline for the offeree company announcing material new information cannot have been made in such an expectation.

10.13 In the light of the above, the Code Committee proposes to amend Note 5 on Rule 32.2 as follows:

> "***5. Rule 31.9 announcements***
>
> *Subject to Note 2 above, if the offeree company makes an announcement of the kind referred to in Rule 31.9 after the 39th day and after a no increase statement has been made, the offeror can choose not to be bound by that statement and to be free to revise its offer if permitted by the Panel under Rule 31.9, provided that:*
>
> *(a) the no increase statement was made after the 39th day; and*
>
> *(b) notice to this effect is published as soon as possible (and in any event within 4 business days after the date of the offeree company announcement) and a notification is sent to offeree company shareholders and persons with information rights at the earliest opportunity.*".

10.14 The Code Committee also proposes to make a similar amendment to Note 5 on Rule 31.5 in relation to no extension statements, as set out in Appendix A.

Q43 Do you have any comments on the proposed amendments to Note 5 on Rule 32.2 and Note 5 on Rule 31.5?

11. Independent advice provided to the board of the offeree company

11.1 Under Rule 3.1, the board of the offeree company must obtain competent independent advice on any offer and the substance of that advice must be made known to the offeree company's shareholders. More specifically, under Rule 25.2(b), the substance of the advice given to the board by the independent adviser appointed under Rule 3.1 must be included in the offeree board circular. Separately, under Rule 25.2(a) the offeree board circular must set out the board's opinion on the offer (including any alternative offers), its reasons for forming that opinion, and its views on:

> "**(i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and**
>
> **(ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business, as set out in the offer document pursuant to Rule 24.2.**".

11.2 In the majority of cases, the terms of an offer are agreed between the offeror and the board of the offeree company. In such cases, the offeree company board, having taken advice from the independent adviser appointed under Rule 3.1, will normally be satisfied that the terms of the offer are fair and reasonable and, subject to taking all other relevant factors into account, will then recommend to offeree company shareholders that they should accept the offer.

11.3 In the case of offers which are not agreed between the offeror and the board of the offeree company, the independent adviser to the board of the offeree company will often have advised the board that the terms of the offer are not fair and reasonable and the directors will normally recommend to shareholders that they should not accept the offer.

11.4 Note 2 on Rule 25.2 provides for the situation where the board of the offeree company is unable to reach a clear opinion on an offer or where there is a divergence of views either among the members of the board or between the board and the independent adviser. Note 2 on Rule 25.2 provides as follows:

> "***2. Where*** there ***is no clear opinion or there is a divergence of views***
>
> *If the board of the offeree company does not reach a clear opinion on an offer, or if there is a divergence of views among its members, or between the board and the independent adviser appointed under Rule 3.1, this must be stated and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors. The Panel should be consulted in advance about the explanation which is to be given.*
>
> *The views of any directors who are in a minority should also be included in the circular.*".

11.5 In addition, Note 3 on Rule 3.1 provides for the situation where the independent adviser finds it impossible to express a view on the merits of the offer or to give a firm recommendation in its advice to the board of the offeree company. Note 3 on Rule 3.1 provides as follows:

> "***3. When no recommendation is given***
>
> *When the independent adviser considers it impossible to express a view on the merits of an offer, or to give a firm recommendation in its advice to the board of the offeree company, this must be stated and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors.*".

11.6 The Code Committee considers that the independent adviser and the board of the offeree company each has a distinct role under the Code in relation to an offer for the offeree company. In summary, the principal role of the independent adviser is to provide advice to the board on the financial terms of the offer, in particular, advice as to whether the terms of the offer are fair and reasonable. In providing this advice, the independent adviser will normally take into account, amongst other matters, the directors' commercial assessments.

11.7 By contrast, the offeree company board is required to give its opinion on the offer, its reasons for forming that opinion and its views on the matters referred to in paragraphs (i) and (ii) of Rule 25.2(a). In forming its opinion on the offer in accordance with Rule 25.2(a), the board of the offeree company will take into account the offer price, the independent adviser's advice and any other factors which it considers relevant. Note 1 on Rule 25.2 makes it clear that the Code does not limit the factors that the board of the offeree company may take into account in forming its opinion on the offer and that, in particular, the board is not required by the Code to consider the offer price as the determining factor. The board's opinion will normally include a recommendation to offeree company shareholders as to whether, in the board's view, shareholders should accept or reject the offer.

11.8 The Code Committee considers that the current wording of Rule 3.1 and Note 3 on Rule 3.1 risks confusing the distinct roles of the independent adviser and the board of the offeree company.

11.9 The Code Committee considers that Rule 3.1 should be amended so as to make it clear that the principal role of the independent adviser is to advise the board of the offeree company as to whether the financial terms of the offer are "fair and reasonable". It is established market practice for the independent adviser to use this formulation in the context of an offer which is recommended by the board of the offeree company and the Code Committee considers it appropriate that this formulation should be formalised in the Code.

11.10 In addition, the Code Committee considers that the use in Note 3 on Rule 3.1 of the phrases "firm recommendation" and "arguments for acceptance or rejection" might be read as implying that the independent adviser is responsible for giving a recommendation to offeree company shareholders as to whether they should accept or reject an offer, which the Code Committee considers is a matter solely

for the board of the offeree company. The Code Committee therefore considers that Note 3 on Rule 3.1 should also be amended.

11.11 In addition, the Code Committee proposes to amend Rule 3.1 so as to make clear that it applies equally to any alternative offers (in the same way as it is clear that Rule 25.2(a) applies to alternative offers).

11.12 The Code Committee therefore proposes to amend Rule 3.1 and Note 3 on Rule 3.1, as follows:

"**3.1 BOARD OF THE OFFEREE COMPANY**

The board of the offeree company must obtain competent independent advice ~~on~~ as to whether the financial terms of any offer (including any alternative offers) are fair and reasonable and the substance of such advice must be made known to its shareholders.

NOTES ON RULE 3.1

…

3. ~~When no recommendation is given~~Where the independent adviser is unable to advise whether the financial terms of the offer are fair and reasonable

~~When~~ If the independent adviser ~~considers it impossible to express a view on the merits~~ is unable to advise the board of the offeree company whether the financial terms of an offer (or any alternative offers) are fair and reasonable, ~~or to give a firm recommendation in its advice to the board of the offeree company, this must be~~ made known to offeree company shareholders ~~stated~~ and an explanation given in the offeree board circular~~, including the arguments for acceptance or rejection, emphasising the important factors~~. The Panel should be consulted in advance about the explanation which is to be given. (See also Note 2 on Rule 25.2.)

~~The Panel should be consulted in such cases.~~".

Q44 Should Rule 3.1 and Note 3 on Rule 3.1 be amended as proposed so as to make clearer the roles of the board of the offeree company and the independent adviser?

12. Aggregation of interests across a group

12.1 The first paragraph of Note 16 on Rule 9.1 provides, in effect, that a multi-service financial organisation should ensure that the interests in a company's shares which the group owns and controls remain below 30% of the company's shares carrying voting rights in order to avoid the group incurring an obligation to make a mandatory offer for the company. Note 16 on Rule 9.1 provides that the interests that the Panel will regard as being relevant for these purposes include interests of principal traders and fund managers which would benefit from "exempt status" if a member of the group were a connected adviser to an offeror, the offeree company or a person acting in concert with either of them. However, options and derivative positions held in a client-serving capacity by a member of the group with recognised intermediary status are excluded from the 30% calculation.

12.2 In order not to restrict unnecessarily the principal trading functions within a multi-service financial organisation, the second paragraph of Note 16 on Rule 9.1 provides that, where a group's aggregate interests in a company approaches or exceeds the 30% threshold, the Panel will normally be prepared to allow a principal trading entity within the group to continue its trading activities without triggering a mandatory offer obligation under Rule 9.1, provided that the company concerned is not in an offer period and that the holding of the principal trader does not exceed 3% of the company's shares carrying voting rights.

12.3 The Code Committee considers that the relief provided by the second paragraph of Note 16 on Rule 9.1 should be available to a principal trader only in circumstances where it is acting in a client-serving capacity, i.e. that such relief should not be available where the principal trader is acting in a proprietary capacity. The Code Committee proposes to make minor amendments to Note 16 on Rule 9.1, and equivalent amendments to Note 1(c) on Rule 7.2, which is in near identical terms, as follows:

"***16. Aggregation of interests across a group and recognised intermediaries***

…

If such a group of persons includes a principal trader and the aggregate number of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period, the shares are acquired in a client-serving capacity and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.".

Q45 Should the second paragraph of Note 16 on Rule 9.1 be amended as proposed so as to make clear that it applies only to shares acquired and held by a principal trader in a client-serving capacity?

13. Assessment of the impact of the proposals

13.1 The amendments proposed in this PCP relate to various different provisions of the Code and there is no over-arching theme to the changes.

