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THE TAKEOVER PANEL

**PROFIT FORECASTS, QUANTIFIED
FINANCIAL BENEFITS STATEMENTS AND
MATERIAL CHANGES IN INFORMATION**

**RESPONSE STATEMENT BY THE
CODE COMMITTEE OF THE PANEL FOLLOWING
THE CONSULTATION ON PCP 2012/1**

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1. Introduction

(a) Background

1.1 On 5 July 2012, the Code Committee of the Takeover Panel (the “**Code Committee**”) published a public consultation paper (“**PCP 2012/1**” or the “**PCP**”) in which it proposed amendments to the provisions of the Takeover Code (the “**Code**”) which relate to profit forecasts, merger benefits statements and material changes in information previously published during an offer period.

1.2 In summary, the Code Committee proposed:

- (a) the introduction of a revised Rule 28 in relation to **profit forecasts**, with the aims of:
 - (i) applying more proportionate requirements than at present to certain profit forecasts, including, in particular, profit forecasts which have been published before an approach has been made to the offeree company with regard to a possible offer;
 - (ii) adopting a more logical framework for the regulation of profit forecasts than the current Rule 28; and
 - (iii) achieving a greater consistency than is currently the case with other legislation, standards and guidance, including: Directive 2003/71/EC of the European Parliament and of the Council (the “**Prospectus Directive**”); Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (the “**PD Regulation**”); the **Prospectus Rules** and the **Listing Rules** of the Financial Conduct Authority (the “**FCA**”), which form part of the **FCA Handbook**; the European Securities and Markets Authority’s recommendations for the consistent implementation of the PD Regulation (the “**ESMA**

recommendations”); the guidance entitled “Prospective Financial Information: Guidance for UK directors” published by the Institute of Chartered Accountants in England and Wales (the “**ICAEW Guidance**”); the Investment Reporting Standards Applicable to Public Reporting Engagements on Profit Forecasts, **SIR 3000**, published by the Financial Reporting Council (the “**FRC**”); and the FRC’s **Ethical Standards for Reporting Accountants**;

- (b) the incorporation into Rule 28 of the current requirements of Note 9 on Rule 19.1 with regard to merger benefits statements (which would be renamed as “**quantified financial benefits statements**”) and, at the same time:
 - (i) extending the application of those provisions to statements made by the offeree company with regard to measures providing cost saving or other financial benefits that it proposes to implement if the offer does not succeed (in addition to the current application of those provisions to statements made by a party to the offer with regard to the financial benefits expected to arise if the offer is successful); and
 - (ii) adopting more detailed requirements than at present; and
- (c) the amendment of Rule 27 in relation to the disclosure of **material changes in information** published in an offer document or an offeree board circular, so as to require an offeror and the offeree company to disclose any such material changes promptly after their occurrence, and not only in the event that a subsequent document is published.

(b) Responses to the consultation

1.3 The consultation period in relation to PCP 2012/1 ended on 28 September 2012. The Code Committee received comments on the consultation questions

from 20 respondents, including from accountancy firms, financial advisers, law firms, investor relations consultancies, trade associations, professional bodies and a trade union. The 17 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 three remaining respondents submitted their comments on a confidential basis. The Code Committee thanks all of the respondents for their comments.

- 1.4 Respondents were broadly supportive of the objectives of the PCP and the proposed amendments, including the new structure for Rule 28.
- 1.5 A number of respondents raised concerns with regard to the proposed treatment of “**consensus**” profit forecasts and profit forecasts published by investment analysts and other third parties, with some respondents putting forward their own suggestions as to how these might be treated.
- 1.6 In addition, comments made by respondents included that:
 - (a) the proposed new “**directors’ confirmations**” regime (under which the directors of the company which has published the profit forecast will be required to confirm its proper compilation and basis of accounting), rather than the “**reporting regime**” (under which reports are required to be obtained from the company’s reporting accountants and financial adviser(s)), should apply to all profit forecasts published prior to the commencement of an offer period, including profit forecasts published after an approach had been made to the offeree company by a potential offeror;
 - (b) the Panel should be able to grant a dispensation from the reporting requirements of Rule 28 in all circumstances where an “**ordinary course profit forecast**” has been published during the offer period, and not only where the other parties to the offer have consented to such a dispensation;

- (c) the proposed approach of treating a “**target**” as a profit forecast might need refinement;
- (d) the proposed requirement, in circumstances where a profit forecast for a future financial period is (or has been) published, for a party to publish “**corresponding**” profit forecasts for the current and intervening financial periods might be unduly burdensome;
- (e) the proposed provisions with regard to a “**management buy-out or similar transaction**” should distinguish between offers led by incumbent managers and offers led by leveraged offerors; and
- (f) in the event that a dispensation on the grounds of “**immateriality**” were to be introduced, the lack of materiality should be assessed by reference to the proportion of the consideration being offered in the form of securities, rather than by reference to the size of the securities exchange offer relative to the size of the offeror.

1.7 Several respondents also raised points of detail, a number of which have been accepted by the Code Committee and reflected in the drafting of the final provisions.

(c) *The Code Committee’s conclusions*

1.8 Having carefully considered the responses to the consultation, the Code Committee has, in most cases, adopted the amendments to the Code which it proposed in PCP 2012/1. However, the Code Committee has introduced modifications to some of the proposals, resulting in changes to the drafting and, in certain cases, the substance of the final provisions, as compared with the proposed amendments. In particular, the Code Committee has concluded that:

- (a) the Panel should not (as was proposed in the PCP) retain the ability to apply the “**reporting regime**” to a profit forecast published by a securities exchange offeror after its first active consideration of a possible offer but prior to its approach to the offeree company. The Code Committee has instead concluded that the “**directors’ confirmations**” regime should always apply to such a profit forecast;
- (b) the Panel should have the express ability to grant a dispensation from the requirements of the new Rule 28 to a securities exchange offeror in circumstances where the consideration securities will not represent a “**material proportion of the value of the offer**” (in addition to the ability, as proposed in the PCP, for the Panel to grant a dispensation where the consideration securities will not represent a material proportion of the offeror’s enlarged share capital);
- (c) offeree companies and securities exchange offerors should be permitted to continue to publish “**consensus forecasts**” on their websites during an offer period (and should not, as was proposed in the PCP, be required to remove consensus forecasts from their websites), provided that such consensus forecasts are calculated in accordance with the requirements of the Code and that the website includes a prominent disclaimer stating that the consensus forecasts are not endorsed by the company concerned; and
- (d) in addition to the ongoing requirement proposed in the PCP for the parties to an offer to announce any material changes in previously published information, there should also be a new requirement for the parties to announce any “**material new information**” which would have been required to have been previously published, had it been known at the relevant time.

(d) ***Code amendments***

1.9 The amendments to the Code which the Code Committee has adopted in this Response Statement are set out in Appendix B. In Appendix B, except as otherwise stated, underlining indicates new text and striking-through indicates deleted text, as compared with the current provisions of the Code. For ease of reading, the new Rule 27 (material changes and subsequent documents) and the new Rule 28 (profit forecasts and quantified financial benefits statements) are not shown in underlined text. The current Rule 27, Rule 28 and Note 9 on Rule 19.1 (merger benefits statements), each of which will be deleted from the Code in its entirety as a result of the amendments adopted in this Response Statement, have not been set out in Appendix B. Where new or amended provisions of the Code are set out in the main body of this Response Statement, they are shown in their new or amended form.

1.10 A table summarising the application of the principal provisions of the new Rule 28 to profit forecasts is set out in Appendix C.

(e) ***Implementation***

1.11 The amendments to the Code introduced as a result of this Response Statement will take effect on Monday, 30 September 2013. Revised pages of the Code will be published prior to the implementation of the amendments.

A: PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS

2. Definitions

<p>Q1 Do you have any comments on the proposed new definitions of “profit forecast”, “profit estimate” and “quantified financial benefits statement” and the proposed amendments to the definitions of “cash offeror” and “offer period”?</p>
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(a) Introduction

2.1 In section 2 of the PCP, the Code Committee proposed the introduction into the Definitions Section of the Code of new definitions of a “profit forecast”, a “profit estimate” and a “quantified financial benefits statement” and the amendment of the current definitions of a “cash offeror” and an “offer period”.

(b) “Profit forecasts” and “profit estimates”

2.2 Three respondents suggested that it would be helpful if the proposed new definitions of “profit forecast” and “profit estimate” were identical to the equivalent definitions in the FCA’s Prospectus Rules, which reproduce parts of the PD Regulation. With one exception, as explained below, the Code Committee has accepted this suggestion.

2.3 Conforming the new definition of “**profit forecast**” with that in the Prospectus Rules will include changing the proposed reference to “*the likely level of profits or losses for a particular period*” so as to refer to “*the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period*”. The Code Committee believes that, in this context, a “*financial period*” may be any particular period to which a profit forecast relates. For example, a financial period may not necessarily be a specific accounting period.

- 2.4 The Prospectus Rules define a “**profit estimate**” as a “*profit forecast for a financial period which has expired and for which results have not yet been published*”. The Code Committee believes that the Code should continue to treat profit figures included in an unaudited preliminary statement of annual results as a profit estimate, and therefore as a profit forecast. This position is consistent with that in ESMA’s “Questions and Answers – Prospectuses (19th updated version)”, which provides as follows:

“84. Definition of Profit Estimate

Q1) How should the term “for which results have not yet been published” in Article 2(11) of the Prospectus Regulation be understood?

AI) ESMA considers that the publication of results for an annual financial period which has expired means publication of the final figures which have been approved by the person responsible within the issuer and the auditor’s report has been published.”.

- 2.5 Accordingly, the Code Committee has retained the reference to “*audited*” results in the new definition of “profit estimate”, as proposed in the PCP. However, the Code Committee notes that, by virtue of the new Rule 28.5, a profit estimate included in a preliminary statement of annual results which complies with the relevant provisions of the UKLA Rules will be exempt from the reporting and other requirements in the new Rule 28.1(a).
- 2.6 The Code Committee has therefore adopted the new definitions of “profit forecast” and “profit estimate”, as follows:

“Profit forecast

A form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word “profit” is not used.”; and

“Profit estimate

A profit forecast for a financial period which has expired and for which audited results have not yet been published.”.

2.7 In addition, and as described in section 5 below, the Code Committee has also adopted a new definition of an **“ordinary course profit forecast”**.

2.8 Five respondents questioned the Note on the new definition of “profit forecast” proposed in the PCP, which provided as follows:

“A statement in relation to a target for profits (or losses) will normally be treated as a profit forecast.”.

Some respondents suggested that this Note should be omitted or moved to the proposed new Rule 28.1. Others queried how the use of other terms, such as “budget”, “aspiration” or “expectation”, would be treated. One respondent noted that the proposed new definition of “profit forecast” in any event provided that a statement might be a profit forecast *“even if ... the word “profit” is not used”* and that the question of whether a statement indicated *“the likely level of profits”* would depend on the facts of each case. The respondent agreed with the Code Committee that a party to an offer should not be able to avoid the requirements of Rule 28 simply by means of a statement that a target does not constitute a forecast of future profits.

2.9 Having taken respondents’ comments into account, the Code Committee has decided not to adopt the proposed Note on the new definition of “profit forecast” but has decided instead to adopt a Note 1 on the new Rule 28.1, as follows:

“1. Targets etc.

A statement described as a “target”, “budget” or similar will normally be treated as a profit forecast, even if it is stated that it is not an indication of the likely level of profits, unless it is clear that the statement is no more than aspirational.”.

(c) *“Quantified financial benefits statements”*

- 2.10 The proposed new definition of a **“quantified financial benefits statement”** was welcomed by respondents, although some made suggestions as to how the definition might be modified.
- 2.11 Having accepted a number of these suggestions, the Code Committee has adopted the new definition of **“quantified financial benefits statement”**, as follows:

“Quantified financial benefits statement

A quantified financial benefits statement is either:

- (a) a statement by a securities exchange offeror or the offeree company quantifying any financial benefits expected to accrue to the enlarged group if the offer is successful; or
- (b) a statement by the offeree company quantifying any financial benefits expected to accrue to the offeree company from cost saving or other measures and/or a transaction proposed to be implemented by the offeree company if the offer is withdrawn or lapses.”.
- 2.12 In addition, the Code Committee has introduced references to **“quantified financial benefits statements”** into Rule 31.9, Note 1 on Rule 32.1 and paragraph (o) of Section 4 of Appendix 1 to the Code, as set out in Appendix B.

(d) *“Cash offerors” and “securities exchange offerors”*

- 2.13 There were few comments on the proposed amendments to the definition of a **“cash offeror”**.
- 2.14 One respondent queried what the situation would be if an offeror which was offering solely cash as consideration, such that the requirements of Rule 28 would not initially be applicable, were subsequently to introduce a securities element into the consideration offered (or securities as alternative consideration). This issue could arise under the current Rule 28, although the

Code Committee is not aware of its having arisen in practice. If such a situation were to arise, the Code Committee considers that Rule 28 would then apply, although the Panel would be required to determine the precise application of the relevant provisions by reference to the facts of the particular case.

2.15 Having reviewed the current references to a “cash offeror” in the Code, the Code Committee notes that most references to cash offerors are framed in the negative, e.g. to “any offeror (other than a cash offeror)”, or similar. The Code Committee considers that it would be preferable for such references to be replaced with references to a “**securities exchange offeror**”.

2.16 The Code Committee has therefore:

- (a) adopted the amendments to the definition of a “cash offeror” proposed in the PCP; and
- (b) introduced a new definition of “securities exchange offeror”, as follows:

“Securities exchange offeror

An offeror (or potential offeror) other than a cash offeror.”.

2.17 In addition, the Code Committee has made consequential amendments to Rule 8 and certain of the other provisions of the Code which currently refer to a “cash offeror”, as set out in Appendix B.

(e) ***“Offer period”***

2.18 The new Note 3 on the definition of “**offer period**” proposed in the PCP was adopted in Instrument 2013/1, which was made by the Code Committee on 28 March 2013.

3. Profit forecasts and quantified financial benefits statements published during an offer period and profit forecasts published following an approach with regard to a possible offer

(a) Profit forecasts and quantified financial benefits statements published during an offer period

Q2 Do you agree that the requirements for assumptions to be stated and for third party reports to be obtained should be retained for profit forecasts and quantified financial benefits statements which are first published during an offer period? Do you have any comments on the proposed new Rule 28.1(a)?

3.1 In section 3 of the PCP, the Code Committee proposed that, in addition to the general requirements of Rule 19.1 that statements should be “*prepared with the highest standards of care and accuracy*” and that information should be “*adequately and fairly presented*”, the Code should continue to impose the reporting and other requirements which currently apply (under Rule 28 and Note 9 on Rule 19.1 respectively) to profit forecasts and merger benefits statements made during an offer period. In addition, whereas the reporting and other requirements which apply to merger benefits statements made by a securities exchange offeror currently apply (broadly) only if the offer is not recommended by the board of the offeree company, the new Rule 28.1(a) proposed in the PCP would apply to any quantified financial benefits statement made by a securities exchange offeror or the offeree company, regardless of whether the offer was recommended by the board of the offeree company.

3.2 There was unanimous support for the proposal that the requirements imposed by the current Rule 28 and Note 9 on Rule 19.1 should continue to apply to profit forecasts and quantified financial benefits statements which are first published during an offer period.

3.3 Four respondents noted that where a **profit forecast** is published the current Rule 28 requires the “*assumptions*” on which it is based to be stated but that

where a **merger benefits statement** is published the current Note 9 on Rule 19.1 requires the “*bases of belief*” which support it to be stated. The respondents suggested that these requirements should be replicated in the new Rule 28, i.e. that assumptions should be required to be stated in the case of a profit forecast and that bases of belief should be required to be stated in the case of a quantified financial benefits statement. The Code Committee has accepted both this suggestion and the suggestion made by one respondent that, consistent with the requirements of the PD Regulation, Rule 28 should require the “*principal*” assumptions to be stated. However, the Code Committee has concluded that all of the requirements with regard to assumptions should be incorporated into the new Rule 28.4 (see section 11) and that all the requirements with regard to bases of belief should be incorporated into the new Rule 28.6 (see section 13).

