

**PCP 2006/1 Issued on 10 February 2006**

**THE PANEL ON TAKEOVERS AND MERGERS**

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

**MISCELLANEOUS CODE AMENDMENTS**

**REVISION PROPOSALS RELATING TO  
VARIOUS RULES OF THE TAKEOVER CODE**

Before it introduces or amends any Rules of the Takeover Code (the “Code”) or the Rules Governing the Substantial Acquisitions of Shares, the Code Committee of the Takeover Panel (the “Code Committee”) is normally required under its consultation procedures to publish the proposed Rules and amendments for public consultation and to consider responses arising from the public consultation process.

The Code Committee is therefore inviting comments on this Public Consultation Paper (“PCP”). Comments should reach the Code Committee by 10 March 2006.

Comments may be sent by email to:

[supportgroup@thetakeoverpanel.org.uk](mailto:supportgroup@thetakeoverpanel.org.uk)

Alternatively, please send comments in writing to:

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The Panel on Takeovers and Mergers  
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It is the Code Committee’s policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

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## **1. Introduction**

- 1.1 The Code Committee considers that it is desirable (and in some cases necessary) to make a number of amendments to the Code. Whilst these amendments affect approximately 30 Rules, in most cases they do not affect the substance of the Rules and in a large number of cases the changes relate to changes in the terminology used in other regulations to which the Code refers.
- 1.2 By publishing this PCP now it will be possible for the relevant amendments (assuming they are adopted following the consultation process) to come into effect at the same time as the amendments proposed in PCPs 2005/3, 2005/4 and 2005/5, later this year.
- 1.3 Where relevant, the rule changes to which this PCP relates are being proposed on the assumption that the rule changes proposed in PCPs 2005/3, 2005/4 and 2005/5 will be adopted as proposed. If, however, the relevant Response Statements adopt the amendments in a different form to that proposed in those PCPs, consequential amendments will be made in the Response Statement to the proposals set out in this PCP.

## **2. Amendments consequential upon changes to the Listing Rules and other minor amendments**

### ***(a) The Listing Rules and the Prospectus Rules***

- 2.1 Various provisions of the Code refer to the provisions or requirements of the Listing Rules of the FSA.
- 2.2 On 1 July 2005, following various consultation papers in relation to the Listing Review and in relation to the implementation of the Prospectus Directive, the FSA divided what were previously the Listing Rules into three parts, namely the Listing Rules, the Disclosure Rules and the Prospectus Rules. As noted by the FSA in paragraph 1.12 of CP04/16:

“The Prospectus Rules will replace many of the existing Listing Rules that relate to the preparation and contents of listing particulars and prospectuses, together with the administrative aspects of listing ...”.

2.3 Accordingly, a number of the references in the Code to the Listing Rules and to “listing particulars” require amendment to bring them in line with the changes to the Listing Rules introduced with effect from 1 July 2005. The relevant amendments, and other related amendments, are set out below.

(i) *Definitions*

2.4 In order to facilitate the proposed amendments to the references in the Code to the Listing Rules, as set out in this PCP, the Code Committee is proposing to introduce the following new definition into the Code to refer collectively to the Listing Rules, the Disclosure Rules and the Prospectus Rules of the FSA:

**“UKLA Rules**

UKLA Rules include the Listing Rules, the Disclosure Rules and the Prospectus Rules of the FSA (or any of them as the context may require) and any such rules as may replace or succeed the Listing Rules, the Disclosure Rules or the Prospectus Rules of the FSA.”.

**Q.1 Do you agree with the proposed new definition of the “UKLA Rules”?**

(ii) *Responsibility statements*

2.5 The proposed amendments to the provisions of the Code relating to responsibility statements, which are being proposed in order to bring the Code into line with the changes to the Listing Rules introduced with effect from 1 July 2005, include:

(a) proposed amendments to the references to the provisions or requirements of the Listing Rules in Notes 1, 3 and 5 on Rule 19.2 and Note 3 on Rule 25.1;

- (b) proposed amendments to the references to listing particulars in Notes 1 and 5 on Rule 19.2 and Note 3 on Rule 25.1; and
- (c) the proposed deletion of Note 4 on Rule 19.2.

2.6 The first sentence of Rule 19.2(a), as proposed to be amended in PCP 2005/5, provides as follows:

**“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.”.**

2.7 Notes 1, 3, 4 and 5 on Rule 19.2 and Note 3 on Rule 25.1 cross-refer to the provisions or requirements of the Listing Rules relating to the acceptance of responsibility for listing particulars. For example, the second paragraph of Note 1 on Rule 19.2 provides as follows:

*“If detailed supervision of any document or advertisement has been delegated to a committee of the board, each of the remaining directors of the company must reasonably believe that the persons to whom supervision has been delegated are competent to carry it out and must have disclosed to the committee all relevant facts directly relating to himself (including his close relatives and related trusts) and all other relevant facts known to him and relevant opinions held by him which, to the best of his knowledge and belief, either are not known to any member of the committee or, in the absence of his specifically drawing attention thereto, are unlikely to be considered by the committee during the preparation of the document or advertisement. This does not, however, override the requirements of “The Listing Rules” relating to the acceptance of responsibility for listing particulars where applicable.”.*

2.8 The Code Committee understands that, following the implementation of the Prospectus Directive, it is unlikely that the issue of securities in the context of a takeover offer regulated by the Code would require the publication of listing particulars under the Listing Rules (which, in accordance with LR 4.1.3 R, are

only required to be prepared and published for securities to be admitted to the professional securities market and for certain other specialist securities for which a prospectus is not required). The Code Committee understands that the issue of securities in the context of a takeover offer will now normally require a prospectus under the Prospectus Rules (or an “equivalent document” as referred to in PR 1.2.2 R (2) and (3) and PR 1.2.3 R (3) and (4)). The Code Committee does not propose to retain the references in the Code to listing particulars for the unlikely circumstances in which listing particulars may be required in the context of a takeover offer. The Code Committee understands, however, that the Panel will interpret references to prospectuses as including listing particulars where appropriate.

2.9 In addition, Note 4 on Rule 19.2 provides as follows:

*“Where, for the purpose of obtaining listing for new securities, persons other than the directors accept responsibility for part of a document which comprises or includes listing particulars, the Panel should be consulted. The adapted form of responsibility statement required by “The Listing Rules” will normally be acceptable in such cases.”*

2.10 The Code Committee understands that, following the introduction of PR 5.5.3 R, all of the directors of an issuer which is proposing to issue securities in the context of a takeover offer must take responsibility for the entirety of the prospectus. This was explained by the FSA in paragraph 2.18 of CP05/07, which stated as follows:

“... It will be possible for the target and target directors to take responsibility, in addition to the issuer and its directors, in takeover and acquisition situations, but they will not be able to take responsibility **instead** of the issuer and its directors ...”.

Accordingly, the reference to the “adapted form of responsibility statement” in Note 4 on Rule 19.2 is no longer appropriate for prospectuses.