13.2 The Code Committee believes that making the deadline for a potential competing offeror to clarify its position a "firm" date, and extending the deadline to Day 53 (Section 2), will provide greater certainty to the parties to an offer as to the applicable timetable. The increased time available will marginally increase the likelihood of the potential competing offeror making an offer rather than a no intention to bid statement, to the potential benefit of shareholders in the offeree company, and will commensurately increase the first offeror's completion risk. The change will decrease the time available for offeree company shareholders to process their decisions whether or not to accept the first offeror's offer if the second offeror makes a no intention to bid statement but the Code Committee believes that seven days will continue to be an adequate time for them to do so.

13.3 The introduction of new restrictions in relation to acquisitions of interests in shares by former potential offerors after Day 53 (Section 3) and by persons who have been granted a dispensation under Note 4 on Rule 2.2 (Section 4) are, in effect, anti-avoidance provisions and should not result in additional burdens, given that the person restricted will have indicated, either publicly or to the Panel, that he has no intention of making a bid.

13.4 The modification and codification of the default auction procedure to be applied where a competitive situation continues to exist on Day 46 of the second offeror's offer timetable (Section 5) should result in minor improvements to the default auction procedure and should provide greater certainty and transparency for parties to an offer, their advisers and market participants. The Code Committee does not anticipate that these changes will result in any additional costs being imposed.

13.5 The changes in the remaining sections of the PCP are designed to clarify the way in which the provisions of the Code currently work, to codify existing practice or otherwise to improve the way in which the Code is drafted and operates. The Code Committee believes that these amendments are worthwhile and proportionate, although the benefits they will produce for market participants and practitioners on a day to day basis will be relatively minor. The Code Committee does not believe that these amendments will result in the imposition of any material burdens or costs.

APPENDIX A

Proposed amendments to the Code

[except as otherwise stated, underlining indicates new text and striking-through indicates deleted text]

DEFINITIONS

Acting in concert

…

NOTES ON ACTING IN CONCERT

…

5. Standstill agreements

Agreements between a company, or the directors of a company, and a person which restrict that person or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing the number of shares in which he or they are interested, may be relevant for the purpose of this definition. However, the Panel will not normally consider the parties to the agreement to be acting in concert provided that the agreement does not restrict any of the parties from either:

(a) accepting an offer for the company's shares at any stage; or

(b) agreeing to accept any offer for the company's shares either before or after its announcement.

The same approach will normally apply to an agreement to which the company's financial adviser or nominated adviser and/or its sponsor and/or underwriter, rather than the company itself (and/or its directors), is a party, for example, an agreement entered into at the time of an equity offering with a view to ensuring an orderly aftermarket in the company's shares.

Where parties intend to enter into standstill agreements to which neither the company (and/or its directors) nor its financial adviser or nominated adviser, its sponsor or underwriter is a party (for example, an agreement between two shareholders), or in any other cases of doubt, the Panel should be consulted in advance.

~~*In cases of doubt, the Panel should be consulted.*~~

11. Indemnity and other dealing arrangements

…

(c) Note 11(b) does not apply to irrevocable commitments or letters of intent, which are subject to Rule 2.7(c)(vi) and Rule 2.11 ~~and Note 5(a) on Rule 8~~.

…

Dealings

A dealing includes the following:

…

(f) … ; ~~and~~

(g) the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company or an offeror; and

(~~g~~h) …

Rule 2.2

2.2 WHEN AN ANNOUNCEMENT IS REQUIRED

…

NOTES ON RULE 2.2

…

4. When a dispensation may be granted

(a) The Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. ~~After~~ If such a dispensation ~~has been~~ is granted, neither the potential offeror, nor any person who acted in concert with it, nor any person who is subsequently acting in concert with either of them, may:

(i) within six months of the dispensation having been granted, do any of the things set out in Rules 2.8(a) to (e); or

(ii) within three months of the dispensation having been granted, ~~not~~ actively consider making an offer for the offeree company, make an approach to the board of the offeree company or acquire an interest in shares in the offeree company ~~for a period of six months and will be treated as having made a statement to which Rule 2.8 applies~~.

The Panel may consent to the ~~these~~ restrictions in paragraph (i) being set aside in the circumstances set out in paragraphs (a~~b~~) to (d) of Note 2 on Rule 2.8~~.~~, but the Panel may only consent to the restrictions in paragraph (ii) being set aside in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8. ~~The Panel may also, at the request of the offeree company, consent to the potential offeror recommencing active consideration of an offer but such consent will not normally be given within three months of the dispensation having been granted.~~

(b) Where a potential offeror to which a dispensation has been granted under paragraph (a) has ceased actively to consider making an offer, the Panel may nonetheless require an announcement to be made where:

(i) any rumour and speculation continues or is repeated; and/or

(ii) it considers that this is otherwise necessary in order to prevent the creation of a false market.

Any such announcement made by the offeree company will ~~not~~ normally be required to identify the former potential offeror~~, unless it has been specifically identified in rumour and speculation~~.

Rule 2.4

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

…

NOTES ON RULE 2.4

1. Consequences of subsequent acquisitions of interests in shares

The acquisition of an interest in offeree company shares by a potential offeror whose existence has been announced (whether publicly identified or not), or which is a participant in a formal sale process, or by any person acting in concert with it may require immediate announcement by the potential offeror under the Note on Rule 7.1. See also Note 12 on Rule 8.

Rule 2.6

2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT

…

(d) When an offeror has announced a firm intention to make an offer and it has been announced that a publicly identified potential offeror might make a competing offer (whether that announcement was made prior to or following the announcement of the first offer), the potential offeror must, by a date in the later stages of the offer period ~~to be announced by the Panel~~, either:

(i) announce a firm intention to make an offer in accordance with Rule 2.7; or

(ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies.

(e) When an offeror has announced a firm intention to make an offer and the offeree company subsequently refers to the existence of a potential competing offeror which has not been identified, the potential competing offeror so referred to must, by a date in the later stages of the offer period ~~to be announced by the Panel~~, either:

(i) announce a firm intention to make an offer in accordance with Rule 2.7; or

(ii) confirm to the offeree company that it does not intend to make an offer, in which case the offeree company must promptly announce that fact and the potential competing offeror will ~~then~~ be treated as if it had <u>then</u> made a statement to which Rule 2.8 applies.

NOTES ON RULE 2.6

…

2. Formal sale process

Where, prior to an offeror having announced a firm intention to make an offer, the board of the offeree company announces that it is seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(a) and (b) <u>(but see Note 12 on Rule 8)</u> and Rule 2.6(a), such that any potential offeror which agrees with the offeree company to participate in that process

would not be required to be publicly identified under Rule 2.4(a) or (b) and would not be subject to the 28 day deadline referred to in Rule 2.6(a), for so long as it is participating in that process. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.

3. Date by which announcement required

Where the first offeror is proceeding by means of a contractual offer, the date by which an announcement will be required to be made by or in respect of a potential competing offeror under Rule 2.6(d) or (e) will ~~normally be a date which is on or around 10 days prior to the final day on which the first offeror's offer is capable of becoming or being declared unconditional as to acceptances~~ be 5.00 pm on the 53rd day following the publication of the first offeror's initial offer document.

Where the first offeror is proceeding by means of a scheme of arrangement, see Section 4 of Appendix 7.

Rule 2.7

2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

…

(c) When a firm intention to make an offer is announced, the announcement must state:

…

(v) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which it has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see Note 5 on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell, any delivery obligation or right to require another person to purchase or take delivery, must also be stated;

(vi) details of any irrevocable commitment or letter of intent procured by the offeror or any person acting in concert with it (see Note 3 on Rule 2.11);

(vii) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold and details of any financial collateral arrangements which the offeror or any person acting in concert with it has entered into (see Note 4 on Rule 4.6);

(~~v~~viii)… **;**

(~~vi~~ix) … **;**

(~~vii~~x) … **; and**

~~(viii) confirmation that the offeror is on the same day disclosing, or has previously disclosed, the details required to be disclosed by it under Rule 8.1(a) and, where such disclosure is being made on the same day but (in accordance with Note 2(a)(i) on Rule 8) may not include all relevant details in respect of all persons acting in concert with the offeror, confirmation that a further disclosure in accordance with Rule 8.1(a) and Note 2(a)(i) on Rule 8 will be made as soon as possible; and~~

(~~ix~~xi) … **.**

NOTES ON RULE 2.7

…

3. Persons acting in concert with the offeror

If an offeror announces a firm intention to make an offer before the deadline for its Opening Position Disclosure (see Note 2(a)(i) on Rule 8), it may not be practicable in the time available to have made enquiries of all persons acting in concert with it in order to include all relevant details in respect of such persons in the announcement. In such circumstances, this fact should be stated and all relevant details included in the Opening Position Disclosure. The Panel should be consulted in all such cases.

