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THE TAKEOVER PANEL

**CONSULTATION PAPER ISSUED BY
THE CODE COMMITTEE OF THE PANEL**

**POST-OFFER UNDERTAKINGS AND
INTENTION STATEMENTS**

The Code Committee of the Takeover Panel (the “**Panel**”) invites comments on this Public Consultation Paper. Comments should reach the Code Committee by Friday, 24 October 2014.

Comments may be sent by e-mail to:

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All responses to formal consultation will be 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.

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1. Introduction and summary of proposals

(a) Introduction

- 1.1 In this Public Consultation Paper (“**PCP**”), the Code Committee of the Panel (the “**Code Committee**”) proposes to amend the Takeover Code (the “**Code**”) so as to introduce a new framework for the regulation of statements made by the parties to an offer (i.e. offerors and offeree companies) relating to any particular course of action they commit or intend to take, or not take, after the end of the offer period.
- 1.2 On 2 May 2014, in the context of its possible offer for AstraZeneca plc (“**AstraZeneca**”), Pfizer Inc. (“**Pfizer**”) stated that, subject to successful completion of its combination with AstraZeneca on the basis proposed by Pfizer, it would make a number of commitments, and that those commitments would be made for a minimum of five years. In summary, these included commitments to:
- (a) complete the construction of AstraZeneca’s planned research and development hub in Cambridge;
 - (b) base key scientific leadership in the UK;
 - (c) employ a minimum of 20% of the combined group’s total research and development workforce in the UK; and
 - (d) retain substantial manufacturing facilities in Macclesfield.
- 1.3 Pfizer’s statement setting out its proposed commitments was made voluntarily and not as a result of a requirement of the Code. However, Pfizer stated that, under the provisions of the Code, the commitments would be binding on it.
- 1.4 Pfizer’s statement was unusual in that:

- (a) an offeror will normally express such statements as statements of intention rather than as commitments; and
 - (b) the commitments proposed to be made by Pfizer were far-reaching and long-term, as compared to statements of intention generally made by offerors (which are rarely expressed to apply for longer than 12 months).
- 1.5 The public debate which took place after Pfizer made its statement highlighted that:
- (a) an offeror is required, in its offer document, to make statements of intention with regard to, amongst other matters, the future business of the offeree company and the continued employment of its employees;
 - (b) an offeror which has no intention to make any changes in relation to those matters must make a statement to that effect in its offer document;
 - (c) a party to an offer which makes a statement relating to any particular course of action to be taken, or not taken, following the offer will be regarded, under the Code, as being committed to taking, or not taking, that course of action for a period of 12 months, or such other period of time as is specified in the statement, unless there is a material change of circumstances. This is the case regardless of whether the statement is expressed as being a “statement of intention” or a “commitment”; and
 - (d) the Panel’s powers to give rulings to secure compliance with the requirements of the Code and to seek enforcement in the courts apply to such statements.

- 1.6 Having reviewed the operation and effect of the relevant provisions of the Code in this area, the Code Committee has concluded that there are a number of issues which it should address, including that:
- (a) the Code does not currently distinguish between a **voluntary commitment** made by a party to an offer, in which the party states what action it *commits* to take, or not take, and a **statement of intention** made by a party to an offer, in which the party states what action it *intends* to take, or not take. This is because, as explained above, the Code, in effect, deems statements of intention to be binding commitments;
 - (b) the Code does not currently include provisions relating to either the formulation of a voluntary commitment or the circumstances in which the party making the commitment can prescribe that it should cease to apply;
 - (c) a voluntary commitment will currently cease to apply if there is a “material change of circumstances”. However, there is no guidance as to how this term is to be applied and this has the potential to cause uncertainty; and
 - (d) the Code does not currently include any mechanisms which the Panel can use to monitor the on-going compliance by a party to an offer with any voluntary commitment which it has made, which commitment might be stated to apply for a significant period of time following the conclusion of the offer.
- 1.7 In addition, the Code Committee considers that the Code provision that statements of intention made by parties to an offer will be deemed to be binding commitments may deter such parties from making informative statements as to their intentions for the business and employees of the offeree company and that

the recent public focus on this issue may exacerbate this in the future unless changes are made to the Code.

(b) Summary of proposals

1.8 In order to address the issues identified above, the Code Committee proposes to introduce a new framework for the regulation of statements made by the parties to an offer relating to any particular course of action they commit or intend to take, or not take, after the end of the offer period.

1.9 The objectives of the proposed new framework are to:

- (a) provide clarity for shareholders and other stakeholders as to the status of statements made by the parties to an offer in relation to action they will, or will not, take following the offer;
- (b) increase the effectiveness of the enforcement tools available to the Panel when parties to an offer choose to make voluntary commitments; and
- (c) enable the parties to an offer to make informative statements of intention.