2.11 In the light of paragraphs 2.6 to 2.10 above, the Code Committee is proposing:

- (a) to amend the final sentence of the second paragraph of Note 1 on Rule 19.2 as follows:

*“... This does not, however, override the requirements of ~~“The Listing Rules”~~ the UKLA Rules relating to the acceptance of responsibility for listing particulars a prospectus or equivalent document where applicable.”;*

- (b) to amend Note 3 on Rule 19.2 as follows:

*“... ~~and The~~ responsibility statement may be amended accordingly, but where it relates to listing particulars the provisions of “The Listing Rules” may affect the position. Where statements of opinion or conclusions concerning another company or unpublished information originating from another company are included, these must normally be covered by a responsibility statement by the directors of the company issuing the document or advertisement or by the directors of the other company; the qualified form of responsibility statement provided for in this Note is not acceptable in such instances. However, where a responsibility statement relates to a prospectus or an equivalent document, the provisions of the UKLA Rules may affect the form of responsibility statement required.”;*

- (c) to delete Note 4 on Rule 19.2 (and to re-number Notes 5 and 6 accordingly);

- (d) to amend Note 5 on Rule 19.2 (which will be re-numbered as Note 4) as follows:

*54. Exclusion of directors*

*Although the Panel may be willing to consider the exclusion of a director from the responsibility statement in appropriate circumstances, where that statement relates to listing particulars a prospectus or an equivalent document the provisions of ~~“The Listing Rules”~~ the UKLA Rules may affect the position.”; and*

- (e) to amend Note 3 on Rule 25.1 as follows:

*“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. Depending on the circumstances, such a director may have to make the responsibility statement required by Rule 19.2, appropriately amended to*



*make it clear that he does not accept responsibility for the views of the board on the offer. Where the statement relates to a prospectus or an equivalent document~~listing particulars~~, the provisions of ~~“The Listing Rules”~~ the UKLA Rules may affect the position.”.*

**Q.2 Do you agree with the proposed amendments in relation to responsibility statements?**

(iii) *The reference to “a prospectus” in Rule 19.1*

2.12 The first sentence of Rule 19.1, as proposed to be amended in PCP 2005/5, states as follows:

**“Each document or advertisement issued, or statement made, during the course of an offer must, as is the case with a prospectus, be prepared with the highest standards of care and accuracy and the information given must be adequately and fairly presented.”.**

2.13 The Code Committee understands that the meaning and nature of a prospectus has changed since the introduction of Rule 19.1 and believes that the reference in Rule 19.1 to “a prospectus” is no longer necessary. The Code Committee is therefore proposing to delete the words **“as is the case with a prospectus”** from Rule 19.1.

**Q.3 Do you agree with the proposed amendment to Rule 19.1?**

(iv) *Other minor amendments*

2.14 In addition, the Code Committee is proposing to make the following amendments, as set out in Appendix A to this PCP:

(a) the amendment of the reference to Schedule 12 of the previous Listing Rules in the definition of “Regulatory Information Service” so as to refer instead to Appendix 3 to the Listing Rules which were introduced with effect from 1 July 2005;

- (b) the amendment of the reference to the Listing Rules in Rule 19.4(v) so as to refer instead to the UKLA Rules;
- (c) minor amendments to Rule 28.6(c), including the amendment of the reference to “preliminary profits statements” in paragraph (ii) of the Rule so as to refer to “preliminary statements of annual results”, reflecting the term used in LR 9.7.2 R (1), and the amendment of the references to “The Listing Rules” so as to refer instead to the UKLA Rules; and
- (d) minor amendments to Note 2 on Section 2 of Appendix 1, so as to refer to any legal or regulatory requirements, including the UKLA Rules, and not only to the Listing Rules.

**Q.4 Do you agree with the proposed minor amendments in relation to the Listing Rules described in paragraph 2.14?**

(b) *Other references to “listing”, “listed” etc.*

(i) *Admission to listing and admission to trading*

2.15 A number of the provisions of the Code refer to the admission to listing and/or to trading of securities. For example, Rule 24.9 provides as follows:

**“24.9 LISTING CONDITIONS**

**Where securities are offered as consideration and it is intended that they should be admitted to the Official List or to trading on AIM, the relevant listing or admission to trading condition should, except with the consent of the Panel, be in terms which ensure that it is capable of being satisfied only when the decision to admit the securities to official listing or trading has been announced by the UKLA and the Stock Exchange.”**

2.16 In addition to identifying the amendments to the Code required following the Listing Review and the implementation of the Prospectus Directive, the Code Committee has taken the opportunity to review the references in the Code to “admission to listing”, “admission to trading” and similar phrases.

2.17 This review identified certain technical amendments which the Code Committee believes would be appropriate in order to bring the Code more into line with the terminology now in use in relation to the admission of securities to listing and to trading, and to recognise that consideration securities will not always be listed or traded on a market in the UK. In addition, the review identified two specific circumstances in which the Code Committee believes the Panel should always be consulted:

- (a) for the purposes of Note 7 on Rule 6, where the proposed consideration consists of securities for which immediate admission to trading on a regulated market in the United Kingdom is not to be sought; and
- (b) for the purposes of Rule 24.9, where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any investment exchange or market other than the Official List or AIM.

2.18 The Code Committee is therefore proposing:

- (a) to amend Rule 2.5(b)(vi) as follows:

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

...

**(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 is subject;”;**

- (b) to amend Note 7 on Rule 6 as follows:

*“7. Unlisted securities*

*An offer where the consideration consists of securities for which ~~an~~ immediate ~~listing~~ admission to trading on a regulated market in the United Kingdom is not to be sought will not normally be regarded as satisfying any obligation incurred under this Rule. In such cases the Panel should be consulted.”;*

- (c) to amend the current paragraph (ix) of Rule 24.2(d) (proposed in PCP 2005/5 to be amended and re-numbered as paragraph (xi)) as follows:

~~“(xi) ... a statement of whether an details of any applications for admission to listing or admission to trading that have has been or will be made in any jurisdiction in respect of the securitiesto the UKLA and whether admission to listing on any other stock exchange or the facility to deal on any other market has been or will be sought;”;~~

- (d) to delete the second part of Rule 24.2(e), which the Code Committee considers to be unnecessary, as follows:

~~“(e) the offer document must contain information on the offeree company ... , whether or not the offeree company is admitted to the Official List;”;~~

- (e) to amend Rule 24.9 as follows:

**“24.9 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS**

**Where securities are offered as consideration and it is intended that they should be admitted to listing on the Official List or to trading on AIM, the relevant admission to listing or admission to trading condition should, except with the consent of the Panel, be in terms which ensure that it is capable of being satisfied only when the decision to admit the securities to ~~official~~ listing or trading has been announced by the UKLA ~~and or~~ the Stock Exchange, as applicable. Where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any other investment exchange or market, the Panel should be consulted.”;** and

- (f) to amend Rule 32.4 as follows:

**“Subject to the prior consent of the Panel, and only to the extent necessary to implement an increased or improved offer, the offeror may introduce new conditions (eg obtaining shareholders’ approval or the admission to listing or admission to trading of new securitiesshares).”.**

- Q.5 Do you agree with the proposed amendments in relation to admission to listing and admission to trading described in paragraph 2.18?**

(ii) *Traded securities*

2.19 In addition, the Code Committee notes that certain provisions which refer to “listed” securities should more appropriately refer to securities “admitted to trading” or similar phrases and that certain provisions of the Code which refer to “unlisted” securities or companies should more appropriately refer to securities or companies which are “not admitted to trading” or are “unquoted”. The Code Committee is therefore proposing:

(a) to amend the second paragraph of Note 3 on Rule 6 as follows:

*“If there is a restricted market in the securities of an offeror, or if the amount of securities to be issued of a class already ~~listed~~ 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.”;*

(b) to amend Note 11 on Rule 8 as follows:

*“11. ~~Unlisted~~ Unquoted public companies and relevant private companies*

*The requirements to disclose dealings apply also to dealings in relevant securities of ~~unlisted~~ public companies whose securities are not admitted to trading and of relevant private companies.”;*

(c) to amend Note 2(b) on Rule 9.5, as proposed to be amended in PCP 2005/3, as follows:

*“(b) If any interest in shares has been acquired in exchange for ~~listed~~ securities which are admitted to trading, the price will normally be established by reference to the middle market price of the ~~listed~~ securities at the time of the acquisition.”;*

(d) to amend the current paragraph (vi) of Rule 24.2(d) (proposed in PCP 2005/5 to be re-numbered as paragraph (viii)) as follows:

**“... (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 ~~listed~~, 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);”;

- (e) to amend the first sentence of Note 1 on Rule 24.2 as follows:

*“The Panel will normally look through ~~unlisted~~-subsidiaries whose securities are not admitted to trading in interpreting this Rule unless, with the agreement of the Panel, the subsidiary in question is regarded as being of sufficient substance in relation to the group and the offer.”; and*

- (f) to amend Rule 24.10 as follows, including the deletion of the cross-reference to Note 7 on Rule 6 since the Code Committee does not believe that the cross-reference is necessary:

**“24.10 ESTIMATED VALUE OF ~~UNLISTED~~ UNQUOTED PAPER  
CONSIDERATION**

**When the offer involves the issue of ~~unlisted~~-securities of a class which is not admitted to trading, the offer document and any subsequent circular from the offeror must contain an estimate of the value of such securities by an appropriate adviser ~~(see Note 7 on Rule 6)~~.”.**

**Q.6 Do you agree with the proposed amendments in relation to traded securities described in paragraph 2.19?**

- (iii) *Note 1 on Rule 14*

- 2.20 In addition, the Code Committee believes that Note 1 on Rule 14.1 should be amended so as to reflect the fact that the Stock Exchange Daily Official List gives details both of securities which are admitted to the Official List and of securities which are admitted to trading on AIM. The Code Committee is therefore proposing to amend the second and third paragraphs of Note 1 on Rule 14.1 as follows:

*“1. Comparability*

*A comparable offer need not necessarily be an identical offer.*

*In the case of offers involving two or more classes of ~~listed~~ equity share capital which are admitted to the Official List or to trading on AIM, the ratio of the offer values should normally be equal to the average of the ratios of the middle market quotations taken from the Stock Exchange Daily Official List over the course of the six months preceding the commencement of the offer period. The Panel will not normally permit the use of any other ratio unless the advisers to the offeror and offeree company are jointly able to justify it.*

*In the case of offers involving two or more classes of equity share capital, one or more of which is not ~~listed~~ admitted to the Official List or to trading on AIM, the ratio of the offer values must be justified to the Panel in advance.”.*

**Q.7 Do you agree with the proposed amendments to Note 1 on Rule 14.1?**

(iv) Securities “admitted to trading”

2.21 The Code Committee believes that, in order to be consistent with other references in the Code, various references to securities being “dealt in” on the Stock Exchange, AIM or OFEX (as applicable) should refer to such securities being “admitted to trading”. The Code Committee is therefore proposing:

(a) to amend the second sentence of Note 4 on Rule 17.1 as follows:

*“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 ~~dealt in~~ admitted to listing or admitted to trading on the Stock Exchange, AIM or OFEX, it would normally be permissible to write to all shareholders instead of making an announcement.”;*

(b) to amend each of Rules 24.2(a) and (b) as follows:

**“where ... the offeror is a company incorporated under the Companies Act 1985 (or its predecessors) and its shares are admitted to the Official List or ~~dealt in~~ to trading on AIM, the offer document must contain:”;** and

(c) subject to any comments from the Confederation of British Industry, the British Bankers’ Association and the Registrars’ Group of the Institute of Chartered Secretaries and Administrators, in consultation with whom Appendix 4 is drawn up, to amend Section 2(b)(i)(2) of Appendix 4 as follows:

“A receiving agent to an offer must either:—

...

(b) ...

(i) ...

(2) **be responsible for the share registers of not less than 25 public companies which ~~have a full listing are admitted to the Official List or are dealt in to trading on AIM ...~~.**

**Q.8 Do you agree with the proposed amendments in relation to securities admitted to trading described in paragraph 2.21?**

### **3. Suspensions**

3.1 The Code Committee notes that certain provisions of the Code, namely the second and third paragraphs of Rule 2.3, the Note on Rule 2.3 and Rule 17.2(a), contemplate circumstances in which an offeree or offeror company’s shares might be the subject of a suspension in the absence of a relevant announcement. These provisions state as follows:

**“2.3 RESPONSIBILITIES OF OFFERORS AND THE OFFEREE COMPANY**

...

**Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price. Where the offer is to be recommended and the UKLA, the Stock Exchange or OFEX, as appropriate, is likely to grant a temporary suspension, a possible alternative to an immediate announcement may be to obtain a suspension to be followed shortly by an announcement.**

**A potential offeror must not attempt to prevent the board of an offeree company from making an announcement or requesting the UKLA, the Stock Exchange or OFEX to grant a temporary suspension of listing at any time the board thinks appropriate.**

*NOTE ON RULE 2.3*



*Suspensions*

*It should be noted that the primary obligation is to make the appropriate announcement as quickly as possible and the Panel will not be sympathetic to delay which is occasioned by an unsuccessful application for suspension.”;*  
and

**“17.2 CONSEQUENCES OF FAILURE TO ANNOUNCE**

**(a) If an offeror fails within the time limit to comply with any of the requirements of Rule 17.1, the UKLA, the Stock Exchange or OFEX, as appropriate, will consider a temporary suspension of listing of the offeree company’s shares and, where appropriate, the offeror’s shares until the relevant information is given.”.**

3.2 The Code Committee believes that a suspension would be unlikely to be granted in the circumstances described in Rules 2.3 and 17.2. The Code Committee is therefore proposing:

(a) to amend the second and third paragraphs of Rule 2.3 as follows:

**“Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price. ~~Where the offer is to be recommended and the UKLA, the Stock Exchange or OFEX, as appropriate, is likely to grant a temporary suspension, a possible alternative to an immediate announcement may be to obtain a suspension to be followed shortly by an announcement.~~**

**A potential offeror must not attempt to prevent the board of an offeree company from making an announcement ~~or requesting the UKLA, the Stock Exchange or OFEX to grant a temporary suspension of listing at any time the board thinks appropriate.”;~~**

(b) to delete the Note on Rule 2.3; and

(c) to delete Rule 17.2(a) and to re-number Rules 17.2(b) and (c) as Rules 17.2(a) and (b) respectively.

**Q.9 Do you agree with the proposed amendments to Rule 2.3 and the proposed deletion of the Note on Rule 2.3 and of Rule 17.2(a)?**

#### 4. Definition of “dealings”

##### (a) *Disposal of control*

4.1 Rule 8.3(a) requires certain dealings to be disclosed in an offer period, as follows:

**“(a) During an offer period, if a person, whether or not an associate, is interested (directly or indirectly) in 1% or more of any class of relevant securities of an offeror or of the offeree company or as a result of any transaction will be interested in 1% or more, dealings in any relevant securities of that company by such person (or any other person through whom the interest is derived) must be publicly disclosed in accordance with Notes 3, 4 and 5.”.**

4.2 Paragraphs (a) to (f) of the definition of “dealings” set out specific examples of actions which constitute a dealing. For example, paragraph (a) of the definition of “dealings” provides as follows:

“A dealing includes the following:-

(a) the acquisition or disposal of securities”.