Rule 2.8

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

A person making a statement that he does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except in the circumstances described in Note 2 or otherwise with the

consent of the Panel, neither the person making the statement, nor any person who acted in concert with that person, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

…

NOTES ON RULE 2.8

1. Prior consultation

Any person considering making such a statement should consult the Panel in advance~~, particularly if it is intended to include specific reservations to set aside the statement~~.

2. When~~ a statement may be set aside~~ the restrictions will no longer apply

~~Except with the consent of the Panel, a statement to which~~ The restrictions in Rule 2.8 ~~applies may be set aside only~~ will no longer apply if:

(a) the board of the offeree company so agrees~~ to the statement being set aside~~. However, ~~W~~where the statement was made ~~at any time following~~ after the announcement by a third party of a firm intention to make an offer, the~~ statement may not normally be set aside~~ restrictions will only cease to apply with the agreement of the board of the offeree company~~ unless~~ if:

(i) that third party offer has been withdrawn or has lapsed; and

(ii) in the period following the making of the statement and prior to the third party offer being withdrawn or lapsing, neither the person who made the statement nor any person acting in concert with that person has acquired an interest in any shares of the offeree company;

(b) a third party announces a firm intention to make an offer for the offeree company;

(c) the offeree company announces a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover;

(d) the Panel determines that there has been a material change of circumstances; or

(e) the statement was made outside an offer period and an event has occurred which was specified in the statement as being an event following which the restrictions set out in Rule 2.8 would~~ enable the statement to be set aside (see

~~*Note 1)*~~ *cease to apply*. *If a person wishes to specify such an event in a statement to which Rule 2.8 will apply, the Panel should be consulted.*

The Panel will normally regard a switch by a third party offeror from a scheme of arrangement to a contractual offer in accordance with Section 8 of Appendix 7, or an announcement of its firm intention to do so, as a material change of circumstances under paragraph (d). However, a switch from a contractual offer to a scheme of arrangement will not normally be regarded as a material change of circumstances.

Rule 2.10

2.10 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

When an offer period begins, the offeree company must announce, as soon as possible and in any case by ~~9.00~~ 7.15 am on the next business day, details of all classes of relevant securities issued by the company, together with the numbers of such securities in issue. An offeror or publicly identified potential offeror must also announce the same details relating to its relevant securities as soon as possible and in any case by ~~9.00~~ 7.15 am on the business day following any announcement identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.

…

Rule 2.11

2.11 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

(a) During an offer period, if any party to the offer or any person acting in concert with it procures an irrevocable commitment or a letter of intent, the relevant party to the offer must publicly disclose the details in accordance with the Notes on this Rule 2.11 by no later than 12 noon on the following business day.

(b) If ~~a party to the offer~~ an offeror, or any person acting in concert with it, has procured an irrevocable commitment or a letter of intent prior to the commencement of the offer period, it must publicly disclose the details in accordance with the Notes on this Rule 2.11 by no later than 12 noon on the business day following the date of the announcement that first identifies it as an offeror. ~~and/or prior to midnight on the day before an Opening Position Disclosure is made under Rule 8.1(a) or 8.2(a), the details must be disclosed~~

~~**in the Opening Position Disclosure made by the relevant party to the offer (see Note 5(a) on Rule 8 and the Notes on this Rule 2.11).**~~

~~**(c) If, during the offer period and prior to midnight on the day before an Opening Position Disclosure is made under Rule 8.1(a) or 8.2(a), a party to the offer or any person acting in concert with it procures an irrevocable commitment or a letter of intent and the details are disclosed in accordance with Rule 2.11(a), that disclosure must also include details of any other commitments or letters which have been procured prior to the date of the disclosure and which have not previously been disclosed.**~~

(~~d~~c) …

(~~e~~d) …

NOTES ON RULE 2.11

1. ~~Timing of d~~Disclosure in firm offer announcement

~~*A disclosure required by Rule 2.11(a) must be made by no later than 12 noon on the business day following the date of the transaction.*~~

~~*No separate disclosure by an offeror is required under Rule 2.11(a) w*~~*Where the ~~relevant information is~~ details required to be disclosed under Note 3 on Rule 2.11 are, pursuant to Rule 2.7(c)(vi), included in an announcement of a firm intention to make an offer ~~made under Rule 2.7~~ which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured, no separate disclosure is required under Rule 2.11(a) or (b).*

Similarly, where the details required to be disclosed under Note 3 on Rule 2.11 are included in an announcement of a possible offer which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured, no separate disclosure is required under Rule 2.11(b).

…

3. Contents of disclosure

A disclosure of the procuring of an irrevocable commitment or a letter of intent must provide full details of the nature of the commitment or letter including:

…

(c) in respect of an irrevocable commitment, any outstanding conditions to which it is subject and the circumstances (if any) in which it will cease to be binding; and

(d) in the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer, the ~~value~~ price (and any other material terms) of the possible offer in respect of which the commitment or letter has been procured, which terms the potential offeror will then be bound to in accordance with ~~(See~~ Rule 2.5(a).~~)~~

…

Rule 3.1

3.1 BOARD OF THE OFFEREE COMPANY

The board of the offeree company must obtain competent independent advice ~~on~~ as to whether the financial terms of any offer (including any alternative offers) are fair and reasonable and the substance of such advice must be made known to its shareholders.

NOTES ON RULE 3.1

…

3. ~~When no recommendation is given~~Where the independent adviser is unable to advise whether the financial terms of the offer are fair and reasonable

~~When~~ If the independent adviser ~~considers it impossible to express a view on the merits~~ is unable to advise the board of the offeree company whether the financial terms of an offer (or any alternative offers) are fair and reasonable, ~~or to give a firm recommendation in its advice to the board of the offeree company,~~ this must be made known to offeree company shareholders ~~stated~~ and an explanation given in the offeree board circular~~, including the arguments for acceptance or rejection, emphasising the important factors~~. The Panel should be consulted in advance about the explanation which is to be given. (See also Note 2 on Rule 25.2.)

~~The Panel should be consulted in such cases.~~

Rule 7.1

7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED

…

NOTE ON RULE 7.1

Potential offerors

The requirement of this Rule to make an immediate announcement applies to any potential offeror whose existence has been referred to in any announcement (whether publicly identified or not), or which is a participant in a formal sale process, either:

(a) where a public statement of the level of its possible offer has been made and the potential offeror or any person acting in concert with it acquires an interest in shares above that level; or

(b) where a third party has announced a firm intention to make an offer and the potential offeror or any person acting in concert with it acquires an interest in shares at above the level of that offer.

A Dealing Disclosure will also be required in accordance with Rule 8.1(b).

Rule 7.2

7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS

…

NOTES ON RULE 7.2

1. Dealings prior to a concert party relationship arising

…

(c) …

If such a group of persons includes a principal trader and the aggregate number of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period, the shares are acquired in a client-

serving capacity and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.

Rule 8

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

…

NOTES ON RULE 8

…

2. Timing of disclosure

(a) Disclosures by the parties to the offer

(i) ~~Subject to the following paragraph, a~~ A party to the offer must make an Opening Position Disclosure by no later than 12 noon on the day falling 10 business days after the commencement of the offer period or the announcement that first identifies an offeror (as the case may be).

~~However, if an offeror announces a firm intention to make an offer before the deadline in the previous paragraph, it must at the same time make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). In such a case, it may not be practicable in the time available to have made enquiries of all persons acting in concert with the offeror in order to include all relevant details in respect of such persons in the Opening Position Disclosure. In such circumstances, this fact should be stated and a further Opening Position Disclosure, containing all relevant details, should be made as soon as possible thereafter and in any event (except with the consent of the Panel) before the deadline in the previous paragraph. The Panel should be consulted in all such cases.~~

If a party to the offer deals in any relevant securities of the offeree company or any securities exchange offeror before midnight on the day before the ~~relevant~~ deadline in the previous paragraph~~s above~~, it must make a Dealing Disclosure (in respect of the dealings and positions of itself alone) in accordance with Rule 8.1(b) or 8.2(b) (as appropriate) and with paragraph (ii) below. However, the party to the offer must also make an Opening Position Disclosure (in respect of the positions of itself and any persons acting in concert with it) by the ~~relevant~~ deadline above.

…

3. Method of disclosure

…

(d) Redemptions and purchases of own securities

If the offeree company or an offeror redeems or purchases its own relevant securities, no separate disclosure will be required under Rule 8 if the information required by Note 5 on Rule 8 is included in an announcement made under Rule 2.10.

…

5. Details to be included in the disclosure

(a) Public disclosures (other than Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity)

…

An Opening Position Disclosure by a party to the offer must also include:

(vii) … .; and

(viii) details of any relevant securities in respect of which that party or any person acting in concert with it has procured an irrevocable commitment or a letter of intent (see Rule 2.11).

