

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2008/4

Miscellaneous Code amendments

Electronic communications, websites and information rights

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 30 March 2009, in accordance with the Appendix to this instrument.

In the Appendix, underlining indicates new text and striking through indicates deleted text.

Made by Lindsay Tomlinson, Chairman, acting on behalf of the Code Committee.

19 December 2008

APPENDIX

DEFINITIONS

Electronic form

A document, an announcement or any information will be sent in electronic form if it is:

(1) sent by means of electronic equipment for the processing or storage of data; and

(2) entirely transmitted and conveyed by wire, radio, optical or other electromagnetic means,

provided that the sender reasonably considers that the form in which it is sent, and the means by which it is sent, will enable the recipient to read and retain a copy of it.

...

Hard copy form

A document, an announcement or any information will be sent in hard copy form if it is sent in a paper copy or similar form capable of being read.

...

Person with information rights

A person in respect of whom a nomination pursuant to the provisions of the Companies Act 2006 has been made (and has not been suspended, revoked or ceased to have effect) by a registered shareholder in an offeree company which has its registered office in the United Kingdom for that person to receive a copy of all communications that the offeree company sends to its shareholders generally or to any class of its shareholders that includes the registered shareholder making the nomination.

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Website notification

A website notification is a document sent in either hard copy form or electronic form to a person to whom a document, an announcement or any information is required to be sent, giving such person notice of the publication of the document, announcement or information on a website and providing details of the relevant website.

NOTE ON WEBSITE NOTIFICATION

A website notification must be prepared with the highest standards of care and accuracy in accordance with Rule 19.1 and must contain a directors' responsibility statement in accordance with Rule 19.2. A website notification must contain a summary of the provisions of Rule 8 (see the Panel's website at www.thetakeoverpanel.org.uk) and must also comply with the other relevant requirements of the Code in relation to the publication of documents, announcements and information.

The information in a website notification must be confined to non-controversial information about an offer and should not be used for argument or invective. A website notification should not include a recommendation to take or not to take any action in relation to, or contain any view on the merits of, an offer except for a factual statement as to whether or not the offer is proceeding with the recommendation of the offeree company board. A party to an offer should not include anything other than acceptance forms, withdrawal forms, proxy cards and other forms connected with an offer in the same envelope as a website notification without the consent of the Panel.

In addition, a website notification must include the following information in relation to the document, announcement or information to which it relates:

(a) details of the website on which the document, announcement or information is published;

(b) a statement setting out the right of persons to whom the document, announcement or information is sent to receive a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form and drawing attention to the fact that such persons will not receive a hard copy unless they so request;

(c) details of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests for hard copies may be made); and

(d) a statement that the website notification is not a summary of the document, announcement or other information to which it relates and should not be regarded as a substitute for reading the document, announcement or information in full.

Rule 2.2

2.2 WHEN AN ANNOUNCEMENT IS REQUIRED

An announcement is required:-

...

(e) when negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside those who need to know in the ~~companies~~ parties concerned and their immediate advisers). ~~An offeror wishing to approach a wider group, for example in order to arrange financing for the offer (whether equity or debt), to seek irrevocable commitments or to organise a consortium to make the offer should consult the Panel; or~~

...

NOTES ON RULE 2.2

1. *Panel to be consulted*

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

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

Rule 2.4

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

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

(iii)(i) ~~Where~~ where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in the case of a proposed securities exchange offer), ~~except with the consent of the~~

Panel, any offer made by the potential offeror for the offeree company will be required to be made on the same or better terms. Where all or part of the consideration is expressed in terms of a monetary value, the offer or that element of the offer must be made at the same or a higher monetary value. Where all or part of the consideration has been expressed in terms of a securities exchange ratio, the offer or that element of the offer must be made on the same (or an improved) securities exchange ratio; and

(ii) where the statement concerned includes reference to the fact that the terms of the possible offer “will not be increased” or are “final” or uses a similar expression, the potential offeror will not be allowed subsequently to make an offer on better terms.

~~the potential offeror will not be allowed subsequently to make an offer for the offeree company at a lower value (taking the value of any securities concerned at the date of announcement of the firm intention to make the offer), unless there has occurred an event which the potential offeror specified in the statement as an event which would enable it to be set aside.~~

See also Note 5.

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NOTES ON RULE 2.4

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5. *Reservation of right to set statements aside*

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

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

Where a potential offeror has reserved the right to vary the form and/or mix of the consideration referred to in a statement subject to Rule 2.4(c) (but remains bound to a specified minimum level of consideration) and exercises that right, the value of any offer that is made subsequently must be the same as or better than the value of the consideration referred to in that statement, calculated as at the time of the announcement of the firm intention to make an offer. If,

during the period ending when the market closes on the first business day after the announcement of the firm intention to make an offer, the value is not maintained, the Panel will be concerned to ensure that the offeror acted with all reasonable care in determining the consideration. If there is a restricted market in the securities offered, or if the amount of securities to be issued of a class already admitted to trading is large in relation to the amount already issued, the Panel may require justification of prices used to determine the value of the offer.

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

6. Duration of restriction

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

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

Rule 2.5

2.5 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

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

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

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NOTES ON RULE 2.5

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3. *Subjective conditions*

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

...

5. *Pre-conditions*

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

...

Rule 2.6

2.6 OBLIGATION ON THE OFFEROR AND THE OFFEREE COMPANY TO PUBLISH~~CIRCULATE~~ ANNOUNCEMENTS

(a) Promptly after the commencement of an offer period (except where an offer period begins with an announcement under Rule 2.5), a copy of the relevant announcement must be sent by the offeree company to its shareholders, persons with information rights and to the Panel.

(b) Promptly after the publication of an announcement made under Rule 2.5:

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

...

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

NOTES ON RULE 2.6

1. *Full text of announcement under Rule 2.5 to be made available*

Where, following an announcement made under Rule 2.5, a circular summarising the terms and conditions of the offer is sent to shareholders, persons with information rights, employee representatives or employees, the full text of the announcement must be made readily and promptly available to them, for example, by ~~placing~~ publishing it on the website of the offeror or the offeree company (as the case may be).

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

See the Note on Rule 30.3.

3. *Holders of convertible securities, options or subscription rights*

Copies of announcements sent to offeree company shareholders and persons with information rights under Rule 2.6 must also, where practicable, be sent simultaneously to the holders of securities convertible into, rights to subscribe for and options over, shares of the same class as those to which the offer relates. An explanation must also be provided that addresses, electronic addresses and certain other information provided for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4.

Rule 2.7

2.7 CONSEQUENCES OF A “FIRM ANNOUNCEMENT”

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

NOTE ON RULE 2.7

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

An announced offeror need not make an ~~proceed with its~~ offer if a competitor has already made ~~posted~~ a higher offer or, with the consent of the Panel, in the circumstances set out in Note 5 on Rule 21.1.

Rule 2.8

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

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NOTES ON RULE 2.8

1. *Prior consultation*

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

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Rule 2.9

2.9 PUBLICATION OF AN ANNOUNCEMENT ABOUT AN OFFER OR POSSIBLE OFFER

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NOTES ON RULE 2.9

1. *Distribution ~~and availability~~ of announcements*

See Rule 19.107.

Rule 3.1

3.1 BOARD OF THE OFFEREE COMPANY

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NOTES ON RULE 3.1

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

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

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Rule 3.2**3.2 BOARD OF AN OFFEROR COMPANY**

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*NOTES ON RULE 3.2*1. *General*

... Shareholders must have sufficient time to consider advice given to them prior to any general meeting held to implement the proposed offer. Any documents or advertisements ~~issued~~ published by the board in such cases must include a responsibility statement by the directors as set out in Rule 19.2.

...

Rule 4**4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR**

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4.2 RESTRICTIONS ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES

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NOTES ON RULES 4.1 and 4.2

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4. *When an offer will not be made~~proceed~~*

If, after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, the discussions are terminated or the offeror decides not to make~~proceed~~ with an offer, no dealings in securities of the offeree company or, where relevant, the offeror, by the offeror or by any person privy to this information may take place prior to an announcement of the position.

5. *No dealing contrary to published advice*

Directors and financial advisers to a company who have interests in securities in that company must not deal in such securities contrary to any advice they have ~~given to shareholders~~ published, or to any advice with which it can reasonably be assumed that they were associated, without giving sufficient public notice of their intentions together with an appropriate explanation.

...

Rule 5.2

5.2 EXCEPTIONS TO RESTRICTIONS

The restrictions in Rule 5.1 do not apply to an acquisition of an interest in shares carrying voting rights in a company by a person:-

(a) at any time from a single shareholder if it is the only such acquisition within any period of 7 days (see also Rules 5.3 and 5.4). This exception will not apply when the person has announced a firm intention to make an offer and ~~the posting of the offer is not subject to a pre-condition~~ there is no pre-condition to which the making of an offer is subject; or

(b) immediately before the person announces a firm intention to make an offer (whether or not ~~the posting of the offer is to be subject to a pre-condition~~ there is any pre-condition to which the making of an offer is subject), provided that the offer will be publicly recommended by, or the acquisition is made with the agreement of, the board of the offeree company and the acquisition is conditional upon the announcement of the offer; or

(c) after the person has announced a firm intention to make an offer provided that ~~the posting of the offer is not~~, at the time of the acquisition, there is no pre-condition to which the making of an offer is subject ~~subject to a pre-condition~~ and:

...

Rule 8

RULE 8. DISCLOSURE OF DEALINGS DURING THE OFFER PERIOD; ALSO INDEMNITY AND OTHER ARRANGEMENTS

...