1.10 In summary, the proposed new framework would:

- (a) distinguish between:
 - (i) “**post-offer undertakings**”, i.e. statements relating to any particular course of action that a party to an offer *commits* to take, or not take, after the end of the offer period and with which it will be required to comply for the period of time specified in the undertaking, unless a qualification or condition set out in the undertaking applies; and

- (ii) “**post-offer intention statements**”, i.e. statements relating to any particular course of action that a party to an offer *intends* to take, or not take, after the end of the offer period, which will be required to be accurate statements of the party’s intentions at the time that they are made and based on reasonable grounds;
 - (b) in view of the distinction between them, apply separate requirements to post-offer undertakings and post-offer intention statements; and
 - (c) enhance the Panel’s ability to monitor compliance with and, therefore, enforce post-offer undertakings by:
 - (i) requiring a party to an offer which makes a post-offer undertaking to provide periodic written reports to the Panel; and
 - (ii) enabling the Panel to require the appointment of an independent supervisor to monitor compliance with a post-offer undertaking.
- (c) ***Invitation to comment***
- 1.11 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Friday, 24 October 2014 and should be sent in the manner set out at the beginning of this PCP.
- 1.12 The full text of the proposed amendments is set out in Appendix A. Where amendments are proposed, underlining indicates proposed new text and striking-through indicates text that is proposed to be deleted. For ease of reference, a list of the questions that are put for consultation is set out in Appendix B.

2. Background

(a) Introduction

2.1 The relevant provisions of the Code, the relevant powers of the Panel and the criminal offence of failure to comply with rules about bid documentation are explained below.

(b) Requirement for an offeror to state its intentions with regard to the business, employees and pension schemes of the offeree company (Rule 24.2)

2.2 Rule 24.2(a) requires that, amongst other things, an offeror must, in its offer document, state:

- (a) its intentions with regard to the future business of the offeree company and explain the long-term commercial justification for the offer;
- (b) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment;
- (c) its strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business; and
- (d) its intentions with regard to employer contributions into the offeree company's pension schemes, the accrual of benefits for existing members and the admission of new members.

2.3 Rule 24.2(b) requires that, if the offeror has no intention to make any changes in relation to the matters described in Rule 24.2(a), or if it considers that its strategic

plans for the offeree company will have no repercussions on employment or the locations of the offeree company's places of business, it must make a statement to that effect in the offer document.

(c) ***Requirement for a party to an offer to comply with statements of intention (Note 3 on Rule 19.1)***

2.4 Note 3 on Rule 19.1 provides that, if a party to an offer makes a statement in any document, announcement or other information published in relation to an offer relating to a particular course of action it intends to take, or not take, after the end of the offer period, that party will be regarded as being committed to that course of action for a period of 12 months from the date on which the offer period ends, or such other period of time as is specified in the statement, unless there has been a material change of circumstances. In effect, Note 3 on Rule 19.1 therefore deems a statement of intention made by a party to an offer, including any statement made by an offeror in compliance with Rules 24.2(a) or (b), to be a commitment.

(d) ***Power to make compliance rulings (Section 10(b) of the Introduction to the Code)***

2.5 Section 10(b) of the Introduction to the Code provides that, if the Panel is satisfied that there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules, or is satisfied that a person has contravened a requirement imposed by or under rules, the Panel may give any direction that appears to it to be necessary in order:

(a) to restrain a person from acting (or continuing to act) in breach of rules; or

- (b) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules; or
 - (c) otherwise to secure compliance with rules.
- 2.6 The “rules” referred to in Section 10(b) of the Introduction are set out in the Code (including in the Introduction, the General Principles, the Definitions and the Rules (and the related Notes and Appendices)) and in the Rules of Procedure of the Hearings Committee.
- (e) ***Power to seek court enforcement (section 955 of the Companies Act 2006)***
- 2.7 As is noted in Section 10(d) of the Introduction to the Code, under section 955 of the Companies Act 2006 (the “Act”), if, on the application of the Panel, the High Court or, in Scotland, the Court of Session is satisfied that:
 - (a) there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules; or
 - (b) a person has contravened a requirement imposed by or under rules,the court may make any order it thinks fit to secure compliance with the requirement. Section 955 also applies (in a modified form) in the Isle of Man and equivalent statutory provisions apply in Jersey and Guernsey.
- 2.8 Any failure to comply with a resulting court order may be a contempt of court, the penalties for which include a custodial sentence or a fine.
- 2.9 The Panel has never sought enforcement by the court. Therefore, the approach of the court to such an application is untested.

(f) *Disciplinary powers (Section 11 of the Introduction to the Code)*

- 2.10 Section 11(a) of the Introduction to the Code provides that the Panel Executive (the “**Executive**”) may deal with a disciplinary matter where the person who is to be subject to disciplinary action agrees the facts and the action proposed by the Executive. In any other case, where it considers that there has been a breach of the Code, the Executive may commence disciplinary proceedings before the Hearings Committee.
- 2.11 Section 11(b) of the Introduction to the Code provides that, if the Hearings Committee finds a breach of the Code or of a ruling of the Panel, it may:
- (a) issue a private statement of censure; or
 - (b) issue a public statement of censure; or
 - (c) suspend or withdraw any exemption, approval or other special status which the Panel has granted to a person, or impose conditions on the continuing enjoyment of such exemption, approval or special status, in respect of all or part of the activities to which such exemption, approval or special status relates; or
 - (d) report the offender’s conduct to a UK or overseas regulatory authority or professional body (most notably the Financial Conduct Authority (the “**FCA**”)) so that the authority or body can consider whether to take disciplinary or enforcement action; or
 - (e) publish a Panel Statement indicating that the offender is someone who, in the Hearing Committee’s opinion, is not likely to comply with the Code. Under the rules of the FCA, a person authorised by the FCA must not act

for the person in question in connection with a transaction to which the Code applies (so called “cold-shouldering”).