The interests, short positions, rights to subscribe, dealing arrangements, securities borrowing and lending positions and irrevocable commitments and letters of intent to be disclosed under (ii), (iii), (vi), and (vii) and (viii) above are those determined in accordance with Note 7(d) below.

Subject to the following paragraph, aAny Dealing Disclosure must also include:

(ixviii) the total of the relevant securities in question in which the dealing took place;

(xix) the prices paid or received (in the case of an average price bargain, each underlying trade should be disclosed). 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 5(i) below);

(~~xi~~x) if the disclosure is by a person acting in concert with a party to the offer, the identity of the party to the offer concerned; and

(~~xii~~xi) the date of the dealing.

However, a Dealing Disclosure by a connected principal trader where the sole reason for the connection is that the principal trader is controlled# by, controls or is under the same control as a connected adviser to an offeror, the offeree company or any person acting in concert with an offeror or the offeree company must include the information specified in Note 5(b) below. The Panel may, where it considers it appropriate, require the person concerned to make more detailed private disclosure to the Panel.

#See Note at end of Definitions Section.

(b) Dealing Disclosures by exempt principal traders with recognised intermediary status dealing in a client-serving capacity

A Dealing Disclosure by an exempt principal trader with recognised intermediary status dealing in a client-serving capacity must include:

(i) the identity of the person disclosing;

(ii) the identity of the party to the offer with which the person disclosing is connected;

(iii) total acquisitions and disposals;

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

(v) the date of the dealing.

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 5(i) below).

…

(f) Owner or controller details

For the purpose of disclosing identity, the owner or controller of any interest or short position in securities disclosed must be specified, in addition to any other details. The naming of nominees or vehicle companies is insufficient. If the owner or controller of the interest or short position is a trust, details of the trustee(s), the settlor and the beneficiaries of the trust must be disclosed. Where the beneficiaries are a defined group, for example, members of a family, a description of the group will normally be sufficient.

The Panel 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. However, in the case of disclosures by fund managers of dealings on behalf of, or positions held for the account of, discretionary clients, the clients need not be named.

…

7. Time for calculating a person's interests etc.

…

(d) The interests, short positions, rights to subscribe, dealing arrangements~~,~~ and securities borrowing and lending positions~~, irrevocable commitments and letters of intent~~ to be disclosed under paragraphs (ii), (iii), (vi)~~,~~ and (vii) ~~and (viii)~~ of Note 5(a) on Rule 8 are those existing or outstanding at midnight on the day immediately preceding the date on which the disclosure is made (except in the case of a Dealing Disclosure made on the same day as the dealing concerned, when the interests etc. to be disclosed are those existing or outstanding immediately following the dealing taking place).

…

12. Potential offerors

(a) If a potential offeror has been referred to in an announcement by the offeree company but has not been publicly identified as such, or if it is a participant in a formal sale process announced by the offeree company (regardless of whether it was a participant at the time of the announcement), the potential offeror and persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement in accordance with Rule 8.1(b) or Rule 8.4 respectively.

At the same time as or before any such Dealing Disclosure, the offeror must also make an announcement that it is considering making an offer, or that it is a participant in the formal sale process, in accordance with Rule 2.9 (see also the Note on Rule 7.1 for when an immediate announcement will be required). The announcement must include a summary of the provisions of Rule 8 (see www.thetakeoverpanel.org.uk).

…

15. Irrevocable commitments and letters of intent

See Rule 2.7(c)(vi) and Rule 2.11 ~~and Note 5(a)(viii) on Rule 8~~.

Rule 9

9.1 WHEN A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT

…

NOTES ON RULE 9.1

…

16. Aggregation of interests across a group and recognised intermediaries

…

If such a group of persons includes a principal trader and the aggregate number of shares in a company in which the group is interested approaches or exceeds 30% of the voting rights, the Panel may consent to the principal trader continuing to acquire shares in the company without consequence under Rule 9.1 provided that the company is not in an offer period, the shares are acquired in a client-serving capacity and the number of shares which the principal trader holds in a client-serving capacity does not at any relevant time exceed 3% of the voting rights of the company. The Panel should be consulted in such cases.

…

NOTES ON DISPENSATIONS FROM RULE 9

1. Vote of independent shareholders on the issue of new securities ("Whitewash")

…

The appropriate provisions of the Code apply to whitewash proposals. Full details of the potential number and percentage of shares in which the person or group of persons acting in concert might become interested (together with details of the different interests concerned) must be disclosed in the document published in connection with the issue of the new securities, which must also include competent independent advice on the proposals which the shareholders are being asked to approve, together with a statement that the Panel has agreed to waive any consequent obligation under this Rule to make a general offer. The resolution must be made the subject of a poll. In addition, unless the person or group of persons acting in concert has entered into an agreement with the company not to make an offer, or has made a statement in the document that it does not intend to

make an offer, the document must contain a statement that the person or group will not be restricted from making an offer for the company in the event that the proposals are approved at the shareholders' meeting. The Panel must be consulted and a proof document submitted at an early stage.

Rule 19.1

19.1 STANDARDS OF CARE

…

NOTES ON RULE 19.1

…

5. Quotations

A quotation (for example, from a newspaper or ~~a broker's~~ an investment analyst's circular) must not be used by a party to the offer out of context and details of the origin must be included.

…

Rule 19.3

19.3 UNACCEPTABLE STATEMENTS

…

NOTE ON RULE 19.3

Statements of support

An offeror or the offeree company must not make statements about the level of support from shareholders or other persons unless their up-to-date intentions have been clearly stated to the offeror or the offeree company (as appropriate) or to their respective advisers. The Panel will require any such statement to be verified to its satisfaction. This will normally include the shareholder or other person confirming its support in writing to the relevant party to the offer or its adviser and that confirmation being provided to the Panel. Such confirmation will then be treated as a letter of intent. The Panel will not require separate verification by an offeror where the information required by Note 3 on Rule 2.11 is included in an announcement ~~made under Rule 2.7~~ of an offer or possible offer which is published no later than 12 noon on the business day following the date on which the letter of intent is procured.

Rule 20.1

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

…

NOTES ON RULE 20.1

…

4. ~~Information~~ Circulars published by ~~concert parties (eg brokers)~~ connected advisers etc.

Rule 20.1 does not prevent ~~brokers or~~ connected advisers to, or other persons acting in concert with, the offeree company or an offeror from ~~any party to the offer~~ sending circulars during the offer period to their own investment clients provided ~~such~~ their publication has ~~previously~~ been approved by the Panel in advance. A draft must be sent to the Panel as early as possible and the final version must be sent to the Panel at the time of publication.

~~In giving to their own clients material on the companies involved in an offer, persons acting in concert with any party to the offer must bear in mind the essential point that new information must not be restricted to a small group. Accordingly, such material~~ Circulars must not include any statements of fact or opinion derived from information not generally available. Profit forecasts, quantified financial benefits statements, asset valuations and estimates of other figures key to the offer ~~should~~ must be avoided (unless, and then only to the extent that, the offer document~~s~~ or the offeree board circular~~s themselves~~ contain~~s~~ such forecasts, statements, valuations or estimates). The status of the person issuing the circular as a person acting in concert with the offeree company or an offeror must be clearly disclosed. ~~Clearance before publication may in many cases be effected by telephone but where there is doubt a draft must be sent to the Panel as early as possible. In all cases, copies of the final version of circulars must be sent to the Panel at the time of publication. Where relevant, the requirements of this Note apply to screen displays.~~

…

~~Attention is drawn to paragraph (5) of the definition of acting in concert, as a result of which, for example, this Note will be relevant to brokers who, although not directly involved with the offer, are presumed to be acting in concert with an offeror or the offeree company because the broker is in the same group as the financial adviser to an offeror or the offeree company.~~

…

Rule 21.1

21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED

During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board must not, without the approval of the shareholders in general meeting:

…

(b) (i) issue any shares or transfer or sell, or agree to transfer or sell, any shares out of treasury or effect any redemption or purchase by the company of its own shares;

Rule 24.4

24.4 INTERESTS AND DEALINGS

…

~~(d) See also Rule 37.4(b).~~

Rule 25.4

25.4 INTERESTS AND DEALINGS

…

~~(d) See also Rule 37.3(c).~~

Rule 26.1

26.1 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE ANNOUNCEMENT OF A~~N~~ FIRM OFFER

Except with the consent of the Panel, copies of the following documents must be published on a website ~~as soon as possible and in any event~~ by no later than 12 noon on the business day following the announcement of a firm intention to make an offer (or, if later, the date of the relevant document)

until the end of the offer (including any related competition reference period):

Rule 31.5

31.5 NO EXTENSION STATEMENTS

…

NOTES ON RULE 31.5

…

2. Reservation of right to set statements aside

A no extension statement may be set aside only if the offeror specifically reserved the right at the time the statement was made to set it aside in the circumstances which subsequently arise; this applies whether or not the offer was recommended at the outset. However, the no extension statement must not be subject to a reservation which depends solely on subjective judgements of the offeror or its directors or the fulfilment of which is in their hands. If an offeror wishes to include a reservation to a no extension statement, the Panel must be consulted.