NOTES ON RULE 8

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4. *Method of disclosure (public or private)*

(a) *Public disclosure*

Dealings should be disclosed to a RIS in typed format by fax or electronic delivery. A copy must also be ~~sent faxed or e-mailed~~ to the Panel in electronic form.

...

(b) Private disclosure

Private disclosure under Rules 8.1(b)(ii) and 8.2 is to the Panel only. Dealings should be sent to the Panel in electronic form ~~by fax or e-mail~~.

...

14. Irrevocable commitments and letters of intent

...

No separate disclosure by an offeror is required under Rule 8.4(a) where the relevant information is included in an announcement made under Rule 2.5 which is ~~released~~ published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured.

...

15. Amendments

If details included in a dealing disclosure are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.

Rule 9.1

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

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NOTES ON RULE 9.1

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7. Placings and other arrangements

When a person is to acquire an interest in shares which will result in his being interested in shares carrying 30% or more of the voting rights of a company,

the Panel will consider waiving the requirements of this Rule if firm arrangements are made for the number of shares carrying voting rights in which he is interested to be reduced to below 30% prior to the acquisition (for example, by a placing of shares) or, in certain exceptional circumstances, if an undertaking is given to make such a reduction within a very short period after the acquisition. In all such cases, the Panel must be consulted in advance. The Panel will be concerned to ensure that none of the persons with whom the acquirer enters into transactions in order to reduce his interests is acting in concert with the acquirer; for example, an obligation under this Rule will not be avoided by placing shares with a number of persons having a common link, such as the discretionary clients of a fund manager who would be connected with the acquirer if he were an offeror (unless, in such circumstances, the fund manager would have exempt status). (See also Rule 9.7.)

...

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

...

Subject to Note 3 on Rule 9.3, where no change in the consideration is involved it will be sufficient, following the announcement, simply to send a notification to~~notify~~ offeree company shareholders and persons with information rights setting out in writing~~of~~ the new number of shares in which the offeror and persons acting in concert with it are interested, of the fact that the acceptance condition (in the form required by Rule 9.3) is the only condition remaining and of the period for which the offer will remain open following the publication~~posting~~ of the document.

An offer made in compliance with this Rule must remain open for not less than 14 days following the date on which the document is published~~posted to offeree company shareholders~~ and as required by Rules 31.4 and 33.1.

...

10. *Convertible securities, warrants and options*

...

Where securities with conversion or subscription rights were issued at a time when no offer obligation on exercise of such rights would arise and no independent shareholders' approval was obtained, the Panel will consider the case on its merits and will have regard, inter alia, to the votes cast on any relevant resolution, the number of shares concerned and the attitude of the board of the company. It is always open to the holder of such rights to dispose of sufficient rights so that, on exercise, the shares in which he would be interested would together carry less than 30% of the voting rights in the company. In circumstances where such rights could not be transferred prior to exercise, the Panel would consider waiving the offer obligation arising upon

an exercise of rights provided there was an undertaking to reduce the number of shares carrying voting rights in which he would be interested to below 30% within a reasonable time. (See also Rule 9.7.)

...

11. *The reduction or dilution of interests in shares ~~a shareholding~~*

...

~~... Additionally, in the case of dilution following the issue of new shares, the Panel will also consider waiving the requirements of the Rule if an arrangement can be made whereby shareholders approve, in the manner outlined in Note 1 of the Notes on Dispensations from Rule 9, the restoration of a diluted percentage interest by acquisitions from those to whom new shares are issued.~~

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Rule 9.3

9.3 CONDITIONS AND CONSENTS

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NOTES ON RULE 9.3

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2. *Acceptance condition*

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

In the event that an offer under Rule 9 lapses because a purchase may not be counted as a result of Note 5 on Rule 10 and subsequently the purchase is completed, the Panel should be consulted. It will require appropriate action to be taken such as the making of a new offer or the reduction of the percentage of shares in which the offeror and persons acting in concert with it are interested. (See also Rule 9.7.)

...

3. *When dispensations may be granted*

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

(a) when the necessary cash is to be provided, wholly or in part, by an issue of new securities. The Panel will normally require that both the

announcement of the offer and the offer document include statements that if the acceptance condition is satisfied but the other conditions required by the Note on Rules 13.1 and 13.3 are not satisfied within the time required by Rule 31.7, and as a result the offer lapses, ~~–(i) the offeror will immediately announce a firm intention to make a new cash offer in compliance with this Rule at the price required by Rule 9.5 (or, if greater, at the cash price offered under the lapsed offer); and~~

~~(ii) until posting of the offer document in respect of that new offer, the offeror and persons acting in concert with it must consult the Panel as to their ability to exercise, or procure the exercise of, the voting rights of the offeree company attaching to the shares in which they have an interest.~~

~~When a dispensation is given, the offeror must endeavour to fulfil the other conditions with all due diligence; or.~~

(b) when any official authorisation or regulatory clearance is required before the offer document is ~~published~~~~posted~~. ~~The person who has incurred the obligation under Rule 9 must endeavour to obtain authorisation or clearance with all due diligence. If authorisation or clearance is obtained, the offer document must be published~~~~posted~~ immediately. If authorisation or clearance is not obtained, the same consequences will follow as if the merger were prohibited following a reference to the Competition Commission or the initiation of proceedings by the European Commission (see Rule 9.4).

~~When a dispensation is given, the offeror must endeavour to fulfil all the other conditions with all due diligence.~~

~~(See also Rule 9.7.)~~

9.4 THE COMPETITION COMMISSION AND THE EUROPEAN COMMISSION

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NOTES ON RULE 9.4

1. If an offer lapses pursuant to Rule 12.1(a) or (b)

If an offer under Rule 9 lapses pursuant to Rule 12.1(a) or (b), the obligation under the Rule does not lapse and, accordingly, if thereafter the merger is allowed, the offer must be reinstated on the same terms and at not less than the same price as soon as practicable. If the merger is prohibited, the offer cannot be made and the Panel will consider whether, if there is no order to such effect, to require the offeror to reduce the percentage of shares carrying voting rights in which it and persons acting in concert with it are interested to below 30% or to its original level before the obligation to offer was incurred, if this was 30% or more. The Panel would normally expect an offeror whose

offer has lapsed pursuant to Rule 12.1(a) or (b) to proceed with all due diligence before the Competition Commission or the European Commission. (See also Rule 9.7.)

...

~~9.7 RESTRICTIONS ON EXERCISE OF CONTROL BY AN OFFEROR~~

~~Except with the consent of the Panel, no nominee of an offeror or persons acting in concert with it may be appointed to the board of the offeree company, nor may an offeror and persons acting in concert with it exercise, or procure the exercise of, the votes attaching to any shares in the offeree company until the offer document has been posted.~~

9.7 VOTING RESTRICTIONS AND DISPOSAL OF INTERESTS

Where the Panel agrees to the disposal of interests in shares by a person as an alternative to making an offer pursuant to Rule 9.1, the Panel must be consulted as to the interests required to be disposed of and the application, pending completion of the disposal, of restrictions on the exercise of the voting rights (or the procurement of the exercise of the voting rights) attaching to the shares in which that person and persons acting in concert with that person are interested. Similarly, where an offer made pursuant to Rule 9.1 lapses for a reason other than the acceptance condition not being satisfied, or where a new offer is required pursuant to Note 2 on Rule 9.3, the Panel must be consulted regarding the ability of the offeror and any persons acting in concert with it to exercise, or procure the exercise of, the voting rights attaching to the shares of the offeree company in which they are interested.

NOTE ON RULE 9.7

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

Where an obligation under Rule 9.1 has arisen by virtue of:

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

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

In each case the calculation will be made by reference to the reduced maximum number of shares entitled to be voted.

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

NOTES ON DISPENSATIONS FROM RULE 9

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

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The appropriate provisions of the Code apply to whitewash proposals. Full details of the potential number and percentage of shares in which the person or group of persons acting in concert might become interested (together with details of the different interests concerned) must be disclosed in the document ~~sent to shareholders relating to~~ published in connection with the issue of the new securities, which must also include competent independent advice on the proposals the shareholders are being asked to approve, together with a statement that the Panel has agreed to waive any consequent obligation under this Rule to make a general offer. ...

...

(a) the Panel will not normally waive an obligation under this Rule if the person to whom the new securities are to be issued or any persons acting in concert with him have acquired any interest in shares in the company in the 12 months prior to the ~~posting to shareholders~~ publication of the circular relating to the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;

(b) a waiver will be invalidated if any acquisitions of interests in shares are made in the period between the ~~posting~~ publication of the circular ~~to shareholders~~ and the shareholders’ meeting.

...

2. *Enforcement of security for a loan*

Where shares or other securities are charged as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a general offer under this Rule, the Panel will not normally require an offer if

sufficient interests in shares are disposed of within a limited period to persons unconnected with the lender, so that the percentage of shares carrying voting rights in which the lender, together with persons acting in concert with it, is interested is reduced to below 30% in a manner satisfactory to the Panel. ~~The lender must consult the Panel as to its ability to exercise or procure the exercise of the voting rights attaching to the shares in which it is interested at any time before sufficient interests are disposed of, or if the interest in excess of 29.9% is likely to be temporary (for example because the company will be issuing more shares).~~ (See also Rule 9.7.)

...

4. *Inadvertent mistake*

If, due to an inadvertent mistake, a person incurs an obligation to make an offer under this Rule, the Panel will not normally require an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with him, so that the percentage of shares carrying voting rights in which the person, together with persons acting in concert with him, is interested is reduced to below 30% in a manner satisfactory to the Panel. ~~Any such person must consult the Panel as to his ability to exercise or procure the exercise of the voting rights attaching to the shares in which he is interested at any time before sufficient interests are disposed of, or if the interest in excess of 29.9% is likely to be temporary (for example because the company will be issuing more shares).~~ (See also Rule 9.7.)