4.3 Paragraph (g) of the definition of “dealings” is much broader and provides as follows:

“(g) any other action resulting, or which may result, in an increase or decrease in the number of securities in which a person is interested or in respect of which he has a short position.”.

4.4 Paragraph (2) of the definition of “interests in securities” provides as follows:

“In particular, a person will be treated as having an interest in securities if:-

...

(2) he has the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to them or has general control of them”.

- 4.5 The Code Committee understands that it is the Panel's practice to treat both the acquisition and the disposal of general control of securities as dealings. Similarly, the Code Committee believes that the acquisition or disposal of the right to exercise (or direct the exercise) of the voting rights attached to securities should be treated as a dealing.
- 4.6 Although there is no specific paragraph in the definition of "dealings" to this effect, the acquisition by a person of voting control or general control over (but not also the ownership of) securities is a dealing falling within the general provisions of paragraph (g) of the definition of "dealings". This is because such an acquisition will result in an increase in the number of securities in which the person is interested by virtue of paragraph (2) of the definition of "interests in securities".
- 4.7 It is not clear from the Code whether the disposal by a person of voting control or general control over (but not also the ownership of) securities is a dealing. The person disposing of the voting control or general control will remain interested in the securities which he owns by virtue of paragraph (1) of the definition of "interests in securities". However, the nature of his interest will have changed and the Code Committee believes that this information should be disclosed as it might be significant.
- 4.8 The Code Committee believes that it should be made clear in the Code that the disposal of voting control or general control over securities constitutes a dealing and is therefore proposing to amend paragraph (a) of the definition of "dealings" as follows:

"(a) the acquisition or disposal of securities, of the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to securities, or of general control of securities;"

- Q.10 Do you agree with the proposed amendment to paragraph (a) of the definition of "dealings"?**

(b) *Securities borrowing and lending*

- 4.9 In paragraphs 27.1 and 27.2 of PCP 2004/3, the Code Committee explained that it was the Panel's normal practice not to regard the borrowing or lending of securities as a dealing in securities. The Code Committee explained that the Panel has taken this stance because, although securities borrowing and lending transactions involve a transfer of title to the securities, the borrower is under an obligation to return the borrowed (or equivalent) securities to the lender (i.e. such that title to those securities is likely to be transferred back).
- 4.10 In paragraph 27.7 of RS 2004/3, the Code Committee concluded that it would be appropriate to await the outcome of various third-party reviews which were then underway relating to securities borrowing and lending before reaching a conclusion as to whether the Code should require the disclosure of borrowing and lending transactions. The Code Committee concluded that the practice referred to in paragraph 4.9 above should continue for the time being.
- 4.11 Accordingly, the Code Committee has not yet concluded its own consideration of the issues relating to securities borrowing and lending. Pending, and without prejudice to, the outcome of that consideration, and in the light of its conclusions set out in RS 2004/3, the Code Committee proposes that securities borrowing and lending transactions should not normally be regarded as dealings and that the Code should be amended to make this clear. The Code Committee therefore proposes to include a new Note on the definition of "dealings" as follows:

"NOTE ON DEALINGS"

*The borrowing or lending of securities will not normally be regarded as a dealing in securities.*

- Q.11 Do you agree with the proposed new Note on the definition of "dealings" relating to the borrowing or lending of securities?**

## 5. Note 3(a)(ii) on Rule 9.3

5.1 Note 3 on Rule 9.3 sets out an example of the circumstances in which the Panel may grant a dispensation from the requirement in Rule 9.3(a) that an offer made under Rule 9 must be conditional only upon a 50% acceptance condition. Assuming adoption of the amendments proposed in PCPs 2005/3 and 2005/5, it will read as follows:

*“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. (See the Note on Rules 13.1 and 13.3.)*

*The Panel will normally require in these circumstances that both the announcement of the offer and the offer document include statements that if the acceptance condition is satisfied but the other conditions are not within the time required by Rule 31.7, and as a result the offer lapses:*

*(i) the offeror will immediately 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 will not exercise, or procure the exercise of, more than 29.9% of the voting rights of the offeree company.*

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

5.2 The Code Committee considers that Note 3(a)(ii) is not strictly correct. This is explained by the following example:

- At the time the offer lapses in circumstances envisaged by this Note, the lapsed offeror and its concert parties have an interest in, say, 49.9% of the offeree company’s voting rights.

- Under the Note as drafted, they would be restricted to exercising only 29.9% of the total voting rights and so 20% of the total voting rights would be disenfranchised.
- Therefore, in exercising 29.9% of the total voting rights, the offeror and its concert parties would, in effect, be exercising 29.9/80 i.e. some 37% of the enfranchised rights remaining.
- In order to restrict the offeror and its concert parties to 29.9% of the enfranchised rights, the percentage of shares to be disenfranchised should be 28.5%. The offeror and its concert parties would, in effect, be exercising votes over 21.4% out of a total possible 71.5%, i.e. 29.9% of the enfranchised rights.

5.3 The Code Committee expects the Panel normally to calculate the percentage of shares to be disenfranchised as illustrated above. While it would be possible to insert a formula into the Note, the Committee believes that the Panel should be consulted in order to determine percentage of shares to be disenfranchised. Therefore, the Code Committee proposes to amend Note 3(a)(ii) as follows:

*“until posting of the offer document in respect of that new offer, the offeror and persons acting in concert with it ~~will not~~ must consult the Panel as to their ability to exercise, or procure the exercise of, more than 29.9% of the voting rights of the offeree company attaching to the shares in which they have an interest.”*

This wording is in line with proposals made in PCP 2005/5 for amendments to Notes 2 and 4 on the Dispensations from Rule 9.

**Q.12 Do you agree with the proposed amendments to Note 3(a)(ii) on Rule 9.3?**

## 6. Amendments relating to Rule 25

### (a) *Offeree company directors' service contracts*

6.1 Rule 25.4(a) provides that the first major circular from the board of the offeree company advising shareholders on an 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 25.4(b) provides that if any such contracts have been entered into or amended within six months of the date of the document, particulars must be given in respect of the earlier contracts (if any) which have been replaced or amended as well as in respect of the current contracts.

6.2 Note 1 on Rule 25.4 specifies the particulars to be disclosed in respect of each contract in question and also provides for certain aggregation as follows:

*“1. Particulars to be disclosed*

*Particulars in respect of existing service contracts and, where appropriate under Rule 25.4(b), earlier contracts or an appropriate negative statement must be provided ...*

*...*

*Where there is more than one contract, a statement of the aggregate remuneration payable is normally regarded as fulfilling the requirements under (c) above, except to the extent that this method would conceal material anomalies which ought to be disclosed (eg because one director is remunerated at a very much higher rate than the others). In cases where contracts have been replaced or amended, however, the particulars of remuneration payable under both the existing and the earlier contracts must relate to each individual separately.*

*... ”.*

6.3 The Code Committee is proposing that the penultimate paragraph of Note 1 on Rule 25.4 (i.e. the second of the paragraphs set out in paragraph 6.2 above) be deleted. This is on the basis that the Code Committee believes that the first major circular from the board of the offeree company should contain full details of each director's remuneration (including salary and other benefits) on

an individual basis. Requiring the disclosure of directors' remuneration on an individual (as opposed to an aggregated) basis would be in line with current corporate governance requirements, including the directors' remuneration report requirements of the Companies Act. Likewise, under the Prospectus Rules, where directors' remuneration is required to be disclosed in a prospectus, it must be provided on an individual basis.