The first document published in connection with an offer in which mention is made of the no extension statement must contain prominent reference to this reservation (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no extension statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details. If the right to set aside the no extension statement has not been specifically reserved as set out above, only in wholly exceptional circumstances will the offeror be allowed to extend its offer (except as required by Rule 31.4), even if a recommendation from the board of the offeree company is forthcoming.

…

5. Rule 31.9 announcements

Subject to Note 2 above, if the offeree company makes an announcement of the kind referred to in Rule 31.9 after the 39th day following the publication of the initial offer document and after a no extension statement has been made, the offeror can choose not to be bound by that statement and to be free to extend its offer if permitted by the Panel under Rule 31.9, provided that:

(a) the no extension statement was made after the 39th day; and

(b) notice to this effect is published as soon as possible (and in any event within 4 business days after the date of the offeree company announcement) and a notification is sent to offeree company shareholders and persons with information rights at the earliest opportunity.

Rule 31.6

31.6 FINAL DAY RULE (FULFILMENT OF ACCEPTANCE CONDITION, TIMING AND ANNOUNCEMENT)

…

NOTES ON RULE 31.6

…

3. The CMA and the European Commission

If there is a significant delay in the decision on whether or not there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings, the Panel will normally extend "Day 39" (see Rule 31.9) to the second day following the announcement of such decision with consequent changes to "Day 46" (see Rule 32.1(c)), "Day 53" (see Note 3 on Rule 2.6) and "Day 60".

Rule 31.9

31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39

… **If an announcement of the kind referred to in this Rule is made after the 39th day, the Panel will normally be prepared to grant an extension to "Day 46" (see Rule 32.1(c)), "Day 53" (see Note 3 on Rule 2.6) and/or "Day 60" (see Rule 31.6) as appropriate.**

Rule 32.1

32.1 PUBLICATION OF REVISED OFFER DOCUMENT

…

NOTES ON RULE 32.1

…

5. Extension to "Day 60"

Where the Panel consents to an extension to "Day 60" in accordance with Rule 31.6(a)(ii), it will normally also grant an extension to or, if appropriate, re-set "Day 46" and "Day 53" (see Note 3 on Rule 2.6). Therefore, where the board of an offeree company consents to a request by an offeror that "Day 60" of the offeror's offer timetable should be extended, and subject to no unreserved "no extension statement" (see Rule 31.5) or "no increase statement" (see Rule 32.2) having been made, the offeror will normally be able to revise its offer, notwithstanding that the original "Day 46" may have passed.

Rule 32.2

32.2 NO INCREASE STATEMENTS

…

NOTES ON RULE 32.2

…

2. Reservation of right to set statements aside

A no increase statement may be set aside only if the offeror has specifically reserved the right at the time the statement was made to set it aside in the circumstances which subsequently arise; this applies whether or not the offer was recommended at the outset. However, the no increase statement must not be subject to a reservation which depends solely on subjective judgements of the offeror or its directors or the fulfilment of which is in their hands. If an offeror wishes to include a reservation to a no increase statement, the Panel must be consulted.

The first document published in connection with an offer in which mention is made of the no increase statement must contain prominent reference to this reservation (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no increase statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details. If the right to set aside the no increase statement has not been specifically reserved as set out above, only in wholly exceptional circumstances will the offeror be allowed to increase its offer after a no increase statement, even if a recommendation from the board of the offeree company is forthcoming or if the offer is unconditional in all respects.

…

5. Rule 31.9 announcements

Subject to Note 2 above, if the offeree company makes an announcement of the kind referred to in Rule 31.9 after the 39th day <u>following the publication of the initial offer document</u> and after a no increase statement has been made, the offeror can choose not to be bound by that statement and to be free to revise its offer if permitted by the Panel under Rule 31.9, provided that<u>:</u>

<u>(a) the no increase statement was made after the 39th day; and</u>

<u>(b)</u> notice to this effect is published as soon as possible (and in any event within 4 business days after the date of the offeree company announcement) and a notification is sent to offeree company shareholders and persons with information rights at the earliest opportunity.

Rule 32.5

32.5 COMPETITIVE SITUATIONS

If a competitive situation continues to exist in the later stages of the offer period, the Panel will normally require revised offers to be announced in accordance with an auction procedure, the terms of which will be determined by the Panel. That procedure will normally <u>follow the auction procedure set out in Appendix 8</u>. ~~require final revisions to competing offers to be announced by the 46th day following the publication of the competing offer document but enable an offeror to revise its offer within a set period in response to any revision announced by a competing offeror on or after the 46th day. The procedure will not normally require any revised offer document to be sent to offeree company shareholders and persons with information rights before the expiry of a set period after the last revision to either offer is announced.~~ <u>However, t</u>~~T~~he Panel will consider applying any alternative procedure which is agreed between competing offerors and the board of the offeree company. <u>Under any auction procedure, the Panel may set a deadline by which any revised offer document must be sent to offeree company shareholders and persons with information rights.</u>

NOTES ON RULE 32.5

1. Dispensation from obligation to make an offer

The Panel will normally grant a dispensation from the obligation to make a revised offer, which is lower than the final revised offer announced by a competing offeror, when the board of the offeree company consents.

~~***2. Guillotine***~~

~~*The Panel may impose a final time limit for announcing revisions to competing offers for the purpose of any procedure established in accordance with this Rule taking into account representations by the board of the offeree company, the revisions previously announced and the duration of the procedure.*~~

~~3.~~2. Schemes of arrangement

Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable. ~~*The Panel will then determine the date or dates on which final revisions to the competing offers must be announced and on which any auction procedure will commence, taking into account all the relevant circumstances.*~~

Rule 37.3

~~**37.3 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEREE COMPANY**~~

~~***(a) Shareholders' approval***~~

~~**During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, no redemption or purchase by the offeree company of its own shares may be effected without the approval of the shareholders at a general meeting. The notice convening the meeting must include information about the offer or anticipated offer. Where it is felt that the redemption or purchase is in pursuance of a contract entered into earlier or another pre-existing obligation, the Panel must be consulted and its consent to proceed without a shareholders' meeting obtained (Notes 1 and 9 on Rule 21.1 may be relevant).**~~

~~*(b) Public disclosure*~~

~~**For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company.**~~

~~*(c) Disclosure in the offeree board circular*~~

~~**Any offeree board circular published in connection with an offer must state the amount of relevant securities of the offeree company which the offeree company has redeemed or purchased during the period commencing 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the document, and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.**~~

Rule 37.4

~~**37.4 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEROR COMPANY**~~

~~*(a) Public disclosure*~~

~~**For the purpose of Rule 8, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by an offeror.**~~

~~*(b) Disclosure in the offer document*~~

~~**The offer document must state (in the case of a securities exchange offer only) the number of relevant securities of the offeror which the offeror has redeemed or purchased between the start of the offer period and the latest practicable date prior to the publication of the offer document and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.**~~

Appendix 1

4 WHITEWASH CIRCULAR

The circular must contain the following information and statements and comply appropriately with the Rules of the Code as set out below:

(a) competent independent advice to the board of the offeree company regarding the transaction, the controlling position which it will create and the effect which this will have on shareholders generally;

…

(d) in cases where the potential controlling position will be held by more than one person, the identity of the potential controllers and their individual potential interests in shares in addition to the information required under (~~i~~j) below;

…

(f) a statement that, in the event that the proposals are approved at the shareholders' meeting, the potential controllers will not be restricted from making an offer for the offeree company, unless the potential controllers have either:

> **(i) entered into an agreement with the company not to make an offer (see Note 5 on the definition of acting in concert); or**
>
> **(ii) made a statement that they do not intend to make an offer (see Rule 2.8),**

in which case full details of such agreement or statement must be included in the circular and the agreement or statement published on a website in accordance with Rule 26.2;

(~~f~~g) … ;

(g~~h~~) ... ;

(~~h~~i) … ;

(i~~i~~j) … ;

(j~~k~~) … ;

(~~k~~l) … ;

(~~l~~m) … ;

(~~m~~n) … ;

(~~n~~o) … ; and

(~~o~~p) … .

