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THE TAKEOVER PANEL

REVIEW OF CERTAIN ASPECTS OF THE REGULATION OF TAKEOVER BIDS

RESPONSE STATEMENT BY THE CODE COMMITTEE OF THE PANEL FOLLOWING THE CONSULTATION ON PCP 2011/1

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1. Introduction and summary

(a) Background

1.1 On 21 March 2011, the Code Committee of the Takeover Panel (the "**Code Committee**") published a public consultation paper ("**PCP 2011/1**" or the "**PCP**") in which it proposed various amendments to the Takeover Code (the "**Code**") following the Code Committee's review of certain aspects of the regulation of takeover bids. That review was initiated by the Code Committee in a Panel Statement, published on 24 February 2010, in the light of widespread commentary and public discussion on the regulation of takeover bids for UK companies, following the takeover of Cadbury plc by Kraft Foods Inc. in the first quarter of 2010. On 1 June 2010, the Code Committee published a public consultation paper ("**PCP 2010/2**"), in which it sought views on various suggestions for possible amendments to the Code, but without setting out any specific proposals or drafting amendments to the Code. The Code Committee's response to PCP 2010/2 was set out in a Panel Statement ("**Statement 2010/22**"), published on 21 October 2010.

1.2 In summary, the Code Committee concluded in Statement 2010/22 that:

(a) "hostile" offerors (i.e. offerors whose offers are not from the outset recommended by the board of the offeree company) have, in recent times, been able to obtain a tactical advantage over the offeree company to the detriment of the offeree company and its shareholders, and that it intended to bring forward proposals to amend the Code with a view to reducing this tactical advantage and redressing the balance in favour of the offeree company; and

(b) changes should be made to the Code to improve the offer process and to take more account of the position of persons who are affected by takeovers in addition to offeree company shareholders.

1.3 The Code Committee concluded that amendments to the Code should be made in order to:

(a) increase the protection for offeree companies against protracted "virtual bid" periods by requiring potential offerors to clarify their position within a short period of time;

(b) strengthen the position of the offeree company by:

(i) prohibiting deal protection measures and inducement fees other than in certain limited cases; and

(ii) clarifying that offeree company boards are not limited in the factors that they may take into account in giving their opinion and recommendation on an offer;

(c) increase transparency and improve the quality of disclosure by:

(i) requiring the disclosure of offer-related fees; and

(ii) requiring the disclosure of the same financial information in relation to an offeror and the financing of an offer irrespective of the nature of the offer; and

(d) provide greater recognition of the interests of offeree company employees by:

(i) improving the quality of disclosure by offerors and offeree companies in relation to the offeror's intentions regarding the offeree company and its employees; and

(ii) improving the ability of employee representatives to make their views known.

1.4 In PCP 2011/1, the Code Committee went on to describe the detailed amendments to the Code that it proposed to make in order to implement the conclusions described in Statement 2010/22 and invited comments on those proposed amendments.

(b) About the Panel

1.5 The Takeover Panel (the "Panel") is an independent body whose main functions are to issue and administer the Code and to supervise and regulate takeovers and other matters to which the Code applies in accordance with the rules set out in the Code. In 2006, the Panel was designated by the Secretary of State for Trade and Industry as the supervisory authority to carry out certain regulatory functions in relation to takeovers under the European Directive on Takeover Bids (2004/25/EC) (the "**Takeovers Directive**"). Its statutory functions under UK law are set out in and under Chapter 1 of Part 28 of the Companies Act 2006. The rules set out in the Code also have statutory effect in the Isle of Man, Jersey and Guernsey, by virtue of legislation applying in those jurisdictions.

1.6 The Code is designed principally to ensure that shareholders in an offeree company are treated fairly, and are not denied an opportunity to decide on the merits of a takeover bid, and that shareholders in an offeree company of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeover bids may be conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

1.7 The financial and commercial merits of takeovers are not the responsibility of the Panel. These are matters for the companies concerned and their shareholders. Nor is the Panel responsible for competition policy or wider questions of public interest, which are the responsibility of Government and other bodies, for example, the Competition Commission, the Office of Fair Trading and the European Commission.

(c) Responses to the consultation

1.8 The consultation period in relation to PCP 2011/1 ended on 27 May 2011. The Code Committee received comments on the consultation questions from 57 respondents, representing a broad range of constituencies. The 43 respondents who submitted comments on a non-confidential basis are listed in Appendix A to this Response Statement and copies of their responses have today been published on the Panel's website at www.thetakeoverpanel.org.uk. The remaining 14 respondents submitted their comments on a confidential basis. The Code Committee thanks all of the respondents for their comments.

1.9 Respondents were broadly supportive of the proposed amendments to the Code. However, there were significant conflicts of views in relation to certain of the proposals, including:

(a) the proposed requirements for potential offerors to be identified at the start of an offer period and for potential offerors, within 28 days of their being identified, to "put up or shut up" or obtain a deadline extension; and

(b) the proposed prohibition on inducement fees and other offer-related arrangements.

1.10 A number of responses were received from trustees of pension schemes and from advisers to, and representatives of, pension scheme trustees. In summary, these respondents considered that various provisions of the Code which relate to the employee representatives of the offeree company should be extended so as to apply also to the trustees of the offeree company's pension scheme. The Code Committee considers that the suggested amendments to the Code are outside the scope of the consultation on PCP 2011/1 and therefore intends to give separate consideration to those suggestions in due course.

(d) The Code Committee's conclusions

1.11 Having carefully considered the responses to the consultation, the Code Committee has adopted the amendments to the Code which it proposed in PCP 2011/1 without material amendment, although the Code Committee has made modifications to certain of the proposed amendments, as further discussed in this Response Statement.

1.12 As noted in section 12 of the PCP, the Code Committee believes that the amendments to the Code set out in this Response Statement are a proportionate response to the concerns raised in the course of its review of the regulation of takeover bids and that the benefits of introducing the amendments will outweigh any additional burdens and costs.

(e) Future review

1.13 Given the significance of the changes, the Code Committee intends to undertake a review of the operation of the amendments to the Code set out in this Response Statement by reference to a period of not less than 12 months following their implementation, subject to the level of bid activity during that period.

(f) Code amendments

1.14 The amendments to the Code which the Code Committee has adopted are set out in Appendix B to this Response Statement. In Appendix B, underlining indicates new text and striking-through indicates deleted text, as compared with the current provisions of the Code. However, where new or amended provisions of the Code are set out in the main body of this Response Statement, they are marked to show changes from the provisions as they were proposed to be amended in PCP 2011/1, unless otherwise indicated.

(g) Implementation and transitional arrangements

1.15 The amendments to the Code introduced as a result of this Response Statement will take effect on Monday, 19 September 2011 (the "**Implementation Date**"). A new edition of the Code will be published on the Implementation Date. Details of the applicable implementation and transitional arrangements, as referred to in the Statement published by the Code Committee today, are available on the Panel's website at www.thetakeoverpanel.org.uk.

(h) Disclosure Table

1.16 The Disclosure Table maintained on the Panel's website will be amended from the Implementation Date so as to show details of the applicable deadline by which a potential offeror is required to announce a firm intention to make an offer or that it does not intend to make an offer, or by which the Panel must grant an extension of the current deadline.

2. Protection for offeree companies against protracted "virtual bid" periods

(a) Introduction

2.1 In section 2 of PCP 2011/1, the Code Committee proposed various rule changes, as summarised below, designed principally to increase the protection for offeree companies against a protracted "virtual bid" period, i.e. a situation where a potential offeror announces that it is considering making an offer but without committing itself to doing so.

(b) Requirement for a potential offeror to be identified

(i) Summary of proposals

2.2 In section 2(b) of PCP 2011/1, the Code Committee proposed the introduction of new Rules 2.4(a) and (b) so as to require:

(a) an announcement by an offeree company which commences an offer period to identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected); and

(b) any subsequent announcement by the offeree company which refers to the existence of a new potential offeror to identify that potential offeror, except where the announcement is made after another offeror has announced a firm intention to make an offer for the offeree company.

In addition, the Code Committee proposed the introduction of a new Note 3 on Rule 2.2 so as to make clear that where, during an offer period, rumour and speculation correctly identifies a potential offeror which has not previously been identified in any announcement, the Panel will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror.

(ii) Summary of responses

2.3 Of the respondents who commented on the proposed requirement for potential offerors to be identified, approximately two-thirds were opposed to it, with the remaining third being either in support of or neutral towards it.

2.4 The concerns raised by those who opposed the proposed requirement included the following:

(a) that many potential offerors would be deterred from making an approach to an offeree company with regard to a possible offer or would withdraw any approach made rather than be identified. This might act to the detriment of shareholders in companies subject to the Code who might be denied the benefit of an offer (or could receive a lower offer as a result of the reduction of competitive tension);

(b) that it might encourage potential offerors whose offer preparations were well-advanced deliberately to leak details of their possible offer in order to "flush out" (or provoke the withdrawal of) any other potential offerors who had approached the offeree company, since the latter would also be required to be identified in the announcement by the offeree company which commenced the offer period; and

(c) that the requirement for all potential offerors to be identified in an announcement by an offeree company which commences an offer period, when coupled with the requirement for each of them to "put up or shut up" within 28 days, would create an "uneven playing field" where a company is in receipt of approaches from two or more potential offerors at the time that the requirement for an announcement is triggered, one of whose offer preparations are well-advanced, the others of whose are not.

2.5 Respondents who supported the proposal considered that the requirement for potential offerors to be identified would redress the tactical advantage of anonymity that potential offerors often enjoy over offeree companies and that the benefits of transparency outweighed any advantage of giving offeree company boards discretion as to whether to identify potential offerors. These respondents also noted that the requirement for potential offerors to be identified might encourage potential offerors to make approaches to offeree companies on a more considered basis, and to take greater efforts to maintain confidentiality, than at present.

2.6 Few respondents commented on the proposed new Note 3 on Rule 2.2, regarding the Panel's ability to require the identification of a potential offeror after the commencement of an offer period, but those who did agreed with the proposal.

(iii) Conclusions

2.7 The Code Committee believes that the identification of the potential offeror or offerors at the commencement of an offer period will remove the tactical advantage of anonymity that potential offerors often enjoy over offeree companies and that the identity of the potential offeror is often important information for shareholders in the offeree company and other market participants.

2.8 The Code Committee does not believe that it has been provided with compelling evidence to suggest that the requirement for identification at the commencement of an offer period will have a significant deterrent effect on potential offerors. Indeed, the Code Committee notes that a risk of identification at this stage exists at present. Whilst the identification of a potential offeror will, in the future, give rise to an automatic "put up or shut up" deadline, the Code Committee believes that the ability for the offeree company to request an extension of this deadline will mean that most potential offerors will have sufficient time in which to prepare their offers. In addition, the Code Committee notes that a potential offeror which makes a "no intention

to bid" statement will be able to set that statement aside in the event that another offeror announces a firm intention to make an offer.

2.9 The Code Committee acknowledges that circumstances may arise in which the board of an offeree company believes that the interests of the company and its shareholders would be best served by a potential offeror's identity remaining undisclosed. However, if this discretion were to be vested in the board of the offeree company, the Code Committee considers that it would quickly become standard practice for an approach by a potential offeror to be conditional upon its not being identified.

2.10 The Code Committee notes that the respondents who raised concerns in relation to the introduction of a requirement to identify potential offerors, and in relation to the introduction of a 28 day "put up or shut up" regime, generally preferred the "alternative approach" to the identification of potential offerors described in section 2(d) of the PCP, whereby the decision as to whether a potential offeror should be publicly identified would rest with the board of the offeree company (other than in cases where the Panel required a potential offeror to be publicly identified following accurate rumour and speculation). The Code Committee continues to believe that, in line with its conclusion in paragraph 2.24 of the PCP, the "alternative approach" should not be pursued.

2.11 In addition, the Code Committee anticipates that the requirement for potential offerors to be identified, coupled with the new "put up or shut up" requirements, will have the benefit of discouraging potential offerors from making premature approaches to offeree companies with regard to possible offers and that the knowledge that a potential offeror will be identified upon the commencement of an offer period should act as an incentive for a potential offeror to ensure that the secrecy of its possible offer is maintained and that appropriate steps are taken to minimise the chances of a leak of information.

2.12 The Code Committee notes that the requirement for all potential offerors to be identified in an announcement by the offeree company which commences an offer period may act to the disadvantage of less well-prepared potential

offerors in circumstances where a company has received approaches from more than one potential offeror at the time that the requirement to make an announcement is triggered. However, where a possible offer announcement is required under Rule 2.2(c), it will often not be possible for the Panel to be definitive about the source of any leak in the time available and it would therefore be inappropriate for the Code to require the disclosure of one, but not all, of the potential offerors.

(iv) Amendments to the Code

2.13 The Code Committee has adopted the new Rules 2.4(a) and (b) as proposed in the PCP, subject to minor amendment, as follows:

> "**2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER**
>
> **(a) An announcement by the offeree company which commences an offer period must identify any potential offeror with ~~whom~~ which the offeree company is in talks or from ~~whom~~ which an approach has been received (and not unequivocally rejected).**
>
> **(b) Any subsequent announcement by the offeree company which refers to the existence of a new potential offeror must identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree company (see Rule 2.6(e)).**".

2.14 The Code Committee has adopted the new Note 3 on Rule 2.2 as proposed in the PCP, with one minor modification, as follows:

> "*3. Rumour and speculation during an offer period*
>
> *Where, during an offer period, rumour and speculation ~~accurately and~~ specifically identifies a potential offeror which has not previously been identified in any announcement, the Panel will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror.*".

(c) Requirement for a potential offeror to "put up or shut up" or obtain a deadline extension

(i) Summary of proposals

2.15 In section 2(c) of PCP 2011/1, the Code Committee proposed the introduction of a new Rule 2.6(a) so as to require that a potential offeror must (subject to certain exceptions), by not later than 5.00 pm on the 28th day following the date of the announcement in which it is first identified, or by not later than any extended deadline:

(a) announce a firm intention to make an offer;

(b) announce that it does not intend to make an offer (in which case the potential offeror would normally be restricted from making an offer for the offeree company for a period of at least six months); or

(c) together with the board of the offeree company, obtain the Panel's consent to an extension of the deadline.

2.16 In section 2(e) of PCP 2011/1, the Code Committee proposed, amongst other things, the introduction of a new Rule 2.6(b), under which the requirements of the new Rule 2.6(a) (as described above) would not apply, or would cease to apply, to a potential offeror if another offeror had already announced, or subsequently announced (prior to the relevant deadline), a firm intention to make an offer for the offeree company.

2.17 In section 2(g) of PCP 2011/1, the Code Committee proposed the introduction of a new Rule 2.6(c), regarding the ability of the Panel to consent to an extension of a "put up or shut up" deadline imposed upon a potential offeror under the proposed new Rule 2.6(a) or any previously extended deadline. It was proposed that the Panel should consent to such an extension only:

(a) where so requested by the board of the offeree company; and

(b) after having taken into account all relevant factors, including the status of negotiations between the offeree company and the potential offeror and the anticipated timetable for their completion.

In addition, it was proposed that:

(c) the new Rule 2.6(c) should provide that, where the Panel consents to the extension of a "put up or shut up" deadline, the offeree company must promptly announce details of the new deadline, the status of negotiations and the anticipated timetable for their completion; and

(d) a new Note 1 on Rule 2.6 should make clear that, when a request to extend a "put up or shut up" deadline was made, the Panel would normally give its decision shortly before the time at which the deadline was due to expire.

(ii) Summary of responses

2.18 The respondents who commented on the proposed requirement for the introduction of an automatic 28 day deadline by which, unless the deadline is extended, a potential offeror must "put up or shut up" were split in a similar manner as in relation to the matter of the identification of potential offerors, with approximately two-thirds raising concerns about the proposed requirement and the remaining one-third either supporting it or adopting a neutral stance.

2.19 The principal concern raised was that 28 days would be too short a period for many potential offerors to complete the necessary steps in order to be in a position to announce a firm intention to make an offer and that shareholders of companies subject to the Code might not therefore receive an offer, either because the potential offeror would try but fail to meet the deadline or because it would withdraw its approach in the knowledge that it would be likely to fail.

2.20 In addition, some respondents considered that "put up or shut up" deadlines should not apply automatically and that they should apply only at the request of the board of the offeree company, as at present, or that, even if deadlines were to apply automatically, their length should be determined by the Panel on a case by case basis.

2.21 One respondent queried the conclusion that each potential offeror should be subject to its own deadline and considered that the latest deadline should be applied to all potential offerors.

2.22 A number of respondents queried whether it was realistic that a potential offeror who was unable to announce a firm intention to make an offer by the relevant deadline would subsequently return to make a competing offer in the event that another offeror announced a firm intention to make an offer (as permitted under Note 2 on Rule 2.8).

2.23 Few respondents commented on the proposed new Rule 2.6(b). However, two respondents were unclear as to why the requirement for a potential offeror to be identified would not apply, or would cease to apply, if another offeror had announced, or subsequently announced, a firm intention to make an offer.

2.24 Various respondents commented on the proposals in relation to extensions of the initial 28 day "put up or shut up" deadline. The principal comments were as follows:

(a) that potential offerors should, at least in some cases, have the ability unilaterally to request the Panel to extend a "put up or shut up" deadline, i.e. that the ability to make such extension requests should not be limited to the board of the offeree company;

(b) that it should not be permissible for the board of the offeree company to request different deadline extensions for different potential offerors;

(c) that the offeree company should not be required to disclose details of the status of negotiations and the anticipated timetable for their completion; and

(d) that the proposal that the Panel should decide whether to grant a deadline extension only shortly before the time at which the deadline is due to expire could give rise to considerable uncertainty and that the Panel should be prepared, in certain circumstances, to grant a deadline extension from the very outset of the offer period.

(iii) Conclusions

2.25 The Code Committee notes the concern that 28 days from the date of the announcement of a possible offer may be an insufficient period of time for certain offerors to take the necessary steps in order to be able to announce a firm intention to make an offer. However, given the widely accepted concerns with regard to "virtual bids", the Code Committee considers that it is necessary to limit the period between a possible offer announcement, particularly a "bear hug" announcement, and the subsequent announcement of a firm offer or statement that an offer will not be made. The Code Committee believes that a deadline of 28 days from the start of the offer period provides an appropriate limit to the period during which a potential offeror may subject the offeree company to the disruption of a "virtual bid" without having persuaded the board of the offeree company to request an extension to that deadline.

2.26 The comments of a number of respondents gave the impression that the proposed amendment of the "put up or shut up" regime would result in a high degree of risk that a potential offeror, even one which was welcomed by the board of the offeree company, would have only 28 days from the date of its initial approach to the offeree company by which to announce either a firm intention to make an offer or that it had no intention to make an offer. The Code Committee believes that these comments over-state this risk, in that:

(a) the 28 day deadline will be set not by virtue of a potential offeror having approached the offeree company but by virtue of the identification of the potential offeror in an announcement by the offeree company (or by the potential offeror itself). Such announcements are required to be made under the Code only in the event that rumour and speculation or an untoward movement in the share price of the offeree company suggests that details of a possible offer have leaked, contrary to the requirement for the maintenance of secrecy in Rule 2.1; and

(b) the 28 day deadline will, in fact, be of little relevance to a potential offeror which enjoys the support of the board of the offeree company, in view of the ability of the board of the offeree company to request the Panel to extend the deadline.

The Code Committee acknowledges that it might be difficult for a potential offeror which had made a premature approach to an offeree company to finalise its bid preparations within 28 days in the event that details of its approach were to leak shortly after it was made. However, the Code Committee believes that potential offerors will be able to mitigate this risk by ensuring that they are well-advanced in their offer preparations before approaching the offeree company and by taking steps to reduce the risks of a leak.

2.27 The Code Committee notes the scepticism of certain respondents that a potential offeror which, having been unable to complete its offer preparations prior to the expiry of the 28 day deadline, has announced that it has no intention to make an offer, would be able to re-join the offer process upon another offeror announcing a firm offer. However, the Code Committee also notes that, in view of the firm offeror's inability to obtain an inducement fee or enter into other offer-related arrangements (see section 3 below), a potential competing offeror should be in a better position to do so than it would be at present.

2.28 As explained in paragraph 2.25 of PCP 2011/1, the principal reason why the "put up or shut up" regime will cease to apply upon a potential offeror announcing a firm intention to make an offer is that the uncertainty caused by a "virtual bid" then no longer subsists and, from that point, the provisions of the Code which govern the timetable for the making of a firm offer will apply.

2.29 The Code Committee does not believe that the issue of "virtual bids" would be adequately addressed if the Code continued to leave the decision as to whether to invoke a "put up or shut up" deadline in the hands of the board of the offeree company. The Code Committee believes that it is preferable for "put up or shut up" deadlines to become standardised and automatic but extendable at the request of the offeree company, and notes that a standard deadline will avoid time-consuming debates between potential offerors, offeree company boards and the Panel as to the most appropriate deadline in any particular case.

2.30 The Code Committee continues to believe that permitting a potential offeror to make a unilateral request for an extension to a "put up or shut up" deadline would be contrary to the objectives of increasing protection for offeree companies against protracted "virtual bid" periods and of reducing the tactical advantage obtained by offerors over offeree companies. On the other hand, the Code Committee continues to believe that the Panel should normally consent to a request for a deadline extension from the board of the offeree company.

2.31 The Code Committee also continues to believe that, in a situation where there are multiple potential offerors for an offeree company, each should initially have its own "put up or shut up" deadline. A regime whereby all potential offerors were subject to the latest deadline would not necessarily achieve a more equitable outcome, since the party that had made the earliest approach would still have more time than others before the deadline.

2.32 Similarly, the Code Committee does not believe that the board of an offeree company should be required to request a deadline extension for all potential offerors simply because it requests an extension for one or more potential

offerors. Nevertheless, the Code Committee agrees with those respondents who considered that, in many cases, the board of the offeree company will wish to achieve a common deadline for all potential offerors. However, the Code Committee has accepted the suggestion of one respondent that the ability of the board of the offeree company to request different deadline extensions for different potential offerors should be expressly referred to in the new Note 1 on Rule 2.6.

2.33 The Code Committee notes the concerns of certain respondents that an announcement by the offeree company giving details of an extended deadline should not be required to disclose in detail the status of negotiations and the anticipated timetable. The Code Committee did not intend that commercially sensitive information should be required to be disclosed in such an announcement and has revised the new Rule 2.6(c) so as to require the offeree company to "comment" on those matters.

2.34 The Code Committee understands why certain potential offerors, which are welcomed by the board of the offeree company, might desire certainty from the outset of the offer period that their "put up or shut up" deadline will be extended. However, the Code Committee considers that the 28 day deadline could quickly become meaningless if potential offerors, in every case, made their approach conditional upon the board of the offeree company requesting an extension from the Panel at the outset of the offer period. The Code Committee therefore continues to believe that the Panel should take its decision as to whether it is appropriate to grant an extension of a deadline only on the basis of the status of negotiations shortly before the expiry of the deadline.

(iv) Amendments to the Code

2.35 The Code Committee has adopted the new Rules 2.6(a), (b) and (c), and Note 1 on Rule 2.6, as proposed in the PCP, subject to certain amendments, as follows:

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

(a) Subject to Rule 2.6(b), by not later than 5.00 pm on the 28th day following the date of the announcement in which it is first identified, or by not later than any extended deadline, a potential offeror must either:

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

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

~~(iii) together with the offeree company, obtain the Panel's consent to an extension of the deadline.~~

unless the Panel has consented to an extension of the deadline.

(b) Rule 2.6(a) will not apply, or will cease to apply, to a potential offeror if another offeror has already announced, or subsequently announces (prior to the relevant deadline), a firm intention to make an offer for the offeree company. In such circumstances, the potential offeror will be required to clarify its intentions in accordance with Rule 2.6(d) below.

(c) The Panel will normally consent to an extension of a deadline set in accordance with Rule 2.6(a), or any previously extended deadline, at the request of the board of the offeree company and after taking into account all relevant factors, including:

(i) the status of negotiations between the offeree company and the potential offeror; and

(ii) the anticipated timetable for their completion.

Where the Panel consents to an extension of a deadline, the offeree company must promptly ~~announce the details of~~ make an announcement setting out the new deadline and commenting on the matters referred to in paragraphs (i) and (ii) above.

…

NOTES ON RULE 2.6

1. ~~Requests for d~~Deadline extensions

> *When a request to extend a deadline set under Rule 2.6(a) is made by the board of the offeree company, the Panel will normally give its decision shortly before the time at which the deadline is due to expire. The board of the offeree company may request different deadline extensions for different potential offerors or may request a deadline extension in relation to one potential offeror but not others.*".

(d) Formal sale process

(i) Summary of proposals

2.36 In section 2(f) of PCP 2011/1, the Code Committee proposed the introduction of a new Note 2 on Rule 2.6. This would provide that, where an offer period commenced with an announcement by the board of the offeree company that it was seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel would normally grant a dispensation from the requirements described above, such that any potential offeror who agreed to participate in that process (and for so long as it was participating in that process) would not be:

(a) required to be publicly identified under Rule 2.4(a) or (b); or

(b) subject to the 28 day deadline referred to in Rule 2.6(a).

2.37 Separately, in section 3(c) of PCP 2011/1, the Code Committee proposed that the Panel should have the ability to grant a dispensation from the prohibition on the offeree company entering into an inducement fee arrangement with an offeror where that offeror had participated in such a formal sale process.

(ii) Summary of responses

2.38 The principal comments by respondents were, in summary, as follows:

(a) that the Panel's ability to grant dispensations should not be limited only to those offer periods which commence with the announcement of a "formal sale process" by the board of the offeree company and that

dispensations should also be available if the board of an offeree company initiates a formal sale process after the start of an offer period; and

(b) that dispensations should also be available following the announcement by the board of an offeree company of a "strategic review" of the company's business.

(iii) Conclusions

2.39 The Code Committee accepts the suggestion made by respondents that the Panel should also be able to grant certain dispensations where the board of the offeree company announces a formal sale process after the offer period has already commenced.

2.40 However, the Code Committee does not consider that the dispensations which may be granted following the announcement of a formal sale process should also be made available following the announcement by the offeree company of a strategic review of its business. The Code Committee believes that allowing dispensations to be granted in such circumstances would make the requirements of the Code that would otherwise apply too easy to circumvent and that such dispensations should only be available when a board is genuinely putting a company up for sale. The Code Committee notes that Practice Statement No. 6, published by the Panel Executive, describes the circumstances in which the announcement of a strategic review will lead to the commencement of an offer period. The Code Committee understands that the Executive intends to reissue Practice Statement No. 6 in substantially the same form as at present upon the implementation of the amendments to the Code described in this Response Statement. Accordingly, under the new Rule 2.4(a), if the offeree company has already received an approach from one or more potential offerors at the time that it makes a strategic review announcement which commences an offer period, each such potential offeror will be required to be identified in the announcement and a 28 day "put up or

shut up" deadline will then be set, albeit that the board of the offeree company will subsequently be able to request an extension of that deadline.

2.41 The Code Committee notes that certain respondents raised detailed queries as to the circumstances in which the Panel would be likely to grant dispensations in respect of a formal sale process and as to the application and interpretation of the new Note 2 on Rule 2.6. On balance, the Code Committee believes that it should be left to the Panel to administer the new provision flexibly on a case by case basis.

(iv) Amendments to the Code

2.42 The Code Committee has adopted the new Note 2 on Rule 2.6, as follows:

> *"2. Formal sale process*
>
> *Where, prior to an offeror having announced a firm intention to make an offer, ~~an offer period commences with an announcement by~~ the board of the offeree company announces that it is seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(a) and (b) and Rule 2.6(a), such that any potential offeror ~~who~~ which agrees with the offeree company to participate in that process ~~and in respect of whom an announcement is subsequently made~~ would not be required to be publicly identified under Rule 2.4(a) or (b) and would not be subject to the 28 day deadline referred to in Rule 2.6(a), for so long as it is participating in that process. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought."*.

