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THE TAKEOVER PANEL

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

**RESTRICTIONS AND SUSPENSIONS
OF VOTING RIGHTS**

The Code Committee of the Takeover Panel (the “**Panel**”) invites comments on this Public Consultation Paper. Comments should reach the Code Committee by Friday, 11 September 2015.

Comments may be sent by e-mail to:

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Alternatively, please send comments in writing 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**”) is proposing amendments to the definition of “voting rights” in the Takeover Code (the “**Code**”) in relation to restrictions and suspensions of voting rights and certain related amendments. “Voting rights” are currently defined in the Code as “all the voting rights attributable to the share capital of a company which are currently exercisable at a general meeting”.

(b) Summary of the proposals

1.2 In Section 2 of the PCP, the Code Committee is proposing that the definition of “voting rights” should be amended to address two points:

- (a) first, to make clear that where a shareholder is, for any reason, currently restricted from exercising the voting rights attaching to shares, those (restricted) voting rights should nevertheless be taken into account in considering the application of the Code in relation to that person and to other shareholders in the company; and
- (b) secondly, to eliminate the existing scope for a company to issue “suspended voting shares” as a means of avoiding the normal application of Rule 9 of the Code, including the requirement for a company to obtain a whitewash. Suspended voting shares are shares which rank *pari passu* with the company’s voting ordinary share capital save that, under the company’s articles of association, the holder of the shares is not entitled to vote in respect of such shares at a general meeting of the company (except on certain matters). However, such shares typically convert automatically into voting ordinary shares on a one-for-one basis upon their transfer to another person (other than certain designated categories of person).

- 1.3 Accordingly, the PCP proposes that the definition of “voting rights” should be amended to make clear that shares which are subject to a restriction on the exercise of voting rights, or to a suspension of voting rights, should nonetheless be regarded for the purposes of the Code as having voting rights which are currently exercisable at a general meeting.
- 1.4 In Section 3 of the PCP, the Code Committee is proposing some minor amendments to the Note on Rule 9.7, which relates to the calculation of the number of shares to which voting restrictions will be applied and the number of interests to be disposed of where the Panel has agreed to the disposal of interests in shares by a person as an alternative to making a mandatory offer under Rule 9.1.
- 1.5 The Code Committee is also proposing certain consequential amendments to Rule 11, as referred to in Section 4.

(c) *Invitation to comment*

- 1.6 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Friday, 11 September 2015 and should be sent in the manner set out at the beginning of this PCP.
- 1.7 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. Definition of “voting rights”

(a) *Introduction*

2.1 The definition of “voting rights” in the Code provides that:

“Except for the purpose of Rule 11, voting rights means all the voting rights attributable to the capital of a company which are currently exercisable at a general meeting.”.

2.2 This definition is particularly relevant in relation to the application of the Code’s mandatory offer obligation. Rule 9.1 provides that a person must make a mandatory offer if the person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30% or more of the voting rights of a company, or if the person increases the percentage of a company’s shares carrying voting rights in which the person (and persons acting in concert with him) is interested in the 30% to 50% band. In such circumstances, the person will be considered to have acquired, or consolidated, “control” of the company. Under the Code, “control” means an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights (as defined above) of a company, irrespective of whether such interest or interests give de facto control.

2.3 Under Note 1 of the Notes on Dispensations from Rule 9, the obligation that would otherwise arise for a mandatory offer to be made may be waived if that obligation arises as a result of the issue of new shares and this is approved by a vote of independent shareholders in general meeting (a “**whitewash**”).

2.4 The definition of “voting rights” has been in the Code in its current form since 1983. Prior to then, the definition did not extend to preference shares which had acquired the right to vote at a general meeting as a result of a preference dividend being in arrears, except where this had been the case for a long period of time. However, the definition was amended in 1983 to cover all of a company’s voting rights which “are currently exercisable at a general meeting”. This ensured that, immediately upon their

acquiring the right to vote, such preference shares would be treated as carrying voting rights for the purposes of the Code.

- 2.5 The Code Committee considers that the approach set out above is sensible and that, in establishing whether control of a company has been acquired or consolidated, and in applying the Code generally, it is appropriate to take account of the percentage of shares carrying voting rights which are currently exercisable at a general meeting.