(g) *Failure to comply with rules about bid documentation (section 953 of the Act)*

2.12 Section 953 of the Act provides that, where an offer document or response document (i.e. an offeree board circular) does not comply with the “offer document rules” or the “response document rules”, a criminal offence will be committed if a relevant person:

- (a) knew that the document did not comply or was reckless as to whether it complied; and
- (b) failed to take all reasonable steps to secure that it did comply.

2.13 Section 10(e) of the Introduction to the Code provides that the “offer document rules” and the “response document rules” are those parts of Rule 24 (which prescribes the matters which must be included in an offer document) and Rule 25 (which prescribes the matters which must be included in an offeree board circular) respectively which are set out in Appendix 6 of the Code (including Rule 24.2) and, to the extent described in Section 10(e) of the Introduction, Rule 27 (which relates to material changes in information previously published by an offeror or the offeree company).

(h) *Application of the Panel’s enforcement and disciplinary powers*

2.14 The effect of Rules 24.2(a) and (b), Note 3 on Rule 19.1 and the Panel’s powers to make compliance rulings and to seek court enforcement is that, if a party to an offer publishes a statement regarding any particular course of action it intends to take, or not take, after the end of the offer period, including a statement made by an offeror in compliance with Rule 24.2, then, unless there has been a material

change of circumstances (as determined by the Panel), the party will be required to act in accordance with that statement for 12 months following the end of the offer period, or such other period as may be specified in the statement. Any failure by it to do so would be a breach of the requirement in Note 3 on Rule 19.1.

- 2.15 If, within the 12 months following the end of the offer period, or such other period as was specified in the statement, the Panel were to be satisfied that there was a reasonable likelihood that a party to an offer *would fail* to act in accordance with a statement of intention (including a voluntary commitment) which it had made, the Panel could give a direction under Section 10(b) of the Introduction to the Code to secure compliance with the requirements of Note 3 on Rule 19.1. In addition, the Panel could apply to the court for an order under section 955 of the Act. In summary, the Code Committee has been advised that the Panel's powers should work effectively if the Panel acts in anticipation of a contravention of a rule-based requirement to restrain a person from doing a particular thing or to secure compliance with the requirements of the Code.
- 2.16 In addition, if, within the 12 months following the end of the offer period, or such other period as was specified in the statement, the Panel were to find that a party to an offer *had failed* to act in accordance with a statement of intention (including a voluntary commitment) which it had made, the Panel could, in principle, give a direction under Section 10(b) of the Introduction to the Code to secure compliance with the requirements of Note 3 on Rule 19.1 and/or apply to the court for an order under section 955 of the Act. However, given that (by contrast with an anticipated contravention) this would be likely to require action already taken in breach of Note 3 on Rule 19.1 to be unwound, the giving of such a direction or court order might, in the circumstances of a particular case, be impractical. For example, it might be impractical for an offeror to comply with a direction or order to re-purchase a factory that it had sold, contrary to an undertaking not to sell that factory. In such circumstances, it might be the case that the only action which could be taken by the Panel in practice would be to

exercise its disciplinary powers under Section 11 of the Introduction to the Code. In addition, the Code Committee notes that the court is not empowered by section 955 of the Act, or otherwise, to award damages in relation to a contravention of a rule-based requirement. The Code Committee considers that this emphasises the need for the Code to provide a framework that enables the Panel to take early action prior to a contravention occurring.

(i) ***The Panel's responsibility for enforcing voluntary commitments***

2.17 Following Pfizer's possible offer for AstraZeneca, and the public debate regarding the commitments proposed to be given by Pfizer, the Code Committee considers that it is important to emphasise that the Panel is currently responsible for the enforcement of voluntary commitments made by a party to an offer relating to action to be taken, or not taken, after the end of an offer period.

2.18 The Code Committee believes it is right that the Panel has such responsibility for the following reasons:

- (a) voluntary commitments are likely to be made in order to secure shareholder and other stakeholder support for an offer. As such, they are likely to be part of the "battle for control" for the offeree company, which is regulated by the Panel; and
- (b) it is well-established that the parties to an offer should be held to what they say during an offer. It is an intrinsic part of the Panel's role in maintaining an orderly market within which takeovers are conducted, and in facilitating the normal functioning of the market, that market participants and other interested constituencies should be able to rely upon statements made in offer-related documents, announcements or other information. This principle should apply whether such statements relate to actions to be taken, or not taken, during an offer period or after its conclusion.

3. Post-offer undertakings

(a) *Distinction between “post-offer undertakings” and “post-offer intention statements”*

3.1 As indicated in Section 1 above, one of the objectives of the proposed new framework is to provide clarity for shareholders and other stakeholders as to the status of statements made by the parties to an offer in relation to action they will, or will not, take following the offer. The Code Committee therefore considers that the Code should draw a clear distinction between voluntary commitments and statements of intention, i.e. that these two types of statement should each be separately defined in the Code and that separate Rules of the Code should apply to each type of statement.

3.2 The Code Committee considers that the proposed new framework should distinguish between:

(a) a “**post-offer undertaking**”, i.e. a statement made by a party to an offer in any document, announcement or other information published in relation to the offer relating to any particular course of action that the party *commits* to take, or not take, after the end of the offer period; and

(b) a “**post-offer intention statement**”, i.e. a statement made by a party to an offer in any document, announcement or other information published in relation to the offer relating to any particular course of action that the party *intends* to take, or not take, after the end of the offer period.