**Q.13 Do you agree that the penultimate paragraph of Note 1 on Rule 25.4 should be deleted?**

**(b) *Financial information relating to offeree companies***

6.4 By virtue of Rule 24.2(e), an offeror is required to include in the offer document the same information in respect of the offeree company as it does in respect of itself pursuant to Rule 24.2(a)(i) to (ix). In particular, Rule 24.2(a)(iv) requires a statement of all known material changes in the financial or trading position subsequent to the last published audited accounts, or that there are no known material changes, and Rule 24.2(a)(v) requires the inclusion of details from any interim or preliminary results announcement made since the last published audited accounts.

6.5 Rule 25 sets out the information which the offeree company board is required to include in its first major circular on an offer (whether recommending acceptance or rejection of the offer). There is no specific requirement in Rule 25 for the offeree company board to include in that circular any details relating to the financial or trading position of the offeree company.

6.6 Under Rule 19.2, each document issued to shareholders in connection with an offer must state that the directors of the offeror and/or, where appropriate, the offeree company accept responsibility for the information contained in the document and that, to the best of their knowledge and belief, the information contained in the document is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information.



- 6.7 In the context of an offer which is recommended and where the first major circular from the offeree board is combined with the offer document, the directors of the offeree company normally take responsibility for all the information contained in the offer document relating to the offeree company and its group. On this basis, the directors of the offeree company would take responsibility for any statement in the offer document that there have been no material changes in the financial or trading position of the offeree company since the date of its last published audited accounts.
- 6.8 However, in the case of a unilateral offer, the directors of the offeree company would clearly not take responsibility for any information contained in the offer document albeit that, under Rule 24.2(e), as applied to Rule 24.2(a)(iv) and (v), the offeror would have included in that document a statement regarding any material changes in the offeree company's financial or trading position since the offeree company's last published audited accounts which were known to the offeror, together with details from any interim statement or preliminary announcement made by the offeree company since the last audited accounts. The offeror would include in the offer document this statement and such details on the basis of publicly available information and the directors of the offeror would take responsibility for that information accordingly.
- 6.9 As noted above, there is no explicit requirement in Rule 25 for the offeree company board to make a statement in its first major circular (or in any other document it may issue) relating to whether there have been any material changes in the offeree company's financial or trading position since the date of the last published audited accounts. Accordingly, in the case of a unilateral offer, no comfort is required to be given by the board of the offeree company in relation to the current financial and trading position of the offeree company.
- 6.10 The Code Committee considers that it would be desirable for there to be an explicit requirement in Rule 25 for the offeree company directors to make a statement regarding any known material changes in the offeree company's financial or trading position since the date of its last published audited

accounts. This would give shareholders the benefit of knowing that such statements had been considered by those best placed to understand the offeree company's affairs i.e. the offeree company directors (as opposed, in the case of a unilateral offer, to just the offeror directors). This would also be in line with General Principle 4 that shareholders should have sufficient information to enable them to make a properly informed decision regarding the offer and that no relevant information should be withheld from them.

- 6.11 However, the Code Committee considers that, despite the introduction of this obligation, in the case of a unilateral offer it would still be appropriate for any relevant information which is known by the offeror relating to the financial or trading position of the offeree company to be disclosed in the offer document. In this way, this publicly available information would be disseminated to offeree company shareholders in as timely a manner as possible, notwithstanding that it may be later supplemented in the offeree company's circular by relevant information known only to the directors of the offeree company. In these circumstances, details of any relevant material changes which have been included by the offeror in the offer document would not need to be repeated in the offeree board circular, provided the material change statement in the offeree board circular makes specific reference to the relevant information disclosed in the offer document.
- 6.12 On the other hand, where the offeree board circular is combined with the offer document it will be the responsibility of the offeree company board under these proposals to include in that document all known material changes in the financial or trading position of offeree company subsequent to the last published audited accounts or a statement that there are no known material changes. In such circumstances the Code Committee does not consider that it would be necessary for the offeror to comply with Rule 24.2(e) insofar as it applies to Rule 24.2(a)(iv).
- 6.13 In the light of the above, the Code Committee is proposing to introduce a new Rule 25.7 as follows:

**“25.7 FINANCIAL AND OTHER INFORMATION**

**The first major circular from the offeree board advising shareholders on 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 25.7*

*1. Offeree board circular combined with offer document*

*Where the first major circular 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. Accordingly, the offeror will not be required to comply with Rule 24.2(e) insofar as it applies to Rule 24.2(a)(iv).*

*2. Offeree board circular posted 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 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.”.*

**Q.14 Do you agree with the introduction of proposed new Rule 25.7 and the Notes thereon?**

**7. Rule 36**

7.1 Rules 36.1 to 36.8 set out a number of provisions in relation to the making of partial offers.

7.2 A number of the provisions of Rule 36, as proposed to be amended in PCP 2005/3, distinguish between partial offers which may, and partial offers which may not, result in the offeror being interested in shares carrying 30% or more of the voting rights of the offeree company. The reason for this distinction is that an offeror which becomes interested in shares carrying 30% or more of the voting rights of the offeree company as a result of the partial offer will then have “control” of the offeree company, as defined by the Code.

The definition of “control”, as proposed to be amended in PCP 2005/3, is as follows:

“Control means an interest, or interests, in shares carrying 30% or more of the voting rights (as defined below) of a company, irrespective of whether such interest or interests give de facto control.”.

7.3 In determining whether control of a company has been acquired or consolidated, Rule 9.1, as proposed to be amended in PCP 2005/3, takes into account the shares in which a person is interested, together with the shares in which persons acting in concert with him are interested.

7.4 The Code Committee believes that the interests of persons acting in concert with an offeror should also be taken into account in the context of the possible outcome of a partial offer and that this should be made clear in the relevant provisions of Rule 36.

7.5 The Code Committee is therefore proposing to amend Rules 36.1, 36.2, 36.4, 36.5, 36.6 and Rule 36.8 so that references to “the offeror” will be replaced by “the offeror and persons acting in concert with it”. A proposed further amendment to Note 2 on Rule 36.3 is also set out in Appendix A to this PCP.

7.6 Furthermore, the Code Committee considers that an additional amendment will be then be needed to Rule 36.6. As it is proposed to be amended in PCP 2005/3, and taking into account the new amendment proposed above, that Rule would provide as follows:

**“In the case of a partial offer which could result in the offeror and persons acting in concert with it holding shares carrying over 50% of the voting rights of the offeree company, the offer document must contain specific and prominent reference to this and to the fact that, if the offer succeeds, the offeror and persons acting in concert with it will be free, subject to Rule 36.3, to acquire further interests in shares without incurring any obligation under Rule 9 to make a general offer.”.**

7.7 However, the penultimate paragraph of Note 4 on Rule 9.1, as proposed to be amended in PCP 2005/3, provides as follows:

*“... When the group [of persons acting in concert] holds shares carrying over 50% of the voting rights in a company, no obligations normally arise from acquisitions by any member of the group. However, subject to considerations similar to those set out in the previous paragraph, the Panel may regard as giving rise to an obligation to make an offer the acquisition by a single member of the group of an interest in shares sufficient to increase the shares carrying voting rights in which he is interested to 30% or more or, if he is already interested in 30% or more, which increases the percentage of shares carrying voting rights in which he is interested.”.*