- 3.4 With regard to accountants’ reports, two respondents suggested that, whilst the required statement that “*the basis of accounting used is consistent with the accounting policies of the party to the offer*” would be appropriate in the case of a profit forecast, such a statement would not be appropriate in the case of a quantified financial benefits statement. The Code Committee accepts this.
- 3.5 One respondent noted that the current Note 9 on Rule 19.1 requires the financial adviser and the reporting accountants to report that a merger benefits statement has been made with “*due care and consideration*”. By contrast, under the new Rule 28.1(a)(ii) proposed in the PCP, the new requirement would be for reporting accountants to confirm that a quantified financial benefits statement had been “*properly compiled on the basis stated*” (with the financial adviser continuing to be required to state that the forecast or statement had been prepared with “*due care and consideration*”). The respondent sought guidance as to what would constitute “proper compilation” in this context. The Code Committee considers that it is for reporting accountants to determine whether a quantified financial benefits statement has been “*properly compiled on the basis stated*”. However, as indicated in paragraph 13.9 of the PCP, the Code Committee understands that the FRC intends to develop a new reporting standard with respect to quantified

financial benefits statements and the Code Committee anticipates that the issue of “proper compilation” would be addressed in that reporting standard.

- 3.6 Two respondents questioned the proposal that quantified financial benefits statements should be reported on in all securities exchange offers, noting that the requirements of the current Note 9 on Rule 19.1:

“will not normally apply in the case of a recommended securities exchange offer unless a competing offer is made and the merger benefits statement is subsequently repeated by the party which made it or the statement otherwise becomes a material issue”.

- 3.7 One respondent observed that, although it was correct (as stated in the PCP) that LR 13.5.9AR of the FCA’s Listing Rules imposes certain disclosure requirements where “*details of estimated synergies or other quantified estimated financial benefits*” are included in a class 1 circular, irrespective of whether the target is supportive of the transaction, it was important to note that LR 13.5.9AR does not require such benefits statements to be reported on.
- 3.8 The Code Committee continues to believe that the new Rule 28.1(a) should apply to all quantified financial benefits statements published by a securities exchange offeror or the offeree company, and that the exemption from the requirements of Note 9 on Rule 19.1 that currently applies where the offer has been recommended by the board of the offeree company should no longer apply. The Code Committee believes that Rule 28.1(a) should apply to a quantified financial benefits statement in the same manner that it applies to a profit forecast and that obtaining reports on quantified financial benefits statements made in the context of a recommended offer is a proportionate requirement.
- 3.9 Having taken respondents’ comments into account, the Code Committee has adopted the new Rule 28.1(a), as follows:

“RULE 28

NB The requirements of Rule 28 do not apply to a profit forecast or a quantified financial benefits statement published by a cash offeror.

**28.1 REQUIREMENTS FOR PROFIT FORECASTS AND
QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

(a) Except with the consent of the Panel, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes a profit forecast or a quantified financial benefits statement, the document or announcement in which the forecast or statement is first published must include:

(i) a report from its reporting accountants stating that, in their opinion, the forecast or statement has been properly compiled on the basis stated and (in the case of a profit forecast only) that the basis of accounting used is consistent with the company’s accounting policies; and

(ii) a report from its financial adviser(s) stating that, in its (or their) opinion, the forecast or statement has been prepared with due care and consideration.”.

(b) *Profit forecasts published before an offer period and following an approach or (in the case of a securities exchange offeror) following the first active consideration of an offer*

Q3 Do you agree that the requirements for assumptions to be stated and for third party reports to be obtained should be retained for profit forecasts which have been published following an approach or, in appropriate circumstances, the first active consideration of a possible offer? Do you have any comments on the proposed new Rule 28.1(b) and Note 1 on Rule 28.1?

(i) *Introduction*

3.10 In section 3 of the PCP, the Code Committee noted that, where the offeree company or a securities exchange offeror has published a profit forecast before the commencement of the offer period, Rule 28.3(d) currently requires the profit forecast to be “*examined, repeated and reported on in the document sent to shareholders*”. The Code Committee proposed that, under the revised

Rule 28, the requirements which would apply to profit forecasts first published during an offer period should, in effect, also apply to profit forecasts published prior to the offer period and either:

- (a) after an approach with regard to a possible offer had been made; or
 - (b) where considered appropriate by the Panel, after the first active consideration of a possible offer by an offeror but prior to an approach having been made to the offeree company.
- (ii) *Profit forecasts published following an approach and prior to the commencement of an offer period*

3.11 All but one of the respondents who commented on Question 3 agreed that the requirements of Rule 28 should apply to a profit forecast published prior to the commencement of an offer period but following an approach having been made to the offeree company.

3.12 The remaining respondent suggested that the commencement of the offer period was a more appropriate time from which the full requirements of Rule 28 should apply. The respondent considered that a profit forecast published following an approach, but prior to the offer period, should be required to be repeated and subject to the “directors’ confirmations” regime (see section 4), but that it should not be subject to the “reporting regime”. The respondent noted that there might be a significant period of time between the time of an approach and the commencement of an offer period and that the requirement for reports might deter companies from making “ordinary course profit forecasts”. As an alternative, the respondent suggested that the reporting requirements of Rule 28 might be limited to profit forecasts which were published both after an approach had been made and within one month of the commencement of the offer period. By contrast, another respondent suggested that, in order to avoid parties to an offer circumventing the requirements of the reporting regime by seeking to construe the term “approach” narrowly, Rule 28 should apply not only to a profit forecast published after the time of the

approach but also to any profit forecast published in the month preceding the commencement of the offer period.

3.13 Subject to what is said in section 5 below with regard to “ordinary course profit forecasts”, the Code Committee believes that the reporting requirements of Rule 28 should continue to apply to profit forecasts published following an approach but prior to the offer period.

(iii) Profit forecasts published by an offeror following the first active consideration of an offer and prior to an approach to the offeree company

3.14 Two respondents questioned the application of Rule 28 to a profit forecast published by a potential offeror following its first active consideration of a possible offer but prior to an approach having been made to the offeree company.

3.15 One of those respondents made comments of a mostly technical nature. The other considered that the application of the full rigour of the new Rule 28 to a potential securities exchange offeror from the moment of first active consideration of a possible offer would be disproportionate, that the risk of a potential securities exchange offeror deliberately making a misleading profit forecast prior to approaching an offeree company was remote, and that other legal and regulatory constraints would, in any event, inhibit such behaviour. The respondent was concerned that the proposed ability for the Panel to exercise discretion as to whether to apply the reporting requirements of the proposed new Rule 28.1(b) to a profit forecast published by an offeror prior to the approach to the offeree company but after the first active consideration of an offer would create considerable uncertainty. The respondent contrasted this with what it considered to be the more usual approach of the Code imposing a requirement and either providing the Panel with an ability to grant a dispensation or requiring the Panel to be consulted in order for it to determine whether the requirement should apply in a particular case. The respondent considered that it would be sufficient for such a profit forecast to be subject to

the less stringent requirements of the proposed new Rule 28.1(c) (see section 4 below).

3.16 Having considered the matter further, and having taken respondents' comments into account, the Code Committee has concluded, on balance, that the safeguards of the new Rule 28.1(c) should sufficiently address the situation where a potential offeror has published a profit forecast after its first active consideration of a possible offer but prior to its approach to the offeree company.

(iv) *Amendments*

3.17 In the light of the above, the Code Committee:

(a) has adopted the new Rule 28.1(b), as follows:

“(b) Except with the consent of the Panel, if the offeree company or a securities exchange offeror published a profit forecast before the offer period commenced but after it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must repeat the profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).”; and

(b) has not adopted the Note 1 on the new Rule 28.1 proposed in the PCP with regard to profit forecasts published by an offeror following its first active consideration of a possible offer but prior to its approach to the offeree company.

4. Profit forecasts published before an approach with regard to a possible offer

<p>Q4 Do you agree with the proposed new requirements with regard to an outstanding profit forecast? Do you have any comments on the proposed new Rule 28.1(c)?</p>
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4.1 In section 4 of the PCP, the Code Committee proposed that a party to an offer which had published a profit forecast before the time when the offeree company had been approached by an offeror should be required, in summary, to:

- (a) repeat the profit forecast and include in the offer document or offeree board circular confirmations from the company's directors with regard to the proper compilation and basis of accounting of the profit forecast (the "directors' confirmations"); or
- (b) explain why the profit forecast was no longer valid; or
- (c) publish (and obtain reports on) a new profit forecast for the relevant period.

4.2 All but one of the respondents who commented on Question 4 agreed with the proposal in principle. One respondent considered that the requirement in the proposed new Rule 28.1(c) for the directors to confirm the accounting basis of the profit forecast would mean that the opportunities for cost savings would be limited. Another respondent considered that the fact that the dispensation from the "reporting regime" would apply only where the directors of the company in question continued to believe that the original profit forecast was valid would mean that the proposed new Rule 28.1(c) was "likely to provide only a limited degree of comfort to the parties to an offer and other quoted companies".

- 4.3 One respondent considered that the proposed requirements would be unduly onerous in circumstances where the offeree company or a securities exchange offeror did not wish to repeat a profit forecast published before an approach and that the proposed requirements should apply only where a party chose to repeat an outstanding profit forecast. The Code Committee does not agree that compliance with the requirements of Rule 28.1 should be dependent on whether a party to an offer chooses to repeat an outstanding profit forecast. The Code Committee considers that any profit forecast on the record might be relied on by shareholders and other market participants who, in the context of an offer, should be informed whether or not the profit forecast remains valid.
- 4.4 One respondent suggested that, where an offeree company had published a profit forecast at a time when the directors had decided to solicit offers for the company, but prior to any approach having been made by a potential offeror, the profit forecast should be required to be reported on, and not simply subject to the “directors’ confirmations” regime. The Code Committee has considered this suggestion but has concluded that such a requirement would be capable of circumvention and therefore unworkable in practice. In addition, the Code Committee notes that any potential offerors which the putative offeree company subsequently approached would be aware of any such profit forecast and would be able to seek to verify it.
- 4.5 One respondent was concerned that, whilst a profit forecast might not strictly remain “*valid*”, as envisaged by the proposed new Rule 28.1(c)(i), the updated figures might not be materially different from the originally published profit forecast. The respondent suggested that, in such circumstances, a party to an offer should, with the consent of the Panel, be able to make a non-material revision to the original profit forecast without incurring a requirement to obtain reports from its reporting accountants and financial adviser. The Code Committee agrees that the requirements of Rule 28.1(c) will apply “*except with the consent of the Panel*” and that, on the facts of a particular case, it would be open to the Panel to grant a dispensation from the strict requirements. However, the Code Committee does not believe that it is

necessary for the specific circumstances in which a dispensation might be granted to be stated in the Code.

- 4.6 One respondent suggested that it would be preferable for Rule 28.1(c)(i) to follow the language of LR 13.5.32R of the FCA's Listing Rules, which requires the inclusion of a statement confirming that a profit forecast has been "*properly compiled on the basis of assumptions stated*". The Code Committee has accepted this suggestion.
- 4.7 In addition, two respondents queried whether, when a profit forecast was repeated, the inclusion of additional disclosures in order to comply with the requirements (in the new Note 7 on Rule 28.1 proposed in the PCP) that a profit forecast must be "understandable" and "reliable" would amount to the publication of a new profit forecast. The Code Committee confirms that it does not consider that the inclusion of such additional disclosures would lead to a repeated profit forecast being deemed to be a "new" profit forecast.
- 4.8 Having taken respondents' comments into account, the Code Committee has adopted the new Rule 28.1(c), as follows:

"(c) Except with the consent of the Panel, and subject to Note 3 (management buy-outs and offers by controllers), if the offeree company or a securities exchange offeror published a profit forecast before it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must:

- (i) repeat the profit forecast and include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled on the basis of the assumptions stated and that the basis of accounting used is consistent with the company's accounting policies (the "directors' confirmations"); or**
- (ii) include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case; or**

(iii) include a new profit forecast for the relevant period and the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).”.

5. Ordinary course profit forecasts

Q5 Do you agree with the proposed ability for the Panel to grant a dispensation from the proposed new Rules 28.1(a) and (b) in relation to ordinary course profit forecasts? Do you have any comments on the proposed new Note 2 on Rule 28.1?

(a) Introduction

5.1 In section 5 of the PCP, the Code Committee noted that companies may publish profit forecasts in forward-looking statements made in the ordinary course of their communication with their shareholders and the market and in accordance with an established practice, i.e. “**ordinary course profit forecasts**”. The Code Committee noted that, under the current Rule 28:

- (a) an ordinary course profit forecast published by the offeree company or a securities exchange offeror during an offer period must be reported on in the relevant document or announcement; and
- (b) an ordinary course profit forecast which has been published by such a party prior to the commencement of the offer period must be reported on in the offer document or offeree board circular (as appropriate).

5.2 Section 5 of the PCP proposed the introduction of a new Note 2 on Rule 28.1 which would provide that, where the offeree company or a securities exchange offeror publishes, or has published an ordinary course profit forecast:

“the Panel may consent to the disapplication of the requirements of the requirements of Rule 28.1(a) or (b), provided that the other parties to the offer consent to the disapplication of those requirements”.

In making this proposal, the Code Committee agreed, on balance, with the argument that the cost of obtaining reports on an ordinary course profit

forecast would normally be disproportionate to the benefits of such reports to offeree company shareholders in a recommended offer and in the absence of competing offers.

(b) Summary of responses

5.3 Respondents generally agreed with the principle that the Panel should have the express ability to dispense with the requirements of the new Rule 28.1(a) or (b) (as appropriate) in the case of an ordinary course profit forecast.

5.4 Five respondents questioned whether the requirement for an ordinary course profit forecast to have been made “*in accordance with an established practice*” was sufficiently clear.

5.5 A number of respondents questioned the application of the requirement for the other parties to the offer to consent to the disapplication of Rule 28.1(a) or (b) in the case of an ordinary course profit forecast. Three respondents suggested that the Panel should retain the ability to grant a dispensation even if each of the other parties to the offer did not so consent. One respondent went further and suggested that the proposed requirement to obtain the consent of all the parties to the offer was not appropriate.

(c) Conclusions

5.6 With regard to the proposed requirement for an ordinary course profit forecast to have been made “*in accordance with an established practice*”, the Code Committee does not consider that it would be appropriate for the Code to require, for example, that statements of a similar nature must have been published for a particular number of years, or to stipulate minimum standards of format and consistency, in order for the Panel to be satisfied that a “practice” has been “established”. Instead, the Code Committee considers that the Panel should take all relevant factors into account in deciding whether to treat a profit forecast as an ordinary course profit forecast.

5.7 The Code Committee notes that where the offeree company or a securities exchange offeror has published a profit forecast (including an ordinary course profit forecast) before an approach was made, the new Rule 28.1(c) provides that the offer document or offeree board circular (as appropriate) must:

- (a) repeat the profit forecast and include the “directors’ confirmations”; or
- (b) explain why the profit forecast was no longer valid; or
- (c) publish (and obtain reports on) a new profit forecast for the relevant period.

The Code Committee has concluded that the requirements of the new Rule 28.1(c) (rather than the requirements of the new Rule 28.1(b)) should apply where the offeree company or a securities exchange offeror has published an ordinary course profit forecast prior to the commencement of an offer period but following an approach having been made to the offeree company.

5.8 The Code Committee continues to believe that if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror first publishes an ordinary course profit forecast, the requirements of the new Rule 28.1(a) should normally apply, unless each other party to the offer (i.e. any party whose identity has been publicly announced at the time that the relevant document or announcement is published) agrees to the disapplication of those requirements. The Code Committee has concluded that, where the other parties to the offer do so agree, the Panel should be able to consent to the disapplication of Rule 28.1(a), in which case the document or announcement in question would be required to include the “directors’ confirmations”.