3.3 In addition, the Code Committee considers that it should clearly be stated in the Code that a commitment or undertaking which a party to an offer has given directly to one or more identified parties, including a government agency such as the Competition and Markets Authority (the “**CMA**”), would not be subject to the

requirements which will apply to post-offer undertakings. The Code Committee considers that any commitment or undertaking given directly to such a party should be enforced by that party by means of the appropriate contractual or other regime applicable to the commitment or undertaking and that the enforcement of such a commitment or undertaking should not be the responsibility of the Panel. This would be in contrast to, for example, a post-offer undertaking made by an offeror as a result of the board of the offeree company demanding that a post-offer undertaking be made as a condition to the board's recommendation of the offeror's offer.

3.4 As a consequence of the proposed new framework clearly distinguishing between post-offer undertakings and post-offer intention statements, the current Note 3 on Rule 19.1, under which statements of intention are, in effect, deemed to be commitments, would be deleted.

3.5 The application of the proposed new framework to post-offer undertakings is discussed in more detail in this Section 3 and its application to post-offer intention statements is discussed in more detail in Section 4 below.

(b) *Making a post-offer undertaking and the consequences of doing so*

3.6 A key feature of the proposed new framework is that the Code would require a party to an offer to comply with the terms of any post-offer undertaking it makes for the period of time specified in the undertaking and to complete any course of action it committed to take by the specified date. A party making a post-offer undertaking would be excused compliance with its terms only if a qualification or condition set out in the undertaking applied.

3.7 In addition, the Code Committee considers that the proposed new framework should impose the following specific requirements on a party to an offer which wishes to make a post-offer undertaking:

- (a) *to consult the Panel in advance of making the post-offer undertaking:* this would enable the Panel to consider the application of the Code to the undertaking, including whether it complies with the requirements for the formulation of post-offer undertakings and whether the Panel should require the appointment of a supervisor (see further below). The Code Committee emphasises, however, that, given that the Code would not require post-offer undertakings to be made, the Panel would have no role in determining the circumstances in which undertakings should be made or in negotiating the terms of any undertakings that are made;
- (b) *expressly to state that it is making a post-offer undertaking:* this reflects the objective of the proposed new framework of providing clarity for shareholders and other stakeholders as to the status of statements made by the parties to an offer in relation to action they will, or will not, take following the offer;
- (c) *to specify the period of time for which the post-offer undertaking is being made or the date by which the course of action committed to will be completed:* this requirement would, in effect, replace that part of Note 3 on Rule 19.1 which currently regards a party to an offer as being committed to take, or not take, a specified course of action for a period of 12 months from the date on which the offer period ends, or such other period of time as it specifies (unless there is a material change of circumstances). The Code Committee considers that a party to an offer should be required to determine and state the duration of any post-offer undertaking, rather than the Code applying a period of time by default; and
- (d) *to state prominently any qualifications or conditions to which the post-offer undertaking is subject:* the requirement to state qualifications or

conditions would, in effect, replace that part of Note 3 on Rule 19.1 which currently enables a party to an offer no longer to be regarded as being committed to take, or not take, a particular course of action if there has been a material change of circumstances. The Code Committee considers that the benefit of this approach is that there would be greater certainty and transparency as to the circumstances in which a person making a post-offer undertaking would cease to be bound by it.

3.8 The Code Committee considers that the Code should provide that the terms of any post-offer undertaking, including the course of action committed to be taken, or not taken, and the qualifications or conditions to which the post-offer undertaking is subject, must:

- (a) be specific and precise;
- (b) be readily understandable and capable of objective assessment; and
- (c) not depend on subjective judgements of the party to the offer or its directors.

3.9 The Code Committee considers that, under the proposed new framework, it will be essential for the Panel to be able to assess whether a party to an offer is complying with the terms of a post-offer undertaking and whether any particular act, event or circumstance falls within a qualification or condition included in the post-offer undertaking. In particular, if a party which makes a post-offer undertaking wishes to be excused compliance with its terms in the event of certain acts, events or circumstances occurring, the Code Committee considers that the party should be required to set out those acts, events or circumstances in terms that are specific and precise, and not general or vague. For example, the Code Committee does not consider that a party to an offer should be permitted to include qualifications and conditions with regard to:

- (a) a “material change of circumstances”;
 - (b) directors’ “fiduciary duties”; or
 - (c) unspecified events of “*force majeure*”. A general reference to acts, events or circumstances which are beyond the party’s control would not be sufficiently precise and the nature of the relevant acts, events or circumstances would need to be described with precision.
- 3.10 The Code Committee does not consider it necessary or appropriate for the Code otherwise to limit the number or scope of qualifications or conditions to post-offer undertakings or to require that they be “material”. However, it notes that the strength of any undertaking (and, therefore, the extent to which it achieves its objectives) may be diminished as the scope and number of qualifications and conditions increases or if immaterial qualifications and conditions are included.
- 3.11 In order to ensure that all shareholders and other stakeholders are made aware of any post-offer undertaking which has been made by a party to an offer, the Code Committee considers that the Code should require any post-offer undertaking made otherwise than in a document published by that party in connection with the offer (for example, in an announcement or other public statement) to be included in the next document published by that party in connection with the offer. In addition, the Code Committee considers that the Panel should be able to require a document to be sent to the offeree company’s shareholders and persons with information rights and to be made readily available to its employee representatives and to the trustees of its pension scheme(s) (for example, where a party to an offer which has made a post-offer undertaking is not otherwise expected to publish a further document).