- 7.8 Note 4 on Rule 9.1 will therefore be relevant where a partial offer results in the offeror and persons acting in concert with it holding shares carrying over 50% of the voting rights in a company but where the offeror does not itself hold shares carrying over 50% of such voting rights. The Code Committee therefore believes that Note 4 on Rule 9.1 should be referred to in Rule 36.6 and thus proposes to make a further amendment to Rule 36.6, and to introduce a new Note on Rule 36.6, as follows:

**“36.6 WARNING ABOUT CONTROL POSITION**

**In the case of a partial offer which could result in the offeror and persons acting in concert with it holding shares carrying over 50% of the voting rights of the offeree company, the offer document must contain specific and prominent reference to this and to the fact that, if the offer succeeds, the offeror and persons acting in concert with it will be free, subject to Rule 36.3 and, where relevant, to Note 4 on Rule 9.1, to acquire further interests in shares without incurring any obligation under Rule 9 to make a general offer.**

NOTE ON RULE 36.6

Relevance of Note 4 on Rule 9.1

Note 4 on Rule 9.1 will not be relevant if the partial offer results in the offeror itself holding shares carrying over 50% of the voting rights of the offeree company.”.

- Q.15 Do you agree with the proposed amendments to Rule 36?**

## 8. Appendix 4 and borrowed shares

8.1 Section 7 of Appendix 4 (the Receiving Agents' Code of Practice) sets out the two disclaimers which the offeror's receiving agent may include in its certificate as to the limitations on its responsibility for any errors of third parties which are not evident from the documents available to the receiving agent.

8.2 Note 8 on Rule 10, which was adopted in paragraph 27.25 of RS 2004/3 (and which took effect on 25 April 2005), provides as follows:

*"8. Borrowed shares*

*Except with the consent of the Panel, shares which have been borrowed by the offeror may not be counted towards fulfilling an acceptance condition."*

8.3 The Code Committee understands that, following the introduction of Note 8 on Rule 10, and the related amendments to Notes 5, 6 and 7 on Rule 10 and to Section 5 of Appendix 4 which were adopted in paragraph 14.14 of RS 2005/2 (and which took effect on 7 November 2005), discussions were held between the Panel and the Registrars' Group of the Institute of Chartered Secretaries and Administrators to establish how these changes to the Code should be reflected in the certificate issued by the offeror's receiving agent. It was agreed that the form of the certificate should be amended so as to be clear that any shares in the offeree company referred to in the certificate as being held or purchased by the offeror did not include any shares in the offeree company which had been borrowed by the offeror.

8.4 However, since a borrowing/lending transaction involves the transfer of title in the borrowed/lent securities, the receiving agent is not able to ascertain from the offeree company's share register whether or not shares held in the name of the offeror have been borrowed. It is therefore necessary for the receiving agent to rely on the offeror's confirmation that any shares in the offeree company certified as being held or purchased by the offeror have not in fact been borrowed.

8.5 Accordingly, as part of the changes to the certificate referred to in paragraph 8.3 above, receiving agents have been permitted to include a third disclaimer in relation to borrowed shares. The Code Committee agrees that, for the reasons set out in paragraph 8.4 above, the inclusion of such a disclaimer is appropriate. Therefore, subject to any comments from the Confederation of British Industry, the British Bankers' Association and the Registrars' Group of the Institute of Chartered Secretaries and Administrators, in consultation with whom Appendix 4 is drawn up, the Code Committee is proposing to introduce an additional paragraph (iii) of Section 7 of Appendix 4, as follows:

**“7 DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES**

...

**“In issuing this certificate we have, where necessary, relied on the following matters:**

(i) ... ;

(ii) ... ;

**(iii) confirmation from the offeror of the validity of shares recorded as registered holdings and purchases in the context of Note 8 on Rule 10.**

... ””.

**Q.16 Do you agree with the proposed amendments to Section 7 of Appendix 4?**

**9. Cost/benefit implications**

The Code Committee believes that, save as referred to below, the amendments proposed in this PCP are unlikely lead to any material increase in the costs incurred by companies and market participants.

The proposed introduction of new Rule 25.7 (addressed in paragraph 6.13 above) may result in additional costs being incurred by some offeree companies. However, the Code Committee notes that:

- (i) in recommended situations, it is normal practice for a material change statement relating to the offeree company to be made and for the offeree company directors to take responsibility for it; and
- (ii) where the offeree company is admitted to listing in the UK, it is in any event obliged to keep the market informed of any material changes in its financial or trading position.

In view of the above, the Code Committee considers that, in the majority of cases, the introduction of proposed Rule 25.7 will either lead to no additional costs being incurred or that any additional costs incurred will not be significant. The Code Committee also believes it is in the interests of the market as a whole for such statements to be made by the directors of the offeree company and that any additional costs are, therefore, justified.



## APPENDIX A

### Proposed amendments to the Code

#### DEFINITIONS

##### Dealings

A dealing includes the following:-

...

(a) the acquisition or disposal of securities, of the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to securities, or of general control of securities;

...

##### NOTE ON DEALINGS

The borrowing or lending of securities will not normally be regarded as a dealing in securities.

##### Regulatory Information Service

A Regulatory Information Service (“RIS”) is any of the services set out in ~~Schedule 12 of Appendix 3 to the FSA-Listing Rules.~~

##### UKLA Rules

UKLA Rules include the Listing Rules, the Disclosure Rules and the Prospectus Rules of the FSA (or any of them as the context may require) and any such rules as may replace or succeed the Listing Rules, the Disclosure Rules or the Prospectus Rules of the FSA.

#### Rule 2.3

##### **2.3 RESPONSIBILITIES OF OFFERORS AND THE OFFEREE COMPANY**

...

**Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company**

~~which must, therefore, keep a close watch on its share price. Where the offer is to be recommended and the UKLA, the Stock Exchange or OFEX, as appropriate, is likely to grant a temporary suspension, a possible alternative to an immediate announcement may be to obtain a suspension to be followed shortly by an announcement.~~

A potential offeror must not attempt to prevent the board of an offeree company from making an announcement ~~or requesting the UKLA, the Stock Exchange or OFEX to grant a temporary suspension of listing at any time the board thinks appropriate.~~

*NOTE ON RULE 2.3*

*Suspensions*

*It should be noted that the primary obligation is to make the appropriate announcement as quickly as possible and the Panel will not be sympathetic to delay which is occasioned by an unsuccessful application for suspension.*

## Rule 2.5

### 2.5 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

...

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

...

(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 is subject;

...

## Rule 6

### RULE 6. ACQUISITIONS RESULTING IN AN OBLIGATION TO OFFER A MINIMUM LEVEL OF CONSIDERATION

...

*NOTES ON RULE 6*

...

3. *No less favourable terms*

...

*If there is a restricted market in the securities of an offeror, or if the amount of securities to be issued of a class already ~~listed~~ 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.*

...

7. *Unlisted securities*

*An offer where the consideration consists of securities for which ~~an~~ immediate ~~listing~~ admission to trading on a regulated market in the United Kingdom is not to be sought will not normally be regarded as satisfying any obligation incurred under this Rule. In such cases the Panel should be consulted.*

## **Rule 8**

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

...

*NOTES ON RULE 8*

...

