

PCP 2008/3 Issued on 18 July 2008

THE TAKEOVER PANEL

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

**ELECTRONIC COMMUNICATIONS, WEBSITES
AND INFORMATION RIGHTS**

Before it introduces or amends any Rules of the Takeover Code (the “Code”), the Code Committee of the Takeover Panel (the “Code Committee”) is normally required under its procedures for amending the Code 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 17 October 2008.

Comments may be sent by e-mail to:

supportgroup@thetakeoverpanel.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee
The Takeover Panel
10 Paternoster Square
London
EC4M 7DY

Telephone: 020 7382 9026

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All responses to formal consultation will be made available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.

Unless the context otherwise requires, words and expressions defined in the Code shall have the same meanings when used in this PCP.

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1. Summary and introduction

(a) Purpose of this PCP

1.1 The amendments to the Code proposed in this PCP reflect the recognition by the Code Committee of the increasing use made by companies, regulatory authorities, shareholders and other market participants of electronic forms of communication and websites. In addition, legislative changes introduced by the Companies Act 2006 (the “2006 Act”) and other regulatory and technological changes have led the Code Committee to conclude that the Code should be amended to:

- (i) enable electronic forms of communication to be used to send documents and information to shareholders and certain other relevant persons;
- (ii) facilitate and require a wider use of websites by parties to offers; and
- (iii) ensure that persons nominated to enjoy “information rights” receive the same information as shareholders.

The amendments to the Code that the Code Committee believes would be required to give effect to these proposals are summarised below.

(b) Publication of Code documents and the incorporation of information into documents by reference

1.2 The Code currently provides that certain offer-related documents and announcements must be variously “posted”, “sent”, “despatched”, “issued”, “released”, “delivered” or otherwise “made readily available” by an offeror or the offeree company (as the case may be) to shareholders in the offeree company and certain other relevant persons. Documents, announcements or information required to be sent to shareholders or any other person under the Code are referred

to in this PCP as “Code documents”. At present, where copies of Code documents are required to be posted, sent or despatched to any person under the Code, they are printed in “hard copy” form and sent to the relevant persons either by post or by some other means of physical delivery. The Code Committee believes that the cost to offerors and offeree companies of printing copies of Code documents in hard copy form and sending them to shareholders and other relevant persons can be significant.

1.3 The Code Committee believes that the potential benefits of permitting offerors and offeree companies to publish Code documents in electronic form or by means of website publication, as an alternative to publishing them in hard copy form, include:

- (i) reducing the printing and posting costs that are currently borne by offerors and offeree companies in relation to the publication of Code documents;
- (ii) increasing the speed and efficiency of communications in relation to offers;
- (iii) giving the recipients of Code documents greater choice as to the manner in which those documents are sent to them;
- (iv) reducing the environmental impact of publishing Code documents; and
- (v) enabling certain companies to use forms of communication that they are currently able to make use of under other legal and regulatory regimes.

1.4 This PCP therefore includes proposals to enable a Code document to be treated as having been “sent” to a person if it is:

- (i) sent to the relevant person in hard copy form;

- (ii) sent to the relevant person in electronic form; or
 - (iii) published on a website, provided that the relevant person is sent a notification in respect of its publication by no later than the date on which the Code document is published.
- 1.5 The Code Committee does not consider it appropriate to prescribe in the Code how copies of Code documents should be published or the steps that must be followed in order to publish a Code document in electronic form or by means of website publication. The Code Committee believes that the manner in which Code documents are published should be left as a matter for an offeror and/or the offeree company (as the case may be) to decide, subject to any elections made by shareholders, persons with information rights and other relevant persons to receive hard copies.
- 1.6 The Code Committee is keen to ensure that no person is prejudiced as a result of being sent Code documents in electronic form or by means of website publication. The Code Committee therefore proposes to amend the Code to provide that any person to whom a Code document is sent in electronic form or by means of website publication should be able to request to receive a hard copy of that document or any future Code documents sent to him in connection with an offer. In addition, the Code Committee proposes that any Code document so published (and any related website notification) should contain a statement that the person to whom it is sent may request a hard copy of that document or any future Code document and should draw attention to the fact that a hard copy will not be sent to that person unless requested.
- 1.7 This PCP also includes proposals to amend the Code to permit certain information that is currently required by the Code to be included in Code documents to be incorporated into the relevant documents by reference to another source of information. The Code Committee believes that it is no longer necessary for

certain information to be sent to all shareholders and other relevant persons provided that the information incorporated by reference is sent to them if so requested. The Code Committee believes that permitting information to be incorporated into documents by reference to other sources would reduce the length of those documents and would be likely to have similar benefits to those described in paragraph 1.3 above.