5.9 The Code Committee notes that, by virtue of the new Note 4 on Rule 28.1 (see section 9 below), the Panel would, in addition, have the ability to grant a dispensation from the requirements of Rule 28 if it considered that the

application of the Rule to a particular ordinary course profit forecast would be disproportionate, even without the agreement of the other parties to the offer.

(d) Amendments

5.10 The Code Committee has:

- (a) introduced a new definition of “ordinary course profit forecast” into the Definitions Section of the Code, as follows:

“Ordinary course profit forecast

A profit forecast published by the offeree company or a securities exchange offeror in accordance with its established practice and as part of the ordinary course of its communications with its shareholders and the market.”; and

- (b) adopted the new Note 2 on Rule 28.1, as follows:

“2. Ordinary course profit forecasts

(a) *Subject to Note 3, if the offeree company or a securities exchange offeror published an ordinary course profit forecast at any stage before the offer period commenced, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must satisfy the requirements of Rule 28.1(c)(i), (ii) or (iii) (as appropriate).*

(b) *Subject to Note 3, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes an ordinary course profit forecast, the document or announcement in which the ordinary course profit forecast is first published must normally include the reports from its reporting accountants and financial adviser(s) required by Rule 28.1(a)(i) and (ii). However, with the agreement of each of the other parties to the offer, the Panel will normally consent to the disapplication of the requirement for reports, in which case the document or announcement must include the directors’ confirmations required by Rule 28.1(c)(i).*

(c) *The Panel must be consulted if the offeree company or a securities exchange offeror considers that a profit forecast should be treated as an ordinary course profit forecast.”.*

- 5.11 In addition, the Code Committee has amended Rule 31.9 (offeree company announcements after Day 39) and Note 1 on Rule 32.1 (announcements which may increase the value of an offer) so as to refer to ordinary course profit forecasts, as set out in Appendix B.

6. Profit forecasts for future financial periods

(a) *Proposed dispensation from the reporting requirements of Rule 28*

Q6 Do you agree with the proposal for the Panel to be able to grant a dispensation from the proposed new Rules 28.1(a) and (b) in relation to profit forecasts for certain future financial periods? Do you have any comments on the proposed new Note 3 on Rule 28.1?

- 6.1 In section 6(a) of the PCP, the Code Committee proposed that, in certain circumstances, the Panel should have the ability to grant a dispensation from the reporting and other requirements of Rules 28.1(a) and (b) where a profit forecast published by the offeree company or a securities exchange offeror relates to a period ending more than 15 months from the date on which the profit forecast is, or was, first published. The Code Committee considered that this would be a more proportionate approach than the current application of the full requirements of Rule 28 to a profit forecast by the offeree company or a securities exchange offeror for any future period, however distant.
- 6.2 All but one of the respondents who commented on Question 6 agreed with the proposal. The Code Committee has therefore adopted a revised version of the new Note 3 on Rule 28.1 proposed in the PCP, but as a new Rule 28.2(a), as follows:

“28.2 PROFIT FORECASTS FOR FUTURE FINANCIAL PERIODS

- (a) The Panel will normally grant a dispensation from the requirement to include reports from reporting accountants and the financial adviser(s) in the case of a profit forecast for a financial period ending more than 15 months from the date on which it is, or**

was, first published. Where such a dispensation is granted, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to or first published, must include the directors' confirmations referred to in Rule 28.1(c)(i). Alternatively, in the case of a profit forecast which was published before the offer period commenced, the document or announcement may include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case."

- (b) *Proposed requirement to publish a corresponding profit forecast for the current financial period and any intervening financial period*

Q7 Do you agree with the proposed requirement to publish corresponding profit forecasts for the current and intervening financial periods where a profit forecast for a future financial period is published? Do you have any comments on the proposed new Rule 28.2?

6.3 In section 6(b) of the PCP, the Code Committee proposed that, where the offeree company or a securities exchange offeror wished to publish a profit forecast with respect to a future financial period, the party concerned should provide offeree company shareholders with a full sequence of projected profits for the current financial period and any intervening financial periods. The Code Committee was concerned that, if the Code were to permit profit forecasts for future financial periods to be published but not reported on, such profit forecasts could be used as a device to enable shareholders, investment analysts and other market participants to interpolate a profit forecast for the current financial period, without the party concerned having published (and, where appropriate, having obtained reports on) that interpolated profit forecast.

6.4 Most of the respondents who commented on Question 7 agreed with the proposals that, where a profit forecast for a future financial period is published:

- (a) the relevant document or announcement should be required to include corresponding profit forecasts for the current financial period and for any intervening financial periods; and
- (b) any corresponding profit forecast would need to be reported on if it related to a period ending less than 15 months from the date on which it was first published but that a dispensation from the reporting requirements of Rules 28.1(a) and (b) should normally be available if it related to a period ending more than 15 months from the date on which it was first published.

- 6.5 One respondent, who agreed in principle with the proposed requirement to publish profit forecasts for current and intervening financial periods, considered that, in the case of a pre-existing profit forecast for a future financial period, the new requirement should apply only if the offeree company or a securities exchange offeror chose to repeat the profit forecast during the offer period. The respondent had made a similar comment with regard to the proposed new Rule 28.1(c). As noted in paragraph 4.3 above, the Code Committee does not believe that compliance with the requirements of Rule 28.1 should be dependent on whether a party to an offer chooses to repeat an outstanding profit forecast.
- 6.6 Two other respondents opposed the principle, and the increased burden, of requiring profit forecasts to be made for the current financial period and any intervening financial period where a profit forecast is published for a future financial period.
- 6.7 One respondent, a professional body, said that its members were split on the issue. The members who were opposed to the proposed new requirement to publish profit forecasts for current and intervening financial periods argued that, where a profit forecast is made for a future financial period, the assumption that shareholders and others are able to interpolate their own profit forecast for the current financial period with any degree of confidence was misplaced. In addition, they considered that it would in any event be unlikely

that a party which had published a profit forecast for a future financial period prior to the commencement of an offer period would have done so with a view to circumventing the requirements of the Code.

- 6.8 The Code Committee notes these points but continues to believe that it is necessary to introduce the new Rule 28.2(b) in order to avoid the risk of profit forecasts for future financial periods being published as a device to enable shareholders and others to infer a profit forecast for the current financial period or any intervening financial period without any of the safeguards of Rule 28 applying. As noted in paragraph 6.11 of the PCP, where the new Rule 28.2 requires the offeree company or a securities exchange offeror to publish one or more new profit forecasts for previous corresponding financial periods for the first time during an offer period, that party will also be required to obtain reports on the new profit forecast(s) in accordance with the new Rule 28.1(b). However, such reports would not have to be obtained where the party had previously published such corresponding profit forecasts prior to the commencement of the offer period, since they could instead be repeated and the “directors’ confirmations” given under the new Rule 28.1(c). In addition, where any new profit forecast related to a future financial period ending more than 15 months from the date on which the profit forecast was published, the party would normally be able to obtain a dispensation from the requirement to obtain reports in accordance with the new Rule 28.2(a).
- 6.9 One respondent considered that statements or forecasts which looked forward, say, four or five years would carry little weight and would be regarded by shareholders and other market participants as “nothing more than targets”. The respondent considered that, if appropriately caveated, such a “target” should not be treated as a profit forecast for the purposes of the Code. The Code Committee considers that the question of whether a forward-looking statement indicates a likely level of profits for a particular period, such that it falls within the definition of “profit forecast”, or is no more than an aspirational target which falls outside the definition of “profit forecast” (and is hence not subject to the reporting requirements of Rule 28), will depend on the facts of the particular case.

- 6.10 Having taken respondents' comments into account, the Code Committee has adopted a new Rule 28.2(b) and a new Note on Rule 28.2, as follows:

(b) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror either publishes for the first time or repeats a profit forecast for a future financial year, the document or announcement must include a corresponding profit forecast for the current financial year and for each intervening financial year. The requirements of Rule 28.1(a), (b) or (c)(i) (as appropriate) will apply to each such forecast for a financial year ending 15 months or less from the date on which it is, or was, first published and the requirements of Rule 28.2(a) will normally apply to each such forecast for a financial year ending more than 15 months from the date on which it is, or was, first published.

NOTE ON RULE 28.2

Other financial periods

The requirements of Rule 28.2(b) will also apply where the offeree company or a securities exchange offeror publishes a profit forecast for a financial period other than a financial year."

7. Management buy-outs and offers by controllers

Q8 Do you agree that reports should always be required to be obtained on a profit forecast where the offer is a management buy-out or is made by the existing controller of the offeree company? Do you have any comments on the proposed new Note 4 on Rule 28.1?

- 7.1 In section 7 of the PCP, the Code Committee proposed that, where an offer is a management buy-out or similar transaction, or is being made by the existing controller or group of controllers, the Code should continue to require any profit forecast to be reported on, regardless of when it was published.
- 7.2 Most of the respondents who commented on Question 8 agreed with the proposal, although two respondents disagreed. These respondents suggested that the Code should draw a distinction between, on the one hand, an offer where members of the incumbent management were leading the bid (and had

arranged funding for the buy-out) and, on the other hand, a leveraged private equity bid, especially where no management incentivisation arrangements had been discussed (albeit that the private equity offeror might wish to retain some or all of the incumbent management). The Code Committee recognises that there might be circumstances in which it would be appropriate for the Panel to grant a dispensation from the requirements of Rule 28.1(a) or (b), for example, if no discussions had yet taken place between a private equity offeror and members of the offeree company's management. However, the Code Committee believes that the Panel should not normally grant a dispensation from those requirements when the offer is a management buy-out or similar transaction.

- 7.3 A number of respondents queried whether (in accordance with the Note 3 on Rule 28.1 proposed in the PCP, i.e. the new Rule 28.2(a) adopted above) the requirement for reports would normally be disapplied if the profit forecast related to a period ending more than 15 months from the date on which the profit forecast was first published. Some respondents considered that a dispensation from the requirements for reports should be available in such circumstances, whilst others considered that reports should always be required where the offer was a management buy-out or similar transaction or was made by the offeree company's existing controller(s). The Code Committee believes that the requirement for reports should not normally extend to a profit forecast which relates to a financial period ending more than 15 months from the date on which it is published. That said, the Code Committee notes that if the publication of a profit forecast for a period which ends in more than 15 months' time triggers a requirement under the new Rule 28.2(b) for a corresponding profit forecast to be made for the first time for the current financial period, that new profit forecast for the current financial period would be required to be reported on.
- 7.4 Having taken respondents' comments into account, the Code Committee has adopted a new Note 3 on Rule 28.1, as follows:

“3. Management buy-outs and offers by controllers

Where the offer is a management buy-out or similar transaction or is being made by the existing controller or group of controllers:

(a) the Panel will not normally grant a dispensation from the requirements of Rule 28.1(a) or (b) (as appropriate) with regard to any profit forecast (including an ordinary course profit forecast) by the offeree company for a financial period ending 15 months or less from the date on which the profit forecast is, or was, first published; and

(b) where the profit forecast was published by the offeree company before it received an approach with regard to a possible offer, the offer document, or any earlier document or announcement published during the offer period in which the profit forecast is referred to, will normally be required to repeat the profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).”

8. Profit ceilings

Q9 Do you have any comments on the proposed new Note 5 on Rule 28.1 with regard to profit ceilings?
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8.1 In section 8 of the PCP, the Code Committee proposed the codification of the Panel Executive’s existing practice by means of the introduction of an express ability for the Panel to grant a dispensation from the requirements of Rule 28 where a profit forecast states a maximum figure (or a “ceiling”) for the likely level of profits.

8.2 Respondents had mixed views on this issue. Three respondents expressly agreed with the proposal but three other respondents queried why a statement which established a “ceiling” for profits should be treated differently from a statement which established a “floor”. One respondent considered that, before granting a dispensation, the Panel should satisfy itself that the announcement of the profit ceiling did not benefit the company in question or its management. However, another respondent queried how the Panel would assess whether the announcement of a profit ceiling would confer such a benefit. One respondent noted that the “no benefit” argument could also apply to, for example, a forecast of a range of profits which contained both a ceiling

and a floor. One respondent queried whether a forecast of a loss would be treated in the same way as a forecast of a maximum profit. Another (who agreed with the proposal) considered that it should not be permissible for a party to avoid the reporting requirements by forecasting (in order to generate expectations of high profits) an artificially high maximum profit figure.

- 8.3 The Code Committee has concluded that the ability for the Panel to grant a dispensation from the requirements of Rule 28 with regard to profit ceilings should be included in a new Note 4 on Rule 28.1, which will also address the ability of the Panel to grant a dispensation from the requirements of Rule 28 where its application would otherwise be disproportionate or inappropriate, as set out in section 9 below. Accordingly, the new Note 5 on Rule 28.1 proposed in the PCP has not been adopted.

9. Where the application of the requirements of Rule 28 would be disproportionate or otherwise inappropriate

Q10 Do you agree that the Code should expressly provide the Panel with the ability to grant a dispensation from the requirements of Rule 28 where the offer would not result in a material increase in the equity share capital of the offeror? Do you have any comments on the proposed new Note 6 on Rule 28.1?

(a) *Where the offer is not material for the offeror*

- 9.1 In section 9 of the PCP, the Code Committee proposed the introduction of a new Note 6 on Rule 28.1, whereby the Panel would have the ability to grant an offeror:

“a dispensation from the requirements of Rule 28 if the offer could not result in the issue of securities representing 10% or more of the enlarged equity share capital of the offeror and if the Panel considers that the application of Rule 28 in such circumstances would be disproportionate”.

- 9.2 Seven of the respondents to Question 10 agreed with the proposed ability for the Panel to grant a dispensation from the requirements of Rule 28 in such

circumstances. One respondent disagreed, on the basis that a profit forecast published by a securities exchange offeror would always be likely to be material to offeree company shareholders, even if the securities offered as consideration represented less than the proposed threshold of 10% of the enlarged equity share capital of the offeror.

- 9.3 One respondent noted that paragraph 9.5 of the PCP had listed various factors which the Panel might take into account in determining whether the application of Rule 28 would be disproportionate in circumstances where the offer would result in an increase in the offeror's existing share capital which was not material. The respondent considered that these factors should be set out in the Code.

(b) Where the securities to be issued by the offeror do not represent a material proportion of the value of the offer

- 9.4 Three respondents queried whether, in determining whether the Panel should grant a dispensation from the requirements of Rule 28, it was appropriate to measure materiality by reference to the potential increase in the offeror's equity share capital. Instead, these respondents suggested that the Panel should grant a dispensation from the requirements of Rule 28 on the grounds of immateriality only where the consideration securities did not represent a material proportion of the value of the offer.

(c) Conclusions

- 9.5 Having taken respondents' comments into account, the Code Committee has decided not to adopt the new Note 6 on Rule 28.1 in the form proposed in the PCP. Instead, the Code Committee has decided to introduce a new Note 4 on Rule 28.1, addressing the potential availability of dispensations from the requirements of Rule 28 where the application of the Rule would be disproportionate or otherwise inappropriate, for example:

- (a) where a party to an offer has published a profit “ceiling” only (see section 8 above); or
- (b) where the consideration securities will not represent a material proportion of the offeror’s enlarged share capital or, alternatively, a material proportion of the value of the offer.

9.6 The new Note 4 on Rule 28.1 adopted by the Code Committee is as follows:

“4. Where the application of Rule 28 would be disproportionate or otherwise inappropriate

(a) The Panel may grant a dispensation from the requirements of Rule 28 if it considers that the application of the Rule to the profit forecast would be disproportionate or otherwise inappropriate, for example:

(i) where the profit forecast states only a maximum figure for the likely level of profits for a particular financial period; or

(ii) in the case of an offeror, where the consideration securities will not represent a material proportion of its enlarged share capital or, alternatively, a material proportion of the value of the offer.

(b) Factors which the Panel might take into account when considering whether to grant a dispensation under paragraph (a) above include:

(i) the reason for the publication of the profit forecast, including whether it was (or would be) an ordinary course profit forecast (see Note 2);

(ii) whether the terms of the profit forecast are general or specific;

(iii) whether the offer has been recommended by the board of the offeree company and (in the case of an offeror) whether a competing offer or possible offer has been announced; and

(iv) in the case of paragraph (a)(i) (i.e. a profit “ceiling”), whether the offer is a management buy-out or similar transaction or is being made by an existing controller or group of controllers of the offeree company.”.