(c) *The monitoring and enforcement of post-offer undertakings*

(i) *Introduction*

3.12 As indicated in Section 1 above, one of the objectives of the proposed new framework is to increase the effectiveness of the enforcement tools available to the Panel when parties to an offer choose to make post-offer undertakings.

3.13 In order to reduce the likelihood of the Panel having to take enforcement action with regard to compliance by parties to an offer with their post-offer undertakings after the end of the offer period, and to improve the Panel's ability to take pre-emptive enforcement action if the need were to arise, the Code Committee considers that the proposed new framework should incorporate certain new features, as described below.

(ii) *Written reports*

3.14 The Code Committee considers that, under the proposed new framework, a party to an offer which has given a post-offer undertaking should be required to submit written reports to the Panel after the end of the offer period at such intervals and in such form as the Panel may require. The Code Committee considers that the written reports should be required, as appropriate, to:

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

- (c) include such other documents or information as the Panel may require; and
 - (d) if so required by the Panel, be published via a Regulatory Information Service.
- 3.15 In addition, the Code Committee considers that any written reports required to be submitted by a party to an offer to the Panel should be required to state that the report has been approved by the board of directors (or equivalent body) of the party concerned and to be signed on its behalf by a duly authorised director (or equivalent person).

(iii) *Supervisors*

- 3.16 The Code Committee considers that, under the proposed new framework, the Panel should be able to require a party to an offer to appoint a supervisor to:
- (a) monitor compliance by that party with any post-offer undertaking which it has made; and
 - (b) submit written reports to the Panel, at such intervals and in such form as the Panel may require, as to the compliance by that party with that undertaking,

in accordance with arrangements made between the Panel and the supervisor. The Code Committee considers that the Code should require the party to the offer concerned to comply with any obligations imposed on it in the supervisor's terms of appointment, such that a breach of such an obligation, for example an obligation on the party to provide information to the supervisor, would also be a breach of the Code.

3.17 The ability for the Panel to require the appointment of a supervisor to assist it in monitoring compliance with post-offer undertakings would be similar to the ability of the CMA, under the Enterprise Act 2002, to require the appointment of “monitoring trustees” to monitor the compliance of merger parties with interim and/or final undertakings agreed with the CMA. As is the case with “monitoring trustees” that are required to be appointed by the CMA, the Code Committee considers that the Code should provide that:

- (a) any supervisor should be independent of the party to the offer concerned, and any person acting in concert with it, and should have the skills and resources necessary to perform the functions of a supervisor;
 - (b) the identity of the supervisor and the terms of appointment should be agreed by the Panel; and
 - (c) the costs of the supervisor should be met by the party to the offer which has made the post-offer undertaking.
- (iv) *Requirement for Panel consent when relying on a qualification or condition*

3.18 As indicated above, under the proposed new framework, a party to an offer which makes a post-offer undertaking will be required to state prominently any qualifications or conditions to which the undertaking is subject and the terms of any such qualifications or conditions will need to comply with the prescribed requirements.

3.19 As an additional safeguard, the Code Committee considers that, if a party to an offer wishes to rely on a qualification or condition in order to take, or not take, a course of action otherwise than in compliance with the terms of the post-offer undertaking, that party should be required to consult the Panel in advance and to obtain the Panel’s consent to rely on that qualification or condition. In addition,

the Code Committee considers that, except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate) with the Panel's consent, there should be a requirement for the party promptly to make an announcement via a Regulatory Information Service describing the course of action it has taken, or not taken, and explaining how and why the relevant qualification or condition applies.

- 3.20 In deciding whether to consent to a party to an offer relying on a qualification or condition in order to take, or not take, a course of action otherwise than in compliance with the terms of its post-offer undertaking, the Panel would need to be made aware of all relevant information and might wish to hear the views of persons who would be likely to be affected by such a ruling. This would particularly be the case in circumstances where it would be difficult to unwind action proposed to be taken by the party in reliance on the qualification or condition to its post-offer undertaking.

(d) Proposed amendments

- 3.21 In the light of the above, the Code Committee is proposing to make the following amendments to the Code.
- 3.22 The Code Committee proposes to introduce new definitions of “post-offer intention statement” and “post-offer undertaking” into the Definitions Section of the Code, as follows:

“Post-offer intention statement

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

Post-offer undertaking

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

NOTE ON POST-OFFER UNDERTAKING

A commitment or undertaking given directly to one or more identified parties, including to a government or governmental agency in order to obtain an official authorisation or regulatory clearance, will not be regarded as a post-offer undertaking.”.