(c) *Publication of information on websites (including documents to be on display under Rule 26)*

1.8 The Code Committee proposes to amend the Code to require the disclosure of information on websites. In particular, the Code Committee proposes to introduce a requirement for a party to an offer to make available on a website all information published by it in relation to an offer (other than disclosures relating to dealings in relevant securities during the offer period). The relevant website would, in effect, form a single point of reference for all information published by a party in relation to an offer and, in the opinion of the Code Committee, would make it easier for shareholders, potential investors and other interested persons to obtain information in relation to offers quickly and efficiently.

1.9 A further measure aimed at making it easier for shareholders, potential investors and other interested persons to obtain information in relation to offers quickly and efficiently is the proposed amendment of the Code to require copies of all documents put on public display under Rule 26 to be published on a website, in addition to being put on display in hard copy form.

(d) *Persons with “information rights”*

1.10 The Code does not currently make provision for persons with indirect interests in securities of offeree companies to be sent copies of Code documents or for such persons to enjoy any other rights in relation to offers. The Code Committee

understands that the 2006 Act introduced a new regime in the United Kingdom in relation to the exercise of shareholders' rights and that the relevant provisions, in certain circumstances, enable registered shareholders to nominate other persons to enjoy certain of the rights that historically have been reserved for a company's registered shareholders.

- 1.11 The Code Committee believes that the Code should be amended to give those persons a right to be provided with information in relation to offers. The Code Committee therefore proposes to introduce a new definition of a "person with information rights". This would refer to a person in respect of whom a nomination has been made (and has not been suspended, revoked or ceased to have effect) by a registered shareholder in an offeree company registered 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 shareholders that includes the nominating registered shareholder.
- 1.12 The Code Committee proposes that persons with information rights should be entitled to be sent Code documents at the same time and in the same manner as they are sent to shareholders in the offeree company if the nominating registered shareholder so elects.

(e) "Whitewash" circulars and other documents published under the Code

- 1.13 The Code Committee anticipates that the proposals set out in this PCP in relation to, among other things, the publication of Code documents and the incorporation of information into documents by reference will be used principally in the context of sending offer documents, offeree board circulars and any revisions thereof to shareholders, persons with information rights and other relevant persons in the context of an offer. However, the Code Committee proposes that the relevant provisions should, where relevant, apply equally to the publication of

“whitewash” circulars pursuant to Appendix 1 of the Code and other documents that are required to be sent to shareholders and other persons under the Code.

(f) *Minor amendments*

1.14 In considering the proposals set out in this PCP, the Code Committee also identified a number of the current provisions of the Code which it believes require amendment, and other issues which it believes require clarification, on the basis described in this PCP.

(g) *Informal consultation by the Panel Executive*

1.15 As part of the Code Committee’s consideration of the proposals set out in this PCP, the Panel Executive (the “Executive”) carried out an informal consultation exercise on its behalf, during which the views of, among others, the bodies listed in Appendix A to this PCP were sought in relation to the principal substantive issues raised by the proposals.

1.16 In summary, the responses received by the Executive to the informal consultation exercise were supportive of the principal objectives set out in this PCP. The Code Committee would like to express its thanks to the bodies listed in Appendix A to this PCP and others who participated in the informal consultation exercise for their valuable input.

(h) *Proposed amendments and questions*

1.17 The full text of the proposed amendments to the Code is set out in Appendix B to this PCP. All references to the Code in this PCP are based on the Code as it will be on 29 July 2008 when the amendments referred to in RS 2008/1 (*Competition Reference Periods*) and the minor and consequential amendments set out in Instrument 2008/3 will be incorporated into the Code. The Code Committee has

today also published PCP 2008/2 (*Miscellaneous Code Amendments*). To the extent that this PCP proposes amendments to Rules that are also the subject of amendments proposed in PCP 2008/2, the relevant Rules may be amended in a different form from that proposed in this PCP to reflect amendments adopted as a result of the Code Committee's consideration of responses to PCP 2008/2.