Appendix 2

6 RULE 6

…

Calculation of the formula price at the time of an acquisition will only be possible if there is co-operation from the board of the offeree company. It is not acceptable for the procedure set out in the previous paragraph to be applied on the basis of estimated net asset values, eg those contained in ~~brokers'~~ investment analysts' circulars. …

Appendix 7

4 HOLDING STATEMENTS

(a) If an announcement of the kind described in Rule 2.6(d) or (e) is made during an offer period involving an offer to be implemented by means of a scheme of arrangement, the Panel will normally require the potential offeror to clarify its position by ~~a date in advance of~~ no later than 5.00 pm on the seventh day prior to the date of the shareholder meetings~~, to be announced by the Panel~~.

(b) Where appropriate, however, taking into account all relevant circumstances, including:

> **(i) the interests of offeree company shareholders and the desirability of clarification prior to the shareholder meetings; and**
>
> **(ii) the time which the ~~offeror or~~ potential offeror has had to consider its position,**

the Panel may permit clarification after the date of the shareholder meetings but ~~before~~ by no later than 5.00 pm on the seventh day prior to the date of the court sanction hearing.

(c) The Panel will announce the date by which clarification is required under paragraph (a) or (b) above.

~~NOTE ON SECTION 4~~

~~Date by which announcement required~~

~~*For the purposes of Section 4(a), the date by which a clarifying announcement will be required to be made will normally be a date which is on or around 10 days prior to the date of the shareholder meetings.*~~"

Appendix 8

[for ease of reading, the proposed new Appendix 8 is not shown in underlined text]

APPENDIX 8

AUCTION PROCEDURE FOR THE RESOLUTION OF COMPETITIVE SITUATIONS

DEFINITIONS AND INTERPRETATION

Auction Day 1

The business day immediately following Day 46.

Auction Day 2

The business day immediately following Auction Day 1.

Auction Day 3

The business day immediately following Auction Day 2.

Auction Day 4

The business day immediately following Auction Day 3.

Auction Day 5

The business day immediately following Auction Day 4.

Auction procedure

The procedure set out in Sections 2 to 4 below.

Day 46

The 46th day following the publication by the second competing offeror of its offer document or, if the second competing offeror is proceeding by means of a scheme of arrangement, such date as the Panel shall determine.

Offer announcement

An announcement of a revised offer by a competing offeror during the auction procedure.

Revised offer

Any offer which represents an increase in the level of the consideration offered by a competing offeror (including the introduction of a new form of consideration or an alternative offer).

1 INTRODUCTION

(a) This Appendix 8 sets out the procedure normally to be followed pursuant to Rule 32.5 when a competitive situation continues to exist at 5.00 pm on Day 46 and no alternative procedure has been agreed between the competing offerors, the board of the offeree company and the Panel.

(b) Prior to the commencement of the auction procedure, the Panel will issue written instructions to each competing offeror and the offeree company setting out the detailed procedural requirements which the Panel considers necessary to give effect to the auction procedure.

(c) This Appendix 8 assumes that there are two competing offerors. If a competitive situation involves more than two competing offerors, the Panel will modify the auction procedure as it considers appropriate.

2 GENERAL

(a) Except with the consent of the Panel, the latest time by which either competing offeror may announce or make a revised offer, other than in accordance with the auction procedure, is 5.00 pm on Day 46.

(b) If a competitive situation continues to exist at 5.00 pm on Day 46, a competing offeror may announce a revised offer thereafter only in accordance with the auction procedure.

(c) If, after 5.00 pm on Day 46, a person other than the then competing offerors announces a firm intention to make an offer for the offeree company, the auction procedure will end and the Panel must be consulted as to the applicable timetable.

(d) A competing offeror which is permitted to announce a revised offer on any day during the auction procedure may make only one offer announcement on the relevant day.

(e) Any offer announcement must comply with the provisions of Rule 2.7.

(f) A competing offeror must not announce a revised offer the consideration of which is calculated by reference to a formula that is determinable by reference to the value of a revised offer by the other competing offeror.

(g) If a competing offeror announces a revised offer which the Panel determines to be contrary to the provisions of the auction procedure, the Panel may declare the revised offer to be invalid, and the competing offeror concerned shall not be permitted to proceed with an offer on the terms set out in the announcement.

(h) Except with the consent of the Panel, during the auction procedure, the competing offerors, the offeree company and any person acting in concert with any of them must not:

> **(i) make any public statement in relation to, or which could reasonably be expected to affect the orderly operation of, the auction procedure or in relation to the terms of either competing offeror's offer; or**
>
> **(ii) deal in relevant securities of the offeree company or take any steps to procure an irrevocable commitment or letter of intent in relation to either competing offeror's offer or to amend, vary, update or replace any irrevocable commitment or letter of intent previously procured.**

(i) Following the end of the auction procedure at 5.00 pm on any of Auction Days 1 to 5, the Panel will make an announcement confirming that the auction procedure has ended.

(j) Between the end of the auction procedure and the end of the offer period, a competing offeror and any person acting in concert with it must not place itself in a position where it would be required to revise its offer. See also Notes 3 and 4 on Rule 32.1.

3 AUCTION DAYS 1 TO 4

(a) The auction procedure will commence on Auction Day 1. Either or both of the competing offerors may announce a revised offer on Auction Day 1. If neither competing offeror announces a revised offer on Auction Day 1, the auction procedure will end at 5.00 pm on Auction Day 1.

(b) A competing offeror may announce a revised offer on Auction Day 2 provided that the other competing offeror announced a revised offer on Auction Day 1. If no such revised offer is announced on Auction Day 2, the auction procedure will end at 5.00 pm on Auction Day 2.

(c) A competing offeror may announce a revised offer on Auction Day 3 provided that the other competing offeror announced a revised offer on Auction Day 2. If no such revised offer is announced on Auction Day 3, the auction procedure will end at 5.00 pm on Auction Day 3.

(d) A competing offeror may announce a revised offer on Auction Day 4 provided that the other competing offeror announced a revised offer on Auction Day 3. If no such revised offer is announced on Auction Day 4, the auction procedure will end at 5.00 pm on Auction Day 4.

(e) If a competing offeror is permitted to announce a revised offer on any of Auction Days 1 to 4 and wishes to do so, that competing offeror must submit an offer announcement to the Panel before 4.00 pm on the relevant day.

(f) Unless the Panel otherwise consents or directs, if the relevant competing offeror submits an offer announcement to the Panel in accordance with paragraph (e), that competing offeror must announce the revised offer by submitting that offer announcement, in the same form as the announcement submitted to the Panel, to a RIS before 5.00 pm on the relevant day, embargoed for publication until that time.

(g) If the relevant competing offeror does not submit an offer announcement to the Panel in accordance with paragraph (e) on any of Auction Days 1 to 4, that competing offeror may not then announce a revised offer on that day.

4 AUCTION DAY 5

(a) If a competing offeror which is permitted to announce a revised offer on Auction Day 4 does so, either or both of the competing offerors may announce a revised offer on Auction Day 5. In any event, the auction procedure will then end at 5.00 pm on Auction Day 5.

(b) If either competing offeror wishes to announce a revised offer on Auction Day 5, that competing offeror must submit an offer announcement to the Panel before 4.00 pm on that day. The offer announcement may be submitted subject to a condition that the revised offer will be announced only if the other competing offeror also submits an offer announcement to the Panel before 4.00 pm on that day (but not subject to any other conditions, such as the level of a competing offeror's revised offer). If an offer

announcement is submitted to the Panel subject to such a condition, the Panel will, before 4.30 pm on Auction Day 5, notify the relevant competing offeror whether the condition has been satisfied. If both competing offerors submit an offer announcement subject to a condition as referred to in this paragraph (b), both conditions will be deemed to have been satisfied.

(c) Unless the Panel otherwise consents or directs, if a competing offeror submits an offer announcement to the Panel on Auction Day 5 in accordance with paragraph (b) and either:

> **(i) the offer announcement is not subject to a condition as referred to in paragraph (b); or**
>
> **(ii) the offer announcement is subject to a condition as referred to in paragraph (b) and the Panel notifies that competing offeror that the condition has been satisfied,**

that competing offeror must announce the revised offer by submitting that offer announcement, in the same form as the announcement submitted to the Panel, to a RIS before 5.00 pm on that day, embargoed for publication until that time.