11. *~~Unlisted~~ Unquoted public companies and relevant private companies*

*The requirements to disclose dealings apply also to dealings in relevant securities of ~~unlisted~~ public companies whose securities are not admitted to trading and of relevant private companies.*

## **Rule 9.3**

### **9.3 CONDITIONS AND CONSENTS**

...

*NOTES ON RULE 9.3*

...

3. *When dispensations may be granted*

...

(a) ...

(ii) *until posting of the offer document in respect of that new offer, the offeror and persons acting in concert with it ~~will not~~ must consult the Panel as to their ability to exercise, or procure the exercise of, more than 29.9% of the voting rights of the offeree company attaching to the shares in which they have an interest.*

...

## **Rule 9.5**

### **9.5 CONSIDERATION TO BE OFFERED**

...

#### *NOTES ON RULE 9.5*

...

#### *2. Calculation of the price*

...

(b) *If any interest in shares has been acquired in exchange for ~~listed~~ securities which are admitted to trading, the price will normally be established by reference to the middle market price of the ~~listed~~ securities at the time of the acquisition.*

...

## **Rule 14.1**

### **14.1 COMPARABLE OFFERS**

...

#### *NOTES ON RULE 14.1*

#### *1. Comparability*

*A comparable offer need not necessarily be an identical offer.*

*In the case of offers involving two or more classes of ~~listed~~ equity share capital which are admitted to the Official List or to trading on AIM, the ratio of the offer values should normally be equal to the average of the ratios of the*

*middle market quotations taken from the Stock Exchange Daily Official List over the course of the six months preceding the commencement of the offer period. The Panel will not normally permit the use of any other ratio unless the advisers to the offeror and offeree company are jointly able to justify it.*

*In the case of offers involving two or more classes of equity share capital, one or more of which is not ~~listed~~ admitted to the Official List or to trading on AIM, the ratio of the offer values must be justified to the Panel in advance.*

## **Rule 17.1**

### **17.1 TIMING AND CONTENTS**

...

#### *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 ~~dealt in~~ admitted to listing or admitted to trading on the Stock Exchange, AIM or OFEX, it would normally be permissible to write to all shareholders instead of making an announcement.*

## **Rule 17.2**

### **17.2 CONSEQUENCES OF FAILURE TO ANNOUNCE**

**(a) — ~~If an offeror fails within the time limit to comply with any of the requirements of Rule 17.1, the UKLA, the Stock Exchange or OFEX, as appropriate, will consider a temporary suspension of listing of the offeree company's shares and, where appropriate, the offeror's shares until the relevant information is given.~~**

**(ba)** ...

**(eb)** ...

## **Rule 19.1**

### **19.1 STANDARDS OF CARE**

**Each document or advertisement issued, or statement made, during the course of an offer must, as is the case with a prospectus, 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 by the company direct or by an adviser on its behalf.**

## **Rule 19.2**

### **19.2 RESPONSIBILITY**

...

#### *NOTES ON RULE 19.2*

#### *1. Delegation of responsibility*

...

*... This does not, however, override the requirements of “The Listing Rules” the UKLA Rules relating to the acceptance of responsibility for listing particulars a prospectus or equivalent document where applicable.*

...

#### *3. Quoting information about another company*

*... ~~and The~~ responsibility statement may be amended accordingly, ~~but where it relates to listing particulars the provisions of “The Listing Rules” may affect the position.~~ Where statements of opinion or conclusions concerning another company or unpublished information originating from another company are included, these must normally be covered by a responsibility statement by the directors of the company issuing the document or advertisement or by the directors of the other company; the qualified form of responsibility statement provided for in this Note is not acceptable in such instances. However, where a responsibility statement relates to a prospectus or an equivalent document, the provisions of the UKLA Rules may affect the form of responsibility statement required.*

#### *4. ~~Responsibility for part of listing particulars~~*

*~~Where, for the purpose of obtaining listing for new securities, persons other than the directors accept responsibility for part of a document which comprises or includes listing particulars, the Panel should be consulted. The adapted form of responsibility statement required by “The Listing Rules” will normally be acceptable in such cases.~~*

#### *54. Exclusion of directors*

*Although the Panel may be willing to consider the exclusion of a director from the responsibility statement in appropriate circumstances, where that*

*statement relates to ~~listing particulars~~ a prospectus or an equivalent document the provisions of ~~“The Listing Rules”~~ the UKLA Rules may affect the position.*

~~65.~~ When an offeror is controlled

...

#### Rule 19.4

#### 19.4 ADVERTISEMENTS

...

(v) advertisements giving information, the publication of which by advertisement is required or specifically permitted by the ~~FSA Listing~~ UKLA Rules;

...

#### Rule 24.2

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

Except with the consent of the Panel:—

(a) where the consideration includes securities and the offeror is a company incorporated under the Companies Act 1985 (or its predecessors) and its shares are admitted to the Official List or ~~dealt in to trading~~ on AIM, the offer document must contain:

...

(b) where the consideration is cash only and the offeror is a company incorporated under the Companies Act 1985 (or its predecessors) and its shares are admitted to the Official List or ~~dealt in to trading~~ on AIM, the offer document must contain:

...

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

...

(viii) ... (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~~listed, 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);

...

(xi) ... ~~a statement of whether an~~ details of any applications for admission to listing or admission to trading that have been or will be made in any jurisdiction in respect of the securities to the UKLA and whether admission to listing on any other stock exchange or the facility to deal on any other market has been or will be sought;

...

(e) the offer document must contain information on the offeree company ... ~~, whether or not the offeree company is admitted to the Official List;~~

...

#### NOTES ON RULE 24.2

1. *Where the offeror is a subsidiary company*

*The Panel will normally look through ~~unlisted~~ subsidiaries whose securities are not admitted to trading in interpreting this Rule unless, with the agreement of the Panel, the subsidiary in question is regarded as being of sufficient substance in relation to the group and the offer. Accordingly if the offeror is part of a group, information will normally be required on the ultimate holding company in the form of group accounts.*

#### Rule 24.9

##### **24.9 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS**

**Where securities are offered as consideration and it is intended that they should be admitted to listing on the Official List or to trading on AIM, the relevant admission to listing or admission to trading condition should, except with the consent of the Panel, be in terms which ensure that it is capable of being satisfied only when the decision to admit the securities to ~~official~~ listing or trading has been announced by the UKLA and or the Stock Exchange, as applicable. Where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any other investment exchange or market, the Panel should be consulted.**



**Rule 24.10****24.10 ESTIMATED VALUE OF ~~UNLISTED~~ UNQUOTED PAPER CONSIDERATION**

When the offer involves the issue of ~~unlisted~~ securities of a class which is not admitted to trading, the offer document and any subsequent circular from the offeror must contain an estimate of the value of such securities by an appropriate adviser ~~(see Note 7 on Rule 6)~~.

**Rule 25.1****25.1 VIEWS OF THE BOARD**

...

*NOTES ON RULE 25.1*

...

*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. Depending on the circumstances, such a director may have to make the responsibility statement required by Rule 19.2, appropriately amended to make it clear that he does not accept responsibility for the views of the board on the offer. Where the statement relates to a prospectus or an equivalent document ~~listing particulars~~, the provisions of “The Listing Rules” ~~the UKLA Rules~~ may affect the position.*

**Rule 25.4****25.4 DIRECTORS’ SERVICE CONTRACTS**

...

*NOTES ON RULE 25.4**1. Particulars to be disclosed*

...