1.18 For ease of reference, a list of the questions that are put for consultation is set out in Appendix C to this PCP.

(i) *Implementation and transitional arrangements*

1.19 The Code Committee's current intention is that any amendments to the Code that are made to give effect to the proposals set out in this PCP should take effect approximately one month after the date on which the Response Statement to this PCP is published.

1.20 The Code Committee anticipates that any amendments to the Code that are made to give effect to the proposals set out in this PCP will be applied to all transactions from the date on which the amendments take effect.

1.21 The Code Committee would welcome comments on the amendments to the Code proposed in this PCP and the implementation of them and will make a further statement in relation to implementation and any transitional arrangements in the Response Statement to this PCP.

PART A: Publication of Code documents

2. Definitions and interpretation

(a) “Electronic form”

2.1 The Code Committee believes that the Code should be amended to include a definition of what it means for a document to be sent to a person in “electronic form” (for example, a document sent by e-mail) as contrasted with a document sent in “hard copy form” (for example, a paper copy of a document). In view of the significant technological advances that have been made in recent years, and which may continue to be made in the future, the Code Committee considers that it is advisable to adopt a wide definition of what constitutes a document in “electronic form” rather than to specify prescriptively the different forms of communication that will be treated as electronic forms.

2.2 The Code Committee therefore proposes to introduce a new definition into the Definitions section of the Code as follows:

“Electronic form

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

(1) sent initially and received at its destination by means of electronic equipment for the processing or storage of data; and

(2) entirely transmitted, conveyed and received 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.”.

Q1 Should the Code be amended to include a new definition of “electronic form”? Do you have any comments on the proposed definition?

(b) “Hard copy form”

2.3 In view of the proposed new definition of “electronic form”, the Code Committee proposes to introduce a new definition of “hard copy form” into the Definitions section of the Code so as to differentiate Code documents that are published in the form of paper copies from documents that are published in electronic form.

2.4 The Code Committee therefore proposes to introduce a new definition into the Definitions section of the Code as follows:

“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.”.

Q2 Should the Code be amended to include a new definition of “hard copy form”? Do you have any comments on the proposed definition?

(c) “Website notification”

2.5 The Code Committee proposes to amend the Code to provide that a Code document will be treated as having been sent to a person if, among other things, a copy is published on a website and the person entitled to receive it is notified of its publication by the offeror or offeree company (as appropriate) sending him a notification, in either hard copy form or electronic form, by no later than the date on which it is published on the website.

2.6 In view of the above, the Code Committee proposes to introduce a new definition into the Definitions section of the Code as follows:

“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.”.

- 2.7 The Code Committee considers that a website notification should comply with the provisions of Rule 19.1 and should therefore be prepared with the highest standards of care and accuracy. In addition, the Code Committee considers that a website notification should contain a responsibility statement in accordance with Rule 19.2 and should comply with the other relevant requirements of the Code in relation to the publication of documents, announcements and information. The Code Committee believes that the information contained in a website notification should be confined to non-controversial information about an offer (for example, giving details of the website on which a Code document is published and how a copy in hard copy form may be obtained) and should not be used for argument or invective concerning an offer. In particular, the Code Committee considers that a website notification should not include a recommendation that any action should be taken 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. The Code Committee also believes that a website notification should make it clear that it is not a summary of the document, announcement or information to which it relates and should not be regarded as a substitute for reading the document, announcement or information in full.
- 2.8 In view of the above, the Code Committee proposes to introduce a Note on the new definition of “website notification” as follows:

“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 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. 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 requested;

(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.”.

Q3 Should the Code be amended to include a new definition of a “website notification”? Do you have any comments on the proposed definition and Note?

3. Form of publication

(a) Introduction

3.1 The Code Committee believes that there is a strong argument for making provision for Code documents to be published in alternative ways to the current practice of printing copies in