10. Compilation of profit forecasts and quantified financial benefits statements

Q11 Do you have any comments on the proposed new Note 7 on Rule 28.1 in relation to the compilation of profit forecasts and quantified financial benefits statements?
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- 10.1 In section 10 of the PCP, the Code Committee proposed the introduction of a new Note 7 on Rule 28.1, setting out provisions with regard to the compilation of profit forecasts and quantified financial benefits statements.
- 10.2 All respondents who commented on Question 11 supported the principle that the Code should include such provisions. A number of respondents expressly supported the proposal that the principles of “understandability”, “reliability” and “comparability” should be reflected in the Code. One respondent suggested that the Code Committee should also adopt the principle of “relevance” set out in the ESMA recommendations. This provides that financial information “*must have an ability to influence economic decisions of investors and [be] provided on a timely basis so as to influence such decisions and assist in confirming or correcting past evaluations*”. The Code Committee continues to believe that it is not necessary to introduce the principle of “relevance” into the Code.
- 10.3 Two respondents preferred the language used to describe the principles of “useful prospective financial information” in the ICAEW Guidance over the language used in the ESMA recommendations. The Code Committee notes that, whilst the two formulations of the principles are not identical, there is little difference in substance and it has decided to adopt the language of the ESMA recommendations, as proposed in the PCP.
- 10.4 Two respondents considered that it would be more appropriate for the Code to address the compilation of profit forecasts and quantified financial benefits statements in separate provisions. The respondents noted that the ICAEW Guidance includes detailed guidelines on the compilation of merger benefits

statements in accordance with the current Note 9 on Rule 19.1. The Code Committee considers that the principles which were set out in the new Note 7 on Rule 28.1 proposed in the PCP are of a high level and that they are equally applicable to profit forecasts and quantified financial benefits statements. Further, the Code Committee notes that the new Rule 28.5 proposed in the PCP, with regard to quantified financial benefits statements, reflected a number of the matters listed in paragraph 10.18 of the ICAEW Guidance under the heading “understandability and reasonable disclosure”. In addition, as noted above, the Code Committee understands that the FRC intends to develop a new reporting standard with respect to quantified financial benefits statements.

- 10.5 Having taken respondents’ comments into account, the Code Committee has adopted a revised version of the proposed new Note 7 on Rule 28.1 as a new Rule 28.3, as follows:

**“28.3 COMPILATION OF PROFIT FORECASTS AND
QUANTIFIED FINANCIAL BENEFITS STATEMENTS**

(a) Any profit forecast or quantified financial benefits statement must be properly compiled and must be prepared with due care and consideration. The profit forecast or quantified financial benefits statement, and the assumptions on which it is based, are the responsibility of the relevant party to the offer and its directors.

(b) A profit forecast (and the assumptions stated) or a quantified financial benefits statement (and the details included in accordance with Rule 28.6) must be:

(i) understandable: it must not be so complex or include such extensive disclosure that it cannot be readily understood;

(ii) reliable: it must be supported by a thorough analysis of the offeree company’s and/or the offeror’s business and must represent factual and not hypothetical strategies, plans and risk analysis; and

(iii) comparable (in the case of a profit forecast only): it should be capable of justification by comparison with outcomes in the form of historical financial information.

(c) A forecast of profit before tax should disclose separately any non-recurrent items and tax charges if they are expected to be abnormally high or low.”.

11. Assumptions

<p>Q12 Do you have any comments on the proposed new Rule 28.3 with regard to assumptions in relation to profit forecasts and quantified financial benefits statements?</p>

11.1 In section 11 of the PCP, the Code Committee proposed, broadly, that the requirement for a profit forecast to be accompanied by assumptions, which is currently set out in Rule 28.2, should be incorporated into the new Rule 28.1 (see section 3 above) and that the requirements with regard to assumptions, currently set out in Notes 1 and 2 on Rule 28.2, should be replaced by a new Rule 28.3.

11.2 All respondents who commented on Question 12 supported the proposed new Rule 28.3 with regard to assumptions. Four respondents suggested omitting from the new Rule 28.3 the proposed requirement that, where a document or announcement states assumptions about factors which could have a material effect on the achievement of a profit forecast or quantified financial benefits statement, the factors should be quantified. The Code Committee has accepted that suggestion.

11.3 Having taken respondents’ comments into account, the Code Committee has adopted a revised version of the new Rule 28.3 proposed in the PCP as a new Rule 28.4. As indicated in section 3 above, the Code Committee has concluded that all of the requirements with regard to assumptions should be incorporated into the new Rule 28.4. The new Rule 28.4 will therefore read as follows:

“28.4 ASSUMPTIONS AND BASES OF BELIEF

(a) When a profit forecast is included in any document or announcement published during an offer period (or in an

announcement which commences an offer period), the document or announcement must include the principal assumptions on which the profit forecast is based.

(b) The assumptions included for a profit forecast or bases of belief included for a quantified financial benefits statement should provide useful information as to its reasonableness and reliability. They must:

(i) be readily understandable;

(ii) be specific and precise; and

(iii) not relate to the general accuracy of the estimates underlying the profit forecast or the quantified financial benefits statement.

(c) There must be a clear distinction between assumptions or bases of belief about factors which the directors (or other members of the company's management) can influence and those which they cannot influence."

12. Profit estimates

Q13 Do you agree that the exemption from the requirements of Rule 28 for certain profit estimates should be extended as proposed? Do you have any comments on the proposed new Rule 28.4?

(a) *Exemption from the requirements of Rule 28*

12.1 In section 12 of the PCP, the Code Committee proposed that there should continue to be an exemption from the requirements of Rule 28.1 for certain profit estimates, provided that they complied with the relevant regulatory requirements. Broadly, the Code Committee proposed that Rule 28.1 should not apply to a profit estimate included in:

(a) a preliminary statement of annual results;

(b) a half-yearly financial report; or

- (c) other interim financial information published by a company and prepared in accordance with International Accounting Standard 34 (“**IAS 34**”).
- 12.2 All respondents who commented on Question 13 supported the principle that certain profit estimates should be exempt from the requirements of Rule 28.
- 12.3 One respondent considered that the exemption should extend to any profit estimate included in an interim management statement (an “**IMS**”), i.e. that the exemption should not be subject to the IMS having been prepared in accordance with IAS 34. This was on the basis that, regardless of its content, an IMS produced by virtue of the requirements of the FCA’s Disclosure Rules and Transparency Rules would be subject to “regulatory oversight”. The Code Committee does not consider that any profit estimate included in an IMS should automatically be exempted from the requirements of Rule 28 and continues to believe that an exemption should be available only where the IMS has been prepared in accordance with an appropriate reporting framework, such as that in IAS 34. In any event, the Code Committee understands that the requirements for IMSs to be published are likely to be removed as part of the proposed amendments to the EU Transparency Directive.
- 12.4 Two respondents queried how the proposed new Rule 28.4 would apply to an overseas company whose securities were admitted to trading on a UK market but which did not prepare its accounts in accordance with the International Financial and Reporting Standards (“**IFRS**”). The respondents noted that only companies which prepared accounts in accordance with IFRS would prepare an IMS in accordance with IAS 34. The Code Committee believes that the Panel should be able to grant a dispensation from the requirements of Rule 28 where such a company publishes a profit estimate in an IMS but only if the IMS has been prepared in accordance with a reporting framework equivalent to that in IAS 34.
- 12.5 As a separate matter, and in answer to a question raised by one respondent, where reporting accountants are required to report on a profit estimate which

does not qualify for an exemption from the requirements of Rule 28, the Panel Executive has confirmed to the Code Committee that it considers that a report prepared in accordance with International Standard for Review Engagements (UK and Ireland) 2410 would normally satisfy the requirements of Rule 28.1.

(b) *Unaudited preliminary statements of annual results*

12.6 With regard to unaudited preliminary statements of annual results, the PCP proposed that the Panel should have the ability, in appropriate circumstances, to grant a dispensation from the requirements of Rule 28.1 in relation to preliminary statements to which the FCA's Listing Rules do not apply. As noted in the PCP, neither the AIM Rules for Companies nor the ISDX Growth Market Rules for Issuers (previously the PLUS Rules for Issuers) include specific provisions in relation to preliminary statements.

12.7 In the PCP, the Code Committee proposed, in effect, that the Panel should be able to grant a dispensation where it was satisfied that a preliminary statement by a company subject to the AIM Rules or the ISDX Growth Market Rules would have complied with the provisions of the Listing Rules with regard to preliminary statements, had those provisions applied to it. One respondent asked how the Panel would satisfy itself on this point. The Code Committee understands that, in such circumstances, the Panel Executive will ask the accountants to the company concerned to confirm that the preliminary statement would have complied with the relevant requirements of the Listing Rules (had they applied).

(c) *Amendments*

12.8 Having taken respondents' comments into account, the Code Committee has adopted a revised version of the new Rule 28.4 proposed in the PCP as a new Rule 28.5, as follows:

“28.5 PROFIT ESTIMATES

Rule 28.1 does not apply to a profit estimate included in:

- (a) a preliminary statement of annual results which complies with the relevant provisions of the UKLA Rules;**
- (b) a half-yearly financial report which complies with the relevant provisions of the UKLA Rules, the AIM Rules for Companies or the ISDX Growth Market Rules for Issuers; or**
- (c) an interim management statement, or other interim financial information, which is published by virtue of a regulatory requirement and which has been prepared in accordance with the reporting framework set out in International Accounting Standard 34.**

NOTES ON RULE 28.5

1. Preliminary statements of annual results

Where an unaudited preliminary statement of annual results is published by an offeree company or a securities exchange offeror whose securities are admitted to trading on a recognised investment exchange but to which the relevant provisions of the UKLA Rules do not apply, the Panel may nonetheless treat the exemption from the requirements of Rule 28.1 as applying if it is satisfied that the statement complies with the substance of those provisions.

2. Other circumstances in which a dispensation may be granted

Where an offeree company or a securities exchange offeror publishes, or has published, a profit estimate in accordance with a regulatory requirement which does not qualify for an exemption under Rule 28.5, the Panel may, in appropriate circumstances, grant a dispensation from the requirements of Rule 28.1 (for example, where an overseas company prepares a half-yearly financial report under a framework equivalent to that in IAS 34 and consistent with that which it adopts for its statement of annual results). The Panel should be consulted in such cases.”.

- 12.9 In addition, the Code Committee has adopted the proposed amendments to the way in which historical financial information is described in Rules 24.3(a)(iv) and (v) and Rule 25.3, as set out in Appendix B.

13. Quantified financial benefits statements

Q14 Do you have any comments on the proposed new Rule 28.5 in relation to quantified financial benefits statements?
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13.1 In section 13 of the PCP, the Code Committee proposed, in effect, that the “additional requirements” which currently apply to merger benefits statements by virtue of Note 9 on Rule 19.1 should be replaced by new provisions within Rule 28 applicable to quantified financial benefits statements. In particular, a new Rule 28.5 was proposed setting out specific disclosure requirements for quantified financial benefits statements.

13.2 There was general support from respondents for the proposed new Rule 28.5 with regard to quantified financial benefits statements. A number of respondents made drafting suggestions which the Code Committee has sought to accommodate in the final version of the new Rule 28.6 set out below.

13.3 As mentioned above, the Code Committee understands that the FRC intends to develop a new reporting standard with respect to quantified financial benefits statements.

13.4 Having taken respondents’ comments into account, the Code Committee has:

(a) deleted the current Note 9 on Rule 19.1; and

(b) adopted a new Rule 28.6, as follows:

**“28.6 DISCLOSURE REQUIREMENTS FOR QUANTIFIED
FINANCIAL BENEFITS STATEMENTS**

When a quantified financial benefits statement is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement must include:

(a) **the bases of belief supporting the statement (identifying the principal assumptions and sources of information);**

- (b) an analysis, explanation and quantification of the constituent elements sufficient to enable the context and relative importance of those elements to be understood;**
- (c) a base figure where any comparison is made with historical financial performance or with existing cost bases and structures;**
- (d) details of any disbenefits expected to arise;**
- (e) in the case of a statement falling under paragraph (a) of the definition of a “quantified financial benefits statement”, a statement that the expected financial benefits will accrue as a direct result of the success of the offer and could not be achieved independently of the offer;**
- (f) an indication of when the financial benefits are expected to be realised;**
- (g) an indication of whether the expected financial benefits will be recurring, clearly identifying any non-recurring benefit(s); and**
- (h) the recurring and non-recurring costs of realising the expected financial benefits.**

NOTES ON RULE 28.6

1. Cost saving measures announced before the offer period

(a) Cost saving measures published by the offeree company prior to the offer period are not subject to Rule 28, even if they are repeated by the offeree company during the offer period. However, if, during the offer period, the offeree company revises any cost saving measures published prior to the offer period, the revised cost saving measures will be treated as a quantified financial benefits statement, such that Rule 28.1(a) will then apply.

(b) The Panel should be consulted if an offeree company proposes to publish a statement with regard to new cost saving measures after it has received an approach but prior to the commencement of an offer period. If the Panel considers that the new cost saving measures are being published as a result of the approach, it may determine that the statement should be treated as if it were a quantified financial benefits statement published during the offer period, save that compliance with the requirements of Rule 28.1(a) may be deferred until the publication of the offeree board circular.

2. *Statements by the offeree company*

The Panel will not normally permit an offeree company to publish a statement quantifying the financial benefits expected to accrue from an offer by a particular offeror unless the statement is published with the consent of that offeror, in which case the requirements of Rule 28.1 will apply. However, the offeree company will be permitted to publish its views on any quantified financial benefits statement published by an offeror.”.

14. Profit forecast for part of a business

Q15 Do you have any comments on the proposed new Rule 28.6 with regard to a profit forecast for part of a business?
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- 14.1 In section 14 of the PCP, the Code Committee proposed the introduction of a new Rule 28.6, which would provide that Rule 28 applies not only to a profit forecast for the whole of a company’s business (as is currently the case) but also to a profit forecast which relates to a part of a company’s business.
- 14.2 There was general support from respondents for the principle that the requirements of Rule 28 should apply to a profit forecast relating to a part of the business of an offeree company or a securities exchange offeror. Five respondents made comments with respect to the circumstances in which the Panel might consent to a disapplication of Rule 28 with regard to a profit forecast for a part of a business. Of these:
- (a) three respondents suggested that the proposed new provision should include a qualification as to materiality; and
 - (b) two further respondents considered that the application of Rule 28 should not be subject to a size limitation, given the potential for small parts of a business to have a disproportionate impact on valuation. However, one of those respondents nonetheless sought guidance as to when the Panel might consider it appropriate to consent to the disapplication of Rule 28 to a profit forecast for part of a business.

- 14.3 Having considered again the question of whether the new provision should be subject to a materiality qualification, the Code Committee continues to believe that it should not. As mentioned in paragraph 14.3 of the PCP, the Code Committee considers that, if the offeree company or a securities exchange offeror has chosen to publish a profit forecast in relation to a particular part of its business, that forecast is likely to be material, such that the requirements of Rule 28 should apply. However, since this will not invariably be the case, the Code Committee proposed that the Panel should be given the express ability to consent to Rule 28 being disapplied in relation to a profit forecast for part of a business in appropriate circumstances.
- 14.4 Two respondents considered that, where an offeree company or a securities exchange offeror had published, and obtained reports on, a profit forecast for the entire group, there should be no requirement to obtain separate reports on any profit forecast which had been made for part of the business for the same financial period. The Code Committee confirms that it is not its intention that separate reports should be obtained in such circumstances and that reports on the profit forecast for the group alone would be sufficient.
- 14.5 In view of the above, the Code Committee has adopted a slightly revised version of the new Rule 28.6 proposed in the PCP as a new Note 5 on Rule 28.1, as follows:

“5. Profit forecast for part of a business

Except with the consent of the Panel, Rule 28 applies in the same way to a profit forecast which relates to any part of the business of the offeree company or a securities exchange offeror as to a profit forecast which relates to the group as a whole.”.