(e) Potential competing offerors and their identification by the offeree company

(i) Summary of proposals

2.43 In section 2(e) of PCP 2011/1, the Code Committee proposed the following:

(a) the introduction of a new Rule 2.6(d) which would provide that when, either prior to or following the announcement by an offeror of a firm intention to make an offer, a publicly identified potential offeror

announces that it might make a competing offer, the potential competing offeror must, by a date in the later stages of the offer period to be announced by the Panel, either announce a firm intention to make an offer or announce that it does not intend to make an offer; and

(b) the introduction of a new Rule 2.6(e) which would provide that, when an offeror has announced a firm intention to make an offer and the offeree company subsequently refers to the existence of a potential competing offeror, that potential competing offeror must, by a date in the later stages of the offer period to be announced by the Panel, either announce a firm intention to make an offer or confirm to the offeree company that it does not intend to make an offer.

2.44 In addition, the Code Committee proposed the amendment of Rule 2.3 so as to provide expressly, in what would become a new Rule 2.3(d), that a potential offeror must not attempt to prevent the board of an offeree company from publicly identifying it at any time the board considers appropriate.

(ii) Summary of responses

2.45 Few respondents commented on the proposed new Rules 2.6(d) and (e) or on the proposed new Rule 2.3(d). One respondent considered that the meaning of the words "a date in the later stages of the offer period", as used in the proposed new Rules 2.6(d) and (e), should be clarified by means of a new Note on Rule 2.6.

(iii) Conclusions

2.46 The Code Committee accepts the suggestion that the meaning of the words "a date in the later stages of the offer period" should be clarified in a new Note on Rule 2.6. The equivalent words in the current Note 1 on Rule 19.3 have for a considerable period of time been interpreted as meaning a date on or around 10 days prior to the end of the 60 day timetable of a contractual offer

(sometimes referred to as "Day 50"), as explained in paragraph 2.26 of PCP 2011/1.

(iv) Amendments to the Code

2.47 The Code Committee has adopted the new Rules 2.6(d) and (e), and has introduced a new Note 3 on Rule 2.6, as follows:

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

…

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

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

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

~~**See also Section 4 of Appendix 7 in the case of a scheme of arrangement.**~~

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

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

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

NOTES ON RULE 2.6

…

3. Date by which announcement required

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

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

2.48 In addition, the Code Committee has adopted the amendments to Section 4(a) of Appendix 7, and has introduced a new Note on Section 4 of Appendix 7, as follows:

"**4 HOLDING STATEMENTS**

(a) If an announcement of the kind described in Rule 2.6(d) is made during an offer period involving a scheme of arrangement, the Panel will normally require the potential offeror to clarify its position by a date in advance of the date of the shareholder meetings, to be announced by the Panel.

…

NOTE ON SECTION 4

Date by which announcement required

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

2.49 The Code Committee has adopted the amendments to the final paragraph of Rule 2.3 as proposed in the PCP, so that the new Rule 2.3(d) will be as follows:

"**(d) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a**

possible offer, or publicly identifying the potential offeror, at any time the board considers appropriate.".

(f) Statements of intention not to make an offer

(i) Summary of proposals

2.50 In section 2(h) of PCP 2011/1, the Code Committee proposed certain, mostly technical, amendments to Rule 2.8 (including to Note 2 on Rule 2.8), which applies where a person makes a statement that he does not intend to make an offer for a company (a "**Rule 2.8 Statement**").

(ii) Summary of responses

2.51 Two respondents objected to the fact that the effect of the proposed amendments would be to introduce a requirement for the Panel to consent to the setting aside of a Rule 2.8 Statement where no such requirement currently exists, although one of them expressly acknowledged that the Panel's consent should be required where the reason for wishing to set the statement aside was that a material change of circumstances had occurred.

2.52 One respondent raised the question of whether the Panel would consent to the setting aside of a person's Rule 2.8 Statement in circumstances where an offeror whose offer was proceeding by means of scheme of arrangement announced that it was switching to a contractual offer or *vice versa*.

(iii) Conclusions

2.53 It is not the Code Committee's intention to change the substance of the manner in which Rule 2.8 Statements may be set aside. The Code Committee has therefore revised Rule 2.8, and Note 2 on Rule 2.8, so as to remove the requirement for Panel consent included in the provisions as proposed in the PCP, other than in relation to a material change of circumstances.

2.54 The Code Committee considers that a person should normally be able to set aside a Rule 2.8 Statement in circumstances where an offeror proceeding by means of scheme of arrangement switches to a contractual offer with the consent of the Panel in accordance with Section 8 of Appendix 7, or announces its firm intention to do so. This is on the basis that the reason for that change is likely to be that the offeror considers that the scheme of arrangement is no longer deliverable, for example because a large shareholder, or a number of shareholders, have announced their intention to vote against the shareholder resolution required to approve the scheme. In such circumstances, a person who had previously made a Rule 2.8 Statement may wish to set that statement aside in order that it can compete with the offeror which has switched so as to proceed by means of a contractual offer. The Code Committee considers that such a scenario would normally be regarded as a "material change of circumstances" and that it would be in the interests of offeree company shareholders for that person to be able to set aside its Rule 2.8 Statement.

2.55 However, taking the case of an offeror proceeding by means of a contractual offer which switches to a scheme of arrangement, the Code Committee does not consider that a scheme would be deliverable in circumstances where a contractual offer was not. Therefore, in all likelihood, an offeror choosing to switch in those circumstances would be doing so for other reasons, which should not be regarded as a "material change of circumstances" which would enable a person who had made a Rule 2.8 Statement to set it aside.

2.56 The Code Committee considers that Note 2 on Rule 2.8 should be amended accordingly.

(iv) Amendments to the Code

2.57 The Code Committee has adopted the proposed amendments to Rule 2.8, and to Note 2 on Rule 2.8 with certain modifications, as follows:

"**2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER**

A person making a statement that he does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except in the circumstances described in Note 2 ~~with the consent of the Panel~~, neither the person making the statement, nor any person who acted in concert with that person, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

…

NOTES ON RULE 2.8

…

2. When a statement may be set aside ~~consent may be given~~

~~The Panel will normally only give its consent under this Rule~~ Except with the consent of the Panel, a statement to which Rule 2.8 applies may be set aside only if:

(a) the board of the offeree company agrees to the statement being set aside. Where the statement was made at any time following the announcement by a third party of a firm intention to make an offer, ~~such consent will not normally be given~~ the statement may not normally be set aside with the agreement of the board of the offeree company unless that offer has been withdrawn or has lapsed;

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

(c) the offeree company announces a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or a reverse takeover ~~(see Note 2 on Rule 3.2)~~;

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

(e) the statement was made outside an offer period and an event has occurred which was specified in the statement as being an event which would enable the statement to be set aside (see Note 1).

The Panel will normally regard a switch by a third party offeror from a scheme of arrangement to a contractual offer in accordance with Section 8 of Appendix 7, or an announcement of its firm intention to do so, as a material change of circumstances under paragraph (d). However, a switch from a contractual offer to a scheme of

arrangement will not normally be regarded as a material change of circumstances.".

2.58 In addition, the Code Committee has adopted similar amendments to the Note on Rules 35.1 and 35.2, which will therefore be as follows:

"*NOTE ON RULES 35.1 and 35.2*

When consent may be given

(a) The Panel will normally only give its consent under this Rule if:

(i) the new offer is recommended by the board of the offeree company. Such consent will not normally be ~~granted~~ given within three months of the lapsing of an earlier offer in circumstances where the offeror was prevented from revising or extending its previous offer as a result of a no increase statement or a no extension statement;

(ii) the new offer follows the announcement by a third party of a firm intention to make an offer for the offeree company;

(iii) the new offer follows the announcement by the offeree company of a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or ~~of~~ a reverse takeover ~~(see Note 2 on Rule 3.2)~~ which has not failed or lapsed or been withdrawn; or

(iv) the Panel determines that there has been ~~any other~~ a material change of circumstances.".

(g) Position under Rule 2.2 where a potential offeror ceases considering the possibility of making an offer

(i) Summary of proposals

2.59 In section 2(i) of PCP 2011/1, the Code Committee proposed the introduction of a new Note 4 on Rule 2.2, whereby:

(a) the Panel would be given the express ability to grant a dispensation from the requirement for a "possible offer" announcement to be made under Rule 2.2(c) or (d) in circumstances where, prior to the

requirement to make an announcement having been satisfied, the potential offeror in question had ceased active consideration of an offer for the offeree company; and

(b) a potential offeror in respect of which such a dispensation had been granted would, save with the consent of the Panel in the circumstances described in paragraphs (b) to (d) of Note 2 on Rule 2.8:

(i) be restricted from actively considering the making of an offer for the offeree company; and

(ii) be bound by the restrictions set out in Rule 2.8,

for a period of six months. In addition, the Panel would be able to consent to those restrictions being set aside at the request of the board of the offeree company, but only after three months had expired since the granting of the dispensation.

2.60 The second paragraph of the proposed new Note 4 on Rule 2.2 sought to make clear that, notwithstanding the granting of such a dispensation, an announcement might nonetheless be required to be made if rumour and speculation continued or was repeated, or if the Panel considered that an announcement was otherwise necessary in order to prevent the creation of a false market.

(ii) Summary of responses

2.61 All of the respondents who commented on the proposed new Note 4 on Rule 2.2 either supported or were neutral towards the proposed ability for the Panel to grant a dispensation from the requirement to make an announcement where a potential offeror ceases active consideration of an offer prior to an announcement being made. None favoured the alternative approach described in paragraph 2.63 of the PCP, under which an announcement would always be required to be made.

2.62 A number of respondents did, however, raise concerns in relation to the proposed Note 4 on Rule 2.2. The principal comments were as follows:

(a) that the "lock out" period of six months (or, following a request by the board of the offeree company, three months) that would apply to a potential offeror was disproportionately long; and

(b) that it should be made clear that an announcement required to be made by the offeree company under the second paragraph of the proposed Note would not necessarily be required to give details of the former potential offeror's identity.

(iii) Conclusions

2.63 The Code Committee continues to believe that the Panel should have the ability to grant dispensations in the circumstances described in the new Note 4 on Rule 2.2. However, the Code Committee considers that it is important to ensure that, in circumstances where such a significant dispensation is granted, the potential offeror has genuinely ceased actively to consider a possible offer and that it is not simply seeking to take advantage of the Panel's ability to grant a dispensation in order to avoid an inconvenient requirement to make an announcement. The Code Committee therefore continues to believe that it is appropriate that such a potential offeror's actions should be restricted for the same period as if it had made a Rule 2.8 Statement, i.e. six months.

2.64 The Code Committee also continues to believe that it is appropriate to include the proposed anti-avoidance mechanism whereby the Panel would be able to accede to a request from an offeree company that a former potential offeror should be allowed to recommence active consideration of a possible offer only after three months had elapsed since the granting of the dispensation. As mentioned in the PCP, a period of three months is in line with that in other anti-avoidance provisions currently included in the Code, such as the Note on Rules 35.1 and 35.2. At the suggestion of one respondent, the Code

Committee has amended the wording of the new Note 4 on Rule 2.2 so that it follows more closely that used in the Note on Rules 35.1 and 35.2.

2.65 The Code Committee agrees that, where an announcement is nonetheless required to be made following the granting of a dispensation under Note 4 on Rule 2.2, on account of persistent rumour and speculation or false market concerns, it would normally be acceptable for the announcement to be made by the offeree company and that it should not normally be necessary to identify the former potential offeror in that announcement. However, if rumour and speculation has specifically identified it, the Code Committee believes that the former potential offeror should normally be identified, on the basis that market participants should be provided with clarity as to whether the person named in the rumour and speculation is subject to restrictions under the Code. The Code Committee has accepted the suggestion of one respondent that these points should be made clear in the new Note 4 itself.

2.66 The Code Committee notes that a number of respondents were concerned that the Code might require an announcement to be made if there is rumour and speculation that a person was, or had formerly been, considering making an offer for a company, in circumstances where the person had ceased actively to consider a possible offer some time prior to the rumour and speculation arising. The Code Committee would like to make clear that there is no requirement under the Code for an announcement to be made in such circumstances and that, accordingly, the new Note 4 on Rule 2.2 will be of no relevance in such a situation. The Code Committee has sought to clarify the new Note 4(b) on Rule 2.2 in order to avoid any confusion in this regard.

(iv) Amendments to the Code

2.67 The Code Committee has adopted the proposed new Note 4 on Rule 2.2 subject to certain amendments, as follows:

> *"4. When a dispensation may be granted*

(a) The Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. After such a dispensation has been granted, the potential offeror may not actively consider making an offer for the offeree company for a period of six months and will be treated as having made a statement to which Rule 2.8 applies. The Panel may consent to ~~this~~ these restrictions being set aside in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8. The Panel may also, at the request of the offeree company, ~~permit~~ consent to the potential offeror ~~to recommence~~ recommencing active consideration of an offer ~~provided that at least~~ but such consent will not normally be given within three months of ~~have expired since~~ the dispensation ~~was~~ having been granted.

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

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

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

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

(v) Postscript

2.68 One respondent noted that the final sentence of paragraph 2.61 of PCP 2011/1 appeared to suggest that a potential offeror which was granted a dispensation under the new Note 4 on Rule 2.2 from having to make an announcement might be permitted to recommence active consideration of an offer following the announcement of a possible offer by a third party. The respondent considered it surprising that the announcement of a possible offer by a third party should, of itself, be sufficient given that:

(a) the announcement of a possible offer by a third party would not, of itself, enable a person who has made Rule 2.8 Statement to set that statement aside; and

(b) a person who is granted a dispensation under the new Note 4 on Rule 2.2 (where no announcement is made) would be expected to be subject to stricter restrictions than a person who is subject to Rule 2.8 (where an announcement will normally have been made).

2.69 The Code Committee acknowledges this point and notes that paragraph 2.61 of the PCP should have provided that the Panel might give its consent to a potential offeror which was granted a dispensation under Note 4 on Rule 2.2 to recommence active consideration of an offer if:

(a) this was agreed to by the board of the offeree company; and

(b) a new offer period had commenced following the announcement of a possible offer by a third party.

(h) Other matters

(i) New Note 1 on Rule 2.5

2.70 A small number of respondents commented on the proposed amendment to Note 5 on Rule 2.4 (the new Note 1 on Rule 2.5), which was intended to clarify that a potential offeror is not permitted to exercise a right it has reserved to set aside a statement in relation to the level of consideration that it might offer, or in relation to varying the form and/or mix of the consideration that it might offer, once it has announced a firm intention to make an offer for the offeree company. For example, if a potential offeror announces a possible offer for each offeree company share of "£10 and 10 offeror shares" (with a combined value of £20) and reserves the right to offer a lower level of consideration with the agreement of the board of the offeree company, or to vary the mix of the consideration, and if the offeror subsequently announces a firm offer on those terms (at which point the combined value remains at £20), it would not be permissible for the offeror subsequently to announce a revised offer of "£13 and 9 offeror shares" (notwithstanding a greater combined value

of £22), even with the agreement of the board of the offeree company, as this would involve a reduction of the number of offeror shares being offered as consideration. However, it would clearly be permissible for the offeror to increase either component of the consideration without reducing the other.

2.71 The respondents were concerned that, as drafted, the proposed new paragraph appeared to restrict an offeror's ability to announce a higher, revised offer, or to increase either the cash or the securities component of a securities exchange offer. The Code Committee confirms that this was not the intention and has sought to make this clearer in the final wording of the new paragraph, as follows:

> "*Once it has announced a firm intention to make an offer, an offeror will ~~no longer~~ not be permitted to exercise any right it had previously reserved either to set aside a statement in relation to the level of consideration that it might offer or ~~any right~~ to vary the form and/or mix of the consideration.*".

(ii) The Note on Rule 7.1

2.72 One respondent noted that, as proposed to be amended, the Note on Rule 7.1 would apply only to potential offerors which had been identified in an announcement by the offeree company. This was not the Code Committee's intention and the wording of the Note has been modified so that it will apply to both potential offerors which have been publicly identified in any announcement (whether made by the offeree company or by the offeror itself) and those whose existence has been referred to in an announcement by the offeree company, as follows:

> "*The requirement of this Rule to make an immediate announcement applies to any potential offeror whose existence has been referred to in any announcement ~~by the offeree company~~ (whether publicly identified or not) either where a public statement of the level of its possible offer has been made and the potential offeror or any person acting in concert with it acquires an interest in shares above that level or where a third party has announced a firm intention to make an offer and the potential offeror or any person acting in concert with it acquires an*

interest in shares at above the level of that offer. A Dealing Disclosure will also be required in accordance with Rule 8.1(b).".

(iii) New Rule 2.5(a)

2.73 The Code Committee has also made minor amendments to the new Rule 2.5(a) (currently Rule 2.4(c)), as explained in section 12 below.

(iv) Other amendments

2.74 The Code Committee has adopted the new structure for Rule 2, as described in paragraph 2.65 of PCP 2011/1.

2.75 In addition, save as described above, the Code Committee has adopted the other minor and consequential amendments referred to in paragraph 2.66 of PCP 2011/1 without further amendment.

(g) Practice Statement No. 20

2.76 As indicated in paragraph 2.12 of PCP 2011/1, the Code Committee understands that, as a consequence of the various amendments to Rule 2, the Panel Executive will update Practice Statement No. 20. The Practice Statement provides informal guidance as to the Executive's interpretation and application of the provisions of Rule 2 relating to secrecy, possible offer announcements and pre-announcement responsibilities, including, at section 3, its interpretation of the term "approach" and its application of the provisions in which that term is used.

3. Prohibition of deal protection measures and inducement fees

(a) Introduction

3.1 In section 3 of PCP 2011/1, the Code Committee proposed the introduction of a new Rule 21.2, which would have the effect of prohibiting inducement fees, implementation agreements and other offer-related arrangements, other than in certain limited circumstances.

3.2 In addition, the Code Committee proposed a number of amendments to Appendix 7 to the Code so as to provide, in summary, that, where an offer is to be effected by means of a scheme of arrangement which is recommended by the board of the offeree company, the board will be required to implement the scheme in accordance with a published timetable, unless it withdraws its recommendation of the scheme or adjourns the shareholder meetings or the court sanction hearing.

(b) General prohibition on offer-related arrangements

(i) Summary of proposals

3.3 In section 3(b) of PCP 2011/1, the Code Committee proposed the deletion of the current Rule 21.2 and the introduction of a new Rule 21.2. Under the proposed new Rule 21.2(a), except with the consent of the Panel, neither the offeree company nor any person acting in concert with it would be permitted to enter into any offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer was reasonably in contemplation. Under the proposed new Rule 21.2(b), an offer-related agreement would exclude:

(a) a commitment to maintain the confidentiality of information (provided that it did not include any other provisions prohibited by Rules 21.2(a) or 2.3(d) or otherwise under the Code);

(b) a commitment not to solicit employees, customers or suppliers;

(c) a commitment to provide information or assistance for the purposes of obtaining any official authorisation or regulatory clearance;

(d) irrevocable commitments and letters of intent; and

(e) any agreement, arrangement or commitment which imposed obligations only on an offeror or any person acting in concert with it.

(ii) Summary of responses

3.4 Around two-thirds of the respondents who commented on the proposed general prohibition of offer-related arrangements supported it or took a neutral stance. The principal concerns of the remaining third were, in summary, as follows:

(a) that inducement fees, or at least those which were payable only in the event of the success of an alternative offer, did not deter or frustrate competing offerors and should therefore not be prohibited; and

(b) that a prohibition on inducement fees would be likely to deter potential offerors from making offers, to the potential detriment of shareholders in companies subject to the Code.

3.5 A number of respondents considered that the proposed prohibition on offer-related arrangements should not apply in the context of a "merger of equals", where it might be arguable as to which of the companies should be treated as the offeree company, or a "reverse takeover", where the substance of the transaction would generally be a takeover of the "offeror" by the "offeree company".

3.6 In addition, a number of respondents suggested that certain other matters should be added to the exclusions from the prohibition on offer-related

arrangements listed in Rule 21.2(b).

(iii) Conclusions

3.7 The Code Committee notes that the majority of respondents were supportive of the proposal to prohibit inducement fees and other offer-related arrangements and continues to believe that such a prohibition should be introduced for the reasons referred to in section 3 of the PCP, i.e. that they might:

(a) deter competing offerors from making an offer, thereby denying offeree company shareholders the possibility of deciding on the merits of a competing offer; and/or

(b) lead to competing offerors making an offer on less favourable terms than they would otherwise have done.

The Code Committee has therefore adopted the new Rule 21.2(a) as proposed in the PCP.

3.8 The Code Committee is not persuaded by the arguments that the general prohibition on offer-related arrangements should not apply in the context of a "merger of equals" or a "reverse takeover". The Code Committee notes that there is no agreed definition of a "merger of equals" and considers that it would be impractical for such a definition to be formulated for the purposes of the new Rule 21.2. In relation to a "reverse takeover", the Code Committee acknowledges that, whilst the form of such a transaction is that the offeror makes an offer for the offeree company, in substance the transaction will generally involve the offeree company taking over the offeror company. However, rather than excluding such transactions from the prohibition on offer-related arrangements, the Code Committee believes that the exception that would normally apply to arrangements which impose obligations only on an offeror or any person acting in concert with it should not apply in such circumstances. The Code Committee has therefore amended the proposed

new Rule 21.2(b)(v) accordingly. In addition, the Code Committee has taken this opportunity to make the description of a reverse takeover in Note 2 on Rule 3.2 into a new definition of "reverse takeover".

3.9 The Code Committee has considered the various suggestions from respondents of arrangements that might be regarded as falling outside the prohibition on offer-related arrangements and has concluded that the list in Rule 21.2(b) should also include any agreement relating to any existing employee incentive arrangement. The Code Committee understands that it is often the case that employee incentive arrangements, whether share or cash-based, include a discretion on the part of the offeree company as to the number of shares to be issued or the amount payable under a bonus arrangement. This discretion is often exercised by the remuneration committee of the board of the offeree company. The Code Committee considers that the board of the offeree company should be permitted to agree with the offeror how any such discretion should be exercised in order to provide certainty to both parties to the offer and to the employees in question regarding the number of shares to be issued or the amount payable under a bonus arrangement.

3.10 In addition, the Code Committee confirms that it is not its intention that the new Rule 21.2(a) should prohibit incentivisation arrangements entered into between an offeror and members of the offeree company's management falling under Rule 16.2. However, the Code Committee does not consider that it is necessary for this to be stated expressly in the new Rule 21.2.

3.11 The Code Committee recognises that an offeror may wish to be provided with:

(a) information regarding the satisfaction of, or its ability to waive, the conditions to its offer, including a confirmation that no material adverse change has occurred in relation to the offeree company; and

(b) notification of any material changes in the conduct of the offeree company's business since the announcement of its offer.

Indeed, in the context of a recommended offer, the Code Committee would expect the offeree company normally to provide the offeror with any such information or notification, regardless of whether it had entered into an agreement to do so. The Code Committee does not believe that the list in Rule 21.2(b) should be expanded so as to permit the offeree company to enter into an agreement to provide such information or notification. However, the Code Committee intends to bring forward in due course proposals to amend Rule 27 so as to require the parties to an offer to disclose any material changes to information published during the offer period promptly and on a continuing basis, and not only upon the publication of a document sent to shareholders of the offeree company and persons with information rights.

(iv) Amendments to the Code

3.12 The Code Committee has therefore deleted the current Rule 21.2 and has adopted the new Rule 21.2 as follows:

> "**21.2 INDUCEMENT FEES AND OTHER OFFER-RELATED ARRANGEMENTS**
>
> **(a) Except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into any offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer is reasonably in contemplation.**
>
> **(b) An offer-related arrangement means any agreement, arrangement or commitment in connection with an offer, including any inducement fee arrangement or other arrangement having a similar or comparable financial or economic effect, but excluding:**
>
> **(i) a commitment to maintain the confidentiality of information provided that it does not include any other provisions prohibited by Rules 21.2(a) or 2.3(d) or otherwise under the Code;**
>
> **(ii) a commitment not to solicit employees, customers or suppliers;**
>
> **(iii) a commitment to provide information or assistance for the purposes of obtaining any official authorisation or regulatory clearance;**

(iv) irrevocable commitments and letters of intent; ~~and~~

(v) any agreement, arrangement or commitment which imposes obligations only on an offeror or any person acting in concert with it, other than in the context of a reverse takeover; and~~.~~

(vi) any agreement relating to any existing employee incentive arrangement.

(c) If there is any doubt as to whether any proposed agreement, arrangement or commitment is subject to this Rule, the Panel should be consulted at the earliest opportunity.".

3.13 The Code Committee has introduced a new definition of "reverse takeover", as follows:

"**Reverse takeover**

A transaction will be a reverse takeover if an offeror might as a result need to increase its existing issued voting equity share capital by more than 100%.

NOTE ON REVERSE TAKEOVER

The definition is of relevance only in circumstances where the offeror is a company that falls within section 3(a)(i) or (ii) of the Introduction.".

3.14 As a consequence of the introduction of the new definition of "reverse takeover", the Code Committee has:

(a) deleted Note 2 on Rule 3.2 (and renumbered Note 3 on Rule 3.2 as Note 2);

(b) deleted the references to Note 2 on Rule 3.2 in Note 2(c) on Rule 2.8 and Note (a)(iii) on Rules 35.1 and 35.2; and

(c) amended Note 4 on Rule 20.2, as follows:

"*4. Mergers and reverse takeovers*

Where an offer or possible offer is a reverse takeover ~~might result in an offeror needing to increase its existing issued voting equity share capital by 100% or more~~, an offeror or potential offeror for either party to such an offer or possible offer will be entitled to receive information which has been given by such party to the other party.".

(c) Dispensations from the general prohibition

(i) Summary of proposals

3.15 In section 3(c) of PCP 2011/1, the Code Committee proposed the introduction of new Notes 1 and 2 on Rule 21.2, which would provide the Panel with the ability to grant dispensations from the general prohibition on offer-related arrangements set out in Rule 21.2 in the following circumstances:

(a) under the proposed Note 1 on Rule 21.2, where an offeror has announced a firm intention to make an offer which was not recommended by the board of the offeree company, the Panel would normally consent to the offeree company entering into an inducement fee arrangement with one competing offeror, provided that the value of the inducement fee was no more than 1% of the value of the offeree company and the inducement fee was payable only if an offer by a third party (including the first offeror) became or was declared wholly unconditional; and

(b) under the proposed Note 2 on Rule 21.2, the Panel would normally grant a dispensation from the prohibition in Rule 21.2 where an offer period commenced with the announcement by the board of the offeree company that it was initiating a formal sale process.

3.16 Paragraph 3.21 of the PCP noted that the Code Committee considered that, where a company was in such serious financial distress that the board was actively seeking an offer to be made for it, the Panel might grant a dispensation from the general prohibition in Rule 21.2 if a potential offeror was willing to make, or consider making, an offer only if it would be

permitted to enter into a work-fee arrangement or other form of inducement fee arrangement, or other offer-related arrangement. However, the Code Committee did not consider that it was necessary to state this expressly in the new Rule 21.2.

(ii) Summary of responses

3.17 Respondents were evenly split on the question of whether the Code should confer on the Panel the ability to grant a dispensation from Rule 21.2 to a competing "white knight" offeror. In addition, certain respondents considered that, if the proposed new Note 1 were to be introduced, it should be possible for the Panel to consent to an inducement fee arrangement being entered into with more than one "white knight", provided that the aggregate value of the inducement fees that were capable of being paid by the offeree company did not exceed 1% of the value of the offeree company.

3.18 Comments on the proposed ability for the Panel to grant dispensations where the offeree company has announced a formal sale process were broadly in line with those made by respondents in relation to the proposed Note 2 on Rule 2.6, as discussed in section 2(d) above. In particular, certain respondents believed that a dispensation should also be available where the board of the offeree company initiates a formal sale process after the start of an offer period.

3.19 There were split views on the question of whether it would be appropriate for the Panel to grant a dispensation from the prohibition in the new Rule 21.2 where the offeree company was in serious financial distress.

(iii) Conclusions

3.20 The Code Committee continues to believe that it would strengthen the position of the offeree company if it were permitted to agree an inducement fee with a "white knight" at the time that the "white knight" announced a firm intention to make an offer. In addition, the Code Committee accepts the suggestion

that, following a firm offer announcement by a hostile offeror, an offeree company should be permitted to enter into inducement fee arrangements with more than one competing offeror, provided that the aggregate amount capable of being paid by the offeree company by way of inducement fees will not, in any circumstances, exceed 1% of the value of the offeree company. However, the Code Committee continues to believe that it should not be permissible for the offeree company to agree an inducement fee with the first offeror, even if it were to revise its offer to above the value of that of a competing offeror.