(b) *Restrictions on the exercise of voting rights*

- 2.6 In certain circumstances, a person holding shares carrying voting rights may be restricted from exercising those voting rights. For example, under Rule 9.7, if the Panel agrees to the disposal of shares by a person as an alternative to the person making a mandatory offer under Rule 9.1, the Panel will normally impose restrictions on the exercise of voting rights attaching to shares held by that person (or persons acting in concert with him) pending completion of the disposal, in order to ensure that the person does not exercise control over the company. In addition, where a person fails to respond to a notice served by a company under section 793 of the Companies Act 2006, the company may apply to the court for an order that the shares in which the person is believed to be interested should be subject to restrictions, including that no voting rights are exercisable in respect of the shares until the notice is complied with. Alternatively, a shareholder may simply agree with the company, or indeed with another person, not to exercise the voting rights attaching to some or all of the shareholder's shares.

- 2.7 The Code Committee understands that, as set out in the decision of the Hearings Committee in the case of Bumi plc (Panel Statement 2013/2), the Executive considers that, although the drafting of the definition could be clearer on this point, the term "voting rights" (as used in the Code) should not be regarded as a reference to whether a particular shareholder can exercise the voting rights attaching to particular shares but to the rights attaching to the shares themselves. In other words, if the rights attaching to shares currently include the right to vote at a general meeting, the shares should be treated as shares carrying voting rights, irrespective of whether the voting rights are in practice exercisable by the current shareholder. Accordingly, where a

shareholder is, for any reason, currently restricted from exercising the voting rights attaching to shares, those (restricted) voting rights should nevertheless be taken into account in considering the application of the Code in relation to that person and to other shareholders in the company.

- 2.8 The Code Committee agrees with this approach and considers that this should be made clear in the definition of “voting rights”.

(c) *Treasury shares*

- 2.9 The definition of “treasury shares” in the Code provides that:

“All percentages of voting rights, share capital and relevant securities are to be calculated by reference to the relevant percentage held and in issue outside treasury.”.

This provision was included in the Code on account of the fact that the Companies Act 2006 provides that a company must not exercise any right in respect of treasury shares (including the right to attend or vote at meetings) and that any purported exercise of such a right is void.

- 2.10 As explained above, the Code Committee proposes to amend the definition of “voting rights” so as to provide, among other things, that any shares which are subject to a restriction on the exercise of voting rights should be regarded as having voting rights which are currently exercisable at a general meeting. On the basis that this could be interpreted to mean that treasury shares should be treated as carrying voting rights for the purpose of the Code, and that this is not the Code Committee’s intention, the Code Committee intends to include an exclusion in respect of treasury shares in the new definition of “voting rights”.

(d) *Suspended voting shares*

- 2.11 The Code Committee understands that, occasionally, the Executive has been consulted by a company that was considering issuing new shares to a person and doing so by issuing to him a combination of ordinary shares and “suspended voting

shares”, i.e. shares which rank *pari passu* with the company’s voting ordinary share capital save that, under the company’s articles of association, the holder of the shares is not entitled to vote in respect of such shares at a general meeting of the company (except on certain matters). Typically, suspended voting shares automatically convert into voting ordinary shares on a one-for-one basis upon their transfer to another person (other than certain designated categories of person).

- 2.12 In the cases referred to above, the Executive was consulted about whether the company could issue suspended voting shares to the person so as to limit his voting rights to 29.9% of the company’s total voting rights in order not to trigger a requirement for that person to make a mandatory offer under Rule 9.1 and to obviate the need for the company to obtain a “whitewash”. On occasion, this was permitted by the Executive, despite concerns that the suspended voting shares were being issued to avoid the normal application of Rule 9, on the basis that these shares did not carry voting rights which were exercisable at a general meeting, such that neither a mandatory offer requirement was triggered nor a whitewash required.
- 2.13 The Code Committee is concerned that the definition of “voting rights” creates the scope for a company to issue suspended voting shares as a means, and often with the sole purpose, of avoiding the normal application of Rule 9, including the requirement for a company to obtain a whitewash.
- 2.14 Furthermore, the Code Committee considers that, if suspended voting shares were permitted as a legitimate means of avoiding the normal application of Rule 9, this would give rise to the following issues:
- (a) in every case where suspended voting shares are issued, the Panel would be required to review the terms of the suspension arrangements in order to ensure that the shares could properly be regarded as not carrying voting rights for the purposes of the Code. The Code Committee understands that the terms of suspension arrangements proposed in the past have varied from case to case, in relation both to any exceptions to the suspension which permit the holder to vote on certain resolutions and to the circumstances in which the suspension ceases to apply. The Code Committee considers that it is unsatisfactory for the