APPENDIX B

List of questions

Q1 **Should the latest date for a potential competing offeror to clarify its position be a firm date as opposed to a flexible date which is set by the Panel on a case-by-case basis?**

Q2 **Should the deadline by which a potential competing offeror must clarify its position be extended to seven days prior to the final day on which the first offeror's offer is capable of becoming or being declared unconditional as to acceptances, rather than 10 days prior to that time?**

Q3 **Should the latest date by which a potential competing offeror must clarify its position be fixed at 5.00pm on the 53rd day following the publication of the first offeror's initial offer document?**

Q4 **Where the first offeror is proceeding by way of a scheme of arrangement, should the latest date by which a potential competing offeror must clarify its position normally be 5.00pm on the seventh day prior to the date of the shareholder meetings?**

Q5 **Should the Panel, in appropriate cases, continue to be able to permit a potential competing offeror to clarify its position after the date of the shareholder meetings and, in such cases, should the deadline be set for a date which is no later than 5.00pm on the seventh day prior to the date of the court sanction hearing?**

Q6 **Do you have any comments on the proposed amendments to Rules 2.6(d) and (e), Note 3 on Rule 2.6 and Section 4 of Appendix 7?**

Q7 **Do you have any comments on the proposed new Note 5 on Rule 32.1 with regard to extensions to Day 60?**

Q8 **What are your views on the proposed amendment to Note 2 on Rule 2.8?**

Q9 **Should paragraph (a) of Note 4 on Rule 2.2 be amended as proposed so as to restrict a person who is subject to that Note, together with any person who acted, or subsequently acts, in concert with it, from acquiring interests in shares of the offeree company?**

Q10 **Should paragraph (a) of Note 4 on Rule 2.2 be amended as proposed so as to restrict a person who is subject to that Note, together with any person who acted, or subsequently acts, in concert with it, from making an approach to the board of the offeree company?**

Q11 Should paragraph (b) of Note 4 on Rule 2.2 be amended as proposed so as to require that an announcement which the Panel requires to be made by the offeree company under that paragraph (b) should normally identify the former potential offeror?

Q12 Should paragraph (a) of Note 4 on Rule 2.2 be amended as proposed to as to restrict a person who is granted a dispensation, and any person acting in concert with it, from actively considering an offer, from making an approach and from acquiring an interest in shares of the offeree company for a period of three months following the date on which the dispensation was granted and from doing any of the things set out in Rules 2.8(a) to (e) for the following three month period?

Q13 Should the default auction procedure be based on the Existing Default Procedure? If not, is there an alternative model which would be more appropriate?

Q14 Should the default auction procedure be incorporated into the Code as a new Appendix 8?

Q15 Should the Proposed Auction Procedure provide for an auction process with a maximum of five rounds over five consecutive business days?

Q16 Should both of the competing offerors be permitted to announce a revised offer in the first round of the auction?

Q17 In the second, third and fourth rounds, should a competing offeror be permitted to announce a revised offer only if the other competing offeror has announced a revised offer in the previous round?

Q18 Should both of the competing offerors be entitled to announce a revised offer in the fifth and final round?

Q19 Do you agree that the Proposed Auction Procedure should not require revised offers to incorporate minimum incremental increases to previous offers?

Q20 Should the Proposed Auction Procedure prohibit the announcement of a revised offer where the consideration is calculated by reference to a formula that is determinable by reference to the value of a revised offer by the other competing offeror (in the absence of agreement between the parties that such formula offers should be permitted)?

Q21 Should a competing offeror be permitted to submit a revised offer to the Panel in the fifth and final round subject to the condition that it will be announced only if the other competing offeror also submits a revised offer?

Q22 Do you agree that the introduction of new forms of consideration during the auction should not be prohibited?

Q23 Should the terms of the Proposed Auction Procedure prohibit dealings in the relevant securities of the offeree company by the parties to the offer and persons acting in concert with them, and the procuring of irrevocable commitments and letters of intent, during the auction procedure?

Q24 Should the terms of the Proposed Auction Procedure provide that, between the end of the auction procedure and the end of the offer period, a competing offeror and any person acting in concert with it must not acquire any interest in the shares of the offeree company if it would then be required to revise its offer?

Q25 Should the terms of the Proposed Auction Procedure prohibit announcements by the competing offerors or the offeree company (or persons acting in concert with them) which relate to, or could reasonably be expected to affect the orderly operation of, the auction procedure or which relate to the terms of either competing offeror's offer?

Q26 Do you have any comments on the proposed amendments to Rule 32.5 or the proposed new Appendix 8?

Q27 Should the Code be amended so as to require a whitewash transaction circular to state that potential controllers which are granted a Rule 9 waiver are not restricted from making an offer for the company?

Q28 Do you have any comments on the proposed amendments to Note 1 of the Notes on Dispensations from Rule 9, Section 4 of Appendix 1 and Note 5 on the definition of "acting in concert"?

Q29 Should Rule 2.11(b) be amended so as to require irrevocable commitments and letters of intent procured prior to an offer period to be disclosed following the identification of the offeror as such, and Rule 2.11(c) deleted, as proposed?

Q30 Should Rule 2.7 be amended so as to require details of interests and short positions in relevant securities of the offeree company, and irrevocable commitments and letters of intent, to be included in the announcement of a firm intention to make an offer, and the new Note 3 on Rule 2.7 introduced, as proposed?

Q31 Should Note 2(a)(i) on Rule 8 be amended such that the "10 business days" deadline would apply to an offeror's Opening Position Disclosure, regardless of when it announced its firm intention to make an offer?

Q32 Should Note 1 on Rule 2.11 be amended so as to make clear that no separate disclosure is required when details of irrevocable commitments and letters of intent are disclosed in a firm or possible offer announcement made by no later than 12 noon on the business day following the date on which they are procured?

Q33 Should paragraph (viii) of Note 5(a) be deleted so as to remove the requirement to disclose details of irrevocable commitments and letters of intent in an Opening Position Disclosure?

Q34 Should Note 3 on Rule 2.11 be amended so as require the disclosure of any outstanding conditions to which an irrevocable commitment is subject?

Q35 Should Note 12 on Rule 8 be amended so as to make clear that it applies to any participant in a formal sale process, and should consequential amendments be made to Note 1 on Rule 2.4, Note 2 on Rule 2.6 and the Note on Rule 7.1, as proposed?

Q36 Should Rule 26.1 be amended so as to make clear that the specified documents are required to be published on a website by no later than 12 noon on the business day following a firm offer announcement (or, if later, the date of the relevant document)?

Q37 Should Rule 2.10 be amended so as to bring forward the latest deadline for announcements of the numbers of relevant securities in issue from 9.00am to 7.15am?

Q38 Should Note 5(f) on Rule 8 be amended so as to require that, where the owner or controller of an interest or short position is a trust, details of the trustee(s), the settlor and the beneficiaries of the trust must be disclosed?

Q39 Should Note 5(a) on Rule 8 be amended to provide for aggregated disclosure by a connected principal trader where the sole reason for the connection is that the principal trader is controlled by, controls or is under the same control as a connected adviser to an offeror, the offeree company or any person acting in concert with the offeror or the offeree company?

Q40 Should the Code be amended as proposed in respect of matters relating to the redemptions and purchases by offeree companies and offerors of their own securities?

Q41 Should Note 4 on Rule 20.1, Note 5 on Rule 19.1 and Section 6 of Appendix 2 be amended as proposed?

Q42 Do you have any comments on the proposed amendments to Note 2 on Rule 32.2 and Note 2 on Rule 31.5?

Q43 Do you have any comments on the proposed amendments to Note 5 on Rule 32.2 and Note 5 on Rule 31.5?

Q44 Should Rule 3.1 and Note 3 on Rule 3.1 be amended as proposed so as to make clearer the roles of the board of the offeree company and the independent adviser?

Q45 Should the second paragraph of Note 16 on Rule 9.1 be amended as proposed so as to make clear that it applies only to shares acquired and held by a principal trader in a client-serving capacity?

APPENDIX C

SUMMARY OF THE CODE'S DISCLOSURE REQUIREMENTS FOR IRREVOCABLE COMMITMENTS

	IRREVOCABLE COMMITMENT PROCURED PRIOR TO OFFER PERIOD		**IRREVOCABLE COMMITMENT PROCURED DURING OFFER PERIOD**	
Irrevocable commitment procured by:	**Current disclosure requirements**	**Proposed disclosure requirements**	**Current disclosure requirements**	**Proposed disclosure requirements**
Identified offeror	**Rule 2.11(c)**: disclose in any announcement required by Rule 2.11(a) prior to Opening Position Disclosure ("OPD") **Rule 2.11(b)**: disclose in OPD	**Rule 2.11(b)**: disclose by 12.00 noon on business day following announcement in which offeror identified **Rule 2.7**: disclose in firm offer announcement	**Rule 2.11(a)**: disclose by 12.00 noon the following business day **Rule 2.11(b)**: disclose in OPD (if deadline has not passed)	**Rule 2.11(a)**: disclose by 12.00 noon the following business day **Rule 2.7**: disclose in firm offer announcement
Unidentified offeror	No disclosure required for so long as not identified			

APPENDIX D

PROPOSED NEW DISCLOSURE FORMS

see overleaf

FORM 8 (OPD)

PUBLIC OPENING POSITION DISCLOSURE BY A PARTY TO AN OFFER
Rules 8.1 and 8.2 of the Takeover Code (the "Code")

1. KEY INFORMATION

(a) Full name of discloser:	
(b) Owner or controller of interests and short positions disclosed, if different from 1(a): *The naming of nominee or vehicle companies is insufficient. For a trust, the trustee(s), settlor and beneficiaries must be named.*	
(c) Name of offeror/offeree in relation to whose relevant securities this form relates: *Use a separate form for each offeror/offeree*	
(d) Is the discloser the offeror or the offeree?	OFFEROR / OFFEREE
(e) Date position held: *The latest practicable date prior to the disclosure*	
(f) In addition to the company in 1(c) above, is the discloser making disclosures in respect of any other party to the offer? *If it is a cash offer or possible cash offer, state "N/A"*	YES / NO / N/A *If YES, specify which:*

2. POSITIONS OF THE PARTY TO THE OFFER MAKING THE DISCLOSURE

If there are positions or rights to subscribe to disclose in more than one class of relevant securities of the offeror or offeree named in 1(c), copy table 2(a) or (b) (as appropriate) for each additional class of relevant security.