15. Profit forecasts published by persons other than the party to the offer to whose profits the forecast relates

Q16 Do you have any comments on the proposed new Rule 28.7(a), the proposed amendments to Note 5 on Rule 19.1, or the proposed Note 1 on Rule 28.7, with regard to references by a party to an offer to third party or average forecasts with respect to its own profits?

(a) Investment analyst and other third party forecasts relating to a party's own profits

(i) Introduction

15.1 In section 15(b) of the PCP, the Code Committee proposed that the Panel Executive's application of Note 5 on Rule 19.1 to "third party" profit forecasts should be codified in a new Rule 28.7(a). In summary, Note 5 on Rule 19.1 provides that, since quotations will necessarily carry the implication that they are endorsed by the party quoting them, comments must not be quoted unless the party concerned is prepared to corroborate, substantiate and take responsibility for them.

15.2 The new Rule 28.7(a) proposed in the PCP provided that if, during an offer period, an offeree company or a securities exchange offeror referred to any forecast with respect to its own future profits (including an average figure) published by one or more investment analysts or other third parties, that third party profit forecast would be treated as having been endorsed by and, in effect, published by the party to the offer concerned. Accordingly, the "reporting regime" of the new Rule 28.1(a) would then apply.

(ii) Summary of responses

15.3 Most respondents agreed with the principle that an offeree company or a securities exchange offeror which referred to a third party profit forecast should be treated as having endorsed that profit forecast and that the requirements of Rule 28 should apply in the same way as if the party to the

offer had published that profit forecast. Some of those respondents considered that it might be preferable for the Code simply to prohibit references by parties to an offer to third party profit forecasts relating to themselves.

- 15.4 One respondent considered that the drafting of the new Rule 28.7 proposed in the PCP could be simplified. In particular, the respondent noted that the reference in the proposed new definition of a “profit forecast” to:

“a form of words which expressly states ... a figure ... for the likely level of profits or losses for a particular period”

appeared to capture a reference to a third party profit forecast. That said, the respondent suggested that this might be reflected in a Note on the new Rule 28.1, in order to put the matter beyond doubt.

- 15.5 One respondent disagreed with the principle behind the proposed new Rule 28.7(a) and considered that it was overly harsh to require a party which quoted a third party’s views to obtain reports on that statement. The respondent considered that the Code should instead set out guidelines as to the fair representation of third party views.

(iii) *Conclusions*

- 15.6 The Code Committee continues to believe that the Panel Executive’s practice of treating references to analysts’ and other third party profit forecasts as being subject to the requirements of Rule 28 should be codified. The Code Committee has accepted the suggestion that this should be reflected in a new Note 6 on the new Rule 28.1.

- 15.7 The Code Committee has therefore adopted a new Note 6 on Rule 28.1, as follows:

“6. Investment analyst and other third party forecasts

Except as provided in Rules 28.7 and 28.8, if in any document or announcement the offeree company or a securities exchange offeror refers to or quotes from a profit forecast relating to it published by an investment analyst or other third party, including a consensus forecast, it will be treated as having endorsed and published that profit forecast. The requirements of Rule 28.1 will then apply.”.

- 15.8 In addition, the Code Committee has amended Note 5 on Rule 19.1 so that it will now read as follows:

“5. Quotations

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

Since the use of a quotation will carry the implication that the quotation is endorsed by the party to the offer using it, quotations must not be used unless the party is prepared, where appropriate, to corroborate or substantiate them and they are covered by the directors’ responsibility statement. See also Note 6 on Rule 28.1 with regard to investment analyst and other third party forecasts.”.

(b) Publication of investment analysts’ forecasts on websites

(i) Introduction

- 15.9 In section 15(b) of the PCP, the Code Committee also proposed the introduction of a new Note 1 on the proposed Rule 28.7, which would require the offeree company or a securities exchange offeror, upon the commencement of an offer period, to remove from its website any profit forecasts (including average figures) by investment analysts.

(ii) Summary of responses

- 15.10 Six of the respondents disagreed with the proposed requirement and considered that it would be onerous and disproportionate. The respondents were concerned that the removal of investment analysts’ forecasts from a

company's website would mean that shareholders would have access only to the consensus figures produced by third party data providers, which they considered might be less accurate, and collated on a less consistent basis, than the consensus forecasts published on the company's own website. One respondent considered that the publication by a company on its website of consensus forecasts represented best practice and was valuable to shareholders. Another respondent considered that an offeree company or a securities exchange offeror should be permitted to continue to calculate consensus forecasts on the same basis as prior to the offer period, subject to omitting from the calculation profit forecasts by analysts in the same group as a connected adviser to any party to the offer.

15.11 Two other respondents suggested a solution similar to that previously put forward in PCP 2010/1, whereby a company would be required to include on its website wording to the effect that any consensus forecasts had not been prepared for the purposes of the offer and that they had not been examined or reported on for the purposes of Rule 28.1.

(iii) Conclusions

15.12 The Code Committee has given careful consideration to respondents' views and has concluded that it would not be in shareholders' best interests for the Code to require companies to remove investment analysts' forecasts from their websites at the commencement of an offer period. On reflection, the Code Committee considers that companies should be permitted to continue to publish investment analysts' forecasts on their websites during an offer period, provided that certain requirements are observed. However, the Code Committee believes that, if these requirements cannot be observed by a party to the offer, it should be required to remove from its website all investment analyst forecasts, including any consensus forecasts.

15.13 The Code Committee believes that the figures to be published on a company's website during an offer period must be based on all forecasts for that company

which have been provided to it by investment analysts who have published such forecasts, with the following exceptions:

- (a) any forecasts which pre-date the company's latest preliminary statement of annual results or half-yearly financial report must be excluded; and
- (b) any forecasts by investment analysts who are in the same group as any party to the offer or any "connected adviser" (as defined in the Definitions Section of the Code) to a party to the offer must be excluded.

15.14 The Code Committee also believes that, in exceptional circumstances, it should be permissible for an offeree company or a securities exchange offeror to exclude an investment analyst's forecast from its calculations if the forecast is wholly anomalous or if it has been prepared on a wholly different basis from that of other investment analysts, provided that it is clearly stated on the website why that forecast has been excluded from the calculations. In such cases, it would, of course, be open to another party to the offer, or another interested person, to put arguments to the Panel that the excluded profit forecast was not wholly anomalous or prepared on a wholly different basis from that of the other investment analysts, in which case the matter would need to be determined by the Panel.

15.15 In addition, the Code Committee believes that a company's website on which investment analysts' forecasts are published during an offer period must:

- (a) for each line in respect of which forecasts are published on the website, state:
 - (i) the highest and lowest figures forecast by any investment analyst; and

- (ii) a “consensus forecast” (being the arithmetic mean of all of the forecasts);
- (b) state the names of the organisations whose forecasts have been included in the calculation of the consensus forecast, and the dates of the forecasts;
- (c) if any analyst’s forecast has been excluded from the calculation of a consensus forecast, state the name of the organisation, the date of the forecast and the reason for its exclusion;
- (d) be kept up-to-date by including any new forecasts promptly after their publication and promptly excluding any forecasts which pre-date the publication of the latest preliminary statement of annual results or half-yearly financial report; and
- (e) prominently state that the investment analysts’ forecasts are not endorsed by the company and that they have not been reviewed or reported on in accordance with the requirements of Rule 28.1.

15.16 Further, the Code Committee believes that, where the offeree company or a securities exchange offeror so publishes details of investment analysts’ forecasts on its website, the source data used to compile the consensus forecasts must, on request, promptly be made available to any other party to the offer.

15.17 The Code Committee has therefore adopted a new Rule 28.7, as follows:

**“28.7 PUBLICATION OF INVESTMENT ANALYSTS’
FORECASTS ON WEBSITES**

- (a) **Where, during the offer period, the offeree company or a securities exchange offeror publishes on its website profit forecasts relating to it that are derived from investment analysts’ forecasts, the forecasts on the website must be based on all forecasts**

provided by investment analysts who have published such forecasts, excluding:

(i) any forecasts which pre-date the publication of the company's latest preliminary statement of annual results or half-yearly financial report (as appropriate); and

(ii) any forecasts by investment analysts whose employer is controlled by, controls or is under the same control as any party to the offer or a connected adviser to any party to the offer.

(b) In addition to the exclusions in paragraph (a), an investment analyst's forecast may exceptionally be excluded from the forecasts on the company's website if it is wholly anomalous or has been prepared on a wholly different basis from that of the other investment analysts.

(c) Except with the consent of the Panel, the following requirements must be complied with (failing which, all investment analysts' forecasts must be removed from the website upon the commencement of the offer period):

(i) for each line in respect of which forecasts are published on the website, the highest and lowest figures forecast by any investment analyst must be stated, together with the arithmetic mean of all investment analysts' forecasts (a "*consensus forecast*");

(ii) the name of each organisation whose forecasts have been included in the calculation of the consensus forecast, and the dates of the forecasts, must be stated;

(iii) if any analyst's forecast has been excluded from the calculation of the consensus forecast, the name of the organisation, the date of the forecast and the reason for its exclusion, must be stated;

(iv) during the offer period, the relevant section of the website must be kept up-to-date by including any new forecasts promptly after their publication and promptly excluding any forecasts which pre-date the publication of the latest preliminary statement of annual results or half-yearly financial report; and

(v) it must be prominently stated that the investment analysts' forecasts are not endorsed by the company and that they have not been reviewed or reported on in accordance with the requirements of Rule 28.1(a).

(d) Subject to Rule 28.8, any reference to or quotation from a consensus or other third party forecast, other than publishing investment analysts' forecasts on a website in accordance with the requirements of this Rule 28.7, will be subject to Note 6 on Rule 28.1.

NOTE ON RULE 28.7

Source data

Where the offeree company or a securities exchange offeror publishes details of investment analysts' forecasts on its website in accordance with Rule 28.7, the source data used to compile the consensus forecasts must, on request, promptly be made available to any other party to the offer."

(c) *References to consensus forecasts relating to the other party to the offer*

Q17 Do you have any comments on the proposed new Rules 28.7(b) and (c), and the proposed new Notes 2 to 4 on Rule 28.7, with regard to a party to an offer referring to consensus profit forecasts with respect to the profits of another party to the offer?

(i) *Introduction*

15.18 In section 15(c) of the PCP, the Code Committee proposed the following:

- (a) *consensus forecasts*: a new Rule 28.7(b) and a new Note 2 on Rule 28.7, providing that if, during an offer period, an offeror or the offeree company referred to the future profits of another party to the offer, it would normally be required to do so by referring to the arithmetic mean of any consensus forecasts published by independent financial data providers;
- (b) *right of reply*: a new Rule 28.7(c), providing that, where an offeror or the offeree company referred to a "consensus profit forecast" (as proposed to be defined) for another party to the offer, the proposed new Rule 28.7(a) would not apply to any subsequent reference to that consensus profit forecast by the party to whose profits it related (i.e. it

would not be required to be reported on under the proposed new Rule 28.1(a);

- (c) *recommended offers*: a new Note 3 on Rule 28.7, providing that (in order to avoid the proposed new Rule 28.7(a) being circumvented), in the context of a recommended offer, a reference by an offeror or the offeree company to a profit forecast relating to the other party's profits would be treated for the purposes of the proposed new Rule 28.7(a) as having been published by the party to whose profits it related, and hence it would need to be reported upon; and
- (d) *sources and bases*: a new Note 4 on Rule 28.7, providing that, where any document or announcement published by a party to the offer referred to an average or a consensus profit forecast, the sources and basis of compilation would have to be stated.

(ii) *Summary of responses*

15.19 Respondents generally agreed with the principle that references to the future profits of another party to the offer should be by means of a "consensus" figure. However, a number of respondents expressed concern with the proposed definition of a "consensus profit forecast" as being the arithmetic mean of figures published by independent financial data providers. One respondent considered that there should be a requirement for such data providers to be accredited and that standards should be developed for this purpose. Another respondent welcomed the proposal to introduce a requirement to refer to "consensus" forecasts but queried the accuracy of consensus figures published by independent data providers. A third respondent considered that the Code should require any profit forecast which was more than six months old to be excluded from a "consensus" figure.

15.20 Respondents also generally supported the principle that the offeree company should have a "right of reply" where the offeror had referred to a profit forecast relating to the offeree company, although some respondents queried

whether the proposed new Rule 28.7(c) went far enough. A number of respondents considered that the inability of the offeree company (unless it was prepared to comply with Rule 28.1) to refer to third party profit forecasts where the offeror had not done so might put the offeree company at a potential disadvantage. One respondent considered that the “right of reply” in the form proposed might be inadequate, particularly where a figure published by an independent data provider was based on errors or omissions and where there would be no ability to challenge the accuracy or reasonableness of the offeror’s selection or use of “consensus” forecasts.

15.21 As regards statements made in recommended offers, the application of the proposed new Note 3 on Rule 28.7 was queried by some respondents. One respondent suggested that the appropriate test should be whether the reference to the profit forecast had been agreed or approved by the party to whose profits it related, rather than whether the offer was recommended. Another respondent queried how the parties would know that an offer “*will be recommended*”, whilst a third respondent queried the application of the proposed Note 3 to a situation where an initially hostile offer was subsequently recommended by the board of the offeree company.

15.22 A number of respondents made comments on the proposed new Note 4 on Rule 28.7 in relation to “sources and basis of compilation”. Two respondents queried whether it was correct to distinguish between “average” and “consensus” profit forecasts. One respondent considered that the Code should not permit “consensus” forecasts to be used where they were materially influenced by forecasts published prior to the company’s latest interim or annual results or prior to a material trading update.

(c) *Conclusions*

15.23 Having reconsidered the issue of a party to the offer referring to third party profit forecasts relating to another party to the offer, the Code Committee has concluded as follows:

- (a) the Code Committee accepts the arguments made by respondents that, where a party to an offer (“**party A**”) wishes to refer to a third party profit forecast relating to any other party to the offer (“**party B**”), it would not be appropriate to require party A to refer to the average of consensus figures published by various independent data providers. Instead, the Code Committee believes that party A should be required to refer to either:
- (i) a consensus forecast published on party B’s website in accordance with the new Rule 28.7 (see above); or
 - (ii) if party B has not published a consensus forecast on its website, a consensus forecast compiled by party A in accordance with the requirements of the new Rule 28.7;
- (b) if party A so refers to a consensus forecast relating to party B, any subsequent reference to that consensus forecast by party B should not be subject to the requirements of Rule 28.1(a), provided that party B does not endorse the consensus forecast. For example, if party A states that the value of its offer represents 15 times the consensus forecast of party B’s EBITDA for the current financial year, party B would also be able to refer to the consensus forecast relating to its EBITDA for the current financial year without triggering the requirements of Rule 28.1(a). However, it would not be able to refer to consensus forecasts for other profit lines or other financial periods without triggering those requirements; and
- (c) as an anti-avoidance measure, if a consensus forecast relating to party B is referred to by party A in any document or announcement which is published with party B’s agreement or approval (which should be made clear), or at a time when the offer is a recommended offer, the reference to the consensus forecast should be treated as having been endorsed and published by party B and therefore subject to the requirements of Rule 28.1.

15.24 The Code Committee has therefore adopted a new Rule 28.8, and a new Note on Rule 28.8, as follows:

**“28.8 REFERENCES TO CONSENSUS FORECASTS
RELATING TO ANOTHER PARTY TO THE OFFER**

(a) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), a party to the offer (“party A”) wishes to refer to investment analysts’ forecasts relating to any other party to the offer (“party B”), party A must refer to either:

(i) a consensus forecast (see Rule 28.7(c)) published on party B’s website in accordance with the requirements of Rule 28.7; or

(ii) if no such consensus forecast has been published on party B’s website, a consensus forecast compiled by party A in accordance with the requirements of Rule 28.7.

(b) Where party A has referred to a consensus forecast relating to party B, any subsequent reference to that consensus forecast by party B will not be subject to Rule 28.1(a), provided that party B does not endorse the consensus forecast.