...

Rule 11.1

11.1 WHEN A CASH OFFER IS REQUIRED

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NOTES ON RULE 11.1

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5. *Acquisitions for securities*

... However, if the vendor of the offeree company shares or other party to the transaction giving rise to the interest is required to hold the securities received or receivable in exchange until either the offer has lapsed or the offer consideration has been ~~posted~~present to accepting shareholders, no obligation under Rule 11.1 will be incurred.

...

Rule 11.2**11.2 WHEN A SECURITIES OFFER IS REQUIRED**

...

Unless the vendor or other party to the transaction giving rise to the interest is required to hold the securities received or receivable until either the offer has lapsed or the offer consideration has been ~~posted~~sent to accepting shareholders, an obligation to make an offer in cash or to provide a cash alternative will also arise under Rule 11.1.

Rule 13.3**13.3 ACCEPTABILITY OF PRE-CONDITIONS**

The Panel must be consulted in advance if a person proposes to include in an announcement any pre-condition to which the making of an posting of ~~the offer~~ will be subject.

...

Rule 15**RULE 15. APPROPRIATE OFFER FOR CONVERTIBLES ETC.**

...

(c) Whenever practicable, the offer or proposal should be ~~sent~~despatched to stockholders at the same time as the offer document is ~~published~~posted but, if this is not practicable, the Panel should be consulted and the offer or proposal should be ~~sent~~despatched as soon as possible thereafter. A copy of the offer or proposal should be sent ~~to~~lodged with the Panel at the time of publication~~issue~~.

...

NOTES ON RULE 15

1. *When conversion rights etc. are exercisable during an offer*

All relevant documents, announcements and other information ~~sent~~ issued to shareholders of the offeree company and persons with information rights in connection with an offer must also, where practicable, be ~~sent~~issued simultaneously to the holders of securities convertible into, rights to subscribe for and options over shares of the same class as those to which the offer relates. If those holders are able to exercise their rights during the course of the offer and to accept the offer in respect of the resulting shares, their

attention should, where appropriate, be drawn to this in the relevant documents, announcements and other information.

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Rule 17.1

17.1 TIMING AND CONTENTS

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NOTES ON RULE 17.1

...

4. Publication of announcements

An announcement under this Rule must be published in accordance with the requirements of Rule 2.9. However, in the case of companies whose securities are not admitted to listing or admitted to trading, it would normally be permissible to ~~write to all shareholders~~ send a notification to all shareholders and persons with information rights instead of making an announcement.

...

Rule 19

19.1 STANDARDS OF CARE

Each document or advertisement ~~issued~~published, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy and the information given must be adequately and fairly presented. This applies whether it is ~~issued~~published by the party ~~the company directly~~ or by an adviser on its behalf.

NOTES ON RULE 19.1

1. Financial advisers' responsibility for ~~release~~publication of information

The Panel regards financial advisers as being responsible to the Panel for guiding their clients and any relevant public relations advisers with regard to any information ~~released~~published during the course of an offer.

...

2. Unambiguous language

The language used in documents, announcements, information, releases or advertisements must clearly and concisely reflect the position being described.

...

...

8. *Merger benefits statements*

... These additional requirements include publication of:

...

(c) an analysis and explanation of the constituent elements sufficient to enable ~~shareholders to understand~~ the relative importance of these elements to be understood; and

...

19.2 RESPONSIBILITY

(a) Each document ~~issued to shareholders~~ or advertisement published in connection with an offer by, or on behalf of, the offeror or the offeree company, must state that the directors of the offeror and/or, where appropriate, the offeree company accept responsibility for the information contained in the document or advertisement and that, to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in the document or advertisement is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information. ...

...

NOTES ON RULE 19.2

...

3. *Quoting information about another party~~company~~*

Where a party ~~publishes~~~~company~~ issues a document or advertisement containing information about another party~~company~~ which makes it clear that such information has been compiled from previously published sources, the directors of the party ~~publishing~~~~company~~ issuing the document or advertisement need, as regards the information so compiled, only take responsibility for the correctness and fairness of its reproduction or presentation and the responsibility statement may be amended accordingly. Where statements of opinion or conclusions concerning another party~~company~~ or unpublished information originating from another party~~company~~ are included, these must normally be covered by a responsibility statement by the directors of the party ~~publishing~~~~company~~ issuing the document or

advertisement or by the directors of the other ~~party~~~~company~~; the qualified form of responsibility statement provided for in this Note is not acceptable in such instances. ...

...

5. When an offeror is controlled

If the offeror is controlled, directly or indirectly, by another person or group, the Panel will normally require that, in addition to the directors of the offeror, other persons (eg directors of an ultimate parent) take responsibility for documents or advertisements ~~issued~~published by or on behalf of the offeror. In such circumstances, the Panel must be consulted.

19.3 UNACCEPTABLE STATEMENTS

Parties to an offer or potential offer and their advisers must take care not to ~~issue~~make statements which, while not factually inaccurate, may ~~mislead shareholders and the market~~be misleading or may create uncertainty. ...

NOTES ON RULE 19.3

...

2. Statements of support

... The Panel will not require separate verification by an offeror where the information required by Note 14 on Rule 8 is included in an announcement made under Rule 2.5 which is ~~published~~~~released~~ no later than 12 noon on the business day following the date on which the letter of intent is procured.

19.4 ADVERTISEMENTS

...

The categories are as follows:-

...

(ix) advertisements published with the specific prior consent of the Panel. (As examples, this might be given if it were necessary to ~~communicate with shareholders~~publish a document, announcement or information during a postal strike or in the circumstances referred to in Note 3 on Rule 20.1.)

NOTES ON RULE 19.4

...

4. *Use of alternative media*

For the purpose of this Rule, advertisements include not only press advertisements but also advertisements in any other media, ~~such as television, radio, video, audio tape and poster.~~

...

19.6 INTERVIEWS AND DEBATES

Parties involved in offers should, if interviewed on radio, ~~or television~~ or any other media, seek to ensure that the sequence of the interview is not broken by the insertion of comments or observations by others not made in the course of the interview. ...

[Note: the current Rule 19.7 has been deleted in its entirety and re-numbered as Rule 19.10, amended as set out below.]

~~19.7 DISTRIBUTION AND AVAILABILITY OF DOCUMENTS AND ANNOUNCEMENTS~~

~~Before the offer document is made public, a copy must be lodged with the Panel. Copies of all other documents and announcements bearing on an offer and of advertisements and any material released to the media (including any notes to editors) must at the time of release be lodged with the Panel and the advisers to all other parties to the offer and must not be released to the media under an embargo (see also the Note on Rule 26). When the release is outside normal business hours, such advisers must be informed of the release immediately, if necessary by telephone; special arrangements may need to be made to ensure that the material is delivered directly to them and to the Panel. No party to an offer should be put at a disadvantage through delay in the release of new information to it.~~

[Note: the current Rule 19.8 has been re-numbered as Rule 19.7, amended as set out below.]

19.87 ~~INFORMATION RELEASED PUBLISHED~~ FOLLOWING THE ENDING OF AN OFFER PERIOD PURSUANT TO RULE 12.2

The requirements of the Code relating to the ~~release~~ publication of information do not normally apply once an offer period has ended pursuant to Rule 12.2(a). ...

19.8 PUBLICATION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION

If a document, an announcement or any information is required to be sent to any person, it will be treated as having been sent if it is:

- (a) sent to the relevant person in hard copy form;
- (b) sent to the relevant person in electronic form; or
- (c) published on a website provided that the relevant person is sent a website notification no later than the date on which it is published on the website.

NOTE ON RULE 19.8

Forms

Acceptance forms, withdrawal forms, proxy cards and any other form connected with an offer must be published in hard copy form only.

19.9 RIGHT TO RECEIVE COPIES OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION IN HARD COPY FORM

(a) If a document, an announcement or any information is required to be sent to any person and it is:

- (i) sent to a person in electronic form; or
- (ii) published on a website and the person entitled to receive it is sent a website notification,

that person may request a copy in hard copy form from the party which publishes it. Any such request must be made in accordance with the procedure specified in the document, announcement or information for the making of such requests and must provide an address to which the hard copy document, announcement or other information may be sent.

(b) A person entitled to receive a document, an announcement or any information may request that all future documents, announcements and information sent to that person in relation to an offer should be sent by the party which publishes it in hard copy form.

(c) If an offeror receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form, it must notify the offeree company as soon as possible and provide details of the address to which hard copy documents, announcements and information should be sent. If the offeree company receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form (either from the person concerned or from an offeror), it must provide the other parties to the offer with details of such requests at the same time as it provides them with updates to the company's register.

(d) If a request is made under (a) above for a hard copy of a document, an announcement or any information, the party which published it must ensure that it is sent to the relevant person as soon as possible and in any event within two business days of the request being received by that party.

(e) Any document, announcement or information that is sent to a person in electronic form or by means of being published on a website, and any related website notification, must contain a statement that the person to whom it is sent may request a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form and may also request that all future documents, announcements and information sent to that person in relation to the offer should be in hard copy form. Attention should be drawn to the fact that a hard copy of the document, announcement or information will not be sent to that person unless so requested and details must be provided of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests may be submitted).