(a) Interests and short positions in the relevant securities of the offeror or offeree to which the disclosure relates

Class of relevant security:				
	Interests		**Short positions**	
	Number	**%**	**Number**	**%**
(1) Relevant securities owned and/or controlled:				
(2) Cash-settled derivatives:				
(3) Stock-settled derivatives (including options) and agreements to purchase/sell:				
TOTAL:				

All interests and all short positions should be disclosed.

Details of any open stock-settled derivative positions (including traded options), or agreements to purchase or sell relevant securities, should be given on a Supplemental Form 8 (Open Positions).

Details of any securities borrowing and lending positions or financial collateral arrangements should be disclosed on a Supplemental Form 8 (SBL).

(b) Rights to subscribe for new securities

Class of relevant security in relation to which subscription right exists:	
Details, including nature of the rights concerned and relevant percentages:	

3. POSITIONS OF PERSONS ACTING IN CONCERT WITH THE PARTY TO THE OFFER MAKING THE DISCLOSURE

Details of any interests, short positions and rights to subscribe (including directors' and other employee options) of any person acting in concert with the party to the offer making the disclosure:

Details of any open stock-settled derivative positions (including traded options), or agreements to purchase or sell relevant securities, should be given on a Supplemental Form 8 (Open Positions).

Details of any securities borrowing and lending positions or financial collateral arrangements should be disclosed on a Supplemental Form 8 (SBL).

4. OTHER INFORMATION

(a) Indemnity and other dealing arrangements

Details of any indemnity or option arrangement, or any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing entered into by the party to the offer making the disclosure or any person acting in concert with it: *Irrevocable commitments and letters of intent should not be included. If there are no such agreements, arrangements or understandings, state "none"*

(b) Agreements, arrangements or understandings relating to options or derivatives

Details of any agreement, arrangement or understanding, formal or informal, between the party to the offer making the disclosure, or any person acting in concert with it, and any other person relating to: **(i) the voting rights of any relevant securities under any option; or** **(ii) the voting rights or future acquisition or disposal of any relevant securities to which any derivative is referenced:** *If there are no such agreements, arrangements or understandings, state "none"*

(c) Attachments

Are any Supplemental Forms attached?

Supplemental Form 8 (Open Positions)	YES/NO
Supplemental Form 8 (SBL)	YES/NO

Date of disclosure:	
Contact name:	
Telephone number:	

Public disclosures under Rule 8 of the Code must be made to a Regulatory Information Service and must also be emailed to the Takeover Panel at monitoring@disclosure.org.uk. The Panel's Market Surveillance Unit is available for consultation in relation to the Code's disclosure requirements on +44 (0)20 7638 0129.

The Code can be viewed on the Panel's website at www.thetakeoverpanel.org.uk.

FORM 8 (DD)

PUBLIC DEALING DISCLOSURE BY A PARTY TO AN OFFER OR PERSON ACTING IN CONCERT (INCLUDING DEALINGS FOR THE ACCOUNT OF DISCRETIONARY INVESTMENT CLIENTS)
Rules 8.1, 8.2 and 8.4 of the Takeover Code (the "Code")

1. KEY INFORMATION

(a) Full name of discloser:	
(b) Owner or controller of interests and short positions disclosed, if different from 1(a): *The naming of nominee or vehicle companies is insufficient. For a trust, the trustee(s), settlor and beneficiaries must be named.*	
(c) Name of offeror/offeree in relation to whose relevant securities this form relates: *Use a separate form for each offeror/offeree*	
(d) Status of person making the disclosure: *e.g. offeror, offeree, person acting in concert with the offeror/offeree (specify name of offeror/offeree)*	
(e) Date dealing undertaken:	
(f) In addition to the company in 1(c) above, is the discloser making disclosures in respect of any other party to the offer? *If it is a cash offer or possible cash offer, state "N/A"*	YES / NO / N/A *If YES, specify which:*

2. POSITIONS OF THE PERSON MAKING THE DISCLOSURE

If there are positions or rights to subscribe to disclose in more than one class of relevant securities of the offeror or offeree named in 1(c), copy table 2(a) or (b) (as appropriate) for each additional class of relevant security.

(a) Interests and short positions in the relevant securities of the offeror or offeree to which the disclosure relates following the dealing

Class of relevant security:				
	Interests		**Short positions**	
	Number	**%**	**Number**	**%**
(1) Relevant securities owned and/or controlled:				
(2) Cash-settled derivatives:				
(3) Stock-settled derivatives (including options) and agreements to purchase/sell:				
TOTAL:				

All interests and all short positions should be disclosed.

Details of any open stock-settled derivative positions (including traded options), or agreements to purchase or sell relevant securities, should be given on a Supplemental Form 8 (Open Positions).

Details of any securities borrowing and lending positions or financial collateral arrangements should be disclosed on a Supplemental Form 8 (SBL).

(b) Rights to subscribe for new securities (including directors' and other employee options)

Class of relevant security in relation to which subscription right exists:	
Details, including nature of the rights concerned and relevant percentages:	

3. DEALINGS BY THE PERSON MAKING THE DISCLOSURE

Where there have been dealings in more than one class of relevant securities of the offeror or offeree named in 1(c), copy table 3(a), (b), (c) or (d) (as appropriate) for each additional class of relevant security dealt in.

The currency of all prices and other monetary amounts should be stated.

(a) Purchases and sales

(i) Party to an offer or person acting in concert (except for a principal trader in the same group as a connected adviser)

Class of relevant security	Purchase/sale	Number of securities	Price per unit

(ii) Principal trader where the sole reason for the connection is that the principal trader is in the same group as a connected adviser

Class of relevant security	Purchases/ sales	Total number of securities	Highest price per unit paid/received	Lowest price per unit paid/received

(b) Cash-settled derivative transactions

Class of relevant security	Product description *e.g. CFD*	Nature of dealing *e.g. opening/closing a long/short position, increasing/reducing a long/short position*	Number of reference securities	Price per unit

(c) Stock-settled derivative transactions (including options)

(i) Writing, selling, purchasing or varying

Class of relevant security	Product description *e.g. call option*	Writing, purchasing, selling, varying etc.	Number of securities to which option relates	Exercise price per unit	Type *e.g. American, European etc.*	Expiry date	Option money paid/ received per unit

(ii) Exercise

Class of relevant security	Product description *e.g. call option*	Exercising/ exercised against	Number of securities	Exercise price per unit

(d) Other dealings (including subscribing for new securities)

Class of relevant security	Nature of dealing *e.g. subscription, conversion*	Details	Price per unit (if applicable)

4. OTHER INFORMATION

(a) Indemnity and other dealing arrangements

Details of any indemnity or option arrangement, or any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing entered into by the party to the offer or person acting in concert making the disclosure and any other person: *Irrevocable commitments and letters of intent should not be included. If there are no such agreements, arrangements or understandings, state "none"*

(b) Agreements, arrangements or understandings relating to options or derivatives

Details of any agreement, arrangement or understanding, formal or informal, between the party to the offer or person acting in concert making the disclosure and any other person relating to: **(i) the voting rights of any relevant securities under any option; or** **(ii) the voting rights or future acquisition or disposal of any relevant securities to which any derivative is referenced:** *If there are no such agreements, arrangements or understandings, state "none"*

(c) Attachments

Are any Supplemental Forms attached?

Supplemental Form 8 (Open Positions)	YES/NO
Supplemental Form 8 (SBL)	YES/NO

Date of disclosure:	
Contact name:	
Telephone number:	

Public disclosures under Rule 8 of the Code must be made to a Regulatory Information Service and must also be emailed to the Takeover Panel at monitoring@disclosure.org.uk. The Panel's Market Surveillance Unit is available for consultation in relation to the Code's dealing disclosure requirements on +44 (0)20 7638 0129.

The Code can be viewed on the Panel's website at www.thetakeoverpanel.org.uk.