(c) Any document or announcement which includes a reference by party A to a consensus forecast relating to party B must make clear whether or not the reference is being made with the agreement or approval of party B. Where the consensus forecast is referred to in any document or announcement which is published by party A with the agreement or approval of party B, or at a time when the offer is a recommended offer, the consensus forecast will be treated as having been endorsed and published by party B and Rule 28.1(a) will therefore apply.”.

B: MATERIAL CHANGES IN INFORMATION**16. New Rule 27****(a) Introduction**

16.1 In section 16 of the PCP, the Code Committee proposed the introduction of a new Rule 27, which would replace the current Rule 27 with regard to material changes in information. The principal proposal was that a specific provision should be introduced into the Code, whereby a party to an offer would be required to disclose promptly any material changes in information which it had published previously. Unless a party to an offer publishes a subsequent document, there is currently no requirement in the Code for it to disclose details of any material changes in information which it has previously published.

16.2 There was general support from respondents for the proposed new Rule 27 with regard to:

- (a) the circumstances in which a party to an offer should be required to disclose details of material changes in information;
- (b) the manner in which details of material changes in information should be disclosed; and
- (c) the proposed requirements to update information previously published and to confirm the ongoing validity and application of certain matters.

(b) *Circumstances in which a party to an offer should be required to disclose details of material changes in information*

Q18 Do you have any comments on the proposed new Rules 27.1 and 27.2(a)(i) with regard to material changes in information?

- 16.3 One respondent considered that “materiality” should be determined by reference to the context in which the information was presented, i.e. that the requirement should be to disclose changes in information that are material to the document or announcement in question. The Code Committee agrees and has amended the new Rule 27.1(a) proposed in the PCP accordingly.
- 16.4 One respondent suggested that, in addition to a requirement for “*material changes in information*” to be disclosed, there should be a requirement for any “*material change in circumstances*” to be disclosed. It was noted that, for example, the requirements for a class 2 transaction in LR 10.4.2R of the Listing Rules provide that a supplementary notification must be made to a Regulatory Information Service (a “**RIS**”) where:

- “(a) there has been a significant change affecting any matter contained in [an] earlier notification; or
- (b) a significant new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.”.

The Code Committee has accepted this suggestion and has added to Rule 27.1(a) a requirement for an offeror and the offeree company to announce any material new information which would have been required to be disclosed in any previous document published during the offer period, had it been known at the time.

- 16.5 The new Rule 27.1(a) will therefore be as follows:

“27.1 MATERIAL CHANGES

- (a) Except with the consent of the Panel, following the publication of the initial offer document or offeree board circular (as appropriate) and until the end of the offer period, the offeror or the offeree company (as appropriate) must promptly announce:**
 - (i) any changes in information disclosed in any document or announcement published by it in connection with the offer which are material in the context of that document or announcement; and**

(ii) any material new information which would have been required to have been disclosed in any previous document or announcement published during the offer period, had it been known at the time.”.

16.6 Another respondent was concerned that the proposed new Rule 27 neither expressly acknowledged that other regulators had rules regarding the disclosure of price-sensitive information nor addressed the situation where a party might be able to benefit from a “safe harbour” under such a rule. The Code Committee acknowledges that, in addition to the Code, other legal and regulatory requirements may govern the disclosure of information during the offer period. The Code Committee understands from the Panel Executive that this has not given rise to any particular issues to date. However, in the event of a conflict arising between the requirements of the Code and other applicable rules, the Code Committee would expect the party in question to consult the Panel Executive in order to discuss how the issue might be resolved.

(c) Manner in which details of material changes in information should be disclosed

16.7 In section 16(c) of the PCP, the Code Committee proposed, in summary, that the new Rule 27 should provide that details of any material changes in information should be required to be disclosed by means of the publication of an announcement but that the Panel should have the ability also to require a document setting out the changes to be sent to offeree company shareholders in appropriate circumstances.

16.8 One respondent considered that the Code should be more definitive on this issue and that guidance should be given as to when a document would be required to be sent to the offeree company’s shareholders. As indicated in paragraph 16.13 of the PCP, the Code Committee anticipates that, in deciding whether to require the publication of a document, the Panel would take into account all relevant factors, including:

- (a) the significance of the matter which requires clarification;
- (b) the stage in the offer timetable;
- (c) the profile of the offer period and the offeree company;
- (d) the size of the shareholder register; and
- (e) whether the matter relates to an approval required in general meeting under Rule 16 or Rule 21.1.

However, the Code Committee does not consider that it is necessary for these factors to be set out in the Code.

(d) Requirement to update information previously published

<p>Q19 Do you have any comments on the proposed new Rules 27.2(a)(ii), 27.2(b) and 27.2(c) in relation to the requirement to update certain matters in any subsequent document?</p>
--

16.9 In section 16(d) of the PCP, the Code Committee proposed the introduction of new Rules 27.2(a)(ii), 27.2(b) and 27.2(c), with regard to the requirement for an offeror or the offeree company, when it publishes a subsequent document in connection with the offer, to update certain of the matters which are required to be disclosed in the offer document and the offeree board circular under Rules 24 and 25.

16.10 Two respondents noted that paragraph (ix) in each of the new Rules 27.2(b) and (c) proposed in the PCP should have referred to quantified financial benefits statements as well as to profit forecasts. The Code Committee agrees and has revised those provisions accordingly.

16.11 With regard to the new Rule 27.2(a)(ii) proposed in the PCP, one respondent suggested that the requirement to disclose changes to the matters listed in the

proposed new Rules 27.2(b) and (c) should be subject to a materiality threshold. The Code Committee has accepted this suggestion and the requirement in Rule 27.2(a)(ii) will therefore be to disclose details of any material changes to the matters listed in Rules 27.2(b) and (c).

(e) Requirement to confirm the ongoing validity and application of certain matters

16.12 In section 16(e) of the PCP, the Code Committee proposed that the current Rules 27.2 and 28.5 should be replaced by a new Rule 27.2(d). In summary, this would provide that, where relevant, a document published by the offeree company or an offeror must include a statement by the directors that any previously published profit forecast, quantified financial benefits statement or asset valuation remains valid and that any report or opinion obtained on it continues to apply.

16.13 The Code Committee has adopted the new Rule 27.2(d) in the form proposed in the PCP.

(f) Amendments

Q20 Do you have any further comments on the proposed new Rule 27 and the related Code amendments?
--

16.14 Having taken respondents' comments into account, the Code Committee has adopted the new Rule 27 in the form set out in Appendix B.

16.15 In addition, as proposed in paragraph 16.20 of the PCP, the Code Committee has:

- (a) made corresponding amendments to Notes 2 and 3 on Rule 20.1, as set out in Appendix B; and
- (b) deleted Note 1 on Rule 23.1.

**C. OTHER AMENDMENTS IN RELATION TO DOCUMENTS
PUBLISHED BY AN OFFEROR AND THE OFFEREE COMPANY**

17. Amendments to Rule 28.4 and Rule 23.3

Q21 Do you have any comments on the proposed amendments relating to the current Rule 28.4?

17.1 In section 17 of the PCP, the Code Committee proposed that the requirements of the current Rule 28.4 should be moved to Rule 23.3 and that a number of minor drafting amendments should be made to Rule 23.3.

17.2 There were no comments on the proposals and the Code Committee has therefore adopted the revised Rule 23.3 and the corresponding amendments to Rules 26.2(c), (e) and (f) as proposed in the PCP and as set out in Appendix B.

17.3 In addition, the Code Committee has adopted the amendments to Rules 24.3(d) and 25.7 proposed in the PCP, with certain modifications, as set out in Appendix B.

18. Documents to be published on a website

Q22 Do you have any comments on the proposed amendments to Rule 26 in relation to documents on display?
--

18.1 In section 18 of the PCP, the Code Committee proposed certain minor amendments to Rule 26, with regard to the documents which the parties to an offer are required to publish on a website.

18.2 There were no comments of substance on the proposed amendments to Rule 26. Those amendments, and certain related amendments, were adopted in Instrument 2013/1, which was made by the Code Committee on 28 March 2013.

APPENDIX A**Respondents to PCP 2012/1****(excluding those who submitted comments on a confidential basis)**

1. Association of British Insurers
2. Bird & Bird LLP
3. British Private Equity and Venture Capital Association
4. Deloitte LLP
5. Ernst & Young LLP
6. GC100 Group
7. Grant Thornton UK LLP
8. Institute of Chartered Accountants in England and Wales
9. Institute of Chartered Accountants of Scotland
10. Investor Relations Society
11. KPMG LLP
12. Makinson Cowell Limited
13. PricewaterhouseCoopers LLP
14. Quoted Companies Alliance
15. Takeovers Joint Working Party of the City of London Law Society Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law
16. Temple Bar Advisory
17. Unite the Union

APPENDIX B

Amendments to the Code

DEFINITIONS

Cash offeror

An offeror (or potential offeror) which has announced, or in respect of which the offeree company has announced, that its offer is, or is likely to be, solely in cash. A non-convertible debt instrument will normally be treated as cash.

...

Dealings

...

NOTES ON DEALINGS

...

2. Securities borrowing and lending

Securities borrowing and lending transactions are not regarded as dealings. However, under Rule 4.6, if an offeror, the offeree company or any person acting in concert with an offeror or the offeree company enters into, or takes action to unwind, a securities borrowing or lending transaction (including any financial collateral arrangement of the kind referred to in Note 4 on Rule 4.6) in respect of relevant securities of ~~an~~ a securities exchange offeror ~~(other than a cash offeror)~~ or, with the Panel's consent, the offeree company, the transaction must be disclosed as if it were a dealing in relevant securities (see Note 5(l) on Rule 8).

...

Ordinary course profit forecast

A profit forecast published by the offeree company or a securities exchange offeror in accordance with its established practice and as part of the ordinary course of its communications with its shareholders and the market.

...

Profit estimate

A profit forecast for a financial period which has expired and for which audited results have not yet been published.

Profit forecast

A form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word “profit” is not used.

Quantified financial benefits statement

A quantified financial benefits statement is either:

(a) a statement by a securities exchange offeror or the offeree company quantifying any financial benefits expected to accrue to the enlarged group if the offer is successful; or

(b) a statement by the offeree company quantifying any financial benefits expected to accrue to the offeree company from cost saving or other measures and/or a transaction proposed to be implemented by the offeree company if the offer is withdrawn or lapses.

...

Securities exchange offeror

An offeror (or potential offeror) other than a cash offeror.

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

...

(b) If the announcement is published outside normal business hours, it must be submitted as required, for release as soon as the relevant service RIS re-opens; it must also be distributed to not less than two national newspapers and two newswire services in the UK.

...

NOTES ON RULE 2.9

...

2. *Other Rules*

Announcements made under Rules 2.11, 6.2(b), 7.1, 8 (Notes 6 and 12(a)), 9.1 (Note 9), 11.1 (Note 6), 12.2(b)(ii)(A), 17.1, 24.1, 25.1, 27.1(a), 31.2, 31.6(a) (Note 1(b)), 31.6(c), 31.7 (Note 2), 31.8 (Note), 31.9, 32.1(a), 32.6(a), Appendix 1.6, Appendix 5.5, Appendix 7.3, Appendix 7.6 and Appendix 7.8 must also be published in accordance with the requirements of ~~this Rule~~ 2.9.

Rule 4.6

4.6 SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND THEIR CONCERT PARTIES

...

(b) During an offer period, where a person subject to Rule 4.6(a) enters into or takes action to unwind a securities borrowing or lending transaction in respect of relevant securities of an a securities exchange offeror (~~other than a cash offeror~~) or, with the consent of the Panel, the offeree company, the transaction must be disclosed as if it were a dealing in those relevant securities (see Note 5(l) on Rule 8).

NOTES ON RULE 4.6

...

2. *Notice in lieu of disclosure*

Where a person subject to Rule 4.6 wishes to enter into or take action to unwind more than one lending transaction in respect of relevant securities of an a securities exchange offeror (~~other than a cash offeror~~) or, with the consent of the Panel, the offeree company, the Panel may instead require that person to give public notice that he might do so.

...

4. *Financial collateral arrangements*

...

If, during an offer period, a person subject to Rule 4.6 grants a right of use, or enters into or takes action to unwind a title transfer collateral arrangement in respect of relevant securities of an a securities exchange offeror (~~other than a cash offeror~~) or, with the consent of the Panel, the offeree company, the transaction must be disclosed as if it were a dealing in relevant securities (see Note 5(l) on Rule 8).

Rule 8**RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS**

...

8.1 DISCLOSURE BY AN OFFEROR

- (a) An offeror must make a public Opening Position Disclosure:
- (i) after the announcement that first identifies it as an offeror; and
 - (ii) after the announcement that first identifies a competing securities exchange offeror ~~(other than a cash offeror)~~.
- (b) An offeror must also make a public Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period for its own account or for the account of discretionary investment clients.

(See also Note 12 below.)

8.2 DISCLOSURE BY THE OFFEREE COMPANY

- (a) An offeree company must make a public Opening Position Disclosure:
- (i) after the commencement of the offer period; and
 - (ii) if later, after the announcement that first identifies any securities exchange offeror ~~(other than a cash offeror)~~.
- (b) An offeree company must also make a public Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period for its own account or for the account of discretionary investment clients.

8.3 DISCLOSURE BY PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE

- (a) Any person who at the relevant time (see Note 7(a) below) is interested (directly or indirectly) in 1% or more of any class of relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror must make a public Opening Position Disclosure:
- (i) after the commencement of an offer period; and

(ii) if later, after the announcement that first identifies any securities exchange offeror ~~(other than a cash offeror)~~.

(b) Any person who is (or as a result of any dealing becomes) interested (directly or indirectly) in 1% or more of any class of relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror must make a public Dealing Disclosure if he deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period.

...

8.4 DISCLOSURE BY CONCERT PARTIES

A person acting in concert with any party to an offer must make a public Dealing Disclosure if he deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period for his own account or for the account of discretionary investment clients. (See also Note 12 below.)

8.5 DISCLOSURE BY EXEMPT PRINCIPAL TRADERS

(a) An exempt principal trader connected with an offeror which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in, or right to subscribe for, any relevant securities of ~~any party to the offer other than a cash offeror~~ the offeree company or any securities exchange offeror in a proprietary capacity must make a public Opening Position Disclosure:

(i) after the announcement that first identifies the offeror with which it is connected as an offeror; and

(ii) after the announcement that first identifies a competing securities exchange offeror ~~(other than a cash offeror)~~.

(b) An exempt principal trader connected with the offeree company which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in, or right to subscribe for, any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror in a proprietary capacity must make a public Opening Position Disclosure:

(i) after the commencement of the offer period; and

(ii) if later, after the announcement that first identifies any securities exchange offeror ~~(other than a cash offeror)~~.

(c) An exempt principal trader connected with a party to the offer must make a public Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period, stating the following details:

...

8.6 DISCLOSURE BY EXEMPT FUND MANAGERS WITH NOINTERESTS IN SECURITIES OF ANY PARTY TO THEOFFER REPRESENTING 1% OR MORE DEALING FORDISCRETIONARY CLIENTS

(a) An exempt fund manager connected with a party to the offer must make a private Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror for the benefit of discretionary investment clients during an offer period.

...

8.7 DISCLOSURE OF NON-DISCRETIONARY DEALINGS BYPARTIES AND CONCERT PARTIES

A party to the offer and any person acting in concert with it must make a private Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period for the account of non-discretionary investment clients (other than a non-discretionary client that is a party to the offer or any person acting in concert with it).

NOTES ON RULE 8

1. Cash offerors

Shares or other securities of a cash offeror will not be treated as “relevant securities” for the purposes of Rule 8.

Following an announcement by a cash offeror that its offer is being revised to become (or that its possible offer may be) a securities exchange offer, Opening Position Disclosures and Dealing Disclosures will be required in the same way as if the announcement had been the first to identify the offeror as ~~an~~ a securities exchange offeror ~~which was not a cash offeror~~.

2. Timing of disclosure

(a) Disclosures by the parties to the offer

(i) Subject to ...

...