(f) If a shareholder, person with information rights or other person is entitled to be sent a document, an announcement or any information and has elected in accordance with any applicable legal or regulatory provisions to receive communications from the offeree company in hard copy form (and such election has been made in respect of information generally and not only in respect of certain specific types of information), that election must be treated by each party to an offer as also applying to the form in which any document, announcement or information must be sent to that person in relation to the offer (see also Section 4 of Appendix 4). If a request is made under (b) above for copies of future documents, announcements and information to be sent in hard copy form, that request must be treated by each party to an offer as an election made in accordance with applicable legal or regulatory provisions to receive communications from the offeree company in hard copy form.

[Note: the current Rule 19.7 has been re-numbered as Rule 19.10, amended as set out below.]

19.10~~7~~ DISTRIBUTION AND AVAILABILITY OF DOCUMENTS, AND ANNOUNCEMENTS AND INFORMATION TO THE PANEL AND OTHER PARTIES TO AN OFFER

(a) Before ~~an~~ the offer document is ~~published~~ made public, a copy of the document in hard copy form and electronic form must be sent to ~~lodged with~~ the Panel. At the time of publication, a copy must also be sent in hard copy form and electronic form to the advisers to all other parties to the offer.

(b) Copies of all other documents ~~and~~, announcements ~~bearing on an~~

offer and of and information published in connection with an offer by, or on behalf of, an offeror or the offeree company, including advertisements and any material released to the media (including any notes to editors), must at the time of publication or release be sent in electronic form to:~~lodged with~~

(i) the Panel; and

(ii) the advisers to all other parties to the offer.

Documents must also be sent in hard copy form to the Panel and the advisers to all other parties to the offer at the time of publication. Such documents, announcements or information and ~~must not be released to the media under an embargo (see also the Note on Rule 26).~~

(c) If a party to an offer publishes a document, an announcement or any information ~~When the release is outside normal business hours, that party must inform the advisers to all other parties to the offer of its publication such advisers must be informed of the release immediately, (if necessary by telephone);~~ In such circumstances, special arrangements may need to be made to ensure that a copy of the document, announcement or information is sent ~~the material is delivered directly to the relevant advisers them~~ and to the Panel. No party to an offer should be put at a disadvantage through a delay in the release of new information to it.

NOTE ON RULE 19.10

Information incorporated by reference

Where information is incorporated into a document by reference to another source of information, a copy of the information so incorporated should be sent to the Panel and the advisers to all other parties to an offer in electronic form at the same time as the document sent in accordance with this Rule.

**19.11 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION
REQUIRED TO BE PUBLISHED ON A WEBSITE**

(a) If an offeror or offeree company, or any person on its behalf:

(i) sends a document or information in relation to an offer to shareholders, persons with information rights or other relevant persons in accordance with Rule 19.8; or

(ii) publishes an announcement (whether related to the offer or not) by sending it to a RIS,

the offeror or offeree company as relevant must, as soon as possible and in any event by no later than 12 noon on the following business day,

ensure that a copy is published on a website. Copies of announcements referred to in Note 5 below do not need to be published on a website.

(b) A copy of each document, announcement or information required to be published on a website under (a) above must continue to be made available on a website free of charge during the course of the offer (and any related competition reference period). Documents, announcements and information published following the end of the offer period will not be required to be published on the website.

(c) Any document, announcement or information published in relation to an offer by an offeror or the offeree company in the manner described in (a)(i) or (ii) above (other than the announcements referred to in Note 5 below) must contain a statement providing details of the website on which a copy will be published.

NOTES ON RULE 19.11

1. Website to be used

A party to an offer should normally use its own website for publishing copies of documents, announcements and information. If a party to an offer does not have its own website, or proposes to use a website maintained by a third party for this purpose, the Panel should be consulted.

2. “Read-only” format

Any document, announcement or information published on a website must be published in a “read-only” format so that it may not be amended or altered in any way.

3. Shareholders, persons with information rights and other persons outside the EEA

Offer-related documents, announcements and information published on a website should be capable of being accessed by shareholders, persons with information rights and other relevant persons in all jurisdictions unless there is a sufficient objective justification for restricting access from certain non-EEA jurisdictions on the basis described in the Note on Rule 30.3.

4. Equality of information to shareholders

Save as expressly permitted by Rule 19.8, the publication of offer-related documents, announcements and information on a website will not satisfy the obligation under Rule 20.1 to make information about companies involved in an offer equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.

5. Announcements not required to be published on a website

Copies of the following announcements do not need to be published on a website:

(a) announcements in relation to notifications made pursuant to the rules of other regulatory regimes in respect of:

(i) transactions by directors or other persons discharging managerial responsibilities in respect of a company;

(ii) the acquisition or disposal of major shareholdings; and

(iii) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares (including treasury shares); and

(b) announcements of the number of relevant securities in issue under Rule 2.10.

Rule 20

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

Information about parties to companies involved in an offer must be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.

NOTES ON RULE 20.1

...

2. Media ~~Press, television and radio~~ interviews

Parties involved in an offer must take particular care not to ~~disclose~~ release new material in interviews or discussions with the media. If, notwithstanding this Note, any new information is ~~made public~~ 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 (see also Note 1 on Rule 19.1).

3. Meetings

... If, notwithstanding the above, any material new information or significant new opinion does emerge at the meeting, a circular giving details must be sent to shareholders and persons with information rights 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. ...

...

4. *Information ~~issued~~ published by associates (eg brokers)*

Rule 20.1 does not prevent ~~the issue of circulars during the offer period to their own investment clients by brokers or advisers to any party to the transaction sending circulars during the offer period to their own investment clients~~ provided such ~~issue~~ publication has previously been approved by the Panel.

...

The associate's status must be clearly disclosed. Clearance before ~~release~~ publication may in many cases be effected by telephone but where there is doubt a draft must be sent to the Panel as early as possible. In all cases, copies of the final version of circulars must be sent to the Panel at the time of ~~release~~ publication. Where relevant, the requirements of this Note apply to screen displays.

...

When an offer or possible offer is referred to the Competition Commission or the European Commission initiates proceedings, the offer period may end in accordance with Rule 12.2(a). Associates must, however, consult the Panel about the ~~issue~~ publication of circulars as described in this Note during the reference or proceedings. ...

5. *Shareholders and persons with information rights outside the EEA*

See the Note on Rule 30.3.

20.2 EQUALITY OF INFORMATION TO COMPETING OFFERORS

Any information, ~~including particulars of shareholders~~, given to one offeror or potential offeror, whether named or unnamed, must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. ...

Rule 21.1

21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED

...

NOTES ON RULE 21.1

...

5. *When there is no need to ~~post~~make an offer*

The Panel may allow an offeror not to make an offer~~proceed with its offer~~ if, at any time during the offer period prior to the publication~~posting~~ of the offer document:—

...

Rule 23

RULE 23. THE GENERAL OBLIGATION AS TO INFORMATION

...

NOTES ON RULE 23

1. *Material changes*

Any document ~~issued to shareholders~~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~~company~~ during the offer period; if there have been no such changes, this should be stated.

2. *Offers conditional on shareholder action*

When an offer has been announced which is conditional on action by offeree company shareholders (eg the rejection of a proposed acquisition or disposal), the first major circular ~~sent~~published by the potential offeror ~~to those shareholders~~ must normally include the information which would be required by Rule 24 to be included in that circular if it were an offer document.

3. *Shareholders and persons with information rights outside the EEA*

See the Note on Rule 30.3.

Rule 24.2

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

...

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

...

(ii) the date when the document is ~~despatched~~published, the name and address of the offeror (including, where the offeror is a company, the type of company and the address of its registered office) and, if appropriate, of the person making the offer on behalf of the offeror;

...

(viii) the middle market quotations for the securities to be acquired, and (in the case of a securities exchange offer) securities offered, for the first business day in each of the six months immediately before the date of the offer document, for the last business day before the commencement of the offer period and for the latest available date before the ~~posting~~publication of the offer document (quotations stated in respect of securities admitted either to the Official List or to trading on AIM should be taken from the Stock Exchange Daily Official List and, if any of the securities are not so admitted, any information available as to the number and price of transactions which have taken place during the preceding six months should be stated together with the source, or an appropriate negative statement);

...

(g) if any document ~~issued~~published by the offeror contains a comparison of the value of the offer with previous prices of the offeree company's shares, a comparison between the current value of the offer and the price of the offeree company's shares on the last business day prior to the commencement of the offer period must be prominently included, no matter what other comparisons are made; and

(h) if any document ~~issued to shareholders of the offeree company~~published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless ~~issued~~published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn his consent to the ~~issue~~publication of the document with the inclusion of his recommendation or opinion in the form and context in which it is included.

Rule 24.3

24.3 INTERESTS AND DEALINGS

...

(c) If any person referred to in Rule 24.3(a) has dealt in any relevant securities of the offeree company (or, in the case of a securities exchange offer only, of the offeror) during the period beginning 12 months prior to

the offer period and ending with the latest practicable date prior to the ~~posting~~publication of the offer document, the details, including dates, must be stated (see Note 5(a) on Rule 8). If no such dealings have taken place, this fact should be stated.

...

NOTES ON RULE 24.3

...

2. Aggregation

...

Acquisitions and disposals should not be netted off, the highest and lowest prices should be stated and the disclosure should distinguish between the different categories of interests in relevant securities and short positions. A full list of all dealings, together with a draft of the proposed aggregated disclosure, should be sent to the Panel, for its approval, in advance of the ~~posting~~publication of the offer documentation and the full list of dealings should be ~~made available for inspection~~put on display in accordance with Rule 26.

Rule 24.14

24.14 INCORPORATION OF INFORMATION BY REFERENCE

(a) The information required to be included in documents under the following Rules may be incorporated into the relevant documents by reference to another source:

(i) Rules 24.2(a)(i) to (iii) and (v) to (viii);

(ii) Rules 24.2(b)(i) and (ii); and

(iii) Rules 24.2(c) and (e), in so far as they refer to Rules 24.2(a)(i) to (iii) and (v) to (viii).