3.21 The Code Committee has adopted amendments to the proposed new Note 2 on Rule 21.2 consistent with the amendments made to the new Note 2 on Rule 2.6 in section 2(d) above, as well as some other minor amendments.

3.22 The Code Committee continues to believe that it might be appropriate for the Panel to grant a dispensation from Rule 21.2 in circumstances where the offeree company is in serious financial distress and where a failure to derogate from the strict application of the Code would clearly be detrimental to the interests of the company's shareholders.

(iv) Amendments to the Code

3.23 The Code Committee has therefore introduced new Notes 1 and 2 on Rule 21.2, as follows:

> *"1. ~~A c~~Competing offeror<u>s</u>*
>
> *Where an offeror has announced a firm intention to make an offer which was not recommended by the board of the offeree company at the time of that announcement and ~~this~~ remains ~~the case~~ <u>not recommended</u>, the Panel will normally consent to the offeree company entering into an inducement fee arrangement with ~~one~~ <u>a</u> competing offeror at the time of the announcement of its firm intention to make a competing offer, provided that:*
>
> *(a) the <u>aggregate</u> value of the inducement fee <u>or fees that may be payable by the offeree company</u> is de minimis<u>,</u> ~~(~~<u>i.e.</u> normally no more than 1% of the value of the offeree company calculated by reference to the price of the competing offer <u>(or, if there are two or more competing</u>*

offerors, the first competing offer) at the time of ~~its~~ the announcement made under Rule 2.7~~)~~; and

(b) ~~the~~ any inducement fee is capable of becoming payable only if an offer ~~made by a party other than the competing offeror~~ becomes or is declared wholly unconditional.

2. Formal sale process

Where, prior to an offeror having announced a firm intention to make an offer, ~~an offer period commences with an announcement by the offeree company that~~ the board of the offeree company announces that it is seeking one or more potential offerors by means of a formal sale process, the Panel will normally grant a dispensation from the prohibition in Rule 21.2, such that the offeree company would be permitted, subject to the same provisos as set out in Note 1(a) and (b) above, to enter into an inducement fee arrangement ~~at the conclusion of that process~~ with one offeror (who had participated in that process) at the time of the announcement of its firm intention to make an offer. In exceptional circumstances, the Panel may also be prepared to consent to the offeree company entering into other offer-related arrangements with that offeror. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.".

(d) "Whitewash" transactions

3.24 In section 3(d) of PCP 2011/1, the Code Committee proposed the introduction of a new Note 3 on Rule 21.2, which would provide that Rule 21.2 also applies in the context of a transaction to which Appendix 1 to the Code applies, i.e. a "whitewash" transaction. Paragraph 3.25 of the PCP stated as follows:

> "The Code Committee recognises that, where a "whitewash" transaction will involve a contribution of assets by an "offeror" to the "offeree company" in consideration for the issue of new shares, the two parties will need to enter into agreements in order to effect the transaction in question, for example, a sale and purchase agreement or a subscription agreement. It is not the intention of the Code Committee to prohibit such transactions or to prevent them from becoming legally effective and the Code Committee considers that, in such cases, the parties or their advisers should consult the Panel.".

3.25 Respondents generally agreed with the proposed treatment of "whitewash" transactions under Rule 21.2, although certain respondents suggested that the substance of paragraph 3.25 of the PCP should be reflected in the new Note 3.

3.26 The Code Committee does not believe that it is necessary to repeat the substance of paragraph 3.25 of the PCP in the Code. In particular, the Code Committee notes that a "whitewash" transaction requires the granting of a waiver by the Panel of the mandatory offer obligation under Rule 9 and, as noted in Note 1 on Section 2 of Appendix 1, consultation with the Panel at an early stage by the parties to a proposed "whitewash" transaction is essential. Any queries in relation to the application of Rule 21.2 to the "whitewash" transaction can therefore be raised at that early stage.

3.27 The Code Committee has therefore adopted the new Note 3 on Rule 21.2 as follows:

> *"3. "Whitewash" transactions*
>
> *Rule 21.2 also ~~generally~~ applies in the context of a "whitewash" transaction. The Panel should be consulted at an early stage where a "whitewash" transaction is proposed.*".

(e) Disclosure and display of permitted offer-related arrangements

3.28 In section 3(e) of PCP 2011/1, the Code Committee proposed the introduction of a new Note 4 on Rule 21.2. The effect of the new Note 4 would be that any agreement that was permitted to be entered into under Rule 21.2, by virtue of either:

(a) falling within the list of excluded agreements, arrangements and commitments in Rule 21.2(b); or

(b) being the subject of a dispensation granted by the Panel in accordance with the provisions of Rule 21.2 or its Notes,

would be required to be summarised in the offer documentation and put on display in accordance with Rule 26.

3.29 Respondents generally agreed with the proposed Note 4 on Rule 21.2, although one queried its purpose.

3.30 The Code Committee believes that the principal benefit of the new Note 4 on Rule 21.2 will be to enable the Panel and other interested persons to see that such agreements, arrangements or commitments as are entered into do not go further than is permissible under the terms of Rule 21.2. However, the Code Committee notes that the new Note 4 on Rule 21.2 does not apply where the Panel has agreed that the agreements or arrangements which the offeror and the offeree company have entered into are in the ordinary course of their respective businesses (see paragraph 3.8 of PCP 2011/1).

3.31 The Code Committee has therefore adopted the new Note 4 on Rule 21.2 as follows:

> *"4. Disclosure and display*
>
> *An announcement of a firm intention to make an offer, offer document or whitewash circular, as the case may be, must include a summary ~~All relevant details~~ of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2 ~~must be fully disclosed in the announcement made under Rule 2.7 and in the offer document or whitewash circular, as well as~~ and a copy of the agreement, arrangement or commitment must be put on display in accordance with Rule 26.1.*".

3.32 The Code Committee has also adopted the proposed Rules 2.7(c)(vii), 24.3(d)(xv) and 26.1(d) without material amendment.

(f) Schemes of arrangement

(i) Summary of proposals

3.33 In section 3(f) of PCP 2011/1, the Code Committee proposed to amend Appendix 7 to the Code, which relates to schemes of arrangement, by introducing a new Section 3 to that Appendix to require that, where a recommended offer is being implemented by means of a scheme of

arrangement, the offeree company must:

(a) announce and publish in the scheme circular the expected timetable for the scheme; and

(b) implement the scheme in accordance with the expected timetable, as published, save that this obligation would cease to apply if the board of the offeree company withdrew its recommendation or if a shareholder meeting or the court sanction hearing was adjourned (or was proposed to be adjourned by the board of the offeree company).

3.34 It was also proposed that, if the offeree company's obligation to implement the scheme in accordance with the published timetable ceased (as described in paragraph 3.33(b) above) and subsequently the offeree company wished to pursue a new timetable with the original offeror, the offeree company would be required to obtain the approval of the offeror and then announce the agreed new timetable.

(ii) Summary of responses

3.35 Of the respondents who commented on the proposed amendments to Appendix 7, almost all welcomed or supported them. A small number of respondents made comments of a technical nature.

3.36 Two respondents suggested that the offeree company should be free to make changes to the expected timetable, as published in the scheme circular, without the consent of the offeror. They argued that to require such consent might allow an offeror which no longer wished to proceed with the scheme to take advantage of minor delays to the timetable by refusing to give its consent and thereby attempt to prevent the scheme from becoming effective.

3.37 Two respondents drew attention to the difficult position of an offeror in circumstances where the board of the offeree company had withdrawn its recommendation but, notwithstanding that the offeror would be unable to

implement the scheme without the cooperation of the board of the offeree company, the offeror would be required to continue to incur the cost of financing its bid. This is because the withdrawal of the recommendation of the board of the offeree company would not, of itself, give rise to an ability for the offeror to invoke a condition to the scheme and therefore, in all likelihood, the scheme would not lapse until the long-stop date. The position would be exacerbated in cases where the parties had agreed to a distant long-stop date, for example in order to obtain necessary regulatory clearances. One respondent contrasted this with the position of an offeror proceeding by way of contractual offer, which would be free (subject to Rule 31) to set closing dates for the satisfaction of the acceptance condition and which would have no obligation under the Code to extend an offer if the acceptance condition had not been satisfied by any closing date. The respondent suggested permitting the offeror to include, within the conditions to a scheme, a specific date by which the shareholder meetings for the scheme must be held and/or a specific date by which the court sanction hearing must be held, such that the offeror's obligation to proceed with the scheme would be capable of being terminated if those meetings or the court sanction hearing were not held by the dates specified.

3.38 One respondent suggested clarifying the application of the current Rule 24.9 (admission to listing and admission to trading conditions – new Rule 24.10) in the context of schemes of arrangement by amending Appendix 7 to take account of the fact that, as currently framed, such conditions need to be satisfied or waived at the time that the court sanctions the scheme, even though admission to listing and admission to trading will in fact occur only after the scheme has become legally effective, i.e. upon delivery to Companies House (or registration) of the court order sanctioning the scheme. The respondent therefore suggested that the condition(s) in question should, in the context of a scheme, refer to the completion of all steps required for the admission to listing or trading, other than the UKLA and/or the Stock Exchange, as applicable, having announced their respective decisions to admit the securities to listing or trading. In practice, for example in relation to a company seeking admission to the Official List with a premium listing, this

would mean that the condition(s) in question would only be satisfied upon the UKLA acknowledging to the offeror or its broker that the application for admission has been approved (after satisfaction of any conditions to which such approval is expressed to be subject) and the Stock Exchange acknowledging to the offeror or its broker that the securities will be admitted to trading. However, admission to the Official List and to trading would only become effective upon the dealing notice being issued by the UKLA, which would be after the scheme had become legally effective.

(iii) Conclusions

3.39 The Code Committee accepts the suggestion of respondents that the offeree company should be free to make changes to the scheme timetable, as published in the scheme circular, without the consent of the offeror (subject to paragraph 3.44 below). The Code Committee notes that the offeree company will be required to announce promptly any such change in accordance with Section 6 of Appendix 7.

3.40 However, while the Code Committee accepts that the offeree company should be free to make changes to the scheme timetable without the consent of the offeror, it does not consider that this should be done in all cases without consequence. This is on the basis that, in its negotiations with the offeree company, an offeror might have required that the scheme should follow a particular timetable in order, for example, for the offeror to optimise its financing arrangements so as to be able to provide the level of consideration being offered to shareholders under the scheme. In such circumstances, the Code Committee considers that it would be unfair to allow the offeree company to change the scheme timetable in such a way that the offeror's requirements could no longer be met within that timetable and for the offeror not to be permitted under the Code to invoke a condition to the scheme with the consequence that the scheme would not lapse until the expiry of the long-stop date.

3.41 Accordingly, the Code Committee also accepts the suggestion that offerors be

permitted to include, within the conditions to a scheme, a specific date by which the shareholder meetings must be held and/or a specific date by which the court sanction hearing must be held. The Code Committee expects that the parties would negotiate the specific dates to be included (and whether to include a condition of this kind at all) in each case. However, the Code Committee considers that, if any such date is specified in the conditions, it must be more than 21 days after the date set out in the expected timetable for the shareholder meetings or the court sanction hearing, as the case may be, as published in the scheme circular. This will allow the board of the offeree company to adjourn the shareholder meetings or the court sanction hearing for up to 21 days beyond the date(s) originally set out in the scheme circular (or such later date as the parties may agree) without the offeror being able to invoke the relevant condition(s).

3.42 The Code Committee considers that the offeror should be entitled to invoke such a condition on the date specified in the condition, without being subject to the current Rule 13.4(a) (new Rule 13.5(a)), i.e. the restriction on invoking a condition unless the circumstances which give rise to the right to invoke the condition are of material significance to the offeror in the context of the offer. In addition, the Code Committee considers that the offeror should be permitted to specify a new date, provided that it has obtained the prior agreement of the offeree company to such new date. Accordingly, on the date specified in the condition (or any new date previously agreed with the offeree company), there will be three options available to an offeror:

(a) to invoke the condition;

(b) to waive the condition (assuming it has reserved the right to waive it); or

(c) to specify the new date agreed with the offeree company.

3.43 On the basis that the Code Committee does not consider that the offeror should be permitted to maintain the ability to invoke such a condition after the

specified date has passed, as this would be detrimental to the interests of offeree company shareholders and market certainty, the Code Committee considers it important that the offeror decides whether to invoke the condition on the date specified in the condition. In addition, the Code Committee considers that any decision whether to waive or invoke such a condition, or to extend the date originally specified in the condition, would be a matter which the offeror would be required to announce as soon as practicable and in any event by no later than 8.00 am on the business day following the date originally specified in the condition.

3.44 The Code Committee considers that:

(a) any specific dates included in the conditions to a scheme by which the shareholder meetings and/or the court sanction hearing must be held; and

(b) the long-stop date

must not be changed by the offeree company without the prior agreement of the offeror.

3.45 The Code Committee notes that if the offeror wishes to preserve the ability under the Code to lapse its offer upon the expiry of the long-stop date, it must include as a condition to the scheme that the scheme must become effective on or before the long-stop date. Such a condition relating to the long-stop date, like the other conditions to a scheme, must be included in the announcement of a firm intention to make an offer which is to be implemented by means of a scheme (see the new Rule 2.7(b)(iii)). The Code Committee expects that the parties to the offer will negotiate an appropriate long-stop date in each case.

3.46 The Code Committee also notes that, if the offeror wishes to include specific dates in the conditions to a scheme by which the shareholder meetings and/or the court sanction hearing must be held, then those too must be included in the announcement of a firm intention to make an offer which is to be implemented

by means of a scheme. However, in cases where the expected dates for the shareholder meetings and the court sanction hearing have not been approved by the court at the time of the announcement of a firm intention to make an offer, the Code Committee accepts that it will not be possible to specify the date on which the 21 day minimum period will expire (as described above). Therefore, the Code Committee considers that it would be acceptable for the version of the condition included in the announcement of a firm intention to make an offer to be expressed in terms such as, for example:

> "the scheme being approved by a majority in number representing 75 per cent by value of the [scheme shareholders] at a meeting of the [scheme shareholders] to be held on or before the 22nd day after the expected date of the shareholder meetings to be set out in the scheme circular in due course (or such later date as may be agreed between the parties to the offer)",

with the version of the condition included in the scheme circular to be amended to include the specific date.

3.47 The Code Committee also accepts the suggested clarification in relation to admission to listing and admission to trading conditions in the context of schemes of arrangement and has introduced a new provision into Appendix 7 to address this. In addition, the Code Committee understands that specimen wording for admission conditions, agreed with the Panel Executive, may be found on the Company Law Committee page of the City of London Law Society's website.

(iv) Amendments to the Code

3.48 The Code Committee has adopted an amended version of Appendix 7, as set out in Appendix B. The new Sections 3, 5(a) and 15 will be as follows:

> "**3 EXPECTED SCHEME TIMETABLE**
>
> **(a) Where an offeror announces a firm intention to make an offer which is to be implemented by means of a scheme of arrangement and the board of the offeree company agrees to the**

inclusion of a statement of its intention to recommend the scheme in that announcement, then the offeree company must, except with the consent of the Panel, ensure that the scheme circular is sent to shareholders and persons with information rights within 28 days of that announcement. If the offeree company board subsequently withdraws its recommendation, this obligation will cease.

(b) The parties to the offer are permitted to include within the conditions to the scheme:

(i) a long-stop date by which the scheme must become effective (unless extended with the agreement of the parties to the offer);

(ii) a specific date by which the shareholder meetings must be held (unless extended with the agreement of the parties to the offer), provided that the date specified must be more than 21 days after the expected date of the shareholder meetings to be set out in the scheme circular; and

(iii) a specific date by which the court sanction hearing must be held (unless extended with the agreement of the parties to the offer) provided that the date specified must be more than 21 days after the expected date of the court sanction hearing to be set out in the scheme circular.

(c) Any condition referred to in paragraph (b) above:

(i) must be given prominent reference in the offeror's announcement of a firm intention to make an offer;

(ii) must not be capable of being invoked or waived after the date specified unless extended with the agreement of the parties to the offer; and

(iii) will not be subject to Rule 13.5(a).

(~~b~~d) The offeree company must ensure that the scheme circular sets out the expected timetable for the scheme, including the expected dates and times for the following:

(i) the record date for any shareholder meeting;

(ii) the latest date and time for the lodging of forms of proxy or elections for any alternative form of consideration;

(iii) the date and time of any shareholder meetings, which must normally be convened for a date which is at least 21 days after the date of the scheme circular;

(iv) the date and time of any meetings of the shareholders of the offeror to be convened in connection with the offer;

(v) the date of the court sanction hearing;

(vi) the record date for the purposes of the scheme and/or any reduction of capital provided for by the scheme;

(vii) the date and time of any proposed suspension in trading of shares or other securities of the offeree company;

(viii) the date of any court hearing to confirm any reduction of capital provided for by the scheme;

(ix) the effective date;

(x) the date and time of the admission to trading of any offeror securities to be issued in connection with the scheme; and

(xi) the long-stop date.

(~~c~~e) Upon publication of the scheme circular, the offeree company must announce in accordance with Rule 2.9 that the scheme circular has been published and include in that announcement the expected timetable, including the expected dates and times referred to in paragraph (~~b~~d) above.

(~~d~~f) The offeree company must implement the scheme in accordance with the expected timetable, as published (subject to any change to the expected timetable announced in accordance with Section 6 below), unless:

(i) the board of the offeree company withdraws its recommendation of the scheme;

(ii) the board of the offeree company announces~~, in accordance with Section 6(a) below,~~ its decision to propose an adjournment of a shareholder meeting or the court sanction hearing;~~ or~~

(iii) a shareholder meeting or the court sanction hearing is adjourned; or

(iv) any condition to the scheme is invoked by the offeror in accordance with the Code.

See also Note 2 on Section 8 below.

~~**(e) If, following one of the events set out in paragraph (d) above, the board of the offeree company wishes to announce a new timetable, the offeree company must first obtain the approval of the offeror to that new timetable and must then promptly announce that new timetable. Following such an announcement, the offeree company must implement the scheme in accordance with the new timetable, unless any of the exceptions referred to in paragraph (d) apply.**~~

…

5 ANNOUNCEMENTS FOLLOWING KEY EVENTS IN A SCHEME

(a) If the parties to the offer include any condition to the scheme in accordance with Section 3(b) above and any such condition is not capable of being satisfied by the date specified in that condition, the offeror must make an announcement as soon as practicable and, in any event, by no later than 8.00 am on the business day following the date so specified, stating whether the offeror has invoked that condition, waived that condition or, with the agreement of the offeree company, specified a new date by which that condition must be satisfied.

…

15 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS

Where securities are offered as consideration and it is intended that they should be admitted to listing on the Official List or to trading on AIM, the relevant admission to listing or admission to trading condition should, except with the consent of the Panel, be in terms which ensure that it is capable of being satisfied only when all steps required for the admission to listing or trading have been completed other than the UKLA and/or the Stock Exchange, as applicable, having announced their respective decisions to admit the securities to listing or trading. Where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any other investment exchange or market, the Panel should be consulted.".

3.49 In addition, the Code Committee has disapplied new the Rule 24.10 in the context of a scheme of arrangement, added a cross-reference to the new Section 15 of Appendix 7 in a new footnote to Rule 24.10 and added the new Rule 24.10 to the list of disapplied provisions in Section 16 (as renumbered) of Appendix 7.

4. Offeree company boards not limited in the factors that they may take into account in giving their opinion on an offer

(a) Summary of proposal

4.1 In section 4 of PCP 2011/1, the Code Committee proposed the introduction of a new Note 1 on Rule 25.2 (currently Rule 25.1) in order to clarify that the Code does not limit the factors that the board of an offeree company may take into account in giving its opinion on an offer and that, in particular, the board of the offeree company is not required to consider the offer price as the determining factor.

(b) Summary of responses

4.2 A large majority of the respondents who commented on this issue supported the introduction of the new Note 1 on Rule 25.2. One respondent considered that the Code should not seek to address issues relating to the duties of offeree company directors while another considered that the proposed Note was "too broad".

4.3 Two respondents considered that the new Note 1 on Rule 25.2 should include a specific reference to section 172 of the Companies Act 2006, which provides that a director of a UK company must act in the way he considers would be most likely to promote the success of the company for the benefit of its shareholders as a whole, having regard, amongst other matters, to the matters listed in sub-section 172(1).

(c) Conclusions

4.4 The Code Committee continues to believe that it would be helpful to clarify by means of the new Note 1 on Rule 25.2 that the Code does not limit the factors that the board of an offeree company is able to take into account in giving its opinion on an offer and that it is not required by the Code to consider the offer price as the determining factor. This is a statement of fact and, by introducing

Note 1 on Rule 25.2, the Code Committee is not seeking to impose any obligations on the boards of offeree companies or to prescribe the duties of directors to their companies. The duties of directors are matters of company law and the Code Committee does not believe that it would be appropriate for the Code to make reference either to the specific duty set out in section 172 of the Companies Act 2006 or to company law more generally.

(d) Amendments to the Code

4.5 The Code Committee has adopted the new Note 1 on Rule 25.2 as proposed in PCP 2011/1, as follows:

> "*1. Factors which may be taken into account*
>
> *The provisions of the Code do not limit the factors that the board of the offeree company may take into account in giving its opinion on the offer in accordance with Rule 25.2(a). In particular, when giving its opinion, the board of the offeree company is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors which it considers relevant.*".

4.6 In addition, the Code Committee has adopted, as proposed, the amendments to Note 3 on Rule 3.1 and the new Notes 2 and 3 on Rule 25.2, as referred to in paragraphs 4.5 and 4.6 of the PCP.

5. Disclosure of offer-related fees and expenses

(a) Introduction

5.1 In section 5 of PCP 2011/1, the Code Committee proposed the introduction of new Rules 24.16 and 25.8, which would require offerors and offeree companies to disclose details of the fees and expenses expected to be incurred in relation to the offer in, respectively, the offer document and the offeree board circular.

(b) Summary of proposals

5.2 In section 5(b) of PCP 2011/1, the Code Committee proposed that offerors and offeree companies should be required to disclose:

(a) an estimate of the aggregate fees and expenses expected to be incurred in relation to an offer;

(b) a breakdown of the aggregate amount by category of adviser; and

(c) in the case of an offeror, an estimate of the fees and expenses expected to be incurred in relation to the financing of the offer.

5.3 In section 5(c) of PCP 2011/1, the Code Committee proposed the introduction of a Note 1 on the new Rule 24.16, which would explain the basis on which offerors should disclose their financing fees and expenses. In paragraph 5.9 of the PCP, the Code Committee concluded that fees or margins payable by offerors in connection with hedging arrangements should not be required to be disclosed.

5.4 In sections 5(d) and (e) of PCP 2011/1, the Code Committee proposed, respectively, the introduction of:

(a) Rule 24.16(b) and Note 2 on Rule 24.16, with regard to the disclosure of variable and uncapped fee arrangements; and

(b) Rules 24.16(d) and (e), with regard to requirements to make a private disclosure to the Panel where fees and expenses are likely materially to exceed the estimated maximum previously publicly disclosed or where the final fees and expenses actually paid materially exceed the publicly disclosed estimate, and with regard to the ability of the Panel to require public disclosure in appropriate circumstances.

(b) Summary of responses

(i) Aggregate disclosure and disclosure by category

5.5 The majority of the respondents who commented on the principle of the disclosure of offer-related fees and expenses were either supportive of, or neutral towards, the idea of requiring offerors and offeree companies to disclose both on an aggregate basis and by category of adviser. Certain respondents, whilst supportive of or neutral towards the principle of fee disclosure, considered that disclosure should be on an aggregate basis only and not also by category of adviser, some citing the example of the requirements of the Prospectus Rules. Three respondents, while supportive of or neutral towards the principle of fee disclosure by offeree companies, queried the value of requiring offerors to disclose details of their fees and expenses. A further two respondents considered that fee arrangements of offerors and offeree companies were irrelevant and did not therefore require disclosure.

(ii) Financing fees and expenses

5.6 Respondents also expressed a range of views on the proposed Note 1 on Rule 24.16, regarding the disclosure of details of the offeror's financing fees and expenses. Whilst most respondents either supported or were neutral towards the proposals, a small number considered that the proposed disclosures would

be unnecessary, or that they might make it more difficult for offer financing to be syndicated.

5.7 Two respondents considered that fees and margins incurred by offerors in relation to hedging and other financial arrangements should be required to be disclosed. One respondent considered that hedging fees should not (and could not meaningfully) be disclosed and one respondent considered that the non-disclosure of hedging fees should be subject to a confirmation that they were on market terms.

(iii) Variable and uncapped fees

5.8 Few respondents commented specifically on the proposals in relation to the disclosure of fees which are variable between defined limits or uncapped and the comments of those that did were consistent with their comments on related issues.

(iv) Where fees and expenses exceed the disclosed estimates

5.9 Two respondents considered that the requirements in the proposed Rules 24.16(c) and (d) were unnecessarily complex. Three respondents sought guidance as to when an increase in an estimated or final fee would be sufficiently material as to warrant private disclosure to the Panel. One respondent sought guidance as to when public disclosure would be required and one hoped that public disclosure would be the norm rather than the exception. One respondent considered that details of the final fees paid should always be disclosed publicly, although another noted that such disclosure would not assist offeree company shareholders in assessing the merits of an offer.

(c) Conclusions

5.10 The Code Committee notes that, in line with the responses to PCP 2010/2, there was widespread support amongst respondents for the proposals in

relation to fee disclosure, particularly from shareholders and their representative bodies. The Code Committee believes that fee disclosure will provide meaningful transparency only if the aggregate figure is broken down into categories and that these should include financial, legal, accounting and public relations advice and, in the case of an offeror, the costs of its financing. The Code Committee acknowledges that certain fees and expenses might be capable of falling within more than one category. However, the Code Committee does not believe that it is necessary to provide detailed guidance on the categorisation of such fees and expenses since the contents of any particular category can be agreed with the Panel in cases of doubt as practice evolves.

5.11 The Code Committee accepts that the fees and expenses of an offeror may be of less direct relevance to offeree company shareholders where the consideration offered is solely cash. On balance, however, the Code Committee believes that this is outweighed by the benefits of transparency and of treating offerors and offeree companies similarly.

5.12 The Code Committee continues to believe that:

(a) financing fees and expenses should be disclosed on the basis described in the PCP; and

(b) fees and margins in connection with hedging arrangements should not be required to be disclosed and that, in any event, it would be difficult for any such disclosure to be made on a reliable basis.

5.13 In relation to Rules 24.16(c) and (d), and the question of when particular fees and expenses should be considered to have materially exceeded a previously published figure such as to require a private disclosure to be made to the Panel, the Code Committee considers that an increase of 10% or more would be material in this context. In determining whether it would be appropriate to require a public disclosure then to be made, the Code Committee considers

that the Panel should take all relevant factors into account, and not only the percentage by which the previously published figure had been exceeded.

(d) Amendments to the Code

5.14 The Code Committee has adopted the proposed new Rule 24.16 with some minor amendments, as follows:

"**24.16 FEES AND EXPENSES**

(a) The offer document must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeror in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to:

(i) financing arrangements;

(ii) financial and corporate broking advice;

~~**(ii) financing arrangements;**~~

(iii) legal advice;

(iv) accounting advice;

(v) public relations advice;

(vi) other professional services (including, for example, management consultants, actuaries and specialist valuers); and

(vii) other costs and expenses.

(b) Where any fee is variable between defined limits, a range must be given in respect of the aggregate fees and expenses and of the fees and expenses of each relevant category, setting out the expected maximum and minimum amounts payable. See Note 2.

(c) Where the fees and expenses payable within a particular category are likely ~~materially~~ to exceed the estimated maximum previously disclosed by 10% or more, the offeror must promptly disclose to the Panel revised estimates of the aggregate fees and expenses expected to be incurred in relation to the offer and of the fees and expenses expected to be incurred within that category. The Panel may require the public disclosure of such revised estimates where it considers this to be appropriate.