If a party to the offer deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror before midnight on the day before the relevant deadline in the paragraphs above, ...

...

(b) Disclosures by persons with interests in securities representing 1% or more

(i) Subject to ...

However, if a person required to make an Opening Position Disclosure under Rule 8.3(a) deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror before midnight on the day before the deadline in the previous paragraph, he must instead make a Dealing Disclosure under Rule 8.3(b) by no later than 3.30 pm on the business day following the date of the dealing. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.3(a).

...

(d) Disclosures by exempt principal traders

(i) Subject to ...

However, if an exempt principal trader required to make an Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b) deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror before midnight on the day before the deadline in the previous paragraph, it must instead make a Dealing Disclosure under Rule 8.5(c) by no later than 12 noon on the next business day. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b).

...

4. **Disclosure in relation to more than one party**

(a) **Opening Position Disclosures**

Subject to paragraphs (i) to (iii) below, when an Opening Position Disclosure is made, the details in Note 5 below must be disclosed in relation to the relevant securities of ~~each party to the offer (other than a cash offeror)~~ the offeree company and any securities exchange offeror at the same time.

However:

...

(ii) (except where the disclosure is an Opening Position Disclosure by an offeror or the offeree company) no disclosure is required in respect of positions in the relevant securities of a party to the offer if full details of positions in each class of that party's relevant securities have previously been publicly disclosed under Rule 8 (and have not changed). An Opening Position Disclosure by an offeror or the offeree company, though, must include the details in Note 5 in relation to the relevant securities of the offeree company and any securities exchange offeror ~~each party to the offer (other than a cash offeror)~~, even if certain details have previously been disclosed by the offeror or offeree company or persons acting in concert with the offeror or the offeree company (as the case may be), in accordance with Rule 8; and

...

(b) **Dealing Disclosures**

Subject to the following sentence, when a Dealing Disclosure is made the details in Note 5 below must be disclosed in relation to the relevant securities of ~~each party to the offer (other than a cash offeror)~~ the offeree company and any securities exchange offeror at the same time. ...

...

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

...

(l) **Securities borrowing and lending**

An Opening Position Disclosure by a party to the offer must include details of any relevant securities of the offeree company and any securities exchange offeror ~~(other than a cash offeror)~~ which the party making the disclosure or any person acting in concert with it has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold. In addition, a Dealing Disclosure by a party to the offer or any person acting in concert with a party to the offer must include details of any relevant securities

of the offeree company and any securities exchange offeror (~~other than a cash offeror~~) which the person making the disclosure has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold.

...

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

(a) Under Rule 8.3(a), an Opening Position Disclosure is required if the person is interested in 1% or more of any class of relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror at the time of the announcement that commences the offer period or the time of the announcement that first identifies an offeror (as the case may be).

(b) Under Rule 8.3(b), a Dealing Disclosure is required if the person dealing is interested in 1% or more of any class of relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror at midnight on the date of the dealing or was so interested at midnight on the previous business day.

...

12. Potential offerors

...

(c) After the announcement that first identifies a potential offeror as such, it will be required to make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). Such disclosure must include details in relation to the relevant securities of the offeree company or any securities exchange offeror ~~each party to the offer (other than a cash offeror)~~, even if certain details have previously been disclosed by the potential offeror or persons acting in concert with it in accordance with Rule 8.3.

Rule 19.1

19.1 STANDARDS OF CARE

...

NOTES ON RULE 19.1

...

5. *Quotations*

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

Since the use of a quotations will necessarily carry the implication that the ~~comments quoted are~~ quotation is endorsed by the party to the offer using it the board, such ~~comments~~ quotations must not be ~~quoted~~ used unless the ~~board~~ party is prepared, where appropriate, to corroborate or substantiate them and they are covered by the directors' responsibility statement ~~is included~~. See also Note 6 on Rule 28.1 with regard to investment analyst and other third party forecasts.

...

~~9. Merger benefits statements~~

[the current Note 9 on Rule 19.1 is not shown and is to be deleted in its entirety]

Rule 20.1

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

...

NOTES ON RULE 20.1

...

2. *Media interviews*

Parties to an offer must take particular care not to disclose new material in interviews or discussions with the media. If, notwithstanding this Note, any new information is published as a result of such an interview or discussion, ~~a circular must be sent to shareholders and persons with information rights and, where appropriate, paid newspaper space taken as required by Note 3 below~~ an announcement giving all relevant details must be made as soon as possible thereafter (see also Note 1 on Rule 19.1). Where appropriate, the Panel may, in addition, require a document to be sent to shareholders and persons with information rights and made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s).

3. Meetings

...

If, notwithstanding the above, any material new information or significant new opinion does emerge at the meeting, an announcement giving all relevant details must be made as soon as possible thereafter. Where appropriate, the Panel may, in addition, require a document to ~~a circular giving details must be sent to shareholders and persons with information rights and made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s) as soon as possible thereafter: in the final stages of an offer it may be necessary to make use of paid newspaper space as well as a circular. The circular or advertisement must include the directors' responsibility statement.~~ If such new information or opinion is not capable of being substantiated as required by the Code (eg for example, a profit forecast), this must be made clear and it must be formally withdrawn in the circular or advertisement.

...

Rule 23

23.1 SUFFICIENT INFORMATION

...

NOTES ON RULE 23.1

~~1. — Material changes~~

Any document published in connection with an offer must include information about ~~any material change in any information previously published by or on behalf of the relevant party during the offer period; if there have been no such changes, this should be stated.~~

~~2. — Offers conditional on shareholder action~~

...

23.3 FINANCIAL ADVISERS' CONSENT TO INCLUSION OF ADVICE, OPINIONS AND REPORTS

If any document or announcement published in connection with an offer includes:

(a) a recommendation or an opinion the substance of the advice given to the board of the offeree company or to an offeror by of a the

independent financial adviser for or against acceptance of the offer, appointed under Rule 3.1 or Rule 3.2;

(b) reports on a profit forecast or a quantified financial benefits statement given by reporting accountants and any financial adviser in accordance with Rule 28; or

(c) an opinion on value given by an independent valuer in accordance with Rule 29,

the document or announcement must, ~~unless published by the financial adviser in question,~~ include a statement that each of the financial adviser(s), the reporting accountants and/or the independent valuer (as appropriate) has given and not withdrawn its consent to the inclusion of its advice, report or opinion (as the case may be) in the relevant document ~~publication of the document with the inclusion of its recommendation or opinion~~ in the form and context in which it is included.

Rule 24

24.3 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 the ISDX Growth Market, the offer document must contain:

...

(iv) details of the website address where any ~~interim statement and/or preliminary announcement made~~ statement of annual results, half-yearly financial report or interim financial information published since the date of its last published audited accounts have been published and a statement that any such ~~statement, or announcement~~ report or information has been incorporated into the offer document by reference to that website in accordance with Rule 24.15;

(v) in the case of a securities exchange offer, a description of any known significant change in its financial or trading position which has occurred since the end of the last financial period for which ~~either audited~~ accounts, a preliminary statement of annual results, a half-yearly financial report ~~financial information or interim financial information~~ has been published, or provide an appropriate negative statement;

...

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

...

(xv) ...; ~~and~~

(xvi) ...; and

(xvii) any profit forecast or quantified financial benefits statement, and any related reports or confirmations, required by Rule 28;

...

24.4 INTERESTS AND DEALINGS

...

NOTES ON RULE 24.4

...

4. *Competing offerors*

Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 24.4(a)(iii) and (iv), 24.4(b) and 24.4(c) must be included in relation to the relevant securities of each securities exchange offeror or potential offeror ~~(other than any cash offeror)~~.

Rule 25

25.3 FINANCIAL AND OTHER INFORMATION

The offeree board circular must contain a description of any known 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 accounts, a preliminary statement of annual results, a half-yearly financial report~~ financial information or interim financial information has been published, or provide an appropriate negative statement.

...

25.4 INTERESTS AND DEALINGS

...

NOTES ON RULE 25.4

...

2. Competing offerors

Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 25.4(a)(i), (iii) and (iv) must be included in relation to the relevant securities of each securities exchange offeror or potential offeror ~~(other than any cash offeror)~~. Similarly, where more than one offeror has announced an offer in accordance with Rule 2.7, the details required by Rule 25.4(a)(v) must be included in respect of each offer.

...

~~25.7 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT, AND DOCUMENTS PUBLISHED ON A WEBSITE~~ OTHER INFORMATION

The offeree board circular must contain:

...

(b) ... ; **and**

(c) ... ; **and**

(d) any profit forecast or quantified financial benefits statement and any related reports or confirmations required by Rule 28.

Rule 26.2

26.2 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE MAKING OF AN OFFER

Except with the consent of the Panel, copies of the following documents must be published on a website from the time the offer document or offeree board circular, as appropriate, is published (or, if later, the date of the relevant document) until the end of the offer (including any related competition reference period):

...

(c) **any written consents of the—an independent financial advisers to the inclusion of its advice in the relevant document in the form and context in which it is included (Rule 23.3(a));**

...

(e) where a profit forecast or quantified financial benefits statement has been published made:

(i) the reports of the ~~auditors or consultant reporting~~ accountants and of the financial advisers (Rules ~~28.3~~ 28.1(a) and (b)); and

(ii) ~~the letters giving the written consents of the auditors or consultant reporting accountants and of the financial advisers to the publication of the relevant document with the inclusion of their reports in the relevant document in the form and context in which it is they are included (Rule 23.3(b)) and, if appropriate, to the continued use of the report in a subsequent document~~ the confirmations that their reports continue to apply (Rules 28.4 and 28.5 Rule 27.2(d));

(f) where an asset valuation has been published 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))~~ the written consent of the independent valuer to the inclusion of its opinion on value in the relevant document in the form and context in which it is included (Rule 23.3(c)) and, if appropriate, the confirmation that its report continues to apply (Rule 27.2(d));

...

Rule 27

[the current Rule 27 is not shown and is to be deleted in its entirety; the new Rule 27 set out below is not shown in underlined text]

RULE 27. MATERIAL CHANGES AND SUBSEQUENT DOCUMENTS

27.1 MATERIAL CHANGES

(a) Except with the consent of the Panel, following the publication of the initial offer document or offeree board circular (as appropriate) and until the end of the offer period, the offeror or the offeree company (as appropriate) must promptly announce:

(i) any changes in information disclosed in any document or announcement published by it in connection with the offer which are material in the context of that document or announcement; and

(ii) any material new information which would have been required to have been disclosed in any previous document or announcement published during the offer period, had it been known at the time.

(b) Where an announcement is required to be made under Rule 27.1(a), the Panel may, in addition, require a document setting out the relevant information to be:

(i) sent to shareholders in the offeree company and persons with information rights; and

(ii) made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s).

27.2 SUBSEQUENT DOCUMENTS

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

(i) any changes in information disclosed in any previous document published by it in connection with the offer which are material in the context of that document (or a statement that there have been no such material changes); and

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

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

(i) its intentions with regard to the matters referred to in Rule 24.2;

(ii) any known significant change in its or the offeree company's financial or trading position (to the extent required under Rule 24.3(a)(v));

- (iii) material contracts (Rule 24.3(a)(vii));**
 - (iv) ratings and outlooks (Rule 24.3(c));**
 - (v) the terms of the offer (Rule 24.3(d)(v));**
 - (vi) any agreements or arrangements which relate to the invocation of the conditions to its offer (Rule 24.3(d)(ix));**
 - (vii) irrevocable commitments and letters of intent (Rule 24.3(d)(x));**
 - (viii) any offer-related arrangements etc. permitted under, or excluded from, Rule 21.2 (Rule 24.3(d)(xv));**
 - (ix) profit forecasts and quantified financial benefits statements (Rule 24.3(d)(xvii));**
 - (x) financing arrangements (Rule 24.3(f));**
 - (xi) interests and dealings in relevant securities (Rule 24.4);**
 - (xii) the effect of the offer on the emoluments of the offeror's directors (Rule 24.5);**
 - (xiii) any special arrangements, including management incentivisation arrangements (Rule 16.2 and Rule 24.6);**
 - (xiv) the ultimate owner of any securities acquired (Rule 24.9);**
 - (xv) any arrangements of the kind referred to in Note 11 on the definition of acting in concert (Rule 24.13); and**
 - (xvi) fees and expenses (to the extent required under Rule 24.16).**
- (c) In the case of the offeree company, the matters referred to in Rule 27.2(a)(ii) are as follows:**
- (i) its opinion on the offer and the other matters referred to in Rule 25.2(a);**
 - (ii) the substance of the independent financial adviser's advice (Rule 25.2(b));**
 - (iii) any known significant changes in its financial or trading position (Rule 25.3);**
 - (iv) interests and dealings in relevant securities (Rule 25.4);**

- (v) the service contracts of the offeree company's directors (Rule 25.5);
 - (vi) any arrangements of the kind referred to in Note 11 on the definition of acting in concert (Rule 25.6);
 - (vii) material contracts (Rule 25.7(a));
 - (viii) irrevocable commitments and letters of intent (Rule 25.7(b));
 - (ix) profit forecasts and quantified financial benefits statements (Rule 25.7(d)); and
 - (x) fees and expenses (to the extent required under Rule 25.8).
- (d) If any document or announcement published by the offeror or the offeree company included a profit forecast, a quantified financial benefits statement or an asset valuation, any document subsequently published by that party in connection with the offer must, unless superseded by information included in the new document, include a statement by the directors of that party confirming:
- (i) that the profit forecast, quantified financial benefits statement or asset valuation (as appropriate) remains valid;
 - (ii) where reports were obtained on a profit forecast or quantified financial benefits statement, that the reporting accountants and financial adviser(s) have confirmed that their reports continue to apply; and
 - (iii) where an opinion on value was obtained on an asset valuation, that the independent valuer has confirmed that its opinion continues to apply.

Rule 28

[the current Rule 28 is not shown and is to be deleted in its entirety; the new Rule 28 set out below is not shown in underlined text]

SECTION K. PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS

RULE 28

NB The requirements of Rule 28 do not apply to a profit forecast or a quantified financial benefits statement published by a cash offeror.

28.1 REQUIREMENTS FOR PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS

(a) Except with the consent of the Panel, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes a profit forecast or a quantified financial benefits statement, the document or announcement in which the forecast or statement is first published must include:

(i) a report from its reporting accountants stating that, in their opinion, the forecast or statement has been properly compiled on the basis stated and (in the case of a profit forecast only) that the basis of accounting used is consistent with the company's accounting policies; and

(ii) a report from its financial adviser(s) stating that, in its (or their) opinion, the forecast or statement has been prepared with due care and consideration.

(b) Except with the consent of the Panel, if the offeree company or a securities exchange offeror published a profit forecast before the offer period commenced but after it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must repeat the profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(c) Except with the consent of the Panel, and subject to Note 3 (management buy-outs and offers by controllers), if the offeree company or a securities exchange offeror published a profit forecast before it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must:

(i) repeat the profit forecast and include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled on the basis of the assumptions stated and that the basis of accounting used is consistent with the company's accounting policies (the "directors' confirmations"); or

(ii) include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case; or

(iii) include a new profit forecast for the relevant period and the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(d) See also Rule 28.2(b).

NOTES ON RULE 28.1

1. Targets etc.

A statement described as a “target”, “budget” or similar will normally be treated as a profit forecast, even if it is stated that it is not an indication of the likely level of profits, unless it is clear that the statement is no more than aspirational.

2. Ordinary course profit forecasts

(a) Subject to Note 3, if the offeree company or a securities exchange offeror published an ordinary course profit forecast at any stage before the offer period commenced, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must satisfy the requirements of Rule 28.1(c)(i), (ii) or (iii) (as appropriate).

(b) Subject to Note 3, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes an ordinary course profit forecast, the document or announcement in which the ordinary course profit forecast is first published must normally include the reports from its reporting accountants and financial adviser(s) required by Rule 28.1(a)(i) and (ii). However, with the agreement of each of the other parties to the offer, the Panel will normally consent to the disapplication of the requirement for reports, in which case the document or announcement must include the directors’ confirmations required by Rule 28.1(c)(i).