- 3.23 In addition, the Code Committee proposes to introduce a new Rule 19.7 into the Code, as follows:

“19.7 POST-OFFER UNDERTAKINGS

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

(b) A post-offer undertaking must:

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

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

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

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

(i) be specific and precise;

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

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

(d) A party to an offer must comply with the terms of any post-offer undertaking for the period of time specified in the undertaking and must complete any course of action committed to by the date specified in the undertaking. A party to an offer will be excused compliance with the terms of a post-offer undertaking only if a qualification or condition set out in the undertaking applies. If a party to an offer wishes to rely on a qualification or condition to a post-offer undertaking in order to take, or not take, a course of action otherwise than in compliance with the terms of that undertaking, that party must consult the Panel in advance and obtain the Panel's consent to rely on that qualification or condition. Except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate) with the Panel's consent, the party must promptly make an announcement in accordance with the requirements of Rule 2.9 describing the course of action it has taken, or not taken, and explaining how and why the relevant qualification or condition applies.

(e) Any post-offer undertaking made by a party to an offer other than in a document published by that party in connection with the offer must be included in the next such document published by that party. The Panel may, in addition, require a document to be sent to the offeree company's shareholders and persons with information rights and made readily available to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).

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

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

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

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

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

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

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

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

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

NOTES ON RULE 19.7

1. Responsibility for written reports

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

2. Appointment of supervisor

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

3.24 In addition, as indicated in paragraph 3.4 above, Note 3 on Rule 19.1 would be deleted.

Q1 Should the new definitions of “post-offer intention statement” and “post-offer undertaking” be introduced as proposed?

Q2 Should the new Rule 19.7 be introduced as proposed?

4. Post-offer intention statements

- 4.1 Under the proposed new framework, the monitoring and enforcement regime which would apply to post-offer undertakings would not apply to post-offer intention statements. However, the Code Committee considers that post-offer intention statements should nevertheless be made with due care and that, if a party to an offer makes a post-offer intention statement relating to a particular course of action that it intends to take, or not take, after the end of the offer period, this will give rise to an expectation that the party will take, or not take, that particular course of action.
- 4.2 The Code Committee therefore considers that the Code should require a post-offer intention statement made by a party to an offer to be both:
- (a) an accurate statement of that party's intention at the time that it is made (i.e. a "subjective" test); and
 - (b) made on reasonable grounds (i.e. an "objective" test).
- 4.3 If a party to an offer which had made a post-offer intention statement under the proposed new framework subsequently wished to take a course of action different from its stated intentions, or not to take a course of action which it had stated it intended to take, the Panel would wish to understand that party's reasons for so acting, or not acting, and to be satisfied that, at the time that it was made, the post-offer intention statement had been both an accurate statement of that party's intention and made on reasonable grounds. The Code Committee considers that, in considering whether a breach of the Code may have occurred when the party to the offer made its post-offer intention statement, the principal factors that the Panel would be likely to take into account would be whether the party was able to demonstrate that it had a good reason for taking a course of action different from its stated intentions, or for not taking a course of action which it had stated it

intended to take, and the period of time which had elapsed between the date on which the post-offer intention statement was made and the date on which the party wished to take, or not take, the action in question. If it determined that a breach of the Code had occurred, the Panel would then need to consider whether to commence disciplinary proceedings and to impose one or more of the sanctions described in Section 11 of the Introduction to the Code.

4.4 The Code Committee also considers that, if a party to an offer had made a post-offer intention statement and, during the period of 12 months from the end of the offer period, or such other period of time as was specified in the statement, that party decided either:

- (a) to take a course of action different from its stated intentions; or
- (b) not to take a course of action which it had stated it intended to take,

it should be required to consult the Panel. The Panel would then be able to consider (on an ex parte basis) whether taking, or not taking, that action would indicate that the Code had been breached and, in addition, whether, upon taking, or not taking, that course of action, the party should then be required promptly to make an announcement:

- (i) describing the course of action it has taken, or not taken; and
- (ii) explaining its reasons for taking, or not taking, that course of action.

4.5 In the light of the above, the Code Committee proposes to introduce a new Rule 19.8 into the Code, as follows:

“19.8 POST-OFFER INTENTION STATEMENTS

- (a) Any post-offer intention statement must be:**

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

(ii) made on reasonable grounds.

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

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

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

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

Q3 Should the new Rule 19.8 be introduced as proposed?

5. Minor and consequential amendments

(a) *Minor amendments to Rule 19.1*

- 5.1 The first sentence of Rule 19.1 provides that “**Each document or advertisement published, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy and the information given must be adequately and fairly presented.**”. The first sentence of Note 2 on Rule 19.1 provides that “*The language used in documents, announcements, information, releases or advertisements must clearly and concisely reflect the position being described.*”.
- 5.2 Following its review of the relevant provisions of the Code which apply to voluntary commitments and statements of intention made by parties to offers, the Code Committee has concluded that the first sentence of Note 2 on Rule 19.1 should be incorporated into Rule 19.1 itself. The Code Committee also considers that, in order to bring Rule 19.1 in line with existing practice, it should be expressly stated to apply to announcements made during the course of an offer.
- 5.3 The Code Committee therefore proposes to delete the first sentence of Note 2 on Rule 19.1 and to amend Rule 19.1, as follows:

“19.1 STANDARDS OF CARE

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

5.4 The second and third sentences of Note 2 on Rule 19.1 provide that “*the word “agreement” must be used with the greatest care*” and that “*Statements must be avoided which may give the impression that persons have committed themselves to certain courses of action (eg accepting in respect of their own shares) when they have not in fact done so.*” The Code Committee proposes to delete the second and third sentences of Note 2 on Rule 19.1 on the basis that they relate to the application of the Code to “statements of support”, which the Code Committee considers to be adequately addressed in the Note on Rule 19.3.