(d) Where the final fees and expenses actually paid within a particular category ~~materially~~ exceed the amount publicly disclosed as the estimated maximum payable by 10% or more, the offeror must promptly disclose to the Panel the final amount paid in respect of that category. The Panel may require the public disclosure of such final amount where it considers this to be appropriate.

NOTES ON RULE 24.16

1. Financing fees and expenses

Full details should be given of any fees and expenses payable, or estimated to be payable in relation to:

(a) ~~when a~~ entering into any financing commitment ~~is entered into~~; and

(b) ~~when the~~ drawing down any financing ~~is drawn down~~.

Any commitment fees should normally be disclosed by means of describing the principal amounts of the financing facilities and the annual percentage rate applicable for the period of time between commitment and drawdown. A cross-reference to the description of how the offer is to be financed, as required under Rule 24.3(f), will normally be sufficient.

2. Variable and uncapped fee arrangements

Where a fee is variable or is not subject to a maximum amount, this should be stated and an indication of the nature of the arrangement given (for example, whether the amount of the fee is discretionary, relates ~~directly~~ to the outcome or final value of the offer or will be calculated on a "time cost" or other basis).

Where a particular category of fees and expenses includes a variable or uncapped element, the figure or range given should reflect a reasonable estimate of the fees likely to be paid on the basis of the terms of the then current offer.

Where a fee arrangement provides for circumstances in which the fee will or may increase, for example where the offer is revised or a competitive situation arises, the higher amount will not be required to be disclosed unless and until such circumstances arise.".

5.15 The Code Committee has adopted the proposed new Rule 25.8 with some minor amendments, as follows:

"**25.8 FEES AND EXPENSES**

The offeree board circular must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeree company in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to the matters specified in paragraphs (ii) to (vii) of Rule 24.16(a). The other provisions of Rule 24.16 and ~~the~~ Notes ~~2~~ on Rule 24.16 ~~will~~ also apply as if references to the offeror were references to the offeree company.".

6. Disclosure of financial and other information

(a) Introduction

6.1 In section 6 of PCP 2011/1, the Code Committee proposed various amendments to the Code in relation to financial and other information required to be disclosed by an offeror, including in relation to the financing of the offer.

(b) Disclosure of financial and other information

(i) Summary of proposals

6.2 In section 6(b) of PCP 2011/1, the Code Committee proposed various amendments to the current Rule 24.2. In summary, the effect of the principal proposed amendments would be:

(a) to require detailed financial information on an offer and the financing of an offer to be disclosed in all offers, and not only in securities exchange offers, by means of deleting the current Rule 24.2(b) and Note 6 on Rule 24.2. By way of exception, the Code Committee proposed that the requirement for an offer document to contain details of all material changes to an offeror's financial or trading position since the date of its last accounts, or to state that there are no known changes, should continue to apply in the case of a securities exchange offer only. In addition, the Code Committee proposed that this requirement should be brought into line with the Prospectus Rules by amending the references to "material changes" so as to refer to "significant changes"; and

(b) to remove the requirement to include individual items of financial information that are required to be included in offer documents and, instead, require website addresses to be provided on which the financial information relating to an offeror or the offeree company for the last two financial years has been published. That information

would then, in effect, be treated as if it had been incorporated into the offer document by reference to the appropriate website in accordance with Rule 24.14.

(ii) Summary of responses

6.3 The majority of the respondents who specifically commented on the proposed deletion of Rule 24.2(b) and Note 6 on Rule 24.2 were supportive of the proposal. However, three respondents considered that the additional information that would be provided in the context of a cash offer would not be of any significant benefit to shareholders in the offeree company.

6.4 Two respondents expressed concerns in relation to the proposal that financial information should be incorporated into an offer document by reference to a website address, rather than being reproduced in the offer document itself, and were of the view that readers would prefer all relevant information to be available in one place. One of these respondents was concerned that the proposals represented a scaling back of the current requirements of Rule 24.2 and, in addition, that moving to a position where financial information was incorporated into an offer document by reference to other sources might affect the ability of shareholders to rely on that information. The two respondents who expressly supported the proposals in relation to incorporation by reference considered that non-UK offerors should be required to make the information available in the English language.

6.5 Two respondents, who welcomed the proposal that the new Rule 24.3(a)(v) should be brought more into line with the Prospectus Rules, suggested that consistency would be improved further if the provision were to require an offeror to state any significant changes in its financial or trading position subsequent to the date of either:

(a) its last audited accounts; or

(b) its last interim statement.

6.6 Two respondents did not agree with the exception from the requirement to make a "no significant change" statement for cash offerors and one respondent expressly supported that proposal.

(iii) Conclusions

6.7 The Code Committee continues to believe that the Code should require the disclosure of the same financial information regarding an offeror and the financing of an offer irrespective of the nature of the offer, and that constituencies other than offeree company shareholders have an interest in information regarding the financial position of the offeror and its group.

6.8 The means by which information in relation to an offer is communicated to offeree company shareholders and other interested persons was consulted upon in PCP 2008/3 ("Electronic communications, websites and information rights"). Following the implementation of the amendments to the Code set out in RS 2008/3, it has been possible for certain financial and other information required to be disclosed by an offeror to be incorporated into an offer document by reference to another source, provided that such information is made available on a website. The amendments proposed in PCP 2011/1 do not therefore represent a "scaling back" of the Code's current requirements, nor does the Code Committee believe that the new provisions will alter the current position with regard to the question of whether shareholders in the offeree company may rely upon information incorporated into offer documents.

6.9 The Code Committee agrees that information in relation to offerors which fall under the new Rule 24.3(b) should normally be made available in the English language and has added a new sentence to Note 2 on Rule 24.3 so as to provide for this.

6.10 The Code Committee has accepted the suggestion that the new Rule 24.3(a)(v) should be brought further into line with the Prospectus Rules. However, the

Code Committee continues to believe that the burden of having to make a "no significant change" statement in the context of a cash offer would be disproportionate to its benefits.

(iv) Amendments to the Code

6.11 The Code Committee has deleted Rule 24.2(b) and Note 6 on Rule 24.2 and, as a consequence of other amendments adopted in this Response Statement, the current Rule 24.2 has been renumbered as Rule 24.3. Rules 24.3(a), (b) and (e), and Note 2(b) on Rule 24.3, will therefore be as follows:

> "**24.3 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER**
>
> **Except with the consent of the Panel:—**
>
> **(a) where the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to trading on a UK regulated market or on AIM or PLUS, the offer document must contain:**
>
> **(i) the names of its directors;**
>
> **(ii) the nature of its business and its financial and trading prospects;**
>
> **(iii) details of the website address where its audited consolidated accounts for the last two financial years have been published~~.~~ and a statement that ~~T~~the accounts ~~will be treated as having~~ have been incorporated into the offer document by reference to that website in accordance with ~~under~~ Rule 24.15;**
>
> **(iv) details of the website address where any interim statement and/or preliminary announcement made since the date of its last published audited accounts have been published~~.~~ and a statement that ~~A~~any such statement or announcement ~~will be treated as having~~ has been incorporated into the offer document by reference to that website in accordance with ~~under~~ Rule 24.15;**
>
> **(v) in the case of a securities exchange offer, ~~all~~ a description of any known significant change~~s~~ in its financial or trading position ~~subsequent to~~ which has occurred since**

the end of the last financial period for which either audited financial information or interim financial information has been published, or provide an appropriate negative statement~~the date of its last published audited accounts or a statement that there are no known significant changes~~;

(vi) a statement of the effect of full acceptance of the offer upon its earnings and assets and liabilities; and

(vii) a summary of the principal contents of each material contract … ;

(b) if the offeror is other than a company referred to in (a) above, the offer document must contain:

(i) in respect of the offeror, the information described in (a) above (so far as appropriate) and such further information as the Panel may require in the particular circumstances (see Note 2);

…

(e) the offer document must contain information on the offeree company on the same basis as set out in (a)(i) to (~~iv~~) above;

…

NOTES ON RULE 24.3

…

2. Further information requirements

…

(b) The Panel must be consulted in advance in any case to which Rule 24.3(b) applies, or may apply regarding the application of its provisions to that particular case. Where information is incorporated into the offer document by reference to another source, the Panel will normally require that information to be available in the English language.".

6.12 The Code Committee has adopted amendments to the new Rule 25.3, so as to remain consistent with the proposed new Rule 24.3(a)(v), as follows:

"**25.3 FINANCIAL AND OTHER INFORMATION**

The offeree board circular must contain ~~all~~ a description of any known significant changes in the financial or trading position of the offeree company which has occurred since the end of the last financial period for which either audited financial information or interim financial information has been published, or provide an appropriate negative statement~~subsequent to the last published audited accounts or a statement that there are no known significant changes.~~".

(c) Ratings and pro forma balance sheets

(i) Summary of proposals

6.13 In section 6(c) of PCP 2011/1, the Code Committee proposed that an offer document should contain details of the ratings accorded by ratings agencies to the offeror and the offeree company prior to the commencement of the offer period and any changes made to those ratings during the offer period. In addition, the Code Committee stated that it had concluded that it should not take forward the suggestion in Statement 2010/22 that, where the offer is material, an offer document should be required to include a *pro forma* balance sheet for the combined group.

(ii) Summary of responses

6.14 Three respondents expressed reservations in relation to the proposed requirement for the offer document to include details of the ratings and outlooks accorded to the offeror and offeree company and any changes during the offer period, principally on the basis that such ratings and outlooks were not a matter of fact but merely the opinions of third parties. Two respondents queried why the disclosure of ratings agency ratings had been preferred over, for example, analysts' research notes.

6.15 A small majority of the respondents who commented on the Code Committee's conclusion not to require the inclusion of *pro forma* balance sheets in offer documents agreed with the conclusion, whilst a minority of the respondents held the view, some strongly, that they should be required in some

or all offers. One respondent, whilst acknowledging the Code Committee's reasons for not doing so, said that it would have supported the introduction of such a requirement in appropriate circumstances.

(iii) Conclusions

6.16 The Code Committee continues to believe that it would be useful for ratings and outlooks accorded to offerors and offeree companies to be included in offer documents. The Code Committee acknowledges that such ratings and outlooks represent the subjective opinions of the agencies concerned but nevertheless considers that they provide a readily available view as to the financial strength and creditworthiness of the offeror and the offeree company and as to how the offer might affect that position.

6.17 The Code Committee wishes to make clear that it would expect disclosures to comprise summary information and that it would not expect entire ratings agency reports to be reproduced in the offer document. For example, the Code Committee would expect the disclosure usually to include details of:

(a) the short-term debt ratings (e.g. P-2, A-2, F2 etc.);

(b) the long-term debt ratings (e.g. Baa2, BBB+, BBB etc.); and

(c) summary details of any outlook, such as whether the long-term and/or short-term debt ratings were on "negative watch".

6.18 The Code Committee acknowledges that a significant number of respondents believed that a *pro forma* combined balance sheet should be required. However, the Code Committee believes that requiring the production of *pro forma* balance sheets to the standards required under the Code would be unduly onerous in many cases and that, in any event, a *pro forma* balance sheet might not present a reliable starting point for assessing the up-to-date financial position of the combined group.

(iv) Amendments to the Code

6.19 The Code Committee has adopted the new Rule 24.3(c), as follows:

> "**(c) the offer document must contain summary details of ~~the~~ any current ratings and outlooks publicly accorded to the offeror and the offeree company by ~~any~~ ratings agency~~y~~ies prior to the commencement of the offer period, any changes made to ~~those~~ previous ratings or outlooks during the offer period ~~and prior to the publication of the offer document~~, and a summary of the reasons given, if any, for any such changes;**".

(d) Offer financing

(i) Summary of proposals

6.20 In section 6(d) of PCP 2011/1, the Code Committee proposed the deletion of the current Rule 24.2(f) and the introduction of a new Rule 24.3(f), which would require all offer documents to contain a description of how the offer is to be financed, including details of the debt facilities or other instruments entered into in order to finance the offer.

(ii) Summary of responses

6.21 There was general support for the introduction of the proposed new Rule 24.3(f). However, three respondents disagreed with the proposed requirements. One respondent queried the benefit of the additional disclosure to offeree company shareholders, given that the "certain funds" requirements of the current Rule 24.7 provided assurance in relation to the reliability of the offeror's financing, whilst the other two were concerned that the detailed debt financing arrangements of private equity offerors were commercially sensitive.

6.22 The Code Committee's confirmation in the PCP that it did not consider that the new Rule 24.3(f) should require detailed disclosure to be made of the equity financing structures of private equity offeror vehicles attracted

comments from a number of respondents, with one respondent expressly agreeing with this approach and another two respondents disagreeing.

(iii) Conclusions

6.23 As described in PCP 2011/1, the Code Committee believes that the reader of an offer document should be provided with information on how the offer is financed and that this information will assist the reader in forming an analysis of the balance sheet and debt of the combined group following the completion of the proposed transaction. The Code Committee continues to believe that it is appropriate that debt facilities should be disclosed to the level of detail set out in the new Rule 24.3(f)(i) to (vii) and that equity financing arrangements should be disclosed in broad terms.

(iv) Amendments to the Code

6.24 The Code Committee has adopted the new Rule 24.3(f) as proposed in the PCP, as follows:

> "**(f) the offer document must contain a description of how the offer is to be financed and the source(s) of the finance. Details must be provided of the debt facilities or other instruments entered into in order to finance the offer and to refinance the existing debt or working capital facilities of the offeree company and, in particular:**
>
> **(i) the amount of each facility or instrument;**
>
> **(ii) the repayment terms;**
>
> **(iii) interest rates, including any "step up" or other variation provided for;**
>
> **(iv) any security provided;**
>
> **(v) a summary of the key covenants;**
>
> **(vi) the names of the principal financing banks; and**
>
> **(vii) if applicable, details of the time by which the offeror will be required to refinance the acquisition facilities and of the consequences of its not doing so by that time;**".

(e) Documents on display

(i) Summary of proposals

6.25 In section 6(e) of PCP 2011/1, the Code Committee proposed various amendments to the requirements in Rule 26 for certain offer-related documents to be made available for public inspection, including a proposed requirement to bring forward the time at which certain documents must be made so available to the date of the announcement of a firm intention to make an offer (as opposed to the date on which the offer document is published, as at present).

(ii) Summary of responses

6.26 The principal comment on section 6(e) related to the Code Committee's opinion in paragraph 6.34 of the PCP that documents relating to the offeror's financing arrangements should be put on display without redaction. A number of respondents considered that the Panel should be given the express ability to consent to the redaction of commercially sensitive information in appropriate circumstances. Some of these respondents queried whether paragraph 6.34 was consistent with the Code Committee's opinion in paragraph 6.30 of the PCP that details of any potential increase in the offeror's financing facility should not be required to be disclosed in the offer document or put on display.

6.27 In addition, a small number of respondents considered that a requirement for certain documents to be put on display "from the time of the announcement of a firm intention to make an offer" was too onerous and that the requirement should apply as from the following business day.

(iii) Conclusions

6.28 The Code Committee accepts the suggestion that the deadline by which documents must be put on display under the new Rule 26.1 should be

extended until not later than the business day following the announcement of a firm intention to make an offer, consistent with the requirements of the current Rule 19.11(a) (which will become new Rule 30.4(a)).

6.29 The Code Committee continues to believe that financing documents should be put on display without redaction. However, the Code Committee acknowledges that the amount of any potential increase in a facility (i.e. "headroom") that the offeror might have agreed with its financing banks will be a matter of particular commercial sensitivity. The Code Committee understands that, where the offeror has agreed such a potential increase with its financing bank, the Panel would normally be prepared:

(a) to grant a dispensation from the requirement to disclose the existence or the amount of that "headroom" under the new Rule 24.3(f); and

(b) provided that the potential increase in the facility was set out in a separate document (and provided that that document did not contain any other provisions that would otherwise be required to be disclosed) to grant a dispensation from the requirement to put that document on display under the new Rule 26.1.

(iv) Amendments to the Code

6.30 The Code Committee has adopted the new Rule 26.1, as follows:

"**26.1 DOCUMENTS TO BE ON DISPLAY FOLLOWING THE ANNOUNCEMENT OF AN OFFER**

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

(a) any irrevocable commitment or letter of intent procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;

(b) any documents relating to the financing of the offer (Rule 24.3(f));

(c) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert; and

(d) any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2.".

7. Disclosure by offerors and offeree companies in relation to the offeror's intentions regarding the offeree company and its employees

(a) Introduction

7.1 In section 7 of PCP 2011/1, the Code Committee proposed amendments to the Code designed to improve the quality of disclosure by offerors and offeree companies in relation to the offeror's intentions regarding the offeree company and its employees. In addition, the Code Committee proposed certain amendments in order to provide a clearer structure for the Code's obligations in relation to the publication, content and display of documents.

(b) Pension scheme trustees

7.2 A number of respondents who were trustees of pension schemes, or who were advisers to, or representatives of, such trustees, suggested that various provisions of the Code referred to by the Code Committee in sections 7 and 8 of the PCP, and which relate to the employee representatives of the offeree company, should be extended so as to apply also to the trustees of the offeree company's pension scheme.

7.3 As indicated in section 1 above, the Code Committee considers that the suggested amendments to the Code are outside the scope of the consultation on PCP 2011/1 and therefore intends to give separate consideration to those suggestions in due course.

(c) Requirement for negative statements

(i) Summary of proposals

7.4 In section 7(b) of PCP 2011/1, the Code Committee proposed the introduction of a requirement for an offeror to make negative statements if it has no intentions to make changes in relation to certain of the matters referred to in the current Rule 24.1 (which would become Rule 24.2). The Rule requires an

offeror to describe in the offer document its intentions and plans for the offeree company, the offeror itself (if it is a company) and for the employees of the respective companies. The Code Committee also proposed that, in addition to the matters currently covered in the Rule, an offeror should also be required to state its intentions with regard to the maintenance of any existing trading facilities for the offeree company's relevant securities.

(ii) Summary of responses

7.5 Around two-thirds of the respondents who commented on this issue expressly agreed with the proposed amendments to Rule 24.2 (as renumbered). One respondent considered that it should be for an offeror to determine whether it wished to make negative statements in relation to its intentions.

7.6 A number of respondents sought guidance as to the level of detail that might be expected to be disclosed under the new Rule 24.2. In addition, a number of respondents sought clarification as to whether it would be acceptable for an offeror which had not had an opportunity to undertake full due diligence to state that it would need to review the position once it had better familiarised itself with the offeree company's business.

(iii) Conclusions

7.7 The Code Committee has adopted the new Rule 24.2 as proposed in the PCP.

7.8 The Code Committee believes that any statement of intention by an offeror should be as detailed as is possible on the basis of the information that is known to the offeror at the time it is made. The Code Committee acknowledges that it might be legitimate for a hostile offeror which has not had an opportunity to undertake full due diligence on the offeree company to state that it will undertake a review of the offeree company's business once it has obtained control of the company. However, the Code Committee believes that the offeror must have a fundamental business rationale for seeking to acquire the offeree company, which it should disclose as fully as possible.

The Code Committee also considers that statements of a general nature are unlikely to be acceptable in the context of a recommended offer where the offeror has had an opportunity to undertake full due diligence.

(iv) Amendments to the Code

7.9 The new Rule 24.2 will therefore be as follows:

> "**24.2 INTENTIONS REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND THEIR EMPLOYEES**
>
> **(a) In the offer document, the offeror must state 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:—**
>
> > **(i) 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;**
> >
> > **(ii) its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business;**
> >
> > **(iii) its intentions with regard to any redeployment of the fixed assets of the offeree company; and**
> >
> > **(iv) 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)(i) to (iii) 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)(i) and (ii) with regard to itself.**".

(d) Adherence to statements for at least a year (or other specified period)

(i) Summary of proposals

7.10 In section 7(c) of PCP 2011/1, the Code Committee proposed the introduction of a new Note 3 on Rule 19.1, which would provide that an offeror or offeree company would be expected to adhere to any statement of intention made during the offer period for a period of 12 months, or such other shorter or longer period of time as specified in its statement.

(ii) Summary of responses

7.11 The majority of respondents who commented on the proposal were either supportive of or neutral towards the proposed new Note 3 on Rule 19.1. A small minority of respondents disagreed with the proposal.

7.12 The principal comments in relation to the proposal were as follows:

(a) that the introduction of a requirement for adherence to statements of intention for a period of 12 months, or such other time as might be specified, might result in fewer statements of intention being made (or in such statements as are made being heavily qualified) or in the parties specifying that they would adhere to a statement of intention for only a short period of time;

(b) that an offeror or offeree company should be released from the requirement to adhere to a statement of intention if there has been a material change of circumstances; and

(c) that the means by which Note 3 on Rule 19.1 would be monitored and enforced, and what disciplinary sanctions would be applied to persons who breached its provisions, were unclear.

(iii) Conclusions

7.13 The Code Committee continues to believe that parties to an offer should be expected to adhere for a defined period to statements of intention which they make during an offer period and that, in the absence of another period being specified, a period of 12 months would be appropriate. The Code Committee considers that, if a statement of intention is specified to apply for only a very short period, readers of the statement will be able to draw their own conclusions regarding the offeror's intentions in the longer term.

7.14 The Code Committee notes that, whilst not all statements of intention by an offeror will be made pursuant to the requirements of the new Rule 24.2, an offeror will, at the very least, be required to state its intentions in relation to the matters described in Rule 24.2(a) or to make a negative statement. The Code Committee recognises that the new requirement may lead to such statements of intention, and/or negative statements, being made subject to certain qualifications but considers that it is preferable for an offeror to make a detailed, albeit qualified, statement rather than a general, albeit unqualified, one.

7.15 The Code Committee agrees with the suggestion that it should be permissible for the offeror or offeree company to be released from the requirement to adhere to a statement of intention if there has been a material change of circumstances and has amended the proposed Note 3 on Rule 19.1 accordingly.

7.16 The Code Committee considers that the criterion that the Panel should apply in determining whether to instigate disciplinary action for a breach of Note 3 on Rule 19.1 should be whether a material change in circumstances has occurred (and that this should be taken as superseding the reference in paragraph 7.10 of the PCP to the question of whether it was "reasonable", at the time, for the party to make the statement of intention).

7.17 The Code Committee would expect the Panel to investigate any complaint received from an interested person that the new Note 3 on Rule 19.1 had been breached. In the event that a breach was found to have occurred, the Code Committee anticipates that any ruling by the Panel would be enforced, and any disciplinary sanctions would be imposed, in the usual manner and in accordance with the Introduction to the Code.

(iv) Amendments to the Code

7.18 The Code Committee has therefore adopted a revised version of the new Note 3 on Rule 19.1, as follows:

> *"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.*".

(e) Obligations in relation to the publication, content and display of documents

7.19 Relatively few comments were received in relation to the proposals for restructuring the provisions of the Code which relate to the obligations in relation to the publication, content and display of documents. However, the meaning of the requirement for certain documents to be made "readily available" to employee representatives or employees, discussed in paragraph 7.22 of the PCP, was raised by certain respondents. One respondent considered that employee representatives and employees should be entitled to receive hard copies of the documents which are required to be made "readily and promptly available" to them, whereas another respondent considered that the Code should make clear that drawing the attention of employee representatives and employees to the fact that the documents had been published on a website would be sufficient. A third respondent considered

that the explanation in paragraph 7.22 of the PCP that the requirement would be complied with if employee representatives or employees were informed through the means that the company normally uses in order to communicate with its employee representatives or employees should be set out in the Code.

7.20 The Code Committee does not believe that it is necessary for the Code to specify how the obligation to make documents or announcements readily available to employee representatives or, where there are no employee representatives, employees themselves, should be satisfied and it understands that this issue has not been raised in the context of any particular case. Notwithstanding this, if, in order to assist in the preparation of their opinion of the effects of the offer on employment, the offeree company's employee representatives were to request a hard copy of the announcements and documents required under the Code to be made readily available to them, the Code Committee would expect the offeror or the offeree company, as the case may be, to provide such hard copies as soon as possible after it receives such a request.

7.21 The Code Committee has adopted the new Rules 24.1 and 25.1 in a slightly amended form from that proposed in the PCP, as follows:

"**24.1 THE OFFER DOCUMENT**

(a) The offeror must, normally within 28 days of the announcement of a firm intention to make an offer, send an offer document to shareholders of the offeree company and persons with information rights, in accordance with Rule ~~19.8~~30.1. At the same time, both the offeror and the offeree company must make the offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves. The Panel must be consulted if the offer document is not to be published within this period.

(b) On the ~~same~~ day of publication, the offeror must:

(i) publish the offer document on a website in accordance with Rule ~~19.11~~30.4; and

(ii) announce via a RIS that the offer document has been so published.

~~(c) At the same time, both the offeror and the offeree company must make the offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves.~~"; and

"**25.1 THE OFFEREE BOARD CIRCULAR**

(a) The board of the offeree company must, normally within 14 days of the publication of the offer document, send a circular to the offeree company's shareholders and persons with information rights, in accordance with Rule ~~19.8~~30.1 and must, at the same time, make it readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.~~:~~

(b) On the day of publication, the offeree company must:

(~~a~~i) publish the circular on a website in accordance with Rule ~~19.11~~30.4; and

(~~b~~ii) announce via a RIS that it has been so published.~~; and~~

~~(c) make it readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.~~".

7.22 In addition, the Code Committee has adopted an amended version of the new Note 1 on Rule 2.12, as follows:

"*1. Where a circular summarising an ~~Full text of~~ announcement made under Rule 2.7 ~~to be made available~~ is sent*

Where, following an announcement made under Rule 2.7, a circular summarising the terms and conditions of the offer is sent or made readily available to shareholders, persons with information rights, employees or employee representatives, the full text of the announcement must be made readily and promptly available to them~~, for example, by publishing it on the website of the offeror or the offeree company (as the case may be)~~. In addition, the circular must give details of the website on which a copy of the announcement will be published in accordance with Rule 30.4(a).".

8. Employee representatives

(a) Introduction

8.1 In section 8 of PCP 2011/1, the Code Committee made various proposals designed to improve communication between the board of the offeree company and the offeree company's employee representatives and employees, and to enable employee representatives to be more effective in providing their opinion on the effects of an offer on employment.

(b) Definition of employee representative

8.2 In section 8(b) of PCP 2011/1, the Code Committee proposed the introduction of a new definition of "employee representative".

8.3 A number of respondents considered that the proposed definition of "employee representative" was unduly wide and that the fact that it could potentially cover multiple employee representatives in various jurisdictions might mean that the costs of complying with the provisions of the Code relating to employee representatives could be disproportionately high. In addition, a number of respondents raised technical queries in relation to the scope of the definition.

8.4 The Code Committee notes that the requirements in relation to communicating information to employee representatives or, where there are no such representatives, to employees themselves, derive from the Takeovers Directive and that there is nothing in the Directive to suggest that those requirements apply only to a limited number of employee representatives or employees, or that they apply only to employee representatives or employees resident in the home state of the company concerned. Indeed, the Code Committee noted at paragraph 5.6.1 of PCP 2005/5 that the requirement to provide information to employees would apply "on a group wide basis, wherever they may be".

8.5 Having taken into account the comments of those respondents who raised issues in relation to the proposed definition of "employee representative", the Code Committee has incorporated a number of amendments, as indicated below:

> "**Employee representative**
>
> An employee representative is:
>
> (a) a representative of ~~a~~ an independent trade union, where ~~such~~ that trade union has been recognised by the offeror or the offeree company in respect of some or all of its employees; and
>
> (b) any other person who has been elected or appointed by employees to represent employees for the purposes of information and consultation ~~to a position in which that person is expected to receive or where it is appropriate for that person to receive (having regard to the purpose for which such person was elected or appointed), on behalf of employees of the offeror or the offeree company, information of the kind specified in the Code~~.".

(c) The passing of information to employee representatives

8.6 In section 8(c) of PCP 2011/1, the Code Committee proposed the introduction of a new Note 6 on Rule 20.1 which would make it clear that there is nothing in the Code to prevent information from being passed in confidence by an offeror or an offeree company to their respective employee representatives or employees, or by an offeror to the offeree company's employee representatives or employees, provided that the requirement for secrecy under Rule 2.1 is respected.