(c) The Panel must be consulted if the offeree company or a securities exchange offeror considers that a profit forecast should be treated as an ordinary course profit forecast.

3. Management buy-outs and offers by controllers

Where the offer is a management buy-out or similar transaction or is being made by the existing controller or group of controllers:

(a) the Panel will not normally grant a dispensation from the requirements of Rule 28.1(a) or (b) (as appropriate) with regard to any profit forecast (including an ordinary course profit forecast) by the offeree company for a financial period ending 15 months or less from the date on which the profit forecast is, or was, first published; and

(b) where the profit forecast was published by the offeree company before it received an approach with regard to a possible offer, the offer document, or any earlier document or announcement published during the offer period in which the profit forecast is referred to, will normally be required to repeat the

profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

4. *Where the application of Rule 28 would be disproportionate or otherwise inappropriate*

(a) The Panel may grant a dispensation from the requirements of Rule 28 if it considers that the application of the Rule to the profit forecast would be disproportionate or otherwise inappropriate, for example:

(i) where the profit forecast states only a maximum figure for the likely level of profits for a particular financial period; or

(ii) in the case of an offeror, where the consideration securities will not represent a material proportion of its enlarged share capital or, alternatively, a material proportion of the value of the offer.

(b) Factors which the Panel might take into account when considering whether to grant a dispensation under paragraph (a) above include:

(i) the reason for the publication of the profit forecast, including whether it was (or would be) an ordinary course profit forecast (see Note 2);

(ii) whether the terms of the profit forecast are general or specific;

(iii) whether the offer has been recommended by the board of the offeree company and (in the case of an offeror) whether a competing offer or possible offer has been announced; and

(iv) in the case of paragraph (a)(i) (i.e. a profit “ceiling”), whether the offer is a management buy-out or similar transaction or is being made by an existing controller or group of controllers of the offeree company.

5. *Profit forecast for part of a business*

Except with the consent of the Panel, Rule 28 applies in the same way to a profit forecast which relates to any part of the business of the offeree company or a securities exchange offeror as to a profit forecast which relates to the group as a whole.

6. *Investment analyst and other third party forecasts*

Except as provided in Rules 28.7 and 28.8, if in any document or announcement the offeree company or a securities exchange offeror refers to or quotes from a profit forecast relating to it published by an investment analyst or other third party, including a consensus forecast, it will be treated as having endorsed and published that profit forecast. The requirements of Rule 28.1 will then apply.

28.2 PROFIT FORECASTS FOR FUTURE FINANCIAL PERIODS

(a) The Panel will normally grant a dispensation from the requirement to include reports from reporting accountants and the financial adviser(s) in the case of a profit forecast for a financial period ending more than 15 months from the date on which it is, or was, first published. Where such a dispensation is granted, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to or first published, must include the directors' confirmations referred to in Rule 28.1(c)(i). Alternatively, in the case of a profit forecast which was published before the offer period commenced, the document or announcement may include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case.

(b) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror either publishes for the first time or repeats a profit forecast for a future financial year, the document or announcement must include a corresponding profit forecast for the current financial year and for each intervening financial year. The requirements of Rule 28.1(a), (b) or (c)(i) (as appropriate) will apply to each such forecast for a financial year ending 15 months or less from the date on which it is, or was, first published and the requirements of Rule 28.2(a) will normally apply to each such forecast for a financial year ending more than 15 months from the date on which it is, or was, first published.

NOTE ON RULE 28.2

Other financial periods

The requirements of Rule 28.2(b) will also apply where the offeree company or a securities exchange offeror publishes a profit forecast for a financial period other than a financial year.

28.3 COMPILATION OF PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS

(a) Any profit forecast or quantified financial benefits statement must be properly compiled and must be prepared with due care and consideration. The profit forecast or quantified financial benefits statement, and the assumptions on which it is based, are the responsibility of the relevant party to the offer and its directors.

(b) A profit forecast (and the assumptions stated) or a quantified financial benefits statement (and the details included in accordance with Rule 28.6) must be:

- (i) **understandable: it must not be so complex or include such extensive disclosure that it cannot be readily understood;**
 - (ii) **reliable: it must be supported by a thorough analysis of the offeree company's and/or the offeror's business and must represent factual and not hypothetical strategies, plans and risk analysis; and**
 - (iii) **comparable (in the case of a profit forecast only): it should be capable of justification by comparison with outcomes in the form of historical financial information.**
- (c) **A forecast of profit before tax should disclose separately any non-recurrent items and tax charges if they are expected to be abnormally high or low.**

28.4 ASSUMPTIONS AND BASES OF BELIEF

- (a) **When a profit forecast is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement must include the principal assumptions on which the profit forecast is based.**
- (b) **The assumptions included for a profit forecast or bases of belief included for a quantified financial benefits statement should provide useful information as to its reasonableness and reliability. They must:**
- (i) **be readily understandable;**
 - (ii) **be specific and precise; and**
 - (iii) **not relate to the general accuracy of the estimates underlying the profit forecast or the quantified financial benefits statement.**
- (c) **There must be a clear distinction between assumptions or bases of belief about factors which the directors (or other members of the company's management) can influence and those which they cannot influence.**

28.5 PROFIT ESTIMATES

Rule 28.1 does not apply to a profit estimate included in:

- (a) **a preliminary statement of annual results which complies with the relevant provisions of the UKLA Rules;**

(b) a half-yearly financial report which complies with the relevant provisions of the UKLA Rules, the AIM Rules for Companies or the ISDX Growth Market Rules for Issuers; or

(c) an interim management statement, or other interim financial information, which is published by virtue of a regulatory requirement and which has been prepared in accordance with the reporting framework set out in International Accounting Standard 34.

NOTES ON RULE 28.5

1. Preliminary statements of annual results

Where an unaudited preliminary statement of annual results is published by an offeree company or a securities exchange offeror whose securities are admitted to trading on a recognised investment exchange but to which the relevant provisions of the UKLA Rules do not apply, the Panel may nonetheless treat the exemption from the requirements of Rule 28.1 as applying if it is satisfied that the statement complies with the substance of those provisions.

2. Other circumstances in which a dispensation may be granted

Where an offeree company or a securities exchange offeror publishes, or has published, a profit estimate in accordance with a regulatory requirement which does not qualify for an exemption under Rule 28.5, the Panel may, in appropriate circumstances, grant a dispensation from the requirements of Rule 28.1 (for example, where an overseas company prepares a half-yearly financial report under a framework equivalent to that in IAS 34 and consistent with that which it adopts for its statement of annual results). The Panel should be consulted in such cases.

28.6 DISCLOSURE REQUIREMENTS FOR QUANTIFIED FINANCIAL BENEFITS STATEMENTS

When a quantified financial benefits statement is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement must include:

(a) the bases of belief supporting the statement (identifying the principal assumptions and sources of information);

(b) an analysis, explanation and quantification of the constituent elements sufficient to enable the context and relative importance of those elements to be understood;

(c) a base figure where any comparison is made with historical financial performance or with existing cost bases and structures;

- (d) details of any disbenefits expected to arise;
- (e) in the case of a statement falling under paragraph (a) of the definition of a “quantified financial benefits statement”, a statement that the expected financial benefits will accrue as a direct result of the success of the offer and could not be achieved independently of the offer;
- (f) an indication of when the financial benefits are expected to be realised;
- (g) an indication of whether the expected financial benefits will be recurring, clearly identifying any non-recurring benefit(s); and
- (h) the recurring and non-recurring costs of realising the expected financial benefits.

NOTES ON RULE 28.6

1. Cost saving measures announced before the offer period

(a) *Cost saving measures published by the offeree company prior to the offer period are not subject to Rule 28, even if they are repeated by the offeree company during the offer period. However, if, during the offer period, the offeree company revises any cost saving measures published prior to the offer period, the revised cost saving measures will be treated as a quantified financial benefits statement, such that Rule 28.1(a) will then apply.*

(b) *The Panel should be consulted if an offeree company proposes to publish a statement with regard to new cost saving measures after it has received an approach but prior to the commencement of an offer period. If the Panel considers that the new cost saving measures are being published as a result of the approach, it may determine that the statement should be treated as if it were a quantified financial benefits statement published during the offer period, save that compliance with the requirements of Rule 28.1(a) may be deferred until the publication of the offeree board circular.*

2. Statements by the offeree company

The Panel will not normally permit an offeree company to publish a statement quantifying the financial benefits expected to accrue from an offer by a particular offeror unless the statement is published with the consent of that offeror, in which case the requirements of Rule 28.1 will apply. However, the offeree company will be permitted to publish its views on any quantified financial benefits statement published by an offeror.

28.7 PUBLICATION OF INVESTMENT ANALYSTS’ FORECASTS ON WEBSITES

- (a) **Where, during the offer period, the offeree company or a securities exchange offeror publishes on its website profit forecasts relating to it that**

are derived from investment analysts' forecasts, the forecasts on the website must be based on all forecasts provided by investment analysts who have published such forecasts, excluding:

- (i) any forecasts which pre-date the publication of the company's latest preliminary statement of annual results or half-yearly financial report (as appropriate); and
 - (ii) any forecasts by investment analysts whose employer is controlled by, controls or is under the same control as any party to the offer or a connected adviser to any party to the offer.
- (b) In addition to the exclusions in paragraph (a), an investment analyst's forecast may exceptionally be excluded from the forecasts on the company's website if it is wholly anomalous or has been prepared on a wholly different basis from that of the other investment analysts.
- (c) Except with the consent of the Panel, the following requirements must be complied with (failing which, all investment analysts' forecasts must be removed from the website upon the commencement of the offer period):
- (i) for each line in respect of which forecasts are published on the website, the highest and lowest figures forecast by any investment analyst must be stated, together with the arithmetic mean of all investment analysts' forecasts (a "*consensus forecast*");
 - (ii) the name of each organisation whose forecasts have been included in the calculation of the consensus forecast, and the dates of the forecasts, must be stated;
 - (iii) if any analyst's forecast has been excluded from the calculation of the consensus forecast, the name of the organisation, the date of the forecast and the reason for its exclusion, must be stated;
 - (iv) during the offer period, the relevant section of the website must be kept up-to-date by including any new forecasts promptly after their publication and promptly excluding any forecasts which pre-date the publication of the latest preliminary statement of annual results or half-yearly financial report; and
 - (v) it must be prominently stated that the investment analysts' forecasts are not endorsed by the company and that they have not been reviewed or reported on in accordance with the requirements of Rule 28.1(a).
- (d) Subject to Rule 28.8, any reference to or quotation from a consensus or other third party forecast, other than publishing investment

analysts' forecasts on a website in accordance with the requirements of this Rule 28.7, will be subject to Note 6 on Rule 28.1.

NOTE ON RULE 28.7

Source data

Where party B has published consensus forecasts on its website in accordance with Rule 28.7, and party A wishes to refer to those consensus forecasts in accordance with Rule 28.8, the source data used by party B to compile the consensus forecasts must, on request, promptly be made available to party A.

28.8 REFERENCES TO CONSENSUS FORECASTS RELATING TO ANOTHER PARTY TO THE OFFER

(a) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), a party to the offer ("party A") wishes to refer to investment analysts' forecasts relating to any other party to the offer ("party B"), party A must refer to either:

(i) a consensus forecast (see Rule 28.7(c)) published on party B's website in accordance with the requirements of Rule 28.7; or

(ii) if no such consensus forecast has been published on party B's website, a consensus forecast compiled by party A in accordance with the requirements of Rule 28.7.

(b) Where party A has referred to a consensus forecast relating to party B, any subsequent reference to that consensus forecast by party B will not be subject to Rule 28.1(a), provided that party B does not endorse the consensus forecast.

(c) Any document or announcement which includes a reference by party A to a consensus forecast relating to party B must make clear whether or not the reference is being made with the agreement or approval of party B. Where the consensus forecast is referred to in any document or announcement which is published by party A with the agreement or approval of party B, or at a time when the offer is a recommended offer, the consensus forecast will be treated as having been endorsed and published by party B and Rule 28.1(a) will therefore apply.

Rule 31.9

31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39

The board of the offeree company should not, except with the consent of the Panel (which should be consulted in good time), announce any material new information, (including trading results, profit forecasts (including ordinary course profit forecasts), or dividend forecasts, asset valuations,

quantified financial benefits statements and proposals for dividend payments or for any material acquisition or disposal, after the 39th day following the publication of the initial offer document. ...

Rule 32.1

32.1 PUBLICATION OF REVISED OFFER DOCUMENT

...

NOTES ON RULE 32.1

1. *Announcements which may increase the value of an offer*

Where an offer involves an exchange of equity or potential equity, the announcement by an offeror of any material new information, (including trading results, profit forecasts (including ordinary course profit forecasts), or dividend forecasts, asset valuations, ~~merger-quantified financial benefits statements and proposals for dividend payments or for any material acquisition or disposal,~~) may have the effect of increasing the value of the offer. An offeror will not, therefore, normally be permitted to make such announcements after it is precluded from revising its offer. If an announcement of a kind referred to in this Note might fall to be made during the offer period, the Panel must be consulted at the earliest opportunity and an offeror will not be permitted to make a no increase statement as defined in Rule 32.2 prior to the publication of the announcement.

Appendix 1

4 WHITEWASH CIRCULAR

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

...

(m) Rule 25.7 (other information~~material contracts, irrevocable commitments and letters of intent, and list of documents published on a website~~);

...

(o) Rules 28 and 29 (profit forecasts, quantified financial benefits statements and asset valuations relating to the offeree company or relating to assets being acquired by the offeree company).

APPENDIX C

Summary of the application of the principal provisions of the new Rule 28 to profit forecasts

Profit forecast published:	Non ordinary course profit forecast for a financial period ending <u>15 months or less</u> from the date on which first published, except for MBOs	Ordinary course profit forecast for a financial period ending <u>15 months or less</u> from the date on which first published, except for MBOs	Profit forecast (including ordinary course) for a financial period ending <u>more than 15 months</u> from date on which first published (including MBOs)
During the offer period	<i>Rule 28.1(a)</i> Document/announcement in which profit forecast is published must include: (i) reports from reporting accountants; and (ii) reports from financial adviser(s)	<i>Note 2(b) on Rule 28.1</i> Document/announcement in which ordinary course profit forecast is published must: (a) comply with Rule 28.1(a); <i>or</i> (b) if all parties agree, include “directors’ confirmations”	<i>Rule 28.2(a)</i> Document/announcement in which profit forecast is published must include “directors’ confirmations”
Prior to the offer period but following approach	<i>Rule 28.1(b)</i> Offer document/offeree board circular (or any earlier document announcement) must repeat profit forecast and include: (i) reports from reporting accountants; and (ii) reports from financial adviser(s)	<i>Note 2(a) on Rule 28.1</i> Offer document/offeree board circular (or any earlier document announcement) must: (a) repeat profit forecast and include “directors’ confirmations”; <i>or</i> (b) explain why profit forecast not valid; <i>or</i> (c) include a new profit forecast and comply with Rule 28.1(a)	<i>Rule 28.2(a)/Rule 28.1(c)</i> Offer document/offeree board circular (or any earlier document announcement) must: (a) repeat profit forecast and include “directors’ confirmations”; <i>or</i> (b) explain why profit forecast not valid; <i>or</i> (c) include a new profit forecast and include “directors’ confirmations”
Before an approach by the offeror	<i>Rule 28.1(c)</i> Offer document/offeree board circular (or any earlier document announcement) must: (a) repeat profit forecast and include “directors’ confirmations”; <i>or</i> (b) explain why profit forecast not valid; <i>or</i> (c) include a new profit forecast and comply with Rule 28.1(a)		

1. **Profit forecasts for future periods** - under Rule 28.2(b), if a profit forecast/ordinary course profit forecast is for a future year, the relevant document or announcement, or (as appropriate) the offer document or offeree board circular, must include a corresponding profit forecast for the current year and any intervening year, Rule 28 will apply to each such profit forecast.
2. **MBOs** – see Note 3 on Rule 28.1
3. **Profit estimates** – see Rule 28.5