Panel to be drawn into such an analysis on each occasion on which a company may wish to issue suspended voting shares in order to avoid the normal application of Rule 9, particularly in view of the broad scope for variations in the nature and terms of the suspension arrangements which would make it difficult to ensure the consistent treatment of suspended voting share arrangements under the Code;

- (b) the issue of suspended voting shares has the potential to cause confusion for other shareholders in the company in calculating the percentage of the total voting rights in the company which they hold for the purposes of the Code, particularly in circumstances where there are exceptions to the suspension arrangements which permit the shareholder to vote on certain resolutions;
- (c) in any particular case, the question of whether subsequent events, for example, a transfer of shares to a third party, may have caused the suspension of the voting rights to cease to be effective may involve a complex factual and legal analysis. This is inherently unsatisfactory given that important consequences under the Code may flow from this analysis. The Panel could face considerable difficulties if there is a difference of opinion between interested parties as to whether the suspension has ceased to apply, which may only be capable of being resolved by a court (since the dispute will relate to the interpretation of a provision in the company's articles of association); and
- (d) it is possible that the company's articles of association could be amended so as to vary the exceptions to the suspension or the circumstances in which the suspension ceases to apply. The Code Committee is concerned that it may not be clear, following such an amendment, whether an obligation to make a mandatory offer may then have been triggered.

2.15 The Code Committee also considers that, whilst there may be a technical distinction between shares in respect of which the exercise of voting rights is restricted (as referred to in paragraph 2.6) and suspended voting shares (i.e. that the former carry voting rights but the latter do not for so long as the suspension applies), in substance there is not a compelling reason for different treatment. In each case, if the restriction

or suspension ceases to apply, for example, because the shares are transferred to a third party, the shares will carry voting rights which the (new) holder can exercise at a general meeting.

- 2.16 In the light of the above, the Code Committee considers that the definition of “voting rights” should be amended so that suspended voting shares are treated as if they were shares carrying voting rights which are currently exercisable at a general meeting.

(e) *Proposed amendment*

- 2.17 As explained above, the Code Committee proposes that the definition of “voting rights” should be amended to provide that any shares which are subject to a restriction on the exercise of voting rights or to a suspension of voting rights should, in each case, normally be regarded as having voting rights which are currently exercisable at a general meeting.

- 2.18 The Code Committee believes that the likely effect of this amendment would be that:

- (a) suspended voting shares would then cease to be effective as a means of avoiding the normal application of Rule 9; and
- (b) a company would therefore be required to seek a whitewash of the issue of suspended voting shares to a person to whom it proposes to issue, or who already holds, 29.9% of a company’s voting share capital.

- 2.19 In the light of the above, the Code Committee proposes to delete the current definition of “voting rights” and to introduce a new definition of “voting rights”, as follows:

“Voting rights

Voting rights of a company means all the voting rights attributable to its share capital which are currently exercisable at a general meeting.

Except for treasury shares, any shares which are subject to:

- (a) a restriction on the exercise of voting rights:

(i) in an undertaking or agreement by or between a shareholder and the company or a third party; or

(ii) arising by law or regulation; or

(b) a suspension of voting rights implemented by means of the company's articles of association or otherwise,

will normally be regarded as having voting rights which are currently exercisable at a general meeting.”.

(f) Non-voting shares and convertible shares

2.20 The Code Committee confirms that this amendment would have no impact on the treatment under the Code of a class of shares which does not carry voting rights in any circumstances (or in the hands of any person) - for example, a class of non-voting ordinary shares - even if those shares are convertible at any time on a one-for-one basis into voting ordinary shares upon service of a conversion notice by the shareholder. This is on the basis that the rights attaching to such shares do not include the right to vote prior to their conversion into voting ordinary shares.