8.7 Few substantive comments were received on the proposed Note 6 on Rule 20.1. However, a number of respondents noted that offerors and offeree companies were likely to require employee representatives or employees to enter into a confidentiality agreement before being prepared to pass to them information in relation to an offer.

8.8 The Code Committee has adopted the new Note 6 on Rule 20.1 as proposed in the PCP, as follows:

"6. Sharing information with employee representatives or employees

Subject to the requirements of Rule 2.1, the Code does not prevent the passing of information in confidence by:

(a) an offeror or the offeree company to their employee representatives or employees; or

(b) an offeror to the employee representatives or employees of the offeree company,

where the employee representatives or employees are acting in their capacity as such (rather than in their capacity as shareholders).

Meetings with employee representatives or employees acting in their capacity as such, both prior to and during the offer period, are not normally covered by Note 3 on Rule 20.1, although the Panel should be consulted if any employees are interested in a significant number of shares.".

(d) Offeree companies to inform employee representatives of the right to give an opinion on the offer

8.9 In section 8(d) of PCP 2011/1, the Code Committee proposed amendments to the current Rule 2.6 (which would become the new Rule 2.12), and the introduction of a new Rule 32.1(b), so as to require, broadly, that:

(a) an announcement of a possible offer must be made readily available by the offeree company to its employee representatives;

(b) the offeree company must, at the same time, inform the employee representatives of their right to have an opinion on the effects of the offer on employment appended to the offeree board's circular; and

(c) the offeree company must similarly inform the employee representatives of their right to have an opinion appended to any offeree board circular published in relation to a revised offer.

8.10 Few substantive comments were received on the proposed amendments. However, one respondent suggested that employee representatives should, in addition, be informed of the offeree company's responsibility under the new Note 1 on Rule 25.9 for the costs of advice required for the verification of the information included in the employee representatives' opinion.

8.11 The Code Committee accepts the suggestion referred to in the previous paragraph and has therefore adopted the new Rules 2.12(a) and (d) and Rule 32.1(b), as follows:

> "**2.12 OBLIGATION TO SEND ANNOUNCEMENTS TO SHAREHOLDERS AND MAKE THEM AVAILABLE TO EMPLOYEE REPRESENTATIVES OR EMPLOYEES**
>
> **(a) Promptly after the commencement of an offer period (except where an offer period begins with an announcement under Rule 2.7), a copy of the relevant announcement must be sent by the offeree company to its shareholders, persons with information rights and the Panel, and must be made readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.**
>
> …
>
> **(d) When, under (a) or (b)(ii) above, the offeree company makes a copy of an announcement or a circular summarising the terms and conditions of the offer available to its employee representatives or employees, it must at the same time inform them of the right of employee representatives under Rule 25.9 to have a separate opinion appended to the offeree board's circular, when published in accordance with Rule 25.1, and of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion.**"; and
>
> "**32.1 PUBLICATION OF REVISED OFFER DOCUMENT**
>
> …
>
> **(b) At the same time, both the offeror and the offeree company must make the revised offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves. The offeree company must also inform its employee representatives or employees of the right of employee representatives under Rule 32.6 to have a**

separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer and of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion.".

(e) Publication of the employee representatives' opinion and responsibility of the offeree company for costs

(i) Summary of proposals

8.12 In section 8(e) of PCP 2011/1, the Code Committee proposed the introduction of a new Rule 25.9 in relation to the right of employee representatives to have an opinion on the effects of the offer on employment appended to the offeree board's circular. In addition to restating the requirements of the current Rule 30.2(b), which sets out the obligation of the board of the offeree company to append the employee representatives' opinion to its circular, the Code Committee proposed that:

(a) the new Rule 25.9 should provide that, where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must publish the employee representatives' opinion on a website and announce via a Regulatory Information Service ("**RIS**") that it has been so published; and

(b) the new Note 1 on Rule 25.9 should provide that the offeree company must pay for the publication of the employee representatives' opinion and for the costs reasonably incurred by the employee representatives in obtaining any advice required for the verification of the information contained in that opinion in order to comply with the standards of Rule 19.1.

(ii) Summary of responses

8.13 The principal comments by respondents related to:

(a) the latest time by which the employee representatives' opinion would need to be received in order to trigger the requirement for the offeree company to publish the opinion on a website;

(b) the type and extent of the advice that would fall to be paid for by the offeree company under the new Note 1 on Rule 25.9. In particular, a number of respondents were concerned to ensure that the offeree company's responsibility would be limited to the costs of verifying statements made against existing sources, and that the offeree company should not be responsible for, for example, costs incurred by employee representatives in commissioning new research in order to be able to be in a position to make a particular statement; and

(c) the prospect of the offeree company being required to pay for advice obtained by multiple employee representatives in relation to their separate opinions.

(iii) Conclusions

8.14 The concept of the employee representatives' opinion derives from the final sentence of Article 9(5) of the Takeovers Directive, which states that:

> "Where the board of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the [offeree board's] document.".

8.15 The Code Committee continues to believe that employee representatives should be provided with a reasonable time within which to prepare their opinion on the effects of the offer on employment and that, where the employee representatives' opinion is not received in sufficient time for it to be

appended to the offeree board's circular, the offeree company should be required to publish the opinion on its website. The Code Committee therefore considers that the Code should require that, provided the employee representatives' opinion is received by not later than 14 days after the date on which the offer becomes or is declared wholly unconditional, the offeree company must promptly publish it on a website and announce via a RIS that it has been so published.

8.16 The Code Committee considers that the costs for which the offeree company would be responsible under the new Note 1 on Rule 25.9 should be limited to those costs which are reasonably incurred by the employee representatives in obtaining advice required to verify the information contained in their opinion on the effects of the offer on employment. Whilst it does not believe that this will necessarily be limited to legal advice, as one respondent suggested, the Code Committee agrees that it would be limited to the verification of any statements made by reference to existing sources, and would not extend, for example, to general advice in relation to the preparation or content of the opinion, or to commissioning new research in order to make a statement that is capable of being verified.

8.17 As indicated in paragraph 8.4 above, the Code Committee acknowledges that there may be representatives of different sets of the offeree company's employees and the offeree company may therefore receive more than one opinion under Rule 25.9.

(iv) Amendments to the Code

8.18 The Code Committee has therefore adopted the proposed Rule 25.9, Note 1 on Rule 25.9 and Rule 32.6(b) with some minor modifications, as follows:

"**25.9 THE EMPLOYEE REPRESENTATIVES' OPINION**

The board of the offeree company must append to its circular a separate opinion from its employee representatives on the effects of the offer on employment, provided such opinion is received in

good time before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must promptly publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received ~~within~~ no later than 14 days ~~of~~ after the date on which the offer ~~becoming or being~~ becomes or is declared wholly unconditional.

NOTES ON RULE 25.9

1. Offeree company's responsibility for costs

The offeree company must pay for the publication of the employee representatives' opinion and for the costs reasonably incurred by the employee representatives in obtaining ~~any~~ advice required for the verification of the information contained in that opinion in order to comply with the standards of Rule 19.1. (See also Rule 32.6(b).)"; and

"**32.6 THE OFFEREE BOARD'S OPINION AND THE EMPLOYEE REPRESENTATIVES' OPINION**

…

(b) The board of the offeree company must append to its circular a separate opinion from its employee representatives on the effects of the revised offer on employment, provided such opinion is received in good time before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must promptly publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received ~~within~~ no later than 14 days ~~of~~ after the date on which the offer ~~becoming or being~~ becomes or is declared wholly unconditional.".

8.19 In order to cater for the fact that the employee representatives' opinion may be required to be published on a website after the end of the offer period, and in order to ensure that other information which relates directly to the offer is published on a website after the end of the offer period, the Code Committee has amended the current Rule 19.11(b), which will become the new Rule 30.4(b), as follows:

"**(b) A copy of each document, announcement or information required to be published on a website under (a) above must continue to be made available on a website free of charge during**

the course of the offer (and any related competition reference period). Documents, announcements and information published following the end of the offer period <u>which do not relate directly to the offer</u> will not be required to be published on the website.".

(f) Responsibility for the contents of the employee representatives' opinion

8.20 In section 8(f) of PCP 2011/1, the Code Committee proposed the introduction of a new Rule 19.2(a)(iii) which would make clear that the employee representatives' opinion would be excluded from the scope of the offeree board's responsibility statement.

8.21 Three of the respondents who commented on this proposal supported it and three considered that the Code should provide that employee representatives should be required to make a responsibility statement in relation to the information contained in their opinion.

8.22 As mentioned in paragraph 8.14 above, the right of employee representatives to have a separate opinion on the effects of the offer on employment appended to the offeree board circular derives from Article 9(5) of the Takeovers Directive. The Code Committee has been advised that the imposition of a requirement on employee representatives to make a responsibility statement in relation to the information contained in their opinion could appear to impose conditions on compliance with the Directive and might therefore subvert the purpose of the provisions regarding employee representatives' opinions. Accordingly, the Code Committee does not believe that it would be appropriate to introduce such a requirement.

8.23 The Code Committee has therefore adopted the amendments to Rule 19.2 as proposed in the PCP, which will therefore be as follows:

"**19.2 RESPONSIBILITY**

(a) … **This Rule does not apply to:**

(i) advertisements falling within … **Rule 19.4;**

(ii) advertisements … required by this Rule; and

(iii) any separate opinion of the employee representatives of the offeree company on the effects of the offer on employment, as referred to in Rule 25.9 or Rule 32.6.".

9. Nature and purpose of the Code

9.1 In section 9 of PCP 2011/1, the Code Committee stated that it believed that it would be consistent with the amendments to the Code that were proposed in the PCP for the Code to be amended to emphasise that it is not the purpose of the Code either to facilitate or to impede takeover offers. To this end, the Code Committee suggested that section 2(a) of the Introduction to the Code could be amended to make this explicit and proposed a small number of other minor amendments.

9.2 The matters set out in section 2(a) of the Introduction to the Code are the responsibility of the Panel and are excluded from the rule-making function of the Code Committee. It was therefore acknowledged in the PCP that any change to section 2(a) of the Introduction would need to be made by the Panel itself.

9.3 The Panel has decided to amend section 2(a) of the Introduction to the Code such that the amended paragraphs will be as follows:

> "The Code is designed principally to ensure that shareholders in an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders in the offeree company of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.
>
> The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the offeree company and its shareholders. In addition, it is not the purpose of the Code either to facilitate or to impede ~~the making of~~ takeover<u>s</u> ~~offers~~. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies.
>
> The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to offeree company shareholders and an orderly framework for takeover<u>s</u> ~~offers~~ can be achieved. …".

9.4 Notwithstanding that section 2(a) of the Introduction to the Code is the responsibility of the Panel and not the Code Committee, the amendments that the Panel has made to section 2(a) are set out in Appendix B to this Response Statement for ease of reference.

10. Definition of "offer period"

10.1 In section 10 of PCP 2011/1, the Code Committee proposed various amendments to the definition of "offer period".

10.2 Very few respondents commented on the proposed amendments.

10.3 The Code Committee has therefore adopted the amended definition as proposed in the PCP, but with a small number of minor amendments, as follows:

> "**Offer period**
>
> The offeree companies that are ~~subject to~~ in an offer period at any particular time, and any offerors or publicly identified potential offerors, are set out in the Disclosure Table on the Panel's website at www.thetakeoverpanel.org.uk.
>
> An offer period will commence when the first announcement is made of an offer or possible offer for a company, or when certain other announcements are made, such as an announcement that a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of the company or that the board of the company is seeking potential offerors.
>
> An offer period will end when an announcement is made that an offer has become or has been declared unconditional as to acceptances, that a scheme of arrangement has become effective, that all announced offers have been withdrawn or have lapsed or following certain other announcements having been made (such as all publicly identified potential offerors having made a statement to which Rule 2.8 applies).
>
> *1. Schemes of arrangement*
>
> *In the case of a scheme of arrangement, provisions of the Code that apply during the course of the offer, or before the offer closes for acceptance, will apply until it is announced that the scheme has become effective or that it has lapsed or been withdrawn.*
>
> *2. Competition reference periods*
>
> *See Rule 12.2.*".

11. Financing pre-conditions

11.1 In section 11 of PCP 2011/1, the Code Committee proposed:

(a) the amendment of the current Note on Rules 13.1 and 13.3, which would become a new Rule 13.4; and

(b) the introduction of a new Rule 13.4(d), which would provide that if an offeror or its financial adviser became aware, or considered it likely, that the offeror would be unable to satisfy a pre-condition relating to the financing of its offer, it would be required promptly to notify the Panel.

11.2 Few respondents commented on this proposal. Two of those that did sought further guidance as to the circumstances and factors that would lead to the requirement to notify the Panel being triggered.

11.3 The Code Committee does not consider that it is necessary or appropriate for such guidance to be provided at this stage and notes that, in order for the Panel to accept the inclusion of a financing pre-condition in an announcement of a firm intention to make an offer, the offeror and its financial adviser must first confirm in writing to the Panel that they are not aware of any reason why the offeror would be unable to satisfy the financing pre-condition within 21 days after the satisfaction (or waiver) of any other permitted pre-conditions.

11.4 The Code Committee has therefore amended the current Note on Rules 13.1 and 13.3 so as to become a new Rule 13.4, as set out in Appendix B, and has adopted the new Rule 13.4(d) as proposed in the PCP, as follows:

> "**(d) If, at any time, the offeror or its financial adviser becomes aware, or considers it likely, that the offeror would be unable to satisfy a financing pre-condition, it must promptly notify the Panel.**".

12. Minor amendment to Rule 2.4(c) (the new Rule 2.5(a))

12.1 On 10 May 2011, the Hearings Committee issued Statement 2011/10, announcing that it had dismissed an appeal by Kalahari Minerals plc. The Hearings Committee published its detailed reasons for the dismissal of the appeal in Statement 2011/11, issued on 25 May 2011.

12.2 The decision of the Hearings Committee related to the circumstances in which the Panel would grant its consent for a person who had previously made an announcement to which the current Rule 2.4(c) applies to make an offer on different terms than those specified in that previous announcement. The Hearings Committee concluded that the Panel's consent should be granted only in "wholly exceptional circumstances" and specifically endorsed the Code Committee's view as to the approach to be adopted in applying Rule 2.4(c), as set out in paragraphs 4.1.1 to 4.1.6 of PCP 2004/2 which led to the introduction of that Rule.

12.3 The Code Committee's view was summarised in paragraph 4.1.4 of PCP 2004/2 which provided as follows:

> "Having considered these arguments, the Code Committee is of the view that where an unqualified statement is made by a potential offeror about the price at which it is considering making an offer, the principle of certainty and orderly conduct should prevail over the apparent disadvantages which might result from holding the offeror to the statement in a particular case (especially as the offeror is under no obligation to mention its proposed offer price). **Accordingly, in the absence of wholly exceptional circumstances, a potential offeror electing to make such an unqualified statement should not be permitted subsequently to make an offer at below that price.** *[emphasis added]* The Code Committee also believes that the same consequences should apply whether the statement is made in a formal announcement or informally, for example in an interview.".

12.4 In its decision, the Hearings Committee also made reference to other similar provisions of the Code based on the same rationale, namely Rule 32.2, relating to "no increase" statements, and Rule 31.5, relating to "no extension" statements.

12.5 In the light of the Hearings Committee's decision, the Code Committee has made a minor amendment to Rule 2.4(c) (the new Rule 2.5(a)) to include express reference to "wholly exceptional circumstances" consistent with Rules 32.2 and 31.5. The Code Committee considers that this amendment does not materially alter the effect of the current Rule 2.4(c) and is therefore amending the provision without any formal consultation.

12.6 The new Rule 2.5(a), and Note 1 on Rule 2.5, will therefore be, as follows:

"**2.5 TERMS AND PRE-CONDITIONS IN POSSIBLE OFFER ANNOUNCEMENTS**

(a) The Panel must be consulted in advance if, prior to the announcement of a firm intention to make an offer, any person proposes to make a statement in relation to the terms on which an offer might be made for the offeree company. ~~Except with the consent of the Panel, i~~If any such statement is made by or on behalf of a potential offeror, its directors, officials or advisers and not immediately withdrawn if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made and only in wholly exceptional circumstances will the offeror be allowed subsequently not to be so bound, unless it specifically reserved the right not to be so bound at the time the statement was made (see Note 1). …

…

NOTES ON RULE 2.5

1. Reservation of right to set statement aside

…

~~Except with the consent of the Panel, w~~Where a potential offeror has referred in a statement subject to Rule 2.5(a) to the level of consideration to be paid if an offer is made, that potential offeror will not be allowed subsequently to make an offer for the offeree company at a lower level of consideration other than in wholly exceptional circumstances, or if ~~unless~~ there has occurred an event which the potential offeror specified in the statement as an event which would enable it to set aside the level of consideration referred to.".

APPENDIX A

Respondents to PCP 2011/1
(excluding those who submitted comments on a confidential basis)

1. Advent International plc

2. Association of British Insurers

3. Beaufort Trust Corporation Ltd

4. Bloomberg L.P.

5. British Private Equity and Venture Capital Association

6. Bryant, Ms C.

7. BT Pension Scheme Management/
Hermes Equity Ownership Services Limited

8. Confederation of British Industry

9. DMH Stallard LLP

10. Employment Lawyers Association

11. Ernst & Young LLP

12. Eversheds LLP

13. GC100 Group

14. Governance for Owners

15. Grant Thornton UK LLP

16. ICI Pensions Trustee Limited

17. Inflexion Private Equity Partners LLP

18. Institute of Chartered Accountants in England and Wales

19. Institute of Chartered Accountants of Scotland

20. Institute of Chartered Secretaries and Administrators

21. Institute of Chartered Secretaries and Administrators, Registrars Group

22. Investment Management Association

23. Kingfisher Pension Trustee Limited

24. Latham & Watkins

25. Mercer Limited

26. Mitchells & Butlers Executive Pension Trust Limited/
Mitchells & Butlers Pensions Limited

27. Morton, Mr R.

28. Nabarro LLP

29. National Association of Pension Funds

30. P.A.T. (Pensions) Limited

31. Penfida Partners LLP

32. Pinsent Masons LLP

33. Quoted Companies Alliance

34. Richardson, Mr D.

35. SABMiller plc

36. Schroder Pension Trustee Limited

37. Standard Life Investments

38. SVM Asset Management Limited

39. Takeovers Joint Working Party of the City of London Law Society's Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law

40. TUC

41. Unite the Union

42. Whitbread Pension Trustees

43. White & Case

APPENDIX B

Amendments to the Code

INTRODUCTION

2 THE CODE

…

(a) Nature and purpose of the Code

The Code is designed principally to ensure that shareholders in an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders in the offeree company of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the offeree company and its shareholders. In addition, it is not the purpose of the Code either to facilitate or to impede takeovers. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies.

The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to offeree company shareholders and an orderly framework for takeovers can be achieved. …

…

10 ENFORCING THE CODE

…

(e) Bid documentation rules

For the purposes of section 953 of the Act, the "offer document rules" and the "response document rules" are those parts of Rules 24 and 25 respectively which are set out in Appendix 6 and, in each case, Rule 27 to the extent that it requires the inclusion of material changes to, or the updating of, the information in those parts of Rules 24 or 25, as the case may be, in relation to ~~the~~ offer documents and offeree board circulars ~~referred to in Rules 30.1 and 30.2 respectively~~ and the revised offer documents and subsequent offeree board circulars referred to in Rules 32.1 and 32.6~~(a)~~ respectively.

DEFINITIONS

Acting in concert

…

NOTES ON ACTING IN CONCERT

…

11. Indemnity and other dealing arrangements

…

(b) …

Such dealing arrangements must be disclosed as required by Note 2~~9~~ on Rule 2.4, Rule ~~2.5(b)~~2.7(c)(v), Notes 5 and 6 on Rule 8, Rule 24.~~12~~13 and Rule 25.~~5~~6.

…

Dealings

…

NOTES ON DEALINGS

1. Indemnity and other dealing arrangements

Dealing arrangements of the kind referred to in Note 11 on the definition of acting in concert in relation to relevant securities which are entered into during the offer period by any offeror, the offeree company or a person acting in concert with any offeror or the offeree company must be disclosed as required by Rule 2.7(c)(v), Notes 5 and 6 on Rule 8, Rule 24.~~12~~13 and Rule 25.~~5~~6.

…

Employee representative

An employee representative is:

(a) a representative of an independent trade union, where that trade union has been recognised by the offeror or the offeree company in respect of some or all of its employees; and

(b) any other person who has been elected or appointed by employees to represent employees for the purposes of information and consultation.

…

Offer period

The offeree companies that are in an offer period at any particular time, and any offerors or publicly identified potential offerors, are set out in the Disclosure Table on the Panel's website at www.thetakeoverpanel.org.uk.

An o~~O~~ffer period ~~means the period from the time~~ will commence when ~~an~~ the first announcement is made of an ~~proposed~~ offer or possible offer for a company, or when certain other announcements are made, such as an announcement that a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of the company or that the board of the company is seeking potential offerors.~~(with or without terms) until the first closing date or, if this is later, the date when the~~

An offer period will end when an announcement is made that an offer has become~~s~~ or ~~is~~ has been declared unconditional as to acceptances, that a scheme of arrangement has become effective, that all announced offers have been withdrawn or have lapsed or following certain other announcements having been made (such as all publicly identified potential offerors having made a statement to which Rule 2.8 applies). ~~or lapses. An announcement that an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company is for sale or that the board of a company is seeking potential offerors will be treated as the announcement of a possible offer. (See also Rule 12.2 regarding competition reference periods.)~~

~~In the case of a scheme of arrangement, the offer period will continue until it is announced in accordance with Section 5(c) of Appendix 7 that the scheme has become effective or that the scheme has lapsed or been withdrawn.~~

1. Schemes of arrangement

In the case of a scheme of arrangement, p~~P~~rovisions of the Code that apply during the course of the offer, or before the offer closes for acceptance, will apply until it is announced that the scheme has become effective or that it has lapsed or been withdrawn~~the same time~~.

2. Competition reference periods

See Rule 12.2.

…

PLUS

The PLUS primary markets operated by PLUS Markets plc. ~~References to PLUS have been included in some Rules for clarity but, in cases of doubt, the Panel should be consulted.~~

…

Regulated market

Regulated market has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).

~~In relation to an EEA State that has not implemented Directive 2004/39/EC, regulated market has the same meaning as it has in Council Directive 93/22/EEC on investment services in the securities field (see Article 1(13)).~~

~~A list of regulated markets within the EEA is maintained on the website of the EU Commission: europa.eu.int/comm/index_en.htm. UK regulated markets are listed on the Panel's website: www.thetakeoverpanel.org.uk.~~

…

Reverse takeover

A transaction will be a reverse takeover if an offeror might as a result need to increase its existing issued voting equity share capital by more than 100%.

NOTE ON REVERSE TAKEOVER

The definition is of relevance only in circumstances where the offeror is a company that falls within section 3(a)(i) or (ii) of the Introduction.

Rule 1

RULE 1. THE APPROACH

(a) An offeror (or its advisers) must notify a firm intention to make an offer ~~The offer must be put forward~~ in the first instance to the board of the offeree company (or ~~to~~ its advisers).

(b) If the offer, or an approach with regard to a possible offer ~~with a view to an offer being made~~, is not made by the ~~ultimate~~ offeror or potential offeror, the identity of that person must be disclosed to the board of the offeree company at the outset.

~~(c) A board so approached is entitled to be satisfied that the offeror is, or will be, in a position to implement the offer in full.~~

Rule 2

RULE 2. SECRECY BEFORE ANNOUNCEMENTS; THE TIMING AND CONTENTS OF ANNOUNCEMENTS

2.1 SECRECY

(a) ~~The vital importance of absolute secrecy before an~~ Prior to the announcement ~~must be emphasised.~~ of an offer or possible offer, a~~A~~ll persons privy to confidential information, and particularly price-sensitive information, concerning ~~an~~ the offer or ~~contemplated~~ possible offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the chances of any ~~accidental~~ leak of information.

~~*NOTES ON RULE 2.1*~~

~~*1. Warning clients*~~

(b) ~~It should be an invariable routine for~~ Financial advisers must at the very beginning of discussions ~~to~~ warn clients of the importance of secrecy and security. Attention should be drawn to the Code, in particular to this Rule 2.1 and to restrictions on dealings.

~~*2. Proof printing*~~

~~*Proof printing documents before a public announcement has been made carries a particular risk of leaks of price-sensitive information; in cases where it is regarded as appropriate to undertake such printing, every possible precaution must be taken to ensure confidentiality.*~~

2.2 WHEN AN ANNOUNCEMENT IS REQUIRED

An announcement is required:

(a) when a firm intention to make an offer ~~(the making of which is not, or has ceased to be, subject to any pre-condition)~~ is notified to the board of the offeree company ~~from a serious source~~ by or on behalf of an offeror, irrespective of the attitude of the board to the offer;

(b) immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Rule 9.1. … **;**

(c) when, following an approach by or on behalf of a potential offeror to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price;

(d) when, after a potential offeror first actively considers an offer but before an approach has been made to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation;

…

NOTES ON RULE 2.2

1. Panel to be consulted

(a) Whether … announcement.

(b) In the case of Rule 2.2(c), … circumstances.

(c) Similarly, in the case of Rules 2.2(d) and (f)(i), the Panel should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation or where there is a material or abrupt movement in its share price after the time when, in the case of Rule 2.2(d), an offer is first actively considered by a potential offeror or, in the case of Rule 2.2(f)(i), either the potential seller or the board starts to seek one or more potential purchasers or offerors.

(d) In the case of Rule 2.2(e), the Panel should be consulted if the potential offeror and/or the offeree company wish to approach a wider group than the very restricted number of people referred to in the Rule without making an announcement.

(e) In the case of Rule 2.2(f)(ii), … sought.

…

3. Rumour and speculation during an offer period

Where, during an offer period, rumour and speculation specifically identifies a potential offeror which has not previously been identified in any announcement, the Panel will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror.

4. When a dispensation may be granted

(a) The Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. After such a dispensation has been granted, the potential offeror may not actively consider making an offer for the offeree company for a period of six months and will be treated as having made a

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

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

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

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

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

2.3 RESPONSIBILITIES OF OFFERORS AND THE OFFEREE COMPANY

(a) Before a potential offeror approaches the board of the offeree company ~~is approached~~, the potential offeror is responsible ~~the responsibility~~ for making any announcement required under Rule 2.2~~can lie only with the offeror. The offeror should, therefore, keep a close watch on the offeree company's share price for any signs of untoward movement.~~

(b) ~~The offeror is also responsible for making an announcement~~ When ~~once~~ an ~~Rule 9~~ obligation to make a mandatory offer under Rule 9.1 is ~~has been~~ incurred, the offeror is responsible for making the announcement required under Rule 2.2(b). See also Rule 7.1.

(c) Following an approach to the board of the offeree company ~~which may or may not lead to an offer~~, the offeree company is responsible ~~primary responsibility~~ for making any announcement required under Rule 2.2, except for an announcement required under Rule 2.2(b) or, where a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of a company without the involvement of the board of the offeree company, Rule 2.2(f) (in which case responsibility will rest with the potential seller of the interest)~~will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price~~.

(d) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a possible offer, or publicly identifying the potential offeror, at any time the board ~~thinks~~ considers appropriate.

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

~~**(a) Except in the case of a mandatory offer under Rule 9, until a firm intention to make an offer has been notified, a brief announcement that talks are taking place (there is no requirement to name the potential offeror in such an announcement) or that a potential offeror is considering making an offer will normally satisfy the obligations under this Rule. Except with the consent of the Panel, such an announcement should also include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).**~~

~~**(b) At any time during an offer period following the announcement of a possible offer (provided the potential offeror has been publicly named), and before the notification of a firm intention to make an offer, the offeree company may request that the Panel impose a time limit for the potential offeror to clarify its intentions with regard to the offeree company. If a time limit for clarification is imposed by the Panel, the potential offeror must, before the expiry of the time limit, announce either a firm intention to make an offer for the offeree company in accordance with Rule 2.5 or that it does not intend to make an offer for the offeree company, in which case the announcement will be treated as a statement to which Rule 2.8 applies.**~~

(a) An announcement by the offeree company which commences an offer period must identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected).