Information that is required to be included in a document under other Rules may be incorporated by reference to another source with the Panel's consent.

(b) Information that is incorporated into a document by reference to another source must be published on a website by no later than the date on which the document is published. The information published on a website must be published:

(i) in a form that may be printed, read and retained by the person to whom the document must be sent; and

(ii) in a “read-only” format so that it may not be amended or altered in any way.

(c) If a person is sent a document which incorporates information by reference to another source, that person may request a copy of the information so incorporated in hard copy form. If such a request is made, the party which published the document must ensure that a copy of the requested information is sent to the relevant person in hard copy form as soon as possible and in any event within two business days of the request being received by the relevant party.

(d) Any document which incorporates information by reference to another source (and any related website notification) must contain a statement that a shareholder, person with information rights or other person to whom it is sent may request a copy of any such information in hard copy form. Attention should be drawn to the fact that a hard copy of the information will not be sent to that person unless requested and details must be provided of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests may be submitted).

NOTE ON RULE 24.14

Source of information incorporated by reference

Where a document incorporates information by reference to other sources, a consolidated list of all such information and sources must be provided including, in each case, details of where the information may be located (for example, providing details of the address of the website on which the information is published and details of the relevant document, page and, where relevant, paragraph numbers). A general reference to where information may be found, for example, “in the company’s annual report and accounts” or “on the company’s website” will not be sufficient.

Rule 25.1

25.1 VIEWS OF THE BOARD ON THE OFFER, INCLUDING THE OFFEROR’S PLANS FOR THE COMPANY AND ITS EMPLOYEES

(a) The board of the offeree company must ~~circulate to the company’s shareholders~~ send its opinion on the offer (including any alternative offers) to the offeree company’s shareholders and persons with information rights. It must, at the same time, make known to its shareholders the substance of the advice given to it by the independent advisers appointed pursuant to Rule 3.1.

...

(c) If any document ~~issued to shareholders of the offeree company~~published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless ~~issued~~published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn ~~its~~his consent to the ~~issue~~publication of the document with the inclusion of ~~its~~his recommendation or opinion in the form and context in which it is included.

NOTES ON RULE 25.1

...

2. *Split boards*

If the board of the offeree company is split in its views on an offer, the directors who are in a minority should also publish their views. The Panel will normally require ~~that they be circulated by the offeree company to send those views to the offeree company's shareholders and persons with information rights.~~

3. *Conflicts of interest*

Where a director has a conflict of interest, he should not normally be joined with the remainder of the board in the expression of its views on the offer and the nature of the conflict should be clearly explained ~~to shareholders.~~ ...

...

Rule 25.2

25.2 FINANCIAL AND OTHER INFORMATION

The first major circular ~~from~~published by the offeree board ~~advising shareholders on~~in connection with an offer (whether recommending acceptance or rejection of the offer) must contain all known material changes in the financial or trading position of the offeree company subsequent to the last published audited accounts or a statement that there are no known material changes.

NOTES ON RULE 25.2

1. *Offeree board circular combined with offer document*

Where the first major circular ~~published by~~^{from} the offeree board is combined with the offer document, it will be the responsibility of the offeree board to include the information required by this Rule. ...

2. *Offeree board circular ~~posted~~^{published} after offer document*

Where the offeror has included in the offer document information on the offeree company as required by Rule 24.2(e) insofar as it applies to Rules 24.2(a)(iv) and (v), such information does not need to be repeated in the first major circular ~~published by~~^{from} the offeree board provided that the statement made in accordance with this Rule makes specific reference to the relevant information disclosed by the offeror in the offer document.

Rule 25.3

25.3 INTERESTS AND DEALINGS

(a) The first major circular published by~~from~~ the offeree board advising shareholders on an offer in connection with the offer (whether recommending acceptance or rejection of the offer) must state:—

...

(c) If any person referred to in Rule 25.3(a)(i) has dealt in any relevant securities of the offeree company or the offeror between the start of the offer period and the latest practicable date prior to the posting/publication of the circular, the details, including dates, must be stated (see Note 5(a) on Rule 8). ...

...

Rule 25.4

25.4 DIRECTORS' SERVICE CONTRACTS

(a) The first major circular published by~~from~~ the offeree board advising shareholders on an offer in connection with the offer (whether recommending acceptance or rejection of the offer) must contain particulars of all service contracts of any director or proposed director of the offeree company with the company or any of its subsidiaries. ...

...

Rule 25.5

25.5 ARRANGEMENTS IN RELATION TO DEALINGS

The first major circular ~~published by~~from the offeree board ~~advising shareholders on an offer~~in connection with the offer; (whether recommending acceptance or rejection of the offer); must disclose any arrangements of the kind referred to in Note 6(b) on Rule 8 which exist between the offeree company, or any person who is an associate of the offeree company by virtue of paragraphs (1), (2), (3) or (4) of the definition of associate, and any other person; if there are no such arrangements, this should be stated. ...

Rule 25.6

25.6 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

The first major circular ~~published by~~from the offeree board ~~advising shareholders on an offer~~in connection with an offer must contain:—

...

Rule 26

RULE 26. DOCUMENTS TO BE ON DISPLAY

...

(d) any report, letter, valuation or other document any part of which is exhibited or referred to in any document ~~issued~~published by or on behalf of the offeror or the offeree company;

...

(g) where a profit forecast has been made:

...

(ii) the letters giving the consent of the auditors or consultant accountants and of the financial advisers to the ~~issue~~publication of the relevant document with the report in the form and context in which it is included or, if appropriate, to the continued use of the report in a subsequent document (Rules 28.4 and 28.5);

...

(n) ... ;~~and~~

(o) ... ;~~and~~

(p) in the case of an offeror, the offer document and any revised offer document (Rules 30.1(a) and 32.1(a)); and

(q) in the case of the offeree company, the offeree board circular and any offeree board opinion on any revised offer document (Rules 30.2(a) and 32.6(a)).

Rule 27

RULE 27. DOCUMENTS SUBSEQUENTLY PUBLISHED ~~SENT TO~~ SHAREHOLDERS

27.1 MATERIAL CHANGES

Documents subsequently sent to shareholders of the offeree and persons with information rights by either party must contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period; if there have been no such changes, this must be stated. In particular, the following matters must be updated:—

...

27.2 CONTINUING VALIDITY OF PROFIT FORECASTS

When a profit forecast has been made, documents subsequently ~~sent to shareholders of the offeree company~~ published by the party making the forecast must comply with the requirements of Rule 28.5.

Rule 28

28.1 STANDARDS OF CARE

There are obvious hazards attached to the forecasting of profits; this should in no way detract from the necessity of maintaining the highest standards of accuracy and fair presentation in all communications ~~to shareholders~~ in published in connection with an offer. ...

28.2 THE ASSUMPTIONS

(a) When a profit forecast appears in any document ~~addressed to shareholders~~ published in connection with an offer, the assumptions, including the commercial assumptions, upon which the directors have based their profit forecast, must be stated in the document.

...

NOTES ON RULE 28.2

1. Requirement to state the assumptions

(a) *It is important that by listing the assumptions on which the forecast is based useful information should be ~~given to shareholders to help them in forming~~ provided to help relevant persons to form a view as to the reasonableness and reliability of the forecast. This should draw ~~the shareholders'~~ attention to, and where possible quantify, those uncertain factors which could materially disturb the ultimate achievement of the forecast.*

(b) *There are inevitable limitations on the accuracy of some forecasts and these should be indicated ~~to assist shareholders in their review~~. A description of the general nature of the business or businesses with an indication of any major hazards in forecasting in these particular businesses should normally be included.*

...

2. General rules

(a) *The following general rules apply to the selection and drafting of assumptions.*

(i) *The ~~shareholder should be able to understand their implications~~ of the assumptions should be capable of being understood with a view to helping relevant persons to form ~~and so be helped in forming~~ a judgement as to the reasonableness of the forecast and the main uncertainties attaching to it.*

...

(iii) ...

Every forecast involves estimates of income and of costs and must obviously be dependent on these estimates. Assumptions of the type illustrated above would not help a person ~~do not help the shareholder~~ in considering the forecast.

...

(b) *Even the more specific type of assumption may still leave ~~shareholders in~~ doubt as to its implications, for instance:—*

...

28.3 REPORTS REQUIRED IN CONNECTION WITH PROFIT FORECASTS

...

(d) Except with the consent of the Panel, any profit forecast which has been made before the commencement of the offer period must be examined, repeated and reported on in the document sent to shareholders and persons with information rights.

(e) Exceptionally, the Panel may accept that, because of the uncertainties involved, it is not possible for a forecast previously made to be reported on in accordance with the Code nor for a revised forecast to be made. In these circumstances, the Panel would insist on ~~shareholders being given~~ a full explanation being given as to why the requirements of the Code were not capable of being met.

28.4 PUBLICATION OF REPORTS AND CONSENT LETTERS

Whenever a profit forecast is made during an offer period, the reports must be included in the document ~~addressed to shareholders~~ containing the forecast or, when the forecast is made in an press-announcement (including one commencing the offer period), in that announcement. The reports must be accompanied by a statement that those making them have given and not withdrawn their consent to publication. If a company's forecast is published first in an press-announcement, it must be repeated in full, together with the reports, in the next document ~~sent to shareholders~~ published in connection with the offer by that company.