5.5 The Code Committee emphasises that these amendments are not intended to alter the manner in which Rule 19.1 is currently applied by the Panel in practice.

Q4 Should Rule 19.1 be amended, and Note 2 on Rule 19.1 deleted, as proposed?

(b) Consequential amendments to Rules 24, 25 and 27

5.6 As a consequence of the amendments proposed above, the Code Committee proposes to introduce new Rules 24.2(d), 24.3(d)(xv), 25.2(c) and 25.7(c), as follows:

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

...

(d) If any statement made in accordance with Rules 24.2(a) to (c) is a post-offer undertaking, it must comply with the requirements of Rule 19.7.”;

- (b) **“24.3 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER**

Except with the consent of the Panel:

...

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

...

(xv) any post-offer undertaking or post-offer intention statement made by the offeror (see Rules 19.7 and 19.8);”;

(c) **“25.2 VIEWS OF THE OFFEREE BOARD ON THE OFFER, INCLUDING THE OFFEROR’S PLANS FOR THE COMPANY AND ITS EMPLOYEES**

...

(c) If any statement made by the board of the offeree company is a post-offer undertaking, it must comply with the requirements of Rule 19.7.”; and

(d) **“25.7 OTHER INFORMATION**

The offeree board circular must contain:

...

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

5.7 In addition, the Code Committee proposes to amend Rules 27.2(b) and (c), as set out in Appendix A.

Q5 Should the new Rules 24.2(d), 24.3(d)(xv), 25.2(c) and 25.7(c) be introduced, and Rules 27.2(b) and (c) amended, as proposed?

(c) *Minor amendments to Rule 24.2*

5.8 The Code Committee considers that the presentation of Rule 24.2(a) would be improved if the requirement for an offeror to state its intentions with regard to the future business of the offeree company were to be included in a separate numbered paragraph, in the same way as are the requirements for an offeror to state its intentions (and strategic plans) with regard to the matters currently set out

in Rules 24.2(a)(i) to (v). The Code Committee therefore proposes to make minor amendments to Rule 24.2, as set out in Appendix A.

Q6 Do you agree with the proposed minor amendments to Rule 24.2?

6. Assessment of the impact of the proposals

6.1 The Code Committee believes that the key benefits of the proposed amendments to the Code are that they will:

- (a) provide clarity for shareholders and other stakeholders as to the status of statements made by the parties to an offer in relation to action they will take, or not take, following the offer;
- (b) increase the effectiveness of the enforcement tools available to the Panel when parties to an offer choose to make voluntary commitments; and
- (c) enable the parties to an offer to make informative statements of intention.

6.2 The Code Committee considers that the introduction of the proposed new framework for the regulation of statements made by the parties to an offer relating to any particular course of action they commit or intend to take, or not take, after the end of the offer period would be a proportionate means of addressing the issues with the current framework identified by the Code Committee, as described in Section 1 above.

6.3 The Code Committee considers that the current lack of a distinction between voluntary commitments and statements of intention is unhelpful. It considers that the introduction of two clear categories of statement, the making of which will have different effects and consequences, will benefit not only offerors and offeree companies, who will be able to choose whether, in making a statement as to the future action they will take, or not take, to make a “post-offer undertaking” or a “post-offer intention statement”, but also shareholders and other stakeholders, who will have greater clarity as to the status of such statements.

- 6.4 The Code Committee considers that the requirement for the terms of a post-offer undertaking, including any qualifications or conditions, to be specific and precise, readily understandable and capable of objective assessment, and not to depend on the subjective judgements of the party which has made it, will result in increased certainty and transparency for shareholders and other stakeholders in the offeree company, and market participants generally, as to the actions which the party has committed to take, or not take, and the circumstances in which it will be permitted to take, or not take, a course of action otherwise than in compliance with the terms of that undertaking. The Code Committee considers that an important aspect of this will be the removal of the ability for a party to an offer to cease to be regarded as committed to take, or not take, a particular course of action in the event of an unspecified “material change of circumstances”.
- 6.5 The Code Committee considers that the introduction of a new framework to facilitate the Panel’s monitoring of compliance with post-offer undertakings, by means of the written reports required to be made by a party to an offer which has made such an undertaking and, in appropriate cases, the appointment of an independent supervisor to monitor compliance on the Panel’s behalf, will increase the effectiveness of the Panel’s enforcement of the requirements of the Code, for the benefit of shareholders and other stakeholders in the offeree company concerned and market participants as a whole.
- 6.6 A party to an offer which makes a post-offer undertaking will incur costs in preparing written reports as to its compliance with the undertaking, although the Code Committee considers that these costs would not normally be material when taken in the context of the overall costs of the offer. Where the Panel requires an independent supervisor to be appointed to monitor compliance with post-offer undertakings, this would clearly result in higher costs being incurred by the party to the offer concerned, particularly where the post-offer undertakings were complex, numerous or stated to apply for a long period of time. However, the Code Committee considers that it is appropriate that these costs should be borne

by the party to the offer concerned, particularly given that the Code would not require post-offer undertakings to be made. The Code Committee understands that this is the case in relation to, for example, monitoring trustees required to be appointed by the CMA. A party which was considering whether to make a post-offer undertaking would therefore need to weigh these costs against the benefit of making the undertaking.