(b) Any subsequent announcement by the offeree company which refers to the existence of a new potential offeror must identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree company (see Rule 2.6(e)).

(c) Any announcement which commences an offer period and any subsequent announcement which first identifies a potential offeror must:

> **(i) specify the date on which any deadline thereby set in accordance with Rule 2.6(a) will expire; and**
>
> **(ii) include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).**

NOTES ON RULE 2.4

1. Consequences of subsequent acquisitions of interests in shares

The acquisition of an interest in offeree company shares by a potential offeror whose existence has been announced (whether publicly identified or not) or

any person acting in concert with it may require immediate announcement by the potential offeror under the Note on Rule 7.1. See also Note 12 on Rule 8.

2. Indemnity and other dealing arrangements

Where the offeree company, an offeror or any person acting in concert with the offeree company or an offeror enters into any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert before the start of the offer period or the announcement that first identifies the offeror, details of the arrangement must be included in the relevant announcement as required by Notes 6(b) and (c) on Rule 8.

Where a dealing arrangement of the kind referred to above is entered into during the offer period, see Note 6(a) on Rule 8.

3. Formal sale process

See Note 2 on Rule 2.6.

2.5 TERMS AND PRE-CONDITIONS IN POSSIBLE OFFER ANNOUNCEMENTS

(ac) Until a firm intention to make an offer has been notified, tThe Panel must be consulted in advance if, prior to the announcement of a firm intention to make an offer, any person proposes to make a statement in relation to the terms on which an offer might be made for the offeree company. Except with the consent of the Panel, iIf any such statement is included in an announcement by a potential offeror or is made by or on behalf of a potential offeror, its directors, officials or advisers and not immediately withdrawn if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made and only in wholly exceptional circumstances will the offeror be allowed subsequently not to be so bound, unless it specifically reserved the right not to be so bound at the time the statement was made (see Note 1). In particular:

> **(i) where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in the case of a proposed possible securities exchange offer), any offer made by the potential offeror for the offeree company will be required to be made on the same or better terms. Where all or part of the consideration is expressed in terms of a monetary value, the offer or that element of the offer must be made at the same or a higher monetary value. Where all or part of the consideration has been expressed in terms of a securities exchange ratio, the offer or that element of the offer must be made on the same (or an improved) securities exchange ratio; and**
>
> **(ii) where the statement concerned includes reference to the fact that the terms of the possible offer "will not be increased" or**

are "final" or uses a similar expression, the potential offeror will not be allowed subsequently to make an offer on better terms.

~~**See also Note 5.**~~

(b~~d~~) ~~Except with the consent of the Panel, t~~The consequences of a statement to which Rule ~~2.4(c)~~ 2.5(a) applies will normally apply also to any person acting in concert with the potential offeror and to any person who is subsequently acting in concert with the potential offeror or such person.

~~*NOTES ON RULE 2.4*~~

~~*1. Pre-conditions*~~

(c) The Panel must be consulted in advance if, prior to announcing a firm intention to make an offer, a potential offeror ~~a person~~ proposes to ~~include in an~~ announce~~ment~~ any pre-conditions to the making of an offer. Any such pre-conditional possible offer announcement must:

> **(a~~i~~) clearly state whether or not the pre-conditions must be satisfied before an offer can be made or whether they are waivable; and**
>
> **(~~b~~ii) include a prominent warning to the effect that the announcement does not amount to a firm intention to make an offer and that, accordingly, there can be no certainty that any offer will be made even if the pre-conditions are satisfied or waived.**

~~*2. Announcement of a potential competing offer*~~

~~*The provisions of Rule 2.4(b) will not apply where an offer has already been announced by a third party and the potential offeror makes a statement that it is considering making a competing offer.*~~

~~*See Note 1 on Rule 19.3.*~~

~~*3. Period for clarification*~~

~~*The precise time limit imposed in any particular case under Rule 2.4(b) will be determined by reference to all the circumstances of the case and the Panel will endeavour to balance the potential damage to the business of the offeree company arising from the uncertainty caused by the potential offeror's interest against the disadvantage to its shareholders of losing the prospect of an offer.*~~

~~*4. Extension of time limit*~~

~~*A time limit for a potential offeror to clarify its intentions imposed under Rule 2.4(b) may be extended only with the consent of the Panel. The Panel's*~~

~~*consent will normally be granted if the board of the offeree company consents to the extension.*~~

NOTES ON RULE 2.5

1~~5~~. Reservation of right to set statements aside

The first announcement in which a statement subject to Rule ~~2.4(c)~~ 2.5(a) is made must ~~also~~ contain prominent reference to any reservation (precise details of which must ~~also~~ be included ~~in the announcement~~). Any subsequent mention by the potential offeror of the statement must be accompanied by a reference to the reservation.

~~Except with the consent of the Panel, w~~Where a potential offeror has referred in a statement subject to Rule ~~2.4(c)~~ 2.5(a) to the level of consideration to be paid if an offer is made, that potential offeror will not be allowed subsequently to make an offer for the offeree company at a lower level of consideration other than in wholly exceptional circumstances, or if ~~unless~~ there has occurred an event which the potential offeror specified in the statement as an event which would enable it to set aside the level of consideration referred to.

Where a potential offeror has reserved the right to vary the form and/or mix of the consideration referred to in a statement subject to Rule ~~2.4(c)~~ 2.5(a) (but remains bound to a specified minimum level of consideration) and exercises that right, the value of any offer that is made subsequently must be the same as or better than the value of the consideration referred to in that statement, calculated as at the time of the announcement of the firm intention to make an offer. If, during the period ending when the market closes on the first business day after the announcement of the firm intention to make an offer, the value is not maintained, the Panel will be concerned to ensure that the offeror acted with all reasonable care in determining the consideration. If there is a restricted market in the securities offered, or if the amount of securities to be issued of a class already admitted to trading is large in relation to the amount already issued, the Panel may require justification of prices used to determine the value of the offer.

Where a potential offeror has made a statement of the kind referred to in Rule ~~2.4(c)(ii)~~ 2.5(a)(ii), it will not be permitted to make an offer at a higher level of consideration unless there has occurred an event which the potential offeror specified in the ~~possible offer~~ statement as an event that would enable it to do so.

Once it has announced a firm intention to make an offer, an offeror will not be permitted to exercise any right it had previously reserved either to set aside a statement in relation to the level of consideration that it might offer or to vary the form and/or mix of the consideration.

2~~6~~. Duration of restriction

The restrictions imposed by Rule ~~2.4(c)~~ 2.5(a) will normally apply throughout the period during which the offeree company is in an offer period and for a further three months thereafter.

However, where a potential offeror has made a statement to which Rule 2.8 applies but the offeree company remains in an offer period, the restrictions imposed by Rule ~~2.4(c)~~ 2.5(a) will normally apply for three months following the making of the statement to which Rule 2.8 applies.

3~~7~~. Statements by the offeree company

Any statement made by the offeree company in relation to the terms on which an offer might be made must ~~also~~ make clear whether or not it is being made with the agreement or approval of the potential offeror. Where the statement is made with the agreement or approval of the potential offeror, the statement will be treated as one to which Rule ~~2.4(c)~~ 2.5(a) applies in the same way as if it had been made by the potential offeror itself. Where it is not so made, the statement must also include a prominent warning to the effect that there can be no certainty that an offer will be made nor as to the terms on which any offer might be made.

[Notes 8 and 9 on the current Rule 2.4 to be deleted: see the new Notes 1 and 2 on Rule 2.4]

2.6 TIMING FOLLOWING A POSSIBLE OFFER ANNOUNCEMENT

(a) Subject to Rule 2.6(b), by not later than 5.00 pm on the 28th day following the date of the announcement in which it is first identified, or by not later than any extended deadline, a potential offeror must either:

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

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

unless the Panel has consented to an extension of the deadline.

(b) Rule 2.6(a) will not apply, or will cease to apply, to a potential offeror if another offeror has already announced, or subsequently announces (prior to the relevant deadline), a firm intention to make an offer for the offeree company. In such circumstances, the potential offeror will be required to clarify its intentions in accordance with Rule 2.6(d) below.

(c) The Panel will normally consent to an extension of a deadline set in accordance with Rule 2.6(a), or any previously extended deadline, at the request of the board of the offeree company and after taking into account all relevant factors, including:

(i) the status of negotiations between the offeree company and the potential offeror; and

(ii) the anticipated timetable for their completion.

Where the Panel consents to an extension of a deadline, the offeree company must promptly make an announcement setting out the new deadline and commenting on the matters referred to in paragraphs (i) and (ii) above.

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

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

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

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

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

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

NOTES ON RULE 2.6

1. Deadline extensions

When a request to extend a deadline set under Rule 2.6(a) is made by the board of the offeree company, the Panel will normally give its decision shortly before the time at which the deadline is due to expire. The board of the offeree

company may request different deadline extensions for different potential offerors or may request a deadline extension in relation to one potential offeror but not others.

2. Formal sale process

Where, prior to an offeror having announced a firm intention to make an offer, the board of the offeree company announces that it is seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(a) and (b) and Rule 2.6(a), such that any potential offeror which agrees with the offeree company to participate in that process would not be required to be publicly identified under Rule 2.4(a) or (b) and would not be subject to the 28 day deadline referred to in Rule 2.6(a), for so long as it is participating in that process. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.

3. Date by which announcement required

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

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

2.~~5~~7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

(a) An offeror should ~~only~~ announce a firm intention to make an offer only after the most careful and responsible consideration~~. Such an announcement should be made only~~ and when ~~an~~ the offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.

(b) Following an announcement of a firm intention to make an offer, the offeror must proceed to make the offer unless, in accordance with the provisions of Rule 13, it is permitted to invoke a pre-condition to the making of the offer or would be permitted to invoke a condition to the offer if the offer were made. However, with the consent of the Panel, an offeror need not make the offer if a competing offeror subsequently announces a firm intention to make a higher offer.

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

(i) … **;**

(ii) … **;**

(iii) all conditions ~~(including normal conditions relating to acceptances, admission to listing, admission to trading and increase of capital)~~ or pre-conditions to which the offer or the making of an offer is subject;

(iv) … **;**

(v) … **;**

(vi) … **;**

(vii) ~~details~~ a summary of any offer-related arrangement or other agreement, arrangement or commitment ~~for the payment of an inducement fee or similar arrangement referred to in~~ permitted under, or excluded from, Rule 21.2; ~~and~~

(viii) … **~~.~~; and**

(ix) a list of the documents published on a website in accordance with Rule 26.1 and the address of the website on which the documents are published.

(d~~c~~) …

NOTES ON RULE ~~2.5~~2.7

1. Unambiguous language

…

2. Conditions and pre-conditions

The Panel must be consulted in advance if a person proposes to include in an announcement:

(a) any pre-condition to which the making of an offer will be subject (see Rule 13.3);

(b) a condition or pre-condition relating to financing (see Rule 13.4); or

(c) any conditions which are not entirely objective (see Rule 13.1).

~~*2. Subjective conditions*~~

~~*Companies and their advisers should consult the Panel prior to the publication of any announcement containing conditions which are not entirely objective (see Rule 13).*~~

~~*3. New conditions for increased or improved offers*~~

~~*See Rule 32.4.*~~

~~*4. Pre-conditions*~~

~~*The Panel must be consulted in advance if a person proposes to include in an announcement any pre-condition to which the making of an offer will be subject. (See also Rule 13.)*~~

~~*5. Financing conditions and pre-conditions*~~

~~*See the Note on Rules 13.1 and 13.3.*~~

[current Rule 2.6 and the Notes thereon to be deleted: see the new Rule 2.12 and the Notes thereon]

~~2.7 CONSEQUENCES OF A "FIRM ANNOUNCEMENT"~~

~~When there has been an announcement of a firm intention to make an offer, the offeror must normally make an offer unless, in accordance with the provisions of Rule 13, the offeror is permitted to invoke a precondition to the making of an offer or would be permitted to invoke a condition to the offer if the offer were made.~~

~~*NOTE ON RULE 2.7*~~

~~*When there is no need to make an offer*~~

~~*With the consent of the Panel, an announced offeror need not make an offer if a competitor has already announced a firm intention to make a higher offer.*~~

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

A person making a statement that he does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except <u>in the circumstances described in Note 2,</u> ~~with the consent of the Panel, unless there is a material change of circumstances or there has occurred an event which the person specified in his statement as an event which would enable it to be set aside,~~ neither the person making the statement, nor any person who acted in concert with <u>that person</u> ~~him~~, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

…

NOTES ON RULE 2.8

…

2. When a statement may be set aside~~Rules 2.4(b) and 12.2(b)~~

Except with the consent of the Panel, a statement to which Rule 2.8 applies may be set aside only if:~~Where a statement to which Rule 2.8 applies is made following a time limit being imposed under Rule 2.4(b) or pursuant to Rule 12.2(b)(ii)(A), the only matters that a person will normally be permitted to specify in the statement as matters which would enable it to be set aside are:~~

(a) ~~the agreement or recommendation of~~ the board of the offeree company agrees to the statement being set aside. Where the statement was made at any time following the announcement by a third party of a firm intention to make an offer, the statement may not normally be set aside with the agreement of the board of the offeree company unless that offer has been withdrawn or has lapsed;

(b) ~~the announcement of an offer by~~ a third party announces a firm intention to make an offer for the offeree company; ~~and~~

(c) ~~the announcement by~~ the offeree company ~~of~~ announces a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or ~~of~~ a reverse takeover ~~(see Note 2 on Rule 3.2).~~;

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

(e) the statement was made outside an offer period and an event has occurred which was specified in the statement as being an event which would enable the statement to be set aside (see Note 1).

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

3. Concert parties

…

The restrictions imposed by Rule 2.8 will, however, normally apply to any person acting in concert with the person making the statement to which the Rule applies if the statement is made during an offer period~~following a time limit being imposed under Rule 2.4(b)~~.

4. Media reports

When considering the application of ~~this~~ Rule 2.8, the Panel will take into account not only the statement itself but the manner of any subsequent public reporting of it.

…

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

…

NOTES ON RULE 2.9

1. Distribution of announcements

See Rule ~~19.10~~30.3.

2. ~~Rules 2.11, 6, 7, 8, 9, 11, 12, 17, 30, 31, 32, Appendix 1.6, Appendix 5 and Appendix 7~~ 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, 24.1, 25.1, ~~30.1(a), 30.2(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 this Rule.

2.10 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

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

…

2.11 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

…

NOTES ON RULE 2.11

1. Timing of disclosure

…

No separate disclosure by an offeror is required under Rule 2.11(a) where the relevant information is included in an announcement made under Rule ~~2.5~~ 2.7 which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured.

2. Method of disclosure

Disclosure under this Rule 2.11 should be made in accordance with the requirements of Rule 2.9. See also Rule 26 (documents to be on display).

3. Contents of disclosure

…

(d) in the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer ~~under Rule 2.5~~, the value (and any other material terms) of the possible offer in respect of which the commitment or letter has been procured. (See Rule 2.5(a)~~2.4(c)~~.)

…

2.12 OBLIGATION TO SEND ANNOUNCEMENTS TO SHAREHOLDERS AND MAKE THEM AVAILABLE TO EMPLOYEE REPRESENTATIVES OR EMPLOYEES

(a) Promptly after the commencement of an offer period (except where an offer period begins with an announcement under Rule 2.7), a copy of the relevant announcement must be sent by the offeree company to its shareholders, persons with information rights and the Panel, and must be made readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.

(b) Promptly after the publication of an announcement made under Rule 2.7:

(i) the offeree company must send a copy of that announcement, or a circular summarising the terms and conditions of the offer, to its shareholders, persons with information rights and the Panel; and

(ii) both the offeror and the offeree company must make that announcement, or a circular summarising the terms and conditions of the offer, readily available to their employee representatives or, where there are no employee representatives, to the employees themselves.

(c) Where necessary, the offeror or the offeree company, as the case may be, should explain the implications of the announcement and, in the case of the offeree company, the fact that addresses, electronic addresses and certain other information provided by offeree company shareholders, persons with information rights and other relevant persons for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4. Any circular published under this Rule should also include a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk).

(d) When, under (a) or (b)(ii) above, the offeree company makes a copy of an announcement or a circular summarising the terms and conditions of the offer available to its employee representatives or employees, it must at the same time inform them of the right of employee representatives under Rule 25.9 to have a separate opinion appended to the offeree board's circular, when published in accordance with Rule 25.1, and of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion.

NOTES ON RULE 2.12

1. Where a circular summarising an announcement made under Rule 2.7 is sent

Where, following an announcement made under Rule 2.7, a circular summarising the terms and conditions of the offer is sent or made readily available to shareholders, persons with information rights, employees or employee representatives, the full text of the announcement must be made readily and promptly available to them. In addition, the circular must give details of the website on which a copy of the announcement will be published in accordance with Rule 30.4(a).

2. Shareholders, persons with information rights, employees and employee representatives outside the EEA

See the Note on Rule 23.2.

3. Holders of convertible securities, options or subscription rights

Copies of announcements sent to offeree company shareholders and persons with information rights under Rule 2.12 must also, where practicable, be sent simultaneously to the holders of securities convertible into, rights to subscribe for and options over, shares of the same class as those to which the offer relates. An explanation must also be provided that addresses, electronic addresses and certain other information provided for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4.

Rule 3

3.1 BOARD OF THE OFFEREE COMPANY

…

NOTES ON RULE 3.1

…

3. When no recommendation is given ~~or there is a divergence of views~~

When ~~it is considered~~ the independent adviser considers it impossible to express a view on the merits of an offer, or to give a firm recommendation in its advice to the board of the offeree company, ~~or when there is a divergence of views amongst board members or between the board and the independent adviser as to either the merits of an offer or the recommendation being made,~~ this must be stated and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors.

The Panel should be consulted in such cases~~advance about the explanation which is to be given~~.

3.2 BOARD OF AN OFFEROR COMPANY

…

NOTES ON RULE 3.2

…

~~2. Reverse takeovers~~

~~A transaction will be a reverse takeover if an offeror might as a result need to increase its existing issued voting equity share capital by more than 100%.~~

~~3~~2. Conflicts of interest

…

Rule 5.2

5.2 EXCEPTIONS TO RESTRICTIONS

...

(e) if the acquisition is permitted by Note 11 on Rule 9.1 or Note 5 ~~on~~ of the Notes on Dispensations from Rule 9.

Rule 6

6.1 ACQUISITIONS BEFORE A ~~RULE 2.5~~ FIRM OFFER ANNOUNCEMENT

…

(b) during the period, if any, between the commencement of the offer period and an announcement made by the offeror in accordance with Rule 2.5~~5~~7; or

…

6.2 ACQUISITIONS AFTER A ~~RULE 2.5~~ FIRM OFFER ANNOUNCEMENT

(a) If, after an announcement made in accordance with Rule 2.5~~5~~7 …

…

NOTES ON RULE 6

…

4. Highest price paid

Where a person acquired an interest in shares more than three months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, within the three month period prior to the commencement of the offer period or after the announcement made in accordance with Rule 2.5~~5~~7 …

Rule 7

7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED

…

NOTE ON RULE 7.1

Potential offerors

The requirement of this Rule to make an immediate announcement applies to any ~~publicly announced~~ potential offeror whose existence has been referred to in any announcement (whether ~~named~~ publicly identified or not) either where a public ~~indication~~ statement of the level of its ~~probable~~ possible offer has

been made and the potential offeror or any person acting in concert with it acquires an interest in shares above that level or where ~~there already exists an offer from~~ a third party has announced a firm intention to make an offer and the potential offeror or any person acting in concert with it acquires an interest in shares at above the level of that offer. A Dealing Disclosure will also be required in accordance with Rule 8.1(b).

7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS

…

NOTES ON RULE 7.2

…

3. Dealings by principal traders

After a principal trader … The Panel will not normally require such dealings to be disclosed under Rules 4.6, 8.4, 24.~~3~~4 or 25.~~3~~4. Any such dealings must take place within a time period agreed in advance by the Panel.

…

6. Disclosure of dealings in offer documentation

Interests in relevant securities and dealings (whether before or after the presumptions in Rules 7.2(a) and (b) apply) by connected discretionary fund managers and principal traders (unless exempt) must be disclosed in any offer document in accordance with Rule 24.~~3~~4 and in any offeree board circular in accordance with Rule 25.~~3~~4, as the case may be. This will not apply in respect of a dealing that has been permitted by Note 3 above and has not been required to be disclosed.

Rule 8

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

…

NOTES ON RULE 8

…

12. Potential offerors

(a) If a potential offeror has been referred to in an announcement by the offeree company ~~the subject of an announcement that talks are taking place~~ but has not been publicly identified as such~~named~~, the potential offeror and

persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement in accordance with Rule 8.1(b) or Rule 8.4 respectively.

Rule 9

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

…

NOTES ON RULE 9.1

5. Employee ~~B~~benefit ~~T~~trusts

…

*9. Triggering Rule 9 during an offer period**

…

An offer … Rules 31.4 and 33.1.

Notes 3 and 4 on Rule 32.1 set out certain restrictions on the incurring of an obligation under this Rule during the offer period.[1]

…

9.3 CONDITIONS AND CONSENTS

…

(a) offers made under ~~this~~ Rule 9 must …

…

NOTES ON RULE 9.3

…

2. Acceptance condition

Notes 2-7 on Rule 10 also apply to offers under ~~this~~ Rule 9.

…

3. When dispensations may be granted

[1] This sentence was inadvertently deleted from the 9th edition of the Code.

The Panel will not normally consider a request for a dispensation under this Rule other than in exceptional circumstances, such as:—

(a) when the necessary cash is to be provided, wholly or in part, by an issue of new securities. The Panel will normally require that both the announcement of the offer and the offer document include statements that if the acceptance condition is satisfied but the other conditions required by ~~the Note on Rules 13.1 and 13.3~~ Rule 13.4(b) are not satisfied within the time required by Rule 31.7, and as a result the offer lapses, the offeror will immediately announce a firm intention to make a new cash offer in compliance with this Rule at the price required by Rule 9.5 (or, if greater, at the cash price offered under the lapsed offer); and

…

9.5 CONSIDERATION TO BE OFFERED

…

(d) The cash offer or the cash alternative must remain open after the offer has become ~~or been declared~~ unconditional as to acceptances for not less than 14 days after the date on which it would otherwise have expired (see Rule 31.4).

…

9.6 OBLIGATIONS OF DIRECTORS

When directors (and their close relatives and related trusts) sell shares to a person (or enter into options, derivatives or other transactions) as a result of which that person is required to make an offer under this Rule, the directors must ensure that as a condition of the sale (or other relevant transaction) the person undertakes to fulfil his obligations under the Rule. In addition, except with the consent of the Panel, such directors should not resign from the board until the first closing date of the offer or the date when the offer becomes ~~or is declared~~ wholly unconditional, whichever is the later.

9.7 VOTING RESTRICTIONS AND DISPOSAL OF INTERESTS

NOTE ON RULE 9.7

…

Where a disposal of interests in shares is permitted as an alternative to making an 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.

Rule 12.2

12.2 COMPETITION REFERENCE PERIODS

...

(b) …

(ii) …

(A) any cleared offeror or potential offeror must, normally within 21 days of the offer's being allowed to proceed, clarify its intentions with regard to the offeree company by making an announcement either of a firm intention to make an offer for the offeree company in accordance with Rule 2.~~5~~7 …

Rule 13

13.2 THE COMPETITION COMMISSION AND THE EUROPEAN COMMISSION

Neither a condition included pursuant to Rule 12.1(c) nor a pre-condition included pursuant to Rule 13.3(a) or (b) will be subject to the provisions of Rules 13.1 or 13.4~~5~~(a).

13.3 ACCEPTABILITY OF PRE-CONDITIONS

…

(See Note ~~4~~2 on Rule 2.~~5~~7.)

~~*NOTE ON RULES 13.1 and 13.3*~~

13.4 FINANCING CONDITIONS AND PRE-CONDITIONS

(a) Subject to Rules 13.4(b) and (c), a~~A~~n offer must not ~~normally~~ be made subject to a condition or pre-condition relating to financing. ~~However:~~

(b~~a~~) W~~w~~here the offer is for cash, or includes an element of cash, and the offeror proposes to finance the cash consideration by an issue of new securities, the offer must be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such

securities or to have them listed or admitted to trading. Conditions which will normally be considered necessary for such purposes include:

> **(i) the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre-emptive basis (if relevant); and**
>
> **(ii) where the new securities are to be admitted to listing or to trading on any investment exchange or market, any necessary listing or admission to trading condition (see also Rule 24.~~9~~10).**

Such conditions must not be waivable and the Panel must be consulted in advance.~~; and~~

(c~~b~~) I~~i~~n exceptional cases, the Panel may be prepared to accept a pre-condition relating to financing either in addition to another pre-condition permitted by ~~this~~ Rule 13.3 or otherwise~~;~~, for example where, due to the likely period required to obtain any necessary material official authorisation or regulatory clearance, it is not reasonable for the offeror to maintain committed financing throughout the offer period~~, in which~~. In such a case:

> **(i) the financing pre-condition must be satisfied (or waived), or the offer must be withdrawn, within 21 days after the satisfaction (or waiver) of any other pre-condition or pre-conditions permitted by ~~this~~ Rule 13.3; and**
>
> **(ii) the offeror and its financial adviser must confirm in writing to the Panel before announcement of the offer that they are not aware of any reason why the offeror would be unable to satisfy the financing pre-condition within that 21 day period.**

(d) If, at any time, the offeror or its financial adviser becomes aware, or considers it likely, that the offeror would be unable to satisfy a financing pre-condition, it must promptly notify the Panel.

13.~~4~~5 INVOKING CONDITIONS AND PRE-CONDITIONS

…

13.~~5~~6 INVOKING OFFEREE PROTECTION CONDITIONS

…

NOTES ON RULE 13.~~5~~6

…

Rule 18

RULE 18. THE USE OF PROXIES AND OTHER AUTHORITIES IN RELATION TO ACCEPTANCES*

…

(a) the proxy may not vote, the rights may not be exercised and no other action may be taken unless the offer is wholly unconditional or, in the case of voting by the proxy, the resolution in question concerns the last remaining condition of the offer (other than any condition covered by Rule 24.~~9~~10) and the offer will become wholly unconditional (save, where relevant, for the satisfaction of any condition covered by Rule 24.~~9~~10) or lapse depending upon the outcome of that resolution;

…

Rule 19

19.1 STANDARDS OF CARE

…

NOTES ON RULE 19.1

…

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.

~~3~~4. Sources

…

~~4~~5. Quotations

…

~~5~~6. Diagrams etc.

…

~~6~~7. Use of other media~~television, videos, audio tapes etc.~~

If ~~any of these~~ other media are to be used, even when they do not constitute advertisements (see Rule 19.4), the Panel must be consulted in advance.

~~7~~8. Financial Services and Markets Act 2000

…

~~8~~9. Merger benefits statements

…

19.2 RESPONSIBILITY

(a) … **This Rule does not apply to:**

(i) advertisements falling within … Rule 19.4; ~~and~~

(ii) advertisements … required by this Rule~~.~~; and

(iii) any separate opinion of the employee representatives of the offeree company on the effects of the offer on employment, as referred to in Rule 25.9 or Rule 32.6.

…

19.3 UNACCEPTABLE STATEMENTS

…

NOTE~~S~~ ON RULE 19.3

~~1. Holding statements~~

~~While an offeror may need to consider its position in the light of new developments, and may make a statement to that effect, and while a potential competing offeror may make a statement that it is considering making an offer, it is not acceptable for such statements to remain unclarified for more than a limited time in the later stages of the offer period. Before any statements of this kind are made, the Panel must be consulted as to the period allowable for clarification. This does not detract in any way from the obligation to make timely announcements under Rule 2.~~

~~In the case of a scheme of arrangement, see Section 4 of Appendix 7.~~

~~2.~~ Statements of support

… The Panel will not require separate verification by an offeror where the information required by Note 3 on Rule 2.11 is included in an announcement

made under Rule 2.~~5~~7 which is published no later than 12 noon on the business day following the date on which the letter of intent is procured.