2.21 The Code Committee acknowledges that the issue of such non-voting convertible ordinary shares to a person who holds 29.9% of a company's shares carrying voting rights could, in practice, achieve certain of the same outcomes as the issue to the person, prior to the proposed amendment, of suspended voting shares in that:

- (a) the issue of the non-voting convertible ordinary shares would not trigger an obligation for a mandatory offer to be made under Rule 9.1 and, accordingly, there would be no requirement for the company to obtain a whitewash in relation to the issue of such shares (albeit that the company could choose to seek a whitewash of the issue and subsequent conversion of such shares into voting ordinary shares by the person to whom they were issued, provided that this is sought at the time of issue of the convertible shares); and
- (b) the voting ordinary shares and the non-voting convertible ordinary shares could be transferred to a third party who could then immediately convert the

non-voting shares into voting ordinary shares, with the result that the transferor would effectively be able to deliver control of the company to the third party.

2.22 However, the Code Committee considers that there is a clear and well-understood framework in place in the Code in relation to convertible shares. Most importantly, the Code makes clear that the acquisition of (non-voting) convertible securities does not trigger an obligation for a mandatory offer to be made, but that a subsequent conversion of such securities into securities carrying voting rights will trigger a mandatory offer obligation unless a whitewash was obtained at the time of issue of the convertible securities. In particular, the first paragraph of Note 10 on Rule 9.1 provides that:

“In general, the acquisition of securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares does not give rise to an obligation under this Rule to make a general offer but the exercise of any conversion or subscription rights or options will be considered to be an acquisition of an interest in shares for the purpose of the Rule.”.

2.23 The Code Committee considers that this approach is correct and is not proposing to amend it. The Code Committee also notes that the issues which arise in relation to suspended voting shares as set out in paragraph 2.14 above do not arise, or are of much less concern, in relation to the issue of a separate class of non-voting convertible ordinary shares.

2.24 Accordingly, the possibility of issuing non-voting convertible ordinary shares to achieve the same outcome as issuing suspended voting shares does not change the view of the Code Committee that the proposed amendment, to introduce the new definition of “voting rights” set out above, should be made.

Q1. Should the proposed new definition of “voting rights” be introduced?

3. Rule 9.7 and the Note on Rule 9.7

- 3.1 The Code Committee has considered whether, in the light of the proposed amendment to the definition of “voting rights”, any amendment should also be made to Rule 9.7 or to the Note on Rule 9.7. As noted in paragraph 2.6 above, under Rule 9.7, where the Panel agrees to the disposal of interests in shares by a person as an alternative to making an offer pursuant to Rule 9.1, the Panel must be consulted as to the interests required to be disposed of and the application, pending completion of the disposal, of restrictions on the exercise of the voting rights attaching to the shares in which that person and persons acting in concert with that person are interested. The Note on Rule 9.7 explains the method of calculating the number of interests which will be required to be disposed of in such circumstances and the number of shares in relation to which voting restrictions will be applied.
- 3.2 The effect of these provisions in practice is set out in paragraphs 3.3 and 3.4 below, using an example of: Company C which has 1,000 shares in issue; Shareholder A who has, by means of an inadvertent mistake, increased its shareholding from 290 shares to 400 shares (and who is required by the Panel to reduce the shareholding to 299 shares as an alternative to making an offer under Rule 9.1); and Shareholder B who holds 300 shares.
- 3.3 Although Shareholder A is required to sell 101 shares so as to reduce its shareholding to 299 shares, i.e. 29.9% of the shares in issue, the number of shares to which voting restrictions will be applied pending completion of that disposal will be greater than 101 because Shareholder A will only be entitled to vote 29.9% of the reduced number of shares in Company C which are capable of being voted, having taken the voting restrictions into account. In this case, the number of shares to which voting restrictions will be applied will be 143 shares, the reduced denominator will be 857 shares and the number of shares which Shareholder A will be entitled to vote will be 257 shares (i.e. 257 divided by 857 equals 29.9%). (If voting restrictions were to be applied to only 101 shares, such that Shareholder A was permitted to vote 299 shares, that would represent 33.3% of the shares in Company C which are capable of being voted – i.e. 299 divided by 899 equals 33.3%).