APPENDIX A

Proposed amendments to the Code

DEFINITIONS

Post-offer intention statement

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

Post-offer undertaking

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

NOTE ON POST-OFFER UNDERTAKING

A commitment or undertaking given directly to one or more identified parties, including to a government or governmental agency in order to obtain an official authorisation or regulatory clearance, will not be regarded as a post-offer undertaking.

Rule 2.9

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

...

NOTES ON RULE 2.9

...

2. Other Rules

Announcements made under Rules 2.11, 6.2(b), 7.1, 8 (Notes 6 and 12(a)), 9.1 (Note 9), 11.1 (Note 6), 12.2(b)(ii)(A), 17.1, 19.7(d), 19.7(f), 19.8(b), 24.1, 25.1, 27.1(a), 31.2, 31.6(a) (Note 1(b)), 31.6(c), 31.7 (Note 2), 31.8 (Note), 31.9, 32.1(a), 32.6(a), Appendix 1.6, Appendix 5.5, Appendix 7.3, Appendix 7.6 and

Appendix 7.8 must also be published in accordance with the requirements of Rule 2.9.

Rule 12.2

12.2 COMPETITION REFERENCE PERIODS

...

NOTES ON RULE 12.2

...

2. *After a reference or initiation of proceedings*

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

Rule 19

19.1 STANDARDS OF CARE

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

NOTES ON RULE 19.1

1. *Financial advisers' responsibility for publication of information*

...

2. ~~Unambiguous language~~

The language used in documents, announcements, information, releases or advertisements must clearly and concisely reflect the position being described. In particular, the word "agreement" must be used with the greatest care. Statements

~~must be avoided which may give the impression that persons have committed themselves to certain courses of action (eg accepting in respect of their own shares) when they have not in fact done so.~~

~~3. — Statements of intention~~

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

~~42. Sources~~

...

~~53. Quotations~~

...

~~64. Diagrams etc.~~

...

~~75. Use of other media~~

...

~~86. FSMA and the Financial Services Act 2012~~

...

19.7 POST-OFFER UNDERTAKINGS

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

(b) A post-offer undertaking must:

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

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

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

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

(i) be specific and precise;

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

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

(d) A party to an offer must comply with the terms of any post-offer undertaking for the period of time specified in the undertaking and must complete any course of action committed to by the date specified in the undertaking. A party to an offer will be excused compliance with the terms of a post-offer undertaking only if a qualification or condition set out in the undertaking applies. If a party to an offer wishes to rely on a qualification or condition to a post-offer undertaking in order to take, or not take, a course of action otherwise than in compliance with the terms of that undertaking, that party must consult the Panel in advance and obtain the Panel's consent to rely on that qualification or condition. Except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate) with the Panel's consent, the party must promptly make an announcement in accordance with the requirements of Rule 2.9 describing the course of action it has taken, or not taken, and explaining how and why the relevant qualification or condition applies.

(e) Any post-offer undertaking made by a party to an offer other than in a document published by that party in connection with the offer must be included in the next such document published by that party. The Panel may, in addition, require a document to be sent to the offeree company's shareholders and persons with information rights and made readily available to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).

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

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

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

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

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

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

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

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

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

NOTES ON RULE 19.7

1. Responsibility for written reports

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

2. Appointment of supervisor

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

19.8 POST-OFFER INTENTION STATEMENTS

(a) Any post-offer intention statement must be:

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

(ii) made on reasonable grounds.

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

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

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

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

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

...

Rule 24

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

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

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

(ii) its intentions with regard to the continued employment of the employees and management of the offeree company and of its

subsidiaries, including any material change in the conditions of employment;

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

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

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

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

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

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

(d) If any statement made in accordance with Rules 24.2(a) to (c) is a post-offer undertaking, it must comply with the requirements of Rule 19.7.

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

Except with the consent of the Panel:

...

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

...

(xv) any post-offer undertaking or post-offer intention statement made by the offeror (see Rules 19.7 and 19.8);

(xvi) ...

(xvii) ...

(xviii) ...

Rule 25

25.2 VIEWS OF THE OFFEREE BOARD ON THE OFFER, INCLUDING THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES

...

(c) If any statement made by the board of the offeree company is a post-offer undertaking, it must comply with the requirements of Rule 19.7.

...

25.7 OTHER INFORMATION

The offeree board circular must contain:

...

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

(ed)

(de) ...

Rule 27

27.2 SUBSEQUENT DOCUMENTS

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

...

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

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

...

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

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

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

(xi) ... ;

(xii) ... ;

(xiii) ... ;

~~(xiiiiv)~~ ... ;

~~(xivv)~~ ... ;

(xvi) ... ; and

(xvii)

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

...

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

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

(xi)

APPENDIX B**List of questions**

- Q1** Should the new definitions of “post-offer intention statement” and “post-offer undertaking” be introduced as proposed?
- Q2** Should the new Rule 19.7 be introduced as proposed?
- Q3** Should the new Rule 19.8 be introduced as proposed?
- Q4** Should Rule 19.1 be amended, and Note 2 on Rule 19.1 deleted, as proposed?
- Q5** Should the new Rules 24.2(d), 24.3(d)(xv), 25.2(c) and 25.7(c) be introduced, and Rules 27.2(b) and (c) amended, as proposed?
- Q6** Do you agree with the proposed minor amendments to Rule 24.2?