19.4 ADVERTISEMENTS

…

NOTES ON RULE 19.4

…

4. Use of ~~alternative~~ other media

…

[Rules 19.8 to 19.11 to be deleted: see new Rules 30.1 to 30.4]

Rule 20

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

…

NOTES ON RULE 20.1

…

3. Meetings

…

In the case of any meeting held prior to the offer period, the representative should confirm that no material new information was forthcoming and no significant new opinions were expressed at the meeting which will not be included in the announcement of the offer to be made under Rule 2.~~5~~7, if and when such announcement is made.

…

The above provisions apply to all such meetings held prior to or during an offer period wherever they take place and even if with only one person or firm, unless the meetings take place by chance. ~~Meetings with employees in their capacity as such (rather than in their capacity as shareholders) are not normally covered by this Note, although the Panel should be consulted if any employees are interested in a significant number of shares.~~

…

5. Shareholders and persons with information rights outside the EEA

See the Note on Rule ~~30.3~~23.2.

6. Sharing information with employee representatives or employees

Subject to the requirements of Rule 2.1, the Code does not prevent the passing of information in confidence by:

(a) an offeror or the offeree company to their employee representatives or employees; or

(b) an offeror to the employee representatives or employees of the offeree company,

where the employee representatives or employees are acting in their capacity as such (rather than in their capacity as shareholders).

Meetings with employee representatives or employees acting in their capacity as such, both prior to and during the offer period, are not normally covered by Note 3 on Rule 20.1, although the Panel should be consulted if any employees are interested in a significant number of shares.

20.2 EQUALITY OF INFORMATION TO COMPETING OFFERORS

Any information given to one offeror or potential offeror, whether publicly identified or not~~named or unnamed~~, must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. This requirement will usually only apply when there has been a public announcement of the existence of the offeror or potential offeror to which information has been given or, if there has been no public announcement, when the offeror or bona fide potential offeror requesting information under this Rule has been informed authoritatively of the existence of another potential offeror.

NOTES ON RULE 20.2

...

4. Mergers and reverse takeovers

Where an offer or possible offer is a reverse takeover ~~might result in an offeror needing to increase its existing issued voting equity share capital by 100% or more~~, an offeror or potential offeror for either party to such an offer or possible offer will be entitled to receive information which has been given by such party to the other party.

Rule 21.2

[Rule 21.2 and the Notes on Rule 21.2 to be deleted]

21.2 INDUCEMENT FEES AND OTHER OFFER-RELATED ARRANGEMENTS

(a) Except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into any offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer is reasonably in contemplation.

(b) An offer-related arrangement means any agreement, arrangement or commitment in connection with an offer, including any inducement fee arrangement or other arrangement having a similar or comparable financial or economic effect, but excluding:

(i) a commitment to maintain the confidentiality of information provided that it does not include any other provisions prohibited by Rules 21.2(a) or 2.3(d) or otherwise under the Code;

(ii) a commitment not to solicit employees, customers or suppliers;

(iii) a commitment to provide information or assistance for the purposes of obtaining any official authorisation or regulatory clearance;

(iv) irrevocable commitments and letters of intent;

(v) any agreement, arrangement or commitment which imposes obligations only on an offeror or any person acting in concert with it, other than in the context of a reverse takeover; and

(vi) any agreement relating to any existing employee incentive arrangement.

(c) If there is any doubt as to whether any proposed agreement, arrangement or commitment is subject to this Rule, the Panel should be consulted at the earliest opportunity.

NOTES ON RULE 21.2

1. Competing offerors

Where an offeror has announced a firm intention to make an offer which was not recommended by the board of the offeree company at the time of that announcement and remains not recommended, the Panel will normally consent to the offeree company entering into an inducement fee arrangement

with a competing offeror at the time of the announcement of its firm intention to make a competing offer, provided that:

(a) the aggregate value of the inducement fee or fees that may be payable by the offeree company is de minimis, i.e. normally no more than 1% of the value of the offeree company calculated by reference to the price of the competing offer (or, if there are two or more competing offerors, the first competing offer) at the time of the announcement made under Rule 2.7; and

(b) any inducement fee is capable of becoming payable only if an offer becomes or is declared wholly unconditional.

2. Formal sale process

Where, prior to an offeror having announced a firm intention to make an offer, the board of the offeree company announces that it is seeking one or more potential offerors by means of a formal sale process, the Panel will normally grant a dispensation from the prohibition in Rule 21.2, such that the offeree company would be permitted, subject to the same provisos as set out in Note 1(a) and (b) above, to enter into an inducement fee arrangement with one offeror (who had participated in that process) at the time of the announcement of its firm intention to make an offer. In exceptional circumstances, the Panel may also be prepared to consent to the offeree company entering into other offer-related arrangements with that offeror. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.

3. "Whitewash" transactions

Rule 21.2 also applies in the context of a "whitewash" transaction. The Panel should be consulted at an early stage where a "whitewash" transaction is proposed.

4. Disclosure and display

An announcement of a firm intention to make an offer, offer document or whitewash circular, as the case may be, must include a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2 and a copy of the agreement, arrangement or commitment must be put on display in accordance with Rule 26.1.

Rule 22

RULE 22. RESPONSIBILITIES OF THE OFFEREE COMPANY AND AN OFFEROR REGARDING REGISTRATION PROCEDURES AND PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE

…

NOTES ON RULE 22

…

2. Rule 2.~~6~~12

Where, following the commencement of an offer period, the offeree company has sent a person a copy of an announcement or a circular in accordance with the provisions of Rule 2.~~6~~12, …

Rule 23

RULE 23. ~~THE~~ GENERAL OBLIGATIONS AS TO INFORMATION

23.1 SUFFICIENT INFORMATION

Shareholders must be given …

…

NOTES ON RULE 23.1

…

~~*3. Shareholders and persons with information rights outside the EEA*~~

~~*See the Note on Rule 30.3.*~~

23.2 MAKING DOCUMENTS, ANNOUNCEMENTS AND INFORMATION AVAILABLE TO SHAREHOLDERS, PERSONS WITH INFORMATION RIGHTS AND EMPLOYEE REPRESENTATIVES OR EMPLOYEES

If a document, an announcement or any information is required to be sent, published or made available to:

(a) shareholders in the offeree company;

(b) persons with information rights; or

(c) employee representatives or employees of the offeror or the offeree company,

pursuant to Rule 2.12, 20.1, 23.1, 24.1, 24.15, 25.1, 30.2, 30.4, 32.1 or 32.6(a), it must be sent, published or made available (as the case may be) to all such persons, including those who are located outside the EEA, unless there is sufficient objective justification for not doing so.

NOTE ON RULE 23.2

Shareholders, persons with information rights, employees and employee representatives outside the EEA

Where local laws or regulations of a particular non-EEA jurisdiction may result in a significant risk of civil, regulatory or, particularly, criminal exposure for the offeror or the offeree company if the information or documentation is sent, published or made available to shareholders in that jurisdiction without any amendment, and unless they can avoid such exposure by making minor amendments to the information being provided or documents being sent, published or made available either:

(a) the offeror or the offeree company need not provide such information or send, publish or make such information or documents available to registered shareholders of the offeree company or persons with information rights who are located in that jurisdiction if less than 3% of the shares of the offeree company are held by registered shareholders located there at the date on which the information is to be provided or the information or documents are to be sent, published or made available (and there is no need to consult the Panel in these circumstances); or

(b) in all other cases, the Panel may grant a dispensation where it would be proportionate in the circumstances to do so having regard to the cost involved, any resulting delay to the transaction timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company.

Similar dispensations will apply in respect of information or documents which are sent, published, provided or required to be made available to employee representatives or employees of the offeror or the offeree company.

The Panel will not normally grant any dispensation in relation to shareholders, persons with information rights, employee representatives or employees of the offeree company who are located within the EEA.

23.3 FINANCIAL ADVISERS' OPINIONS

If any document published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn its consent to the publication of the document with the inclusion of its recommendation or opinion in the form and context in which it is included.

Rule 24

24.1 THE OFFER DOCUMENT

(a) The offeror must, normally within 28 days of the announcement of a firm intention to make an offer, send an offer document to shareholders of the offeree company and persons with information rights, in accordance with Rule 30.1. At the same time, both the offeror and the offeree company must make the offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves. The Panel must be consulted if the offer document is not to be published within this period.

(b) On the day of publication, the offeror must:

(i) publish the offer document on a website in accordance with Rule 30.4; and

(ii) announce via a RIS that the offer document has been so published.

24.~~1~~2 INTENTIONS REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND THEIR EMPLOYEES

(a) ~~An offeror will be required to cover the following points i~~In the offer document, the offeror must state 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:—

~~(a) its intentions regarding the future business of the offeree company;~~

(i) 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;

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

(~~c~~iii) its intentions ~~regarding~~ with regard to any redeployment of the fixed assets of the offeree company; and

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

~~(d) the long-term commercial justification for the proposed offer; and~~

~~(e) 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.**~~

(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(i) to (iii) 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 ~~cover~~ state its intentions with regard to its future business and comply with (a)(i), ~~(b)~~ and (~~e~~ii) with regard to itself.

24.3~~2~~ FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER

Except with the consent of the Panel:—

(a) where ~~the consideration includes securities and~~ the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to trading on a UK regulated market ~~the Official List or to trading~~ or on AIM or PLUS, the offer document must contain:

(i) the names of its directors;

(ii) the nature of its business and its financial and trading prospects;

(iii) details of the website address where its audited consolidated accounts for the last two financial years have been published and a statement that the accounts have been incorporated into the offer document by reference to that website in accordance with Rule 24.15;

(iv) details of the website address where any interim statement and/or preliminary announcement made since the date of its last published audited accounts have been published and a statement that any such statement or announcement has been incorporated into the offer document by reference to that website in accordance with Rule 24.15;

~~**(i) for the last 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, minority interests, the amount absorbed by dividends and earnings and dividends per share;**~~

~~**(ii) a statement of the assets and liabilities shown in the last published audited accounts;**~~

~~(iii) a cash flow statement if provided in the last published audited accounts;~~

(~~v~~**iv**) **in the case of a securities exchange offer, ~~all~~ a description of any known ~~material changes~~ significant change in ~~the~~ its financial or trading position which has occurred since the end of the last financial period for which either audited financial information or interim financial information has been published, or provide an appropriate negative statement~~of the company subsequent to the last published audited accounts or a statement that there are no known material changes~~;**

~~(v) details relating to items referred to in (i) above in respect of any interim statement or preliminary announcement made since the last published audited accounts;~~

~~(vi) inflation-adjusted information if any of the above has been published in that form;~~

~~(vii) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures, including those relating to inflation-adjusted information;~~

~~(viii) where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated;~~

~~(ix) the names of the offeror's directors;~~

~~(x) the nature of its business and its financial and trading prospects; and~~

(vi) a statement of the effect of full acceptance of the offer upon its earnings and assets and liabilities; and

(**vii**~~xi~~) **a summary of the principal contents of each material contract … ;**

~~(b) where the consideration is cash only and the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to the Official List or to trading on AIM, the offer document must contain:~~

~~(i) for the last two financial years for which information has been published, turnover and profit or loss before taxation;~~

~~(ii) a statement of the net assets of the company shown in the last published audited accounts;~~

~~(iii) the names of the company's directors; and~~

~~(iv) the nature of the business and its financial and trading prospects;~~

(b~~c~~) if the offeror is other than a company referred to in (a) ~~and (b)~~ above, ~~whether the consideration is securities or cash,~~ the offer document must contain:

(i) in respect of the offeror, the information described in (a) above (so far as appropriate) and such further information as the Panel may require in the particular circumstances (see Note 2);

…

(c) the offer document must contain summary details of any current ratings and outlooks publicly accorded to the offeror and the offeree company by ratings agencies prior to the commencement of the offer period, any changes made to previous ratings or outlooks during the offer period, and a summary of the reasons given, if any, for any such changes;

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

(i) … **;**

(ii) the date when the document is published, the name and address of the offeror (including, where the offeror is a company, the type of company and the address of its registered office) ~~and, if appropriate, of the person making the offer on behalf of the offeror~~;

(iii) … **(See Note 34);**

(iv) … **;**

(v) the terms of the offer, including the consideration offered for each class of security, the total consideration offered and particulars of the way in which the consideration is to be paid in accordance with Rule 31.8 or, in the case of a scheme of arrangement, Section 10 of Appendix 7;

(vi) all conditions ~~(including normal conditions relating to acceptances, admission to listing, admission to trading and increase of capital)~~ to which the offer is subject;

(vii) particulars of all documents required, and procedures to be followed, for acceptance of the offer or, in the case of a scheme of arrangement, for voting;

(viii) the middle market quotations for the securities to be acquired, and (in the case of a securities exchange offer) securities offered, for the first business day in each of the six months immediately before the date of the offer document, for the last business day before the commencement of the offer period and for the latest available date before the publication of the offer document, together with the source ~~(quotations stated in respect of securities admitted either to the Official List or to trading on AIM should be taken from the Stock Exchange Daily Official List and,~~ (or, if any of the securities are not ~~so~~ admitted to trading, any information available as to the number and price of transactions which have taken place during the preceding six months ~~should be stated~~, together with the source, or an appropriate negative statement);

(ix) … **;**

(x) … **;**

(xi) … **;**

~~(xii) in the case of a securities exchange offer, the effect of full acceptance of the offer upon the offeror's assets, profits and business which may be significant for a proper appraisal of the offer;~~

(xii~~i~~) a summary … **;**

(xiii~~v~~) the national law … **;**

(xiv) the compensation … **; ~~and~~**

(xv~~i~~) ~~details~~ a summary of any offer-related arrangement or other agreement, arrangement or commitment ~~for the payment of an inducement fee or similar arrangement as referred to in~~ permitted under, or excluded from, Rule 21.2; and

(xvi) a list of the documents which the offeror has published on a website in accordance with Rules 26.1 and 26.2 and the address of the website on which the documents are published.

(e) the offer document must contain information on the offeree company on the same basis as set out in (a)(i) to (vi~~x~~) above;

~~(f) all offer documents must contain a description of how the offer is to be financed and the source of the finance. The principal lenders or~~

~~**arrangers of such finance must be named. Where the offeror intends that the payment of interest on, repayment of or security for any liability (contingent or otherwise) will depend to any significant extent on the business of the offeree company, a description of the arrangements contemplated will be required. Where this is not the case, a negative statement to this effect must be made;**~~

(f) the offer document must contain a description of how the offer is to be financed and the source(s) of the finance. Details must be provided of the debt facilities or other instruments entered into in order to finance the offer and to refinance the existing debt or working capital facilities of the offeree company and, in particular:

(i) the amount of each facility or instrument;

(ii) the repayment terms;

(iii) interest rates, including any "step up" or other variation provided for;

(iv) any security provided;

(v) a summary of the key covenants;

(vi) the names of the principal financing banks; and

(vii) if applicable, details of the time by which the offeror will be required to refinance the acquisition facilities and of the consequences of its not doing so by that time; and

(g) … ~~**; and**~~**.**

~~**(h) if any document published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn his consent to the publication of the document with the inclusion of his recommendation or opinion in the form and context in which it is included.**~~

NOTES ON RULE 24.~~2~~3

…

2. Further information requirements

*(a) For the purpose*s *of paragraphs (ii) and (iii) of Rule 24.*~~2~~*3(b*~~e~~*), the expression "person" will normally include the ultimate owner(s), and persons having control (as defined), of the offeror if not already included under paragraphs (ii) or (iii). Whilst the precise nature of the further information*

which may be required to be disclosed under paragraphs (i), (ii) or (iii) of Rule 24.3(b) in any particular case will depend on the circumstances of that case, the Panel would normally expect it to include a general description of the business interests of the offeror and/or other person(s) concerned and details of those assets which the Panel considers may be relevant to the business of the offeree company.

(b) The Panel must be consulted in advance in any case to which Rule 24.~~2~~3(b~~c~~) applies, or may apply regarding the application of its provisions to that particular case. Where information is incorporated into the offer document by reference to another source, the Panel will normally require that information to be available in the English language.

~~3. Partial offers~~

~~Where the offer is a partial offer, the offer document must contain the information required under Rule 24.2(a), whether the consideration is securities or cash.~~

3~~4~~. Persons acting in concert with the offeror

For the purposes of Rule 24.~~2~~3(d)(iii), …

4~~5~~. Offers made under Rule 9

When an offer is made under Rule 9, the information required under Rule 24.~~2~~3(d)(v) must include the method employed under Rule 9.5 in calculating the consideration offered.

~~6. Certain offers where the consideration is solely in cash~~

~~The Panel will normally consent to the provisions of Rules 24.2(b), (c)(i) (to the extent that it refers to Rule 24.2(a)) and (f) being disapplied in relation to offers where the consideration is solely in cash provided that the offer (including all related offers and proposals) is structured so that no person will remain or become a minority shareholder in the offeree company, or the risk of anyone doing so is negligible. In such circumstances, the offer document or scheme circular must nonetheless contain the names of the offeror's directors.~~

~~If an offer to which this Note applies is subsequently restructured with the effect that:~~

~~(a) the consideration is no longer solely in cash; or~~

~~(b) the transaction structure switches to a contractual offer where the risk of a person remaining or becoming a minority shareholder in the offeree company is not negligible,~~

~~*the provisions of Rules 24.2(b), (c)(i) and (f) will apply in full and the information required by those provisions must be included in the supplementary scheme circular or offer document (as appropriate).*~~

~~*Where Rule 24.2(c)(i) applies, compliance with the "further information" requirements of that rule will still be required (see Note 2 on Rule 24.2).*~~

~~*The Panel should be consulted in advance where consent to the disapplication of any of the requirements of Rule 24.2(b), (c)(i) or (f) is sought.*~~

…

24.~~3~~4 INTERESTS AND DEALINGS

…

(b) If, in the case of any of the persons referred to in Rule 24.~~3~~4(a), …

(c) If any person referred to in Rule 24.~~3~~4(a) …

…

NOTES ON RULE 24.~~3~~4

…

2. Aggregation

…

Acquisitions and disposals … should be put on display in accordance with Rule 26.2.

3. Discretionary fund managers and principal traders

Interests in relevant securities and short positions of non-exempt discretionary fund managers and principal traders which are connected with the offeror and their dealings since the date 12 months prior to the offer period will need to be disclosed under Rules 24.~~3~~4(a)(ii)(b) *and 24.~~3~~4(c) respectively.*

4. Competing offerors

Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 24.~~3~~4(a)(iii) and (iv), 24.~~3~~4(b) and 24.~~3~~4(c) must be included in relation to the relevant securities of each offeror or potential offeror (other than any cash offeror).

24.4~~5~~ DIRECTORS' EMOLUMENTS

…

NOTE ON RULE 24.~~4~~5

…

24.~~5~~6 SPECIAL ARRANGEMENTS

…

24.~~6~~7 INCORPORATION OF OBLIGATIONS AND RIGHTS*

The offer document must state the time allowed for acceptance of the offer and any alternative offer and must incorporate language which appropriately reflects Notes 4–8 on Rule 10 and those parts of Rules 13.~~4~~5(a), 13.~~5~~6 (if applicable), 17 and 31–34 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.

NOTES ON RULE 24.~~6~~7

…

2. Rule 31.6(c)

Rule 24.~~6~~7 does not apply …

24.~~7~~8 CASH CONFIRMATION

…

24.~~8~~9 ULTIMATE OWNER OF SECURITIES ACQUIRED

…

24.~~9~~10 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS*

…

**This Rule is disapplied in a scheme. See Section 15 of Appendix 7.*

24.1~~0~~1 ESTIMATED VALUE OF UNQUOTED PAPER CONSIDERATION

…

24.1~~1~~2 NO SET-OFF OF CONSIDERATION

…

24.1~~2~~3 ARRANGEMENTS IN RELATION TO DEALINGS

…

24.1~~3~~4 CASH UNDERWRITTEN ALTERNATIVES WHICH MAY BE SHUT OFF*

…

24.1~~4~~5 INCORPORATION OF INFORMATION BY REFERENCE

~~**(a) The information required to be included in documents under the following Rules may be incorporated into the relevant documents by reference to another source:**~~

~~**(i) Rules 24.2(a)(i) to (iii) and (v) to (viii);**~~

~~**(ii) Rules 24.2(b)(i) and (ii); and**~~

~~**(iii) Rules 24.2(c) and (e), in so far as they refer to Rules 24.2(a)(i) to (iii) and (v) to (viii).**~~

(a) In addition to the requirements under Rules 24.3(a)(iii) and (iv) (and, insofar as they refer to Rules 24.3(a)(iii) and (iv), Rules 24.3(b) and (e)) for certain information to be incorporated into an offer document by reference to a website, i~~I~~nformation that is required to be included in a document under other Rules may be incorporated by reference to another source with the Panel's consent.

…

NOTE ON RULE 24.1~~4~~5

…

24.16 FEES AND EXPENSES

(a) The offer document must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeror in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to:

(i) financing arrangements;

(ii) financial and corporate broking advice;

(iii) legal advice;

(iv) accounting advice;

(v) public relations advice;

(vi) other professional services (including, for example, management consultants, actuaries and specialist valuers); and

(vii) other costs and expenses.

(b) Where any fee is variable between defined limits, a range must be given in respect of the aggregate fees and expenses and of the fees and expenses of each relevant category, setting out the expected maximum and minimum amounts payable. See Note 2.

(c) Where the fees and expenses payable within a particular category are likely to exceed the estimated maximum previously disclosed by 10% or more, the offeror must promptly disclose to the Panel revised estimates of the aggregate fees and expenses expected to be incurred in relation to the offer and of the fees and expenses expected to be incurred within that category. The Panel may require the public disclosure of such revised estimates where it considers this to be appropriate.

(d) Where the final fees and expenses actually paid within a particular category exceed the amount publicly disclosed as the estimated maximum payable by 10% or more, the offeror must promptly disclose to the Panel the final amount paid in respect of that category. The Panel may require the public disclosure of such final amount where it considers this to be appropriate.

NOTES ON RULE 24.16

1. Financing fees and expenses

Full details should be given of any fees and expenses payable, or estimated to be payable in relation to:

(a) entering into any financing commitment; and

(b) drawing down any financing.

Any commitment fees should normally be disclosed by means of describing the principal amounts of the financing facilities and the annual percentage rate applicable for the period of time between commitment and drawdown. A cross-reference to the description of how the offer is to be financed, as required under Rule 24.3(f), will normally be sufficient.

2. Variable and uncapped fee arrangements

Where a fee is variable or is not subject to a maximum amount, this should be stated and an indication of the nature of the arrangement given (for example, whether the amount of the fee is discretionary, relates to the outcome or final value of the offer or will be calculated on a "time cost" or other basis).

Where a particular category of fees and expenses includes a variable or uncapped element, the figure or range given should reflect a reasonable estimate of the fees likely to be paid on the basis of the terms of the then current offer.

Where a fee arrangement provides for circumstances in which the fee will or may increase, for example where the offer is revised or a competitive situation arises, the higher amount will not be required to be disclosed unless and until such circumstances arise.

Rule 25

25.1 THE OFFEREE BOARD CIRCULAR

(a) The board of the offeree company must, normally within 14 days of the publication of the offer document, send a circular to the offeree company's shareholders and persons with information rights, in accordance with Rule 30.1 and must, at the same time, make it readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.

(b) On the day of publication, the offeree company must:

(i) publish the circular on a website in accordance with Rule 30.4; and

(ii) announce via a RIS that it has been so published.

NOTE ON RULE 25.1

Where there is no separate offeree board circular

Where the offeree board's circular is combined with the offer document, Rule 25.1 will not apply. However, Rules 25.2 to 25.9 will apply to the combined document.

25.~~1~~2 VIEWS OF THE OFFEREE BOARD ON THE OFFER, INCLUDING THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES

~~(a) The board of the offeree company must send its opinion on the offer (including any alternative offers) to the offeree company's shareholders and persons with information rights. It must, at the same time, make known to its shareholders the substance of the advice given to it by the independent advisers appointed pursuant to Rule 3.1.~~

(~~b~~a) The ~~opinion referred to in (a) above~~ offeree board circular must ~~include~~ set out the opinion of the board on the offer (including any

alternative offers) and the board's reasons for forming its opinion and must include ~~the~~ its views ~~of the board of the offeree company~~ on:

(i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and

(ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business, as set out in the offer document pursuant to Rule 24.~~1~~2~~,~~.

~~and must state the board's reasons for forming its opinion.~~

(b) In addition, the circular must include the substance of the advice given to the board of the offeree company by the independent adviser appointed under Rule 3.1.

~~(c) If any document published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn its consent to the publication of the document with the inclusion of its recommendation or opinion in the form and context in which it is included.~~

NOTES ON RULE 25.~~1~~2

~~1. When a board has effective control~~

~~A board whose shareholdings confer control over a company which is the subject of an offer must carefully examine the reasons behind the advice it gives to shareholders and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.~~

1. Factors which may be taken into account

The provisions of the Code do not limit the factors that the board of the offeree company may take into account in giving its opinion on the offer in accordance with Rule 25.2(a). In particular, when giving its opinion, the board of the offeree company is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors which it considers relevant.

2. ~~Split boards~~ Where there is no clear opinion or there is a divergence of views

If the board of the offeree company ~~is split in its views~~ does not reach a clear opinion on an offer, or if there is a divergence of views among its members, or

between the board and the independent adviser appointed under Rule 3.1, this must be stated and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors. The Panel should be consulted in advance about the explanation which is to be given.

T~~t~~he views of any directors who are in a minority should also be included in the circular. ~~publish their views. The Panel will normally require the offeree company to send those views to the offeree company's shareholders and persons with information rights.~~

3. When a board has effective control

A board whose shareholdings confer control over an offeree company must carefully examine the reasons behind its opinion on the offer and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.

~~3~~4. Conflicts of interest

…

~~4~~5. Management buy-outs

…

25.~~2~~3 FINANCIAL AND OTHER INFORMATION

The ~~first major~~ offeree board circular ~~published by the offeree board in connection with an offer (whether recommending acceptance or rejection of the offer)~~ must contain ~~all~~ a description of any known ~~material changes~~ significant change in the financial or trading position of the offeree company which has occurred since the end of the last financial period for which either audited financial information or interim financial information has been published, or provide an appropriate negative statement~~subsequent to the last published audited accounts or a statement that there are no known material changes~~.

NOTES ON RULE 25.~~2~~3

1. Offeree board circular combined with offer document

Where the ~~first major~~ offeree board circular ~~published by the offeree board~~ is combined with the offer document, it will be the responsibility of the offeree board to include the information required by ~~this~~ Rule 25.3. Accordingly, the offeror will not be required to comply with Rule 24.~~2~~3(e) insofar as it applies to Rule 24.~~2~~3(a)(v~~iv~~).

2. Offeree board circular published after offer document

Where the offeror has included in the offer document information on the offeree company as required by Rule 24.~~2~~3(e) insofar as it applies to Rule~~s~~ 24.~~2~~3(a)~~(iv) and~~ (v), such information does not need to be repeated in the ~~first major~~ offeree board circular ~~published by the offeree board~~ provided that the statement made in accordance with ~~this~~ Rule 25.3 makes specific reference to the relevant information disclosed by the offeror in the offer document.

25.~~3~~4 INTERESTS AND DEALINGS

(a) The ~~first major~~ offeree board circular ~~published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer)~~ must state:—

…

(b) If, in the case of any of the persons referred to in Rule 25.~~3~~4(a), …

(c) If any person referred to in Rule 25.~~3~~4(a)(i) has dealt in any relevant securities of the offeree company or the offeror between the start of the offer period and the latest practicable date prior to the publication of the circular, the details, including dates, must be stated (see Note 5 on Rule 8). If any person referred to in Rule 25.~~3~~4(a)(ii)*(b)* to *(c)* has dealt in relevant securities of the offeree company (or, in the case of a securities exchange offer only, the offeror) during the same period, similar details must be stated. In all cases, if no such dealings have taken place this fact should be stated.

…

NOTES ON RULE 25.~~3~~4

(See also Notes on Rule 24.~~3~~4 which apply equally to this Rule.)