28.5 SUBSEQUENT DOCUMENTS – CONTINUING VALIDITY OF FORECAST

When a company includes a forecast in a document, any document subsequently ~~sent out~~ published by that company in connection with that offer must, except with the consent of the Panel, contain a statement by the directors that the forecast remains valid for the purpose of the offer and that the financial advisers and accountants who reported on the forecast have indicated that they have no objection to their reports continuing to apply.

...

28.7 TAXATION, EXTRAORDINARY ITEMS AND MINORITY INTERESTS

When a forecast of profit before taxation appears in a document ~~addressed to shareholders~~ published in connection with an offer, there must be included forecasts of taxation (where the figure is expected to be significantly abnormal), extraordinary items and minority interests (where either of these amounts is expected to be material).

Rule 29.1**29.1 VALUATIONS TO BE REPORTED ON IF GIVEN IN CONNECTION WITH AN OFFER**

...

(d) Another party's assets

A party to a takeover situation will not normally be permitted to publish a valuation, appraisal or calculation of worth of the assets owned by another party unless it is supported by the unqualified opinion of a named independent valuer and that valuer has had access to sufficient information to carry out a property valuation, appraisal or calculation of worth either in accordance with The Standards or, in respect of assets other than land, buildings, plant and equipment, to appropriate standards approved by the Panel. ...

Rule 29.2**29.2 BASIS OF VALUATION**

...

(e) ... Where this is done, the document sent to shareholders and persons with information rights should distinguish between properties valued professionally and those where the directors have made estimates on the basis of the sample valuation and should also compare such estimates with book values.

Rule 29.5**29.5 OPINION AND CONSENT LETTERS**

...

(c) Valuation certificate to be on display

Where a valuation of assets is given in any document ~~addressed to shareholders~~ published in connection with an offer, the valuation report must be ~~made available for inspection, in the manner described in~~ put on display in accordance with Rule 26, together with an associated report or schedule containing details of the aggregate valuation. Where the Panel is satisfied that such disclosure may be commercially disadvantageous to the company concerned, it will allow the report or schedule to appear in a summarised form. In certain cases, the Panel may require any of these documents to be reproduced in full in a document sent to shareholders and persons with information rights.

Rule 29.6

29.6 WAIVER IN CERTAIN CIRCUMSTANCES

In exceptional cases, certain companies, in particular property companies, which are the subject of an unexpected offer may find difficulty in obtaining, within the time available, the opinion of an independent valuer to support an asset valuation, as required by this Rule, before the board's circular has to be ~~sent out~~ published. ...

Rule 30

RULE 30. PUBLISHING ~~MAKING~~ THE OFFER DOCUMENT AND THE OFFEREE BOARD CIRCULAR ~~AVAILABLE~~

30.1 THE OFFER DOCUMENT

(a) The offer document should normally be ~~sent~~ posted to shareholders of the offeree company and persons with information rights within 28 days of the announcement of a firm intention to make an offer. The Panel must be consulted if the offer document is not to be published ~~posted~~ within this period. On the day of publication ~~posting~~, the offeror must put the offer document on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the offer document has been published ~~posted~~ and where the document can be inspected.

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

30.2 THE OFFEREE BOARD CIRCULAR

(a) The board of the offeree company must publish a circular containing its opinion, as required by Rule 25.1(a), as soon as practicable after publication of the offer document and normally within 14 days and must:

- (i) ~~post~~ send it to its shareholders and to persons with information rights; and

...

On the day of posting publication, the board of the offeree company must put the circular on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the circular has been ~~posted~~ published and where it can be inspected.

...

NOTE ON RULE 30.2

Where there is no separate offeree board circular

Where the offeree board's circular is combined with the offer document the references to the offeree board's circular being ~~posted~~ sent to shareholders of the offeree company and persons with information rights and being made readily and promptly available after publication of the offer document will be inapplicable. Other than this, the requirements of Rule 30.2 will apply as usual to the single document.

30.3 MAKING DOCUMENTS, ANNOUNCEMENTS AND INFORMATION AVAILABLE TO SHAREHOLDERS, PERSONS WITH INFORMATION RIGHTS, EMPLOYEE REPRESENTATIVES AND EMPLOYEES

~~The requirements under Rules 2.6, 20.1, 23, 30.1, 30.2, 32.1 and 32.6(a) to provide information or to send or make documents available to shareholders of the offeree company or to employee representatives or employees of the offeror or the offeree company apply in respect of all such shareholders, employee representatives or employees, including those who are located outside the EEA, unless there is sufficient objective justification for their not doing so. If a document, an announcement or any information is required to be sent, published or made available to:~~

~~(a) shareholders in the offeree company;~~

~~(b) persons with information rights; or~~

~~(c) employee representatives or employees of the offeror or the offeree company,~~

~~pursuant to Rules 2.6, 19.9, 19.11, 20.1, 23, 24.14, 30.1, 32.1 and 32.6(a), it must be sent, published or made available (as the case may be) to all such persons, including those who are located outside the EEA, unless there is sufficient objective justification for not doing so.~~

NOTE ON RULE 30.3

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

Where local laws or regulations of a particular non-EEA jurisdiction may result in a significant risk of civil, regulatory or, particularly, criminal exposure for the offeror or the offeree company if the information or documentation is sent, published or made available to shareholders in that jurisdiction without any amendment, and unless they can avoid such exposure

by making minor amendments to the information being provided or documents being sent, published or made available either:

(a) the offeror or the offeree company need not provide such information or send, publish or make such information or documents available to registered shareholders of the offeree company or persons with information rights who are located in that jurisdiction if less than 3% of the shares of the offeree company are held by registered shareholders located there at the date on which the information is to be provided or the information or documents are to be sent, published or made available (and there is no need to consult the Panel in these circumstances); or

...

Similar dispensations will apply in respect of information or documents which are sent, published, provided or required to be made available to employee representatives or employees of the offeror or the offeree company.

The Panel will not normally grant any dispensation in relation to shareholders, persons with information rights, employee representatives or employees of the offeree company who are located within the EEA.

Rule 31.1

31.1 FIRST CLOSING DATE

An offer must initially be open for at least 21 days following the date on which the offer document is ~~posted~~published.

Rule 31.2

31.2 FURTHER CLOSING DATES TO BE SPECIFIED

In any announcement of an extension of an offer, either the next closing date must be stated or, if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice. In the latter case, or if the offer will remain open for acceptances beyond the 70th day following ~~posting~~the publication of the offer document, at least 14 days' notice ~~in writing~~ must be given, before the offer is closed, to those shareholders who have not accepted by sending a notification to offeree company shareholders and persons with information rights.

Rule 31.5

31.5 NO EXTENSION STATEMENTS

If statements in relation to the duration of an offer such as “the offer will not be extended beyond a specified date unless it is unconditional as to acceptances” (“no extension statements”) are included in documents sent to offeree company shareholders or announcements published in connection with an offer, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to extend its offer beyond the stated date except where the right to do so has been specifically reserved. The provisions of Rule 31.4 will apply in any event.

NOTES ON RULE 31.5

...

1. *Firm statements*

In general, an offeror will be bound by any firm statement as to the duration of its offer. Any statement of intention will be regarded for this purpose as a firm statement; the expression “present intention” should not be used as it may be misleading to shareholders.

2. *Reservation of right to set statements aside*

... The first document ~~sent to shareholders~~ published in connection with an offer in which mention is made of the no extension statement must contain prominent reference to this reservation (precise details of which must also be included in the document). ...

3. *Competitive situations*

Subject to Note 2 above, if a competitive situation arises after a no extension statement has been made, the offeror can choose not to be bound by it and to be free to extend its offer provided that:—

(a) notice to this effect is ~~published~~ given as soon as possible (and in any event within 4 business days after the day of the firm announcement of the competing offer) and a notification is sent to offeree company shareholders and persons with information rights ~~shareholders are informed in writing~~ at the earliest opportunity; and

(b) any offeree shareholders who accepted the offer after the date of the no extension statement are given a right of withdrawal for a period of 8 days following the date on which the notice is ~~posted~~ published.

...

4. *Recommendations*

Subject to Note 2 above, the offeror can choose not to be bound by a no extension statement which would otherwise prevent the offeror from making ~~prevent the posting of an~~ increased or improved offer that would be recommended for acceptance by the board of the offeree company.

5. *Rule 31.9 announcements*

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

Rule 31.6

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

(a) Except with the consent of the Panel, an offer (whether revised or not) may not become or be declared unconditional as to acceptances after midnight on the 60th day after the day the initial offer document was posted~~published~~. ...

...

NOTES ON RULE 31.6

1. *Extension of offer under Rule 31.6(a)*

...

(b) Any extension to which the Panel consents must be announced by the offeror in accordance with Rule 2.9. The Panel should be consulted as to whether ~~notice~~ notification in respect of the extension should also be ~~posted~~sent to offeree company shareholders and persons with information rights.

...

4. *Competitive situations*

If a competing offer has been announced, both offerors will normally be bound by the timetable established by the ~~posting~~publication of the competing offer document. ...

The Panel will not normally grant its consent under Rule 31.6(a)(ii) in a competitive situation unless its consent is sought before the 46th day following the ~~posting~~publication of the competing offer document.

Rule 31.7

31.7 TIME FOR FULFILMENT OF ALL OTHER CONDITIONS

...

NOTES ON RULE 31.7

...

2. Extensions

Any extension to which the Panel consents must be announced by the offeror in accordance with Rule 2.9. The Panel should be consulted as to whether ~~notice~~notification in respect of the extension should also be ~~posted~~sent to offeree company shareholders and persons with information rights.

Rule 31.8

31.8 SETTLEMENT OF CONSIDERATION

Except with the consent of the Panel, the consideration must be ~~posted~~sent to accepting shareholders within 14 days of the later of: the first closing date of the offer, the date the offer becomes or is declared wholly unconditional or the date of receipt of an acceptance complete in all respects.

NOTE ON RULE 31.8

Extensions

Any extension to which the Panel consents must be announced by the offeror in accordance with Rule 2.9. The Panel should be consulted as to whether ~~notice~~notification in respect of the extension should also be ~~posted~~sent to offeree company shareholders.

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 or dividend

forecasts, asset valuations and proposals for dividend payments or for any material acquisition or disposal) after the 39th day following the ~~posting~~publication of the initial offer document. ...

Rule 32.1

32.1 OFFER OPEN FOR 14 DAYS AFTER POSTING PUBLICATION OF REVISED OFFER DOCUMENT

(a) If an offer is revised, a revised offer document, drawn up in accordance with Rules 24 and 27, must be ~~posted~~sent to shareholders of the offeree company and persons with information rights. On the day of ~~posting~~publication, the offeror must put the revised offer document on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been ~~posted~~published and where the document can be inspected.

(b) The offer must be kept open for at least 14 days following the date on which the revised offer document is ~~posted~~published. Therefore, no revised offer document may be ~~posted~~published in the 14 days ending on the last day the offer is able to become unconditional as to acceptances.*

NOTES ON RULE 32.1

1. *Announcements which may increase the value of an 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 ~~release~~publication of the announcement.

...

3. *When revision is not permissible**

Since an offer must remain open for acceptance for 14 days following the date on which the revised offer document is ~~posted~~published, an offeror will generally not be able to revise its offer, and must not place itself in a position where it would be required to revise its offer, in the 14 days ending on the last day its offer is able to become unconditional as to acceptances. ...

4. *Triggering Rule 9**

When an offeror, which is making a voluntary offer either in cash or with a cash alternative, acquires an interest in shares which causes it to have to extend a mandatory offer under Rule 9 at no higher price than the existing cash offer, the change in the nature of the offer will not be viewed as a revision (and will thus not be precluded by an earlier no increase statement), even if the offeror is obliged to waive any outstanding condition, but such an

acquisition can only be made if the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is ~~posted~~published.

Rule 32.2

32.2 NO INCREASE STATEMENTS

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

NOTES ON RULE 32.2

1. Firm statements

... Any statement of intention will be regarded for this purpose as a firm statement; the expression “present intention” should not be used as it may be misleading ~~to shareholders~~.

2. Reservation of right to set statements aside

... The first document ~~sent to shareholders~~published in connection with an offer in which mention is made of the no increase statement must contain prominent reference to this reservation (precise details of which must also be included in the document). Any subsequent mention by the offeror of the no increase statement must be accompanied by a reference to the reservation or, at the least, to the relevant sections in the document containing the details. ...

3. Competitive situations

Subject to Note 2 above, if a competitive situation arises after a no increase statement has been made, the offeror can choose not to be bound by it and to be free to revise its offer provided that:—

(a) notice to this effect is ~~given~~published as soon as possible (and in any event within 4 business days after the day of the firm announcement of the competing offer) and ~~shareholders are informed in writing~~a notification is sent to offeree company shareholders and persons with information rights at the earliest opportunity; and

(b) any shareholders who accepted the offer after the date of the no increase statement are given a right of withdrawal for a period of 8 days following the date on which the notice is ~~posted~~published.*

...

4. Recommendations

Subject to Note 2 above, the offeror can choose not to be bound by a no increase statement which would otherwise prevent the ~~posting of offeror from~~ making an increased or improved offer that would be recommended by the board of the offeree company.

5. Rule 31.9 announcements*

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

...

Rule 32.5

32.5 COMPETITIVE SITUATIONS

If a competitive situation continues to exist in the later stages of the offer period, the Panel will normally require revised offers to be ~~published~~announced in accordance with an auction procedure, the terms of which will be determined by the Panel. That procedure will normally require final revisions to competing offers to be announced by the 46th day following the ~~posting~~publication of the competing offer document but enable an offeror to revise its offer within a set period in response to any revision announced by a competing offeror on or after the 46th day. The procedure will not normally require any revised offer document to be sent to offeree company shareholders and persons with information rights~~posted~~ before the expiry of a set period after the last revision to either offer is announced.

NOTES ON RULE 32.5

1. Dispensation from obligation to ~~post~~make an offer

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

...

Rule 32.6

32.6 THE OFFEREE BOARD'S OPINION

(a) The board of the offeree company must ~~post~~send to the company's shareholders and persons with information rights a circular containing its opinion on the revised offer under Rule 25.1(a), drawn up in accordance with Rules 25 and 27. On the day of ~~posting~~publication, the offeree company must put the circular on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been ~~posted~~published and where the document can be inspected.

...

Rule 32.7

32.7 INFORMING EMPLOYEES

(a) When any revised offer document is ~~published~~posted ~~to shareholders of the offeree company~~, both the offeror and the offeree company must make that document readily and promptly available to the representatives of their employees or, where there are no such representatives, to the employees themselves. ~~On the day of posting, the offeree company must put the circular on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been posted and where the document can be inspected.~~

(b) When the board of the offeree company ~~posts to its shareholders~~publishes a circular containing its opinion under Rule 25.1(a) on a revised offer, it must make that circular readily and promptly available to its employee representatives or, where there are no such representatives, to the employees themselves.

Rule 33.2

33.2 SHUTTING OFF CASH UNDERWRITTEN ALTERNATIVES

Where the value of a cash underwritten alternative provided by third parties is, at the time of announcement, more than half the maximum value of the offer, an offeror will not be obliged to keep that alternative open in accordance with Rules 31.4 or 33.1 if it has ~~given notice to~~

~~shareholders in writing~~ sent a notification to offeree company shareholders and persons with information rights that it reserves the right to close it on a stated date, being not less than 14 days after the date on which the ~~written notice is posted~~ notification is published, or to extend it on that stated date. ...

NOTES ON RULE 33.2

1. *Further ~~notifications~~ notices*

Where a ~~notice~~ notification has been ~~published~~ given pursuant to this Rule and the alternative is not closed on the stated date but extended, the offeror must send a further notification ~~give a further notice in writing~~ to shareholders and persons with information rights if it wishes to take advantage of this Rule.

...

Rule 35

35.1 DELAY OF 12 MONTHS

Except with the consent of the Panel, where an offer has been announced or made ~~posted~~ ...

35.2 PARTIAL OFFERS

...

NOTE ON RULES 35.1 and 35.2

When dispensations may be granted

(a) *The Panel will normally grant consent under this Rule when:—*

(i) the new offer is recommended by the board of the offeree company. Such consent will not normally be granted within 3 months of the lapsing of an earlier offer in circumstances where the offeror ~~either~~ was prevented from revising or extending its previous offer as a result of a no increase statement or a no extension statement ~~or was one of two or more competing offerors whose offers lapsed with combined acceptances of less than 50% of the voting rights of the offeree company; or~~

...

Rule 37.1

37.1 POSSIBLE REQUIREMENT TO MAKE A MANDATORY

OFFER

...

NOTES ON RULE 37.1

...

5. *Disqualifying transactions*

...

(b) *a waiver will be invalidated if any acquisitions are made by the relevant person, or by any member of the relevant group of persons acting in concert, in the period between the ~~posting~~publication of the circular ~~to shareholders~~ and the shareholders' meeting.*

Rule 37.3

37.3 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEREE COMPANY

...

(c) Disclosure in the offeree board circular

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

Rule 37.4

37.4 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEROR COMPANY

...

(b) Disclosure in the offer document

The offer document must state (in the case of a securities exchange offer only) the number of relevant securities of the offeror which the offeror has redeemed or purchased between the start of the offer period and the

latest practicable date prior to the ~~posting~~publication of the offer document and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.

Rule 38.2

38.2 DEALINGS BETWEEN OFFERORS AND CONNECTED EXEMPT PRINCIPAL TRADERS

An offeror and any person acting in concert with it must not deal as principal with an exempt principal trader connected with the offeror in relevant securities of the offeree company during the offer period. It will generally be for the advisers to the offeror (including a corporate broker) to ensure compliance with this Rule rather than the principal trader. (See also Rule 4.2(b).)

Rule 38.5

38.5 DISCLOSURE OF DEALINGS

...

NOTES ON RULE 38.5

...

2. *Method of disclosure*

Dealings should be disclosed to a RIS by electronic delivery. A copy must be ~~sent faxed or e-mailed~~ to the Panel in electronic form. ...

...

5. *Amendments*

If details included in a dealing disclosure are incorrect, they should be corrected as soon as practicable in a subsequent disclosure. Such disclosure should state clearly that it corrects details disclosed previously, identify the disclosure or disclosures being corrected, and provide sufficient detail for the reader to understand the nature of the corrections. In the case of any doubt, the Panel should be consulted.

Appendix 1

APPENDIX 1

WHITEWASH GUIDANCE NOTE

(See Note 1 of Notes on Dispensations from Rule 9)

1 INTRODUCTION

...

(c) Rules 19, ~~and 20~~ and 24.14, where relevant, apply equally to documents, announcements and information published given in connection with a transaction which is the subject of the whitewash procedure.

...

2 SPECIFIC GRANT OF WAIVER REQUIRED

In each case, specific grant of a waiver from the Rule 9 obligation is required. Such grant will be subject to:—

...

(c) approval in advance by the Panel of the circular ~~to shareholders~~ setting out the details of the proposals;

...