*~~Where there is more than one contract, a statement of the aggregate remuneration payable is normally regarded as fulfilling the requirements under (c) above, except to the extent that this method would conceal material~~*

~~anomalies which ought to be disclosed (eg because one director is remunerated at a very much higher rate than the others). In cases where contracts have been replaced or amended, however, the particulars of remuneration payable under both the existing and the earlier contracts must relate to each individual separately.~~

...

## Rule 25.7

### **25.7 FINANCIAL AND OTHER INFORMATION**

**The first major circular from the offeree board advising shareholders on 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 25.7

##### 1. Offeree board circular combined with offer document

Where the first major circular 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. Accordingly, the offeror will not be required to comply with Rule 24.2(e) insofar as it applies to Rule 24.2(a)(iv).

##### 2. Offeree board circular posted 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 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 28.6

### **28.6 STATEMENTS WHICH WILL BE TREATED AS PROFIT FORECASTS**

...

#### **(c) Interim and preliminary figures**

**Except with the consent of the Panel, any unaudited profit figures published during an offer period must be reported on. This provision does not, however, apply to:—**

...

(ii) unaudited statements of annual results which comply with the requirements for preliminary ~~profits~~ statements of annual results as set out in ~~“The Listing~~ the UKLA Rules”;

(iii) unaudited statements of interim results which comply with the requirements for half-yearly reports as set out in ~~“The Listing~~ the UKLA Rules” in cases where the offer has been publicly recommended by the board of the offeree company; or

(iv) unaudited statements of interim results by offerors which comply with the requirements for half-yearly reports as set out in ~~“The Listing~~ the UKLA Rules”, whether or not the offer has been publicly recommended by the board of the offeree company but provided the offer could not result in the issue of securities which would represent 10% or more of the enlarged voting share capital of the offeror.

...

#### Rule 32.4

##### 32.4 NEW CONDITIONS FOR INCREASED OR IMPROVED OFFERS

Subject to the prior consent of the Panel, and only to the extent necessary to implement an increased or improved offer, the offeror may introduce new conditions (eg obtaining shareholders’ approval or the admission to listing or admission to trading of new securitiesshares).

#### Rule 36

##### 36.1 PANEL’S CONSENT REQUIRED

The Panel’s consent is required for any partial offer. In the case of an offer which could not result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of a company, consent will normally be granted.

##### 36.2 BUYING BEFORE THE OFFER

In the case of an offer which could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more but holding less than 100% of the voting rights of a company, such consent will not normally be granted if the offeror or persons acting in concert with it have acquired, selectively or in significant numbers, interests in

shares in the offeree company during the 12 months preceding the application for consent or if interests in shares have been acquired at any time after the partial offer was reasonably in contemplation.

### **36.3 ACQUISITIONS DURING AND AFTER THE OFFER**

...

#### *NOTES ON RULE 36.3*

...

#### *2. Partial offer resulting in an interest of less than 30%*

*The consent of the Panel will normally be granted for acquisitions of interests in shares within 12 months of the end of the offer period when a partial offer has resulted in the offeror and persons acting in concert with it being interested in shares carrying less than 30% of the voting rights of a company.*

...

### **36.4 OFFER FOR BETWEEN 30% AND 50%**

When an offer is made which could result in the offeror and persons acting in concert with it being interested in shares carrying not less than 30% but not holding shares carrying more than 50% of the voting rights of a company, the precise number of shares offered for must be stated and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number.

### **36.5 OFFER FOR 30% OR MORE REQUIRES 50% APPROVAL**

Any offer which could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of a company must be conditional, not only on the specified number of acceptances being received, but also on approval of the offer, normally signified by means of a separate box on the form of acceptance, being given in respect of over 50% of the voting rights held by shareholders who are independent of the offeror and persons acting in concert with it. This requirement may on occasion be waived if over 50% of the voting rights of the offeree company are held by one shareholder.

### **36.6 WARNING ABOUT CONTROL POSITION**

In the case of a partial offer which could result in the offeror and persons acting in concert with it holding shares carrying over 50% of the voting rights of the offeree company, the offer document must contain specific and prominent reference to this and to the fact that, if the offer succeeds, the offeror and persons acting in concert with it will be free, subject to Rule 36.3 and, where relevant, to Note 4 on Rule 9.1, to acquire further

interests in shares without incurring any obligation under Rule 9 to make a general offer.

NOTE ON RULE 36.6

Relevance of Note 4 on Rule 9.1

Note 4 on Rule 9.1 will not be relevant if the partial offer results in the offeror itself holding shares carrying over 50% of the voting rights of the offeree company.”.

...

**36.8 COMPARABLE OFFER**

When an offer is made for a company with more than one class of equity share capital which could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights, a comparable offer must be made for each class.

...

**Appendix 1**

**APPENDIX 1**

**WHITEWASH GUIDANCE NOTE**

...

**2 SPECIFIC GRANT OF WAIVER REQUIRED**

...

*NOTES ON SECTION 2*

...

2. ~~Listing Rules~~ Other legal or regulatory requirements

*It must be noted that, ~~in the case of listed companies,~~ clearance of the circular in accordance with any other legal or regulatory requirement (for example, under the ~~Listing~~ UKLA Rules) does not constitute approval of the circular by the Panel.*

## Appendix 4

## APPENDIX 4

## RECEIVING AGENTS' CODE OF PRACTICE

...

## 2 QUALIFICATIONS FOR ACTING AS A RECEIVING AGENT

A receiving agent to an offer must either:—

...

(b) ...

(i) ...

(2) be responsible for the share registers of not less than 25 public companies which ~~have a full listing~~ are admitted to the Official List or are dealt in to trading on AIM; and

...

## 7 DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES

...

“In issuing this certificate we have, where necessary, relied on the following matters:

(i) ... ;

(ii) ... ;

(iii) confirmation from the offeror of the validity of shares recorded as registered holdings and purchases in the context of Note 8 on Rule 10.

...”

**APPENDIX B****List of Questions**

- Q.1 Do you agree with the proposed new definition of the “UKLA Rules”?**
- Q.2 Do you agree with the proposed amendments in relation to responsibility statements?**
- Q.3 Do you agree with the proposed amendment to Rule 19.1?**
- Q.4 Do you agree with the proposed minor amendments in relation to the Listing Rules described in paragraph 2.14?**
- Q.5 Do you agree with the proposed amendments in relation to admission to listing and admission to trading described in paragraph 2.18?**
- Q.6 Do you agree with the proposed amendments in relation to traded securities described in paragraph 2.19?**
- Q.7 Do you agree with the proposed amendments to Note 1 on Rule 14.1?**
- Q.8 Do you agree with the proposed amendments in relation to securities admitted to trading described in paragraph 2.21?**
- Q.9 Do you agree with the proposed amendments to Rule 2.3 and the proposed deletion of the Note on Rule 2.3 and of Rule 17.2(a)?**
- Q.10 Do you agree with the proposed amendment to paragraph (a) of the definition of “dealings”?**
- Q.11 Do you agree with the proposed new Note on the definition of “dealings” relating to the borrowing or lending of securities?**

- Q.12 Do you agree with the proposed amendments to Note 3(a)(ii) on Rule 9.3?**
- Q.13 Do you agree that the penultimate paragraph of Note 1 on Rule 25.4 should be deleted?**
- Q.14 Do you agree with the introduction of proposed new Rule 25.7 and the Notes thereon?**
- Q.15 Do you agree with the proposed amendments to Rule 36?**
- Q.16 Do you agree with the proposed amendments to Section 7 of Appendix 4?**