- 3.4 Although Shareholder A is permitted to vote only 257 shares pending completion of the disposal, Shareholder B will continue to be entitled to vote the 300 shares that it holds. Although this represents 35.0% of the shares in Company C which are capable of being voted pending completion of the disposal by Shareholder A of the 101 shares (300 divided by 857 equals 35.0%), it would be unfair for Shareholder B to be restricted in the number of shares which it is entitled to vote on account of the breach of Rule 9.1 by Shareholder A. If Shareholder A considers that this outcome puts it at a disadvantage, it can address the situation by completing the disposal of the 101 shares without delay. In any event, the Code Committee considers that any such disadvantage would be of Shareholder A's own making.
- 3.5 The Code Committee has concluded that it is not necessary for any amendments to be made to Rule 9.7 or to the Note on Rule 9.7 to take account of the proposed change to the definition of "voting rights" referred to in Section 2 above.
- 3.6 However, as part of its review of the relevant provisions of the Code, the Code Committee has decided that some minor amendments should be made to the Note on Rule 9.7 as set out below in order to make its application clearer, including that it should be split into two separate Notes:

"NOTES ON RULE 9.7

1. Calculation of the number of interests in shares to be disposed of

Where a disposal of interests in shares is permitted as an alternative to making ~~a~~ mandatory offer, the interests in shares required to be disposed of must be sufficient to take the total number of shares carrying voting rights in which the offeror and persons acting in concert with it are interested either, if Rule 9.1(a) applies, to below 30% or, if Rule 9.1(b) applies, to the percentage in which they were interested prior to the triggering acquisition being made.

2. Calculation of the number of shares to which voting restrictions will be applied ~~and the number of interests to be disposed of~~

Where voting restrictions are applied by virtue of an obligation under Rule 9.1 to make a mandatory offer ~~has having arisen by virtue of under:~~

(a) Rule 9.1(a), the number of shares in relation to which voting restrictions, ~~if any,~~ will be applied will normally be such number of shares as results in the person to whom Rule 9.1(a) applies (together with persons acting

in concert with that person) being able to ~~vote-exercise~~ less than 30% of the voting rights attaching to shares in the offeree company; or

(b) Rule 9.1(b), the number of shares in relation to which voting restrictions, ~~if any,~~ will be applied will normally be such number of shares as results in the person to whom Rule 9.1(b) applies (together with persons acting in concert with that person) being able to ~~vote no more than the-exercise a~~ percentage of ~~interests~~ voting rights attaching to shares in the offeree company held by those persons ~~which is no more than the percentage of shares carrying voting rights in which that person (together with persons acting in concert with that person) was interested prior to the triggering acquisition being made.~~

In each case, the calculation of the number of shares in relation to which voting restrictions will be applied will be made by reference to the reduced maximum number of ~~shares entitled to be voted~~ voting rights which may be exercised following the application of the voting restrictions by the Panel.”.

(The ordering of the paragraphs in Notes 1 and 2 on Rule 9.7 has been changed from the current Note on Rule 9.7. However, this has not been shown in the marked-up text.)

Q2. Should the Note on Rule 9.7 be amended as proposed?

4. Rule 11

- 4.1 Under Rule 11.1(a), an obligation to make a cash offer arises where the shares of any class under offer in the offeree company in which interests are acquired for cash by an offeror and any person acting in concert with it during the offer period and within the 12 months prior to its commencement “carry 10% or more of the voting rights currently exercisable at a class meeting of that class”. Under Rule 11.2, where interests in shares of any class of the offeree company “carrying 10% or more of the voting rights currently exercisable at a class meeting of that class” have been acquired by an offeror and any person acting in concert with it in exchange for securities in the three months prior to the commencement of and during the offer period, such securities will normally be required to be offered to all other holders of shares of that class.
- 4.2 On account of the fact that the obligations in Rules 11.1(a) and 11.2 are triggered where, during the relevant period, shares carrying 10% or more of “the voting rights currently exercisable at a class meeting of that class” have been acquired by the offeror and any person acting in concert with it, the current definition of “voting rights” excludes its application in relation to Rule 11 (which is why the definition begins with “Except for the purpose of Rule 11, ...”).
- 4.3 The Code Committee does not consider that it is necessary to refer to “voting rights” in Rule 11 and therefore proposes to amend Rules 11.1(a) and 11.2 as follows:

- (a) Rule 11.1(a):

“11.1 WHEN A CASH OFFER IS REQUIRED

Except with the consent of the Panel in cases falling under (a) or (b), a cash offer is required where:

- (a) the shares of any class under offer in the offeree company in which interests are acquired for cash (but see Note 5) by an offeror and any person acting in concert with it during the offer period and within 12 months prior to its commencement represent ~~carry~~ 10% or more of the shares ~~voting rights currently exercisable at a class meeting of that class~~ in issue, in which case the offer for that class shall be in cash or**

accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class acquired during the offer period and within 12 months prior to its commencement; or”; and

- (b) Rule 11.2:

“11.2 WHEN A SECURITIES OFFER IS REQUIRED

Where interests in shares of any class of the offeree company representing ~~carrying 10% or more of the shares voting rights currently exercisable at a class meeting of that class~~ in issue have been acquired by an offeror and any person acting in concert with it in exchange for securities in the three months prior to the commencement of and during the offer period, such securities will normally be required to be offered to all other holders of shares of that class.”.

4.4 The Code Committee is also proposing to:

- (a) delete the fourth paragraph of Note 1 on Rule 11.1; and
- (b) make consequential amendments to the second paragraph of Note 4 on Rule 11.1, Note 8 on Rule 11.1, Note 5 on Rule 11.2 and Note 6 on Rule 11.2,

in each case as set out in Appendix A.

Q3. Should Rules 11.1 and 11.2 be amended as proposed?

5. Companies which currently have suspended voting shares in issue

- 5.1 The Code Committee understands that there may be a small number of companies which have in the past issued suspended voting shares and in respect of which such shares remain in issue.
- 5.2 If the proposals set out in this PCP are adopted, those companies should consult the Executive in order to obtain a ruling regarding the application of the Code to that company, taking account of the facts of the particular case.

6. Assessment of the impact of the proposals

- 6.1 The amendments proposed in this PCP relate principally to the definition of “voting rights”. As explained above, the proposal that any shares which are subject to a restriction on the exercise of voting rights should nonetheless be treated as shares carrying voting rights which are currently exercisable at a general meeting codifies existing practice. Accordingly, the Code Committee does not believe that this proposal will place any new burden on parties to an offer, other market participants or practitioners.
- 6.2 The proposal that suspended voting shares should nonetheless be treated as shares carrying voting rights which are currently exercisable at a general meeting will require companies which issue such shares to obtain a whitewash where this would cause the person to whom the shares are issued, together with persons acting in concert with that person, to be interested in 30% or more of the company’s shares carrying voting rights. Although this could lead to additional advisory and other costs for the company, the Code Committee does not consider that this factor should carry much weight on the basis that the Code Committee’s purpose in making this amendment is to remove the scope for a company to issue suspended voting shares as a means of avoiding the normal application of Rule 9, including the requirement to obtain a whitewash. Accordingly, the Code Committee considers the proposed amendment to be proportionate and justifiable.

APPENDIX A

Proposed amendments to the Code

DEFINITIONS

Voting rights

Voting rights of a company means all the voting rights attributable to its share capital which are currently exercisable at a general meeting.

Except for treasury shares, any shares which are subject to:

(a) a restriction on the exercise of voting rights:

(i) in an undertaking or agreement by or between a shareholder and the company or a third party; or

(ii) arising by law or regulation; or

(b) a suspension of voting rights implemented by means of the company's articles of association or otherwise.

will normally be regarded as having voting rights which are currently exercisable at a general meeting.

[The existing definition shall be deleted.]

Rule 9.7

9.7 VOTING RESTRICTIONS AND DISPOSAL OF INTERESTS

...

NOTES ON RULE 9.7

1. Calculation of the number of interests in shares to be disposed of

Where a disposal of interests in shares is permitted as an alternative to making a ~~an~~ mandatory offer, the interests in shares required to be disposed of must be sufficient to take the total number of shares carrying voting rights in which the offeror and persons acting in concert with it are interested either, if Rule 9.1(a) applies, to below 30% or, if Rule 9.1(b) applies, to the percentage in which they were interested prior to the triggering acquisition being made.

2. Calculation of the number of shares to which voting restrictions will be applied and the number of interests to be disposed of

Where voting restrictions are applied by virtue of an obligation ~~under Rule 9.1 to make a mandatory offer~~ has having arisen by virtue of under:

(a) *Rule 9.1(a), the number of shares in relation to which voting restrictions, ~~if any,~~ will be applied will normally be such number of shares as results in the person to whom Rule 9.1(a) applies (together with persons acting in concert with that person) being able to ~~vote~~ exercise less than 30% of the voting rights attaching to shares in the offeree company; or*

(b) *Rule 9.1(b), the number of shares in relation to which voting restrictions, ~~if any,~~ will be applied will normally be such number of shares as results in the person to whom Rule 9.1(b) applies (together with persons acting in concert with that person) being able to ~~vote no more than the~~ exercise a percentage of interests voting rights attaching to shares in the offeree company held by those persons which is no more than the percentage of shares carrying voting rights in which that person (together with persons acting in concert with that person) was interested prior to the triggering acquisition being made.*

In each case, the calculation of the number of shares in relation to which voting restrictions will be applied will be made by reference to the ~~reduced maximum number of shares entitled to be voted~~ voting rights which may be exercised following the application of the voting restrictions by the Panel.

[The ordering of the paragraphs in Notes 1 and 2 on Rule 9.7 has been changed from the current Note on Rule 9.7. However, this has not been shown in the marked-up text.]

Rule 11

11.1 WHEN A CASH OFFER IS REQUIRED

Except with the consent of the Panel in cases falling under (a) or (b), a cash offer is required where:

(a) **the shares of any class under offer in the offeree company in which interests are acquired for cash (but see Note 5) by an offeror and any person acting in concert with it during the offer period and within 12 months prior to its commencement represent ~~carry~~ 10% or more of the shares voting rights ~~currently exercisable at a class meeting of that class~~ in issue, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class acquired during the offer period and within 12 months prior to its commencement; or**

...

NOTES ON RULE 11.1**1. Price**

...

The Panel should be consulted in advance if it is proposed to acquire the voting rights attaching to shares, or general control of them.

...

4. Equality of treatment

...

Rule 11.1(c) may also be relevant when interests in shares representing ~~carrying~~ 10% or more of ~~the voting rights of a class~~ in issue have been acquired in the previous 12 months for a mixture of securities and cash. The Panel should be consulted in all relevant cases.

...

8. Allotted but unissued shares

When shares of a company ~~carrying voting rights~~ have been allotted (even if provisionally) but have not yet been issued, for example, under a rights issue when the shares are represented by renounceable letters of allotment, the Panel should be consulted. Such shares are likely to be relevant for the purpose of calculating percentages under this Rule.

...

11.2 WHEN A SECURITIES OFFER IS REQUIRED

Where interests in shares of any class of the offeree company representing ~~carrying~~ 10% or more of the shares ~~voting rights currently exercisable at a class meeting~~ of that class in issue have been acquired by an offeror and any person acting in concert with it in exchange for securities in the three months prior to the commencement of and during the offer period, such securities will normally be required to be offered to all other holders of shares of that class.

...

NOTES ON RULE 11.2

...

5. Acquisitions for a mixture of cash and securities

The Panel should be consulted where interests in shares representing ~~carrying~~ 10% or more of any ~~the voting rights of a class of shares in issue~~ have been acquired during the offer period and within 12 months prior to its commencement for a mixture of securities and cash.

6. Acquisitions in exchange for securities to which selling restrictions are attached

Where an offeror and any person acting in concert with it has acquired interests in shares representing ~~carrying~~ 10% or more of ~~the voting rights of any class of shares in issue~~ in the offeree company during the offer period and within 12 months prior to its commencement and the consideration received or receivable by the vendor or other party to the transaction giving rise to the interest includes shares to which selling restrictions of the kind set out in the second sentence of Rule 11.2 are attached, the Panel should be consulted.

APPENDIX B**List of questions**

- Q1. Should the proposed new definition of “voting rights” be introduced?**
- Q2. Should the Note on Rule 9.7 be amended as proposed?**
- Q3. Should Rule 11.1 and 11.2 be amended as proposed?**