NOTES ON SECTION 2

1. Early consultation

Consultation with the Panel at an early stage is essential. Late consultation may well result in delays to planned timetables. Experience suggests that the documents ~~sent to shareholders~~ published in connection with the whitewash procedure may have to pass through several proofs before they meet the Panel's requirements and no waiver of the Rule 9 obligation will be granted until such time as the documentation has been approved by the Panel.

...

3 DISQUALIFYING TRANSACTIONS

...

(a) the Panel will not normally waive an obligation under Rule 9 if the person to whom the new securities are to be issued or any person acting in

concert with him has acquired any interest in shares in the company in the 12 months prior to the ~~posting to shareholders~~publication of the circular relating to the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;

(b) a waiver will be invalidated if any acquisitions of interests in shares are made in the period between the ~~posting~~publication of the circular ~~to shareholders~~ and the shareholders' meeting.

4 WHITEWASH CIRCULAR TO SHAREHOLDERS

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

...

(h) Rules 23, 24.1, 24.2 and 25.2 (information ~~to shareholders~~ which must include full details of the assets, if any, being injected);

(i) Rules 24.3 and 25.3 (disclosure of interests and dealings). Dealings in respect of Rule 24.3 should be covered for the 12 months prior to the ~~posting~~publication of the circular but dealings in respect of Rule 25.3 need not be disclosed as there is no offer period;

...

Appendix 2

APPENDIX 2

FORMULA OFFERS GUIDANCE NOTE

...

2 SPECIFICATION OF THE FORMULA

...

The Panel does not consider it appropriate to insist on a standard method of calculating net asset values in formula offers. There is, however, a danger of confusion ~~in the minds of shareholders when they are asked to consider~~being caused when assessing the advantages or disadvantages of an offer by reference to net asset values which are calculated by each side on a different basis. Principals and their advisers should, therefore, ensure that wherever reference is to be made to net asset value as an argument for or against an offer, the utmost clarity is used to make plain the basis of calculation. This applies to paid advertisements in the press as

well as to documents ~~addressed to shareholders directly~~ and announcements published in connection with an offer.

...

4 ESTIMATE OF THE FORMULA OFFER VALUE

The offer announcement must include an estimate of the value of the offer, in pence per share, on the day of the announcement and the offer document must include a similar estimate on the latest practicable date prior to posting publication.

...

Appendix 3

APPENDIX 3

DIRECTORS' RESPONSIBILITIES AND CONFLICTS OF INTEREST GUIDANCE NOTE

1 DIRECTORS' RESPONSIBILITIES

... These arrangements should ensure that:-

(a) the board is provided promptly with copies of all documents and announcements ~~issued~~ published by or on behalf of their company which bear on the offer; the board receives promptly details of all dealings in relevant securities made by their company or its associates and details of any agreements, understandings, guarantees, expenditure (including fees) or other obligations entered into or incurred by or on behalf of their company in the context of the offer which do not relate to routine administrative matters;

...

Appendix 4

APPENDIX 4

RECEIVING AGENTS' CODE OF PRACTICE

...

1 INTRODUCTION

... Co-operation is interpreted to include the provision of data in a form convenient for the receiving agent. For example, if the receiving agent so

requests, following the announcement of an offer, the registrar should, if practicable, provide the register in electronic form~~computer-readable form (eg by magnetic tape)~~. ...

...

3 THE PROVISION OF THE OFFEREE COMPANY'S REGISTER

...

(c) ... In addition, copies of these documents should be sent~~relayed~~ immediately to the offeror's receiving agent insofar as not previously notified.

...

4 THE PROVISION OF ADDRESSES, ELECTRONIC ADDRESSES, ELECTIONS AND OTHER DETAILS

(a) When a firm intention to make an offer is announced, the offeree company should respond, or instruct its registrar to respond, within two business days to a request from the offeror for details in respect of:

(i) electronic addresses provided to the offeree company by shareholders in the offeree company for the receipt of documents, announcements and other information in electronic form;

(ii) addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, persons with information rights for the receipt of documents, announcements and other information in hard copy form or electronic form;

(iii) addresses, electronic addresses and other information provided to the offeree company by any other persons entitled to receive copies of documents, announcements or information for the receipt of such communications in hard copy form or electronic form (including a copy of any register(s) of persons entitled to receive documents under Rule 15); and

(iv) elections made in accordance with applicable legal or regulatory provisions by, or on behalf of, shareholders in the offeree company, persons with information rights or any other relevant persons to receive communications from the offeree company in hard copy form,

provided, in each case, that the relevant address, electronic address, election or other information has been provided to the offeree company for the receipt of information generally and not only for certain specific types of information.

(b) The information provided to an offeror in compliance with (a) above should be updated to reflect the position as at the close of business on the day of the request. The offeree company shall ensure, or shall instruct its registrar to ensure, that the information described in (a) above is kept as up-to-date as the relevant maintenance system will allow and updates shall be provided to the offeror, or its receiving agent, in respect of any changes in that information at the same time as updates to the company's register are provided under Section 3 above to the offeror's receiving agent.

(c) When the information referred to in (a) above is provided to an offeror by the offeree company or its registrar, the use of that information by the offeror for purposes that are not related to the offer may be subject to legal restrictions, including in relation to the protection of data.

54 COUNTING OF ACCEPTANCES

...

65 COUNTING OF PURCHASES

...

76 OFFERS BECOMING OR BEING DECLARED UNCONDITIONAL AS TO ACCEPTANCES BEFORE THE FINAL CLOSING DATE†

...

87 DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES

...

Appendix 5

APPENDIX 5

TENDER OFFERS

1 PANEL'S CONSENT REQUIRED

...

NOTES ON SECTION 1

...

2. Tender offers in competition with other types of offer under the Code

Where a tender offer is proposed for shares in a company subject to another type of offer under the Code, the following matters will have to be considered:

...

(b) ~~circulation of~~ sending the tender advertisement to all shareholders and persons with information rights;

...

2 PROCEDURE AND CLEARANCE

(a) A person publishing a tender offer for the shares of a company which are admitted to listing on the Official List or to trading on AIM or on PLUS must do so by paid advertisement in two national newspapers and must notify the company concerned of the information specified in Section 3 at least 7 days before the day on which the tender offer closes. The offeror may also ~~circulate~~ send copies of the advertisement to shareholders of the company and persons with information rights, subject to compliance with the FSMA.

(b) In all other cases, the tender offer must be made by sending means of a circular to shareholders and persons with information rights (containing the same information as for a tender offer advertisement as specified in Section 3) and must be open for acceptance for at least 21 days. A copy of the circular must be provided to the company concerned at the same time as it is posted to shareholders not later than the date on which it is published.

...

(f) In every case the UKLA, the Stock Exchange or PLUS, as appropriate, and the Panel must be sent a copy supplied with copies of the final text of the advertisements or circulars in hard copy form and electronic form at the same time as they are sent given to the newspapers or are published ~~posted to shareholders, as the case may be~~.

3 DETAILS OF TENDER OFFER ADVERTISEMENTS

...

NOTES ON SECTION 3

...

2. *Limit on contents of tender advertisements and circulars*

The limit on the amount of information permissible in tender advertisements and circulars is strictly enforced; no form of argument or persuasion is

allowed. Consequently the offeror (or any person acting in concert with it) may not make any statement or otherwise ~~make public~~ publish any information in connection with the tender offer which is not already contained in the tender offer advertisement or circular itself.

4 CIRCULARS FROM THE BOARD OF THE OFFEREE COMPANY

A copy of any document ~~sent~~ published by the board of the offeree company ~~to its shareholders~~ in connection with the tender offer must be ~~lodged with~~ sent to the Panel in hard copy form and electronic form at the same time as it is ~~posted~~ published.

...

Appendix 7

APPENDIX 7

SCHEMES OF ARRANGEMENT

DEFINITIONS AND INTERPRETATION

...

Offer documents and offeree board circulars

In the case of a scheme of arrangement, references in the Code to an offer document or to the ~~first major offeree board~~ circular from the offeree board (and related expressions) shall be construed as references to the scheme circular and references to a revised offer document or to a subsequent offeree board circular (and related expressions) shall be construed as references to any supplementary scheme circular.

...

2 MANDATORY OFFERS

...

NOTES ON SECTION 2

- 1. When the Panel's consent may be granted*

...

If the Panel permits the mandatory offer obligation to be so satisfied and the scheme lapses for a reason which would not have caused a contractual offer to lapse, the Panel will require the offeror to make a new contractual offer

immediately in compliance with Rule 9. The scheme circular must include a statement by the offeror that, if the scheme lapses for such a reason, the offeror will make a new contractual offer as required by the Panel. ~~Until the posting of the offer document in respect of a new contractual offer, the Panel may impose restrictions on the ability of the offeror and persons acting in concert with it to exercise, or procure the exercise of, voting rights of the offeree company attaching to the shares in which they have an interest. In such circumstances Rule 9.7 will apply.~~

...

6 CHANGES TO THE EXPECTED SCHEME TIMETABLE

...

(c) In all cases, the Panel should be consulted as to whether notice of an adjournment of any meeting or hearing or any other delay in, or change to, the expected timetable should, in addition, be posted sent to offeree company shareholders and persons with information rights.

...

10 SETTLEMENT OF CONSIDERATION

Except with the consent of the Panel, the consideration must be posted sent to offeree company shareholders within 14 days of the effective date. The terms of the scheme must reflect this requirement.

DOCUMENT CHARGES

...

6 PAYMENT OF DOCUMENT CHARGES

The financial adviser to the offeror (or, if there is no financial adviser, the offeror) is responsible for the payment of the document charge to the Panel except in the case of a whitewash document when the financial adviser to the offeree company is responsible. Payments should be sent to the Panel when documents are posted published. ...

...