…

2. Competing offerors

Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 25.~~3~~4(a)(i), (iii) and (iv) must be included in relation to the relevant securities of each offeror or potential offeror (other than any cash offeror). Similarly, where more than one offeror has announced an offer in accordance with Rule 2.~~5~~7, the details required by Rule 25.~~3~~4(a)(v) must be included in respect of each offer.

25.~~4~~5 DIRECTORS' SERVICE CONTRACTS

(a) The ~~first major~~ offeree board circular ~~published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer)~~ must contain …

…

NOTES ON RULE 25.4~~4~~5

1. Particulars to be disclosed

Particulars in respect of existing service contracts and, where appropriate under Rule 25.4~~4~~5(b), earlier contracts or an appropriate negative statement must be provided as follows:—

…

25.5~~5~~6 ARRANGEMENTS IN RELATION TO DEALINGS

The ~~first major~~ offeree board circular ~~published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer)~~ must disclose …

…

25.6~~6~~7 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT, AND DOCUMENTS ON DISPLAY

The ~~first major~~ offeree board circular ~~published by the offeree board in connection with an offer~~ must contain:~~—~~

(a) … **; ~~and~~**

(b) … **~~.~~; and**

(c) a list of the documents which the offeree company has published on a website in accordance with Rules 26.1 and 26.2 and the address of the website on which the documents are published.

…

25.8 FEES AND EXPENSES

The offeree board circular must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeree company in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to the matters specified in paragraphs (ii) to (vii) of Rule 24.16(a). The other provisions of Rule 24.16 and Note 2 on Rule 24.16 also apply as if references to the offeror were references to the offeree company.

25.9 THE EMPLOYEE REPRESENTATIVES' OPINION

The board of the offeree company must append to its circular a separate opinion from its employee representatives on the effects of the offer on

employment, provided such opinion is received in good time before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must promptly publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received no later than 14 days after the date on which the offer becomes or is declared wholly unconditional.

NOTES ON RULE 25.9

1. Offeree company's responsibility for costs

The offeree company must pay for the publication of the employee representatives' opinion and for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion in order to comply with the standards of Rule 19.1. (See also Rule 32.6(b).)

2. Notification of the rights of employee representatives under Rule 25.9

See Rule 2.12(d).

Rule 26

RULE 26. DOCUMENTS TO BE ON DISPLAY

26.1 DOCUMENTS TO BE ON DISPLAY FOLLOWING THE ANNOUNCEMENT OF AN OFFER

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

(a) any irrevocable commitment or letter of intent procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;

(b) any documents relating to the financing of the offer (Rule 24.3(f));

(c) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert; and

(d) any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2.

26.2 DOCUMENTS TO BE ON DISPLAY FOLLOWING THE MAKING OF AN OFFER

Except with the consent of the Panel, copies of the following documents must be ~~made available for inspection and~~ published on a website from the time the offer document or offeree board circular, as appropriate, is published until the end of the offer (~~and~~ including any related competition reference period)~~. The offer document or offeree board circular must state which documents are so available, the place (being a place in the City of London or such other place as the Panel may agree) where inspection can be made and the address of the website on which the documents are published~~:

(a) … ;

~~**(b) audited consolidated accounts of the offeror or the offeree company for the last two financial years for which these have been published;**~~

(b~~c~~) … ;

(c~~d~~) written consents of the financial advisers (Rules ~~24.2(h) and 25.1(c)~~23.3);

(d~~e~~) any material contract entered into by an offeror or the offeree company, or any of their respective subsidiaries, in connection with the offer that is described in the offer document or offeree board circular (as appropriate) in compliance with Rule 24.23(a), Rule 24.23(b~~c~~) or Rule 25.67(a);

(e~~f~~) where a profit forecast has been made:

(i) the reports of the auditors or consultant accountants and of the financial advisers (Rule 28.3); and

(ii) … ;

(f~~g~~) where an asset valuation has been made:

(i) the valuation certificate and associated report or schedule containing details of the aggregate valuation (Rule 29.5(c)); and

(ii) a letter stating that the valuer has given and not withdrawn his consent to the publication of his name in the relevant document (Rule 29.5(b));

~~**(h) any document evidencing an irrevocable commitment or a letter of intent which has been procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;**~~

(gi) where the Panel has given consent to aggregation of dealings, a full list of all dealings (Note 2 on Rule 24.334);

(j) documents relating to the financing arrangements for the offer where such arrangements are described in the offer document in compliance with the third sentence of Rule 24.2(f);

(hk) all derivative contracts which in whole or in part have been disclosed under Rules 24.334(a) and (c) and 25.334(a) and (c) or in accordance with Rules 8.1, 8.2 or 8.4. Documents in respect of the last mentioned must be made available for inspection published from the time the offer document or the offeree board circular is published or from the time of disclosure, whichever is the later; and

(l) documents relating to the payment of an inducement fee or similar arrangement (Rule 21.2);

(im) any agreements or arrangements, or, if not reduced to writing, a memorandum of all the terms of such agreements or arrangements, which relate to the circumstances in which the offeror may or may not invoke or seek to invoke a condition to its offer disclosed in the offer document pursuant to (Rule 24.223(d)(ix));.

(n) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert;

(o) in the case of an offeror, the offer document and any revised offer document (Rules 30.1(a) and 32.1(a)); and

(p) in the case of the offeree company, the offeree board circular and any offeree board opinion on any revised offer document (Rules 30.2(a) and 32.6(a)).

NOTES ON RULE 26

…

4. Shareholders, persons with information rights and other persons in non-EEA jurisdictions

See Note 3 on Rule 19.11 and the Note on Rule 30.323.2 and Note 3 on Rule 30.4.

5. Amendment, variation, or updating or replacement of documents on display

If a document on display is amended, varied, or updated or replaced during the period in which it is required to be on display under Rule 26, then the

amended, varied or updated document, or the replacement document, should also be put on display and a statement that this has been done should be included on the website.

Rule 27

27.1 MATERIAL CHANGES

Documents subsequently sent to shareholders of the offeree company and persons with information rights by a party to the offer must contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period; if there have been no such changes, this must be stated. In particular, the following matters must be updated:—

(a) changes or additions to, or the replacement of, material contracts, irrevocable commitments or letters of intent or financing arrangements (Rules 24.23(a), (bc), and (d)(x) and (f) and 25.67(a) and (b));

(b) any known material significant changes in the financial or trading position (Rules 24.23(a)(iv) and 25.23);

(c) interests and dealings (Rules 24.34 and 25.34);

(d) directors' emoluments (Rule 24.45);

(e) special arrangements (Rule 24.56);

(f) ultimate owner of securities acquired under the offer (Rule 24.89);

(g) arrangements in relation to dealings (Rules 24.123 and 25.56); and

(h) changes to directors' service contracts (Rule 25.45).

…

Rule 28.6

28.6 STATEMENTS WHICH WILL BE TREATED AS PROFIT FORECASTS

…

(g) Earnings enhancement and merger benefits statements

…

See also Note 89 on Rule 19.1.

Rule 29

29.5 OPINION AND CONSENT LETTERS

…

(c) Valuation certificate to be on display

Where a valuation of assets is given in any document published in connection with an offer, the valuation report must be put on display in accordance with Rule 26.2, …

…

Rule 30

~~SECTION M: TIMING AND REVISION~~
SECTION M: DISTRIBUTION OF DOCUMENTATION DURING AN OFFER

RULE 30~~. PUBLISHING THE OFFER DOCUMENT AND THE OFFEREE BOARD CIRCULAR~~

[current Rules 30.1 to 30.3 to be deleted]

30.1 PUBLICATION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION

If a document, an announcement or any information is required to be sent to any person, it will be treated as having been sent if it is:

(a) sent to the relevant person in hard copy form;

(b) sent to the relevant person in electronic form; or

(c) published on a website provided that the relevant person is sent a website notification no later than the date on which it is published on the website.

NOTE ON RULE 30.1

Forms

Acceptance forms, withdrawal forms, proxy cards and any other form connected with an offer must be published in hard copy form only.

30.2 RIGHT TO RECEIVE COPIES OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION IN HARD COPY FORM

(a) If a document, an announcement or any information is required to be sent to any person and it is:

(i) sent to a person in electronic form; or

(ii) published on a website and the person entitled to receive it is sent a website notification,

that person may request a copy in hard copy form from the party which publishes it. Any such request must be made in accordance with the procedure specified in the document, announcement or information for the making of such requests and must provide an address to which the hard copy document, announcement or other information may be sent.

(b) A person entitled to receive a document, an announcement or any information may request that all future documents, announcements and information sent to that person in relation to an offer should be sent by the party which publishes it in hard copy form.

(c) If an offeror receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form, it must notify the offeree company as soon as possible and provide details of the address to which hard copy documents, announcements and information should be sent. If the offeree company receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form (either from the person concerned or from an offeror), it must provide the other parties to the offer with details of such requests at the same time as it provides them with updates to the company's register.

(d) If a request is made under (a) above for a hard copy of a document, an announcement or any information, the party which published it must ensure that it is sent to the relevant person as soon as possible and in any event within two business days of the request being received by that party.

(e) Any document, announcement or information that is sent to a person in electronic form or by means of being published on a website, and any related website notification, must contain a statement that the person to whom it is sent may request a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form and may also request that all future documents, announcements and information sent to that person in relation to the offer should be in hard copy form. Attention should be drawn to the fact that a hard copy of the document,

announcement or information will not be sent to that person unless so requested and details must be provided of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests may be submitted).

(f) If a shareholder, person with information rights or other person is entitled to be sent a document, an announcement or any information and has elected in accordance with any applicable legal or regulatory provisions to receive communications from the offeree company in hard copy form (and such election has been made in respect of information generally and not only in respect of certain specific types of information), that election must be treated by each party to an offer as also applying to the form in which any document, announcement or information must be sent to that person in relation to the offer (see also Section 4 of Appendix 4). If a request is made under (b) above for copies of future documents, announcements and information to be sent in hard copy form, that request must be treated by each party to an offer as an election made in accordance with applicable legal or regulatory provisions to receive communications from the offeree company in hard copy form.

30.3 DISTRIBUTION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO THE PANEL AND OTHER PARTIES TO AN OFFER

(a) Before an offer document is published, a copy of the document in hard copy form and electronic form must be sent to the Panel. At the time of publication, a copy must also be sent in hard copy form and electronic form to the advisers to all other parties to the offer.

(b) Copies of all other documents, announcements and information published in connection with an offer by, or on behalf of, an offeror or the offeree company, including advertisements and any material released to the media (including any notes to editors), must at the time of publication or release be sent in electronic form to:

(i) the Panel; and

(ii) the advisers to all other parties to the offer.

Documents must also be sent in hard copy form to the Panel and the advisers to all other parties to the offer at the time of publication. Such documents, announcements or information must not be released to the media under an embargo (see also Note 1 on Rule 26).

(c) If a party to an offer publishes a document, an announcement or any information outside normal business hours, that party must inform the advisers to all other parties to the offer of its publication immediately (if necessary by telephone). In such circumstances, special arrangements may need to be made to ensure that a copy of the document, announcement or information is sent directly to the relevant advisers and

to the Panel. No party to an offer should be put at a disadvantage through a delay in the release of new information to it.

NOTE ON RULE 30.3

Information incorporated by reference

Where information is incorporated into a document by reference to another source of information, a copy of the information so incorporated should be sent to the Panel and the advisers to all other parties to an offer in electronic form at the same time as the document sent in accordance with this Rule.

30.4 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION REQUIRED TO BE PUBLISHED ON A WEBSITE

(a) If an offeror or offeree company, or any person on its behalf:

(i) sends a document or information in relation to an offer to shareholders, persons with information rights or other relevant persons in accordance with Rule 30.1; or

(ii) publishes an announcement (whether related to the offer or not) by sending it to a RIS,

the offeror or offeree company as relevant must, as soon as possible and in any event by no later than 12 noon on the following business day, ensure that a copy is published on a website. Copies of announcements referred to in Note 5 below do not need to be published on a website.

(b) A copy of each document, announcement or information required to be published on a website under (a) above must continue to be made available on a website free of charge during the course of the offer (and any related competition reference period). Documents, announcements and information published following the end of the offer period which do not relate directly to the offer will not be required to be published on the website.

(c) Any document, announcement or information published in relation to an offer by an offeror or the offeree company in the manner described in (a)(i) or (ii) above (other than the announcements referred to in Note 5 below) must contain a statement providing details of the website on which a copy will be published.

NOTES ON RULE 30.4

1. Website to be used

A party to an offer should normally use its own website for publishing copies of documents, announcements and information. If a party to an offer does not

have its own website, or proposes to use a website maintained by a third party for this purpose, the Panel should be consulted.

2. "Read-only" format

Any document, announcement or information published on a website must be published in a "read-only" format so that it may not be amended or altered in any way.

3. Shareholders, persons with information rights and other persons outside the EEA

Offer-related documents, announcements and information published on a website should be capable of being accessed by shareholders, persons with information rights and other relevant persons in all jurisdictions unless there is a sufficient objective justification for restricting access from certain non-EEA jurisdictions on the basis described in the Note on Rule 23.2.

4. Equality of information to shareholders

Save as expressly permitted by Rule 30.1, the publication of offer-related documents, announcements and information on a website will not satisfy the obligation under Rule 20.1 to make information about companies involved in an offer equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.

5. Announcements not required to be published on a website

Copies of the following announcements do not need to be published on a website:

(a) announcements in relation to notifications made pursuant to the rules of other regulatory regimes in respect of:

(i) transactions by directors or other persons discharging managerial responsibilities in respect of a company;

(ii) the acquisition or disposal of major shareholdings; and

(iii) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares (including treasury shares); and

(b) announcements of the number of relevant securities in issue under Rule 2.10.

Rule 31

SECTION N: OFFER TIMETABLE AND REVISION

RULE 31. TIMING OF THE OFFER*

…

31.5 NO EXTENSION STATEMENTS

…

NOTES ON RULE 31.5

…

3. Competitive situations

…

(For the purpose of this Note a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether ~~named~~ publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

…

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

(a) …

(v) when withdrawal rights are introduced under Rule 13.~~5~~6.

…

NOTES ON RULE 31.6

…

2. Rule 31.6(c) announcement

Under Rule 31.6(c), an announcement as to whether the offer is unconditional as to acceptances or has lapsed should normally be made by 5.00 pm on the final closing date. This requirement should not be reflected in the terms of the offer pursuant to Rule 24.~~6~~7, …

3. The Competition Commission and the European Commission

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

…

31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39

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

…

Rule 32

32.1 ~~OFFER OPEN FOR 14 DAYS AFTER~~ PUBLICATION OF REVISED OFFER DOCUMENT

(a) If an offer is revised, a revised offer document, drawn up in accordance with Rules 24 and 27, must be sent to shareholders of the offeree company and persons with information rights. On the same day ~~of publication~~, the offeror must: ~~put the revised offer document on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been published and where the document can be inspected~~

(i) publish the offer document on a website in accordance with Rule 30.4; and

(ii) announce via a RIS that the offer document has been so published.

(b) At the same time, both the offeror and the offeree company must make the revised offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves. The offeree company must also inform its employee representatives or employees of the right of employee representatives under Rule 32.6 to have a separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer and of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion.

(~~b~~c) … **acceptances.***

…

**Rule 32.1(~~b~~c) and the first sentence of Note 3 on Rule 32.1 are disapplied in a scheme. See Section 7 of Appendix 7.*

32.2 NO INCREASE STATEMENTS

…

NOTES ON RULE 32.2

…

3. Competitive situations

…

(For the purpose of this Note a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether ~~named~~ publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)

…

32.6 THE OFFEREE BOARD'S OPINION AND THE EMPLOYEE REPRESENTATIVES' OPINION

(a) The board of the offeree company must send to the company's shareholders and persons with information rights a circular containing its opinion on the revised offer ~~under~~ as required by Rule 25.1~~(a)~~, drawn up in accordance with Rules 25 and 27 and, at the same time:

(i) publish the circular on a website in accordance with Rule 30.4;

(ii) announce via a RIS that the circular has been published; and

(iii) make it readily and promptly available to its employee representatives or, where there are no employee representatives, to the employees themselves.

~~On the day of publication, the offeree company must put the circular on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been published and where the document can be inspected.~~

(b) The board of the offeree company must append to ~~the~~ its circular ~~containing its opinion on a revised offer~~ a separate opinion from ~~the~~ its employee representatives ~~of its employees~~ on the effects of the revised offer on employment, provided such opinion is received in good time

before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must promptly publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received no later than 14 days after the date on which the offer becomes or is declared wholly unconditional.

NOTE ON RULE 32.6

Employee representatives' opinion: offeree company's responsibility for costs

See Note 1 on Rule 25.9.

[Rule 32.7 to be deleted]

Rule 33.2

33.2 SHUTTING OFF CASH UNDERWRITTEN ALTERNATIVES

… **(See also Rule 24.13~~3~~4.)**

Rule 34

RULE 34. RIGHT OF WITHDRAWAL*

34.1 WHEN THE RIGHT OF WITHDRAWAL MAY BE EXERCISED

~~(a)~~ An ~~acceptor~~ accepting shareholder must be entitled … until the earlier of:

(a~~i~~) the time that … ; and

(b~~ii~~) the final time … in accordance with Rule 31.6.

34.2 OFFEREE PROTECTION CONDITIONS

~~(b)~~ An ~~acceptor~~ accepting shareholder must be entitled to withdraw his acceptance if so determined by the Panel in accordance with Rule 13.~~5~~6.

34.3 RETURN OF DOCUMENTS OF TITLE

~~(c)~~ If a shareholder …

Rule 35

35.1 DELAY OF 12 MONTHS

…

NOTE ON RULES 35.1 and 35.2

When ~~dispensations~~ consent may be given ~~granted~~

(a) The Panel will normally only ~~grant~~ give its consent under this Rule if ~~when~~:

(i) the new offer is recommended by the board of the offeree company. Such consent will not normally be ~~granted~~ given within ~~3~~ three months of the lapsing of an earlier offer in circumstances where the offeror was prevented from revising or extending its previous offer as a result of a no increase statement or a no extension statement; ~~or~~

(ii) the new offer follows the announcement by a third party of ~~an~~ a firm intention to make an offer ~~by a third party~~ for the offeree company; ~~or~~

(iii) the new offer follows the announcement by the offeree company of a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or ~~of~~ a reverse takeover ~~(see Note 2 on Rule 3.2)~~ which has not failed or lapsed or been withdrawn~~.~~; or

(iv) the Panel determines that there has been a material change of circumstances.

(b) The Panel may also ~~grant~~ give consent …

Rule 38.3

38.3 ASSENTING SECURITIES AND DEALINGS IN ASSENTED SECURITIES

…

NOTES ON RULE 38.3

1. Withdrawal rights under Rule 13.~~5~~6

If withdrawal rights are introduced under Rule 13.~~5~~6, …

…

Appendix 1

APPENDIX 1

WHITEWASH GUIDANCE NOTE

(See Note 1 of the Notes on Dispensations from Rule 9.)

1 INTRODUCTION

…

(c) Rules 19, 20 and 24.14~~5~~5, …

…

4 WHITEWASH CIRCULAR

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

…

(h) Rule 21.2 (inducement fees and other offer-related arrangements);

(i) Rules 23, 24.~~1~~12, 24.~~2~~23 and 25.~~2~~23 (information which must include full details of the assets, if any, being injected);

(j) Rules 24.~~3~~34 and 25.~~3~~34 (disclosure of interests and dealings). Dealings in respect of Rule 24.~~3~~34 should be covered for the 12 months prior to the publication of the circular but dealings in respect of Rule 25.~~3~~34 need not be disclosed as there is no offer period;

(k) Rules 24.~~5~~56 and 24.~~8~~89 (arrangements in connection with the proposal);

(l) Rule 25.~~4~~45 (service contracts of directors and proposed directors);

(m) Rule 25.~~6~~67 (material contracts, irrevocable commitments and letters of intent, and list of documents on display);

…

Appendix 6

APPENDIX 6

BID DOCUMENTATION RULES FOR THE PURPOSES OF SECTION 953 OF THE COMPANIES ACT 2006

…

"Offer document rules"

Article	**Those parts of the Rule set out below which give effect to the Article**
Article 6(3)(a)	**Rule 24.~~2~~3(d)(v)**
Article 6(3)(b)	**Rule 24.~~2~~3(d)(ii)**
Article 6(3)(c)	**Rule 24.~~2~~3(d)(iv)**
Article 6(3)(d)	**Rule 24.~~2~~3(d)(v) and Note ~~4~~5 on Rule 24.~~2~~3**
Article 6(3)(e)	**Rule 24.~~2~~3(d)(xiv~~xv~~)**
Article 6(3)(f)	**Rule 24.~~2~~3(d)(iv)**
Article 6(3)(g)	**Rule 24.~~3~~4(a)(i), (ii)**
Article 6(3)(h)	**Rule 24.~~2~~3(d)(vi)**
Article 6(3)(i)	**Rule 24.~~1~~2**
Article 6(3)(j)	**Rule 24.~~6~~7 (first phrase)**
Article 6(3)(k)	**Rule 24.~~2~~3(d)(xi)**
Article 6(3)(l)	**Rule 24.~~2~~3(f)**
Article 6(3)(m)	**Rule 24.~~2~~3(d)(iii) and Note ~~3~~4 on Rule 24.~~2~~3**
Article 6(3)(n)	**Rule 24.~~2~~3(d)(xiii~~xiv~~)**

"Response document rules"

Article 9(5), first sentence	**Rule 25.1 and Rule 25.~~1~~2(a) ~~and (b)~~**

Appendix 7

APPENDIX 7

SCHEMES OF ARRANGEMENT

DEFINITIONS AND INTERPRETATION

…

Long-stop date

The date stated in the scheme circular to be the latest date by which the scheme must become effective and included as such in the terms of the scheme.

…

~~**3 DATE OF SHAREHOLDER MEETINGS**~~

~~**The shareholder meetings must normally be convened for a date which is at least 21 days after the date of the scheme circular.**~~

3 EXPECTED SCHEME TIMETABLE

(a) Where an offeror announces a firm intention to make an offer which is to be implemented by means of a scheme of arrangement and the board of the offeree company agrees to the inclusion of a statement of its intention to recommend the scheme in that announcement, then the offeree company must, except with the consent of the Panel, ensure that the scheme circular is sent to shareholders and persons with information rights within 28 days of that announcement. If the offeree company board subsequently withdraws its recommendation, this obligation will cease.

(b) The parties to the offer are permitted to include within the conditions to the scheme:

(i) a long-stop date by which the scheme must become effective (unless extended with the agreement of the parties to the offer);

(ii) a specific date by which the shareholder meetings must be held (unless extended with the agreement of the parties to the offer), provided that the date specified must be more than 21 days after the expected date of the shareholder meetings to be set out in the scheme circular; and

(iii) a specific date by which the court sanction hearing must be held (unless extended with the agreement of the parties to the offer) provided that the date specified must be more than 21 days after the expected date of the court sanction hearing to be set out in the scheme circular.

(c) Any condition referred to in paragraph (b) above:

(i) must be given prominent reference in the offeror's announcement of a firm intention to make an offer;

(ii) must not be capable of being invoked or waived after the date specified unless extended with the agreement of the parties to the offer; and

(iii) will not be subject to Rule 13.5(a).

(d) The offeree company must ensure that the scheme circular sets out the expected timetable for the scheme, including the expected dates and times for the following:

(i) the record date for any shareholder meeting;

(ii) the latest date and time for the lodging of forms of proxy or elections for any alternative form of consideration;

(iii) the date and time of any shareholder meetings, which must normally be convened for a date which is at least 21 days after the date of the scheme circular;

(iv) the date and time of any meetings of the shareholders of the offeror to be convened in connection with the offer;

(v) the date of the court sanction hearing;

(vi) the record date for the purposes of the scheme and/or any reduction of capital provided for by the scheme;

(vii) the date and time of any proposed suspension in trading of shares or other securities of the offeree company;

(viii) the date of any court hearing to confirm any reduction of capital provided for by the scheme;

(ix) the effective date;

(x) the date and time of the admission to trading of any offeror securities to be issued in connection with the scheme; and

(xi) the long-stop date.

(e) Upon publication of the scheme circular, the offeree company must announce in accordance with Rule 2.9 that the scheme circular has been published and include in that announcement the expected timetable, including the expected dates and times referred to in paragraph (d) above.

(f) The offeree company must implement the scheme in accordance with the expected timetable, as published (subject to any change to the expected timetable announced in accordance with Section 6 below), unless:

(i) the board of the offeree company withdraws its recommendation of the scheme;

(ii) the board of the offeree company announces its decision to propose an adjournment of a shareholder meeting or the court sanction hearing;

(iii) a shareholder meeting or the court sanction hearing is adjourned; or

(iv) any condition to the scheme is invoked by the offeror in accordance with the Code.

See also Note 2 on Section 8 below.

4 HOLDING STATEMENTS

(a) If ~~a statement~~ an announcement of the kind described in Rule 2.6(d) or (e) ~~Note 1 on Rule 19.3~~ is made during an offer period involving a scheme of arrangement, the Panel will normally require the ~~statement to be clarified~~ potential offeror to clarify its position by a date~~, to be specified by the Panel,~~ in advance of the date of the shareholder meetings, to be announced by the Panel.

…

NOTE ON SECTION 4

Date by which announcement required

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

5 ANNOUNCEMENTS FOLLOWING KEY EVENTS IN A SCHEME

(a) If the parties to the offer include any condition to the scheme in accordance with Section 3(b) above and any such condition is not capable of being satisfied by the date specified in that condition, the offeror must make an announcement as soon as practicable and, in any event, by no later than 8.00 am on the business day following the date so specified, stating whether the offeror has invoked that condition, waived that condition or, with the agreement of the offeree company, specified a new date by which that condition must be satisfied.

(~~a~~b) …

(~~b~~c) …

(~~c~~d) …

…

8 SWITCHING

…

(c) …

(ii) details of any material changes to the other details originally announced pursuant to Rule ~~2.5(b)~~2.7(c);

…

NOTES ON SECTION 8

1. Determination of the offer timetable following a switch

…

(b) the time which has elapsed since the switching offeror's original announcement under Rule 2.~~5~~7 and the extent to which it is reasonable for the offeree board to be hindered in the conduct of its affairs;

…

2. Consequences of a withdrawal of recommendation etc.

Where:

(a) the board of the offeree company withdraws its recommendation of the scheme;

(b) the board of the offeree company announces its decision to propose an adjournment to a shareholder meeting or the court sanction hearing;

(c) any shareholder meeting or the court sanction hearing is adjourned; or

(d) the Panel considers that the offeree company has not implemented the scheme in accordance with the published timetable,

the Panel will normally consent to a request from the offeror to switch to a contractual offer with an acceptance condition set at up to 90% of the shares to which the offer relates.

…

14 INCORPORATION OF OBLIGATIONS AND RIGHTS

In addition to the relevant requirements of Rules 24 and 25, the scheme circular must incorporate language which appropriately reflects those parts of Rule 13.5(a) and 13.6 (if applicable) and of this Appendix 7 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.

15 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS

Where securities are offered as consideration and it is intended that they should be admitted to listing on the Official List or to trading on AIM, the relevant admission to listing or admission to trading condition should, except with the consent of the Panel, be in terms which ensure that it is

capable of being satisfied only when all steps required for the admission to listing or trading have been completed other than the UKLA and/or the Stock Exchange, as applicable, having announced their respective decisions to admit the securities to listing or trading. Where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any other investment exchange or market, the Panel should be consulted.

16~~14~~ PROVISIONS DISAPPLIED IN A SCHEME

…

(e) Note 2 on Rule 13.~~5~~6 (availability of withdrawal rights);

…

(h) Rule 24.~~6~~7 (incorporation of obligations and rights) and Rule 24.13~~3~~4 (cash underwritten alternatives which may be shut off);

(i) Rule 24.10 (admission to listing and admission to trading conditions);

(~~i~~j) …

(~~j~~k) Rule 32.1(~~b~~c), …

(~~k~~l) …

(~~l~~m) …

DOCUMENT CHARGES

2 VALUATION OF OFFER FOR DOCUMENT CHARGES

When the charge … in accordance with Rule 24.1~~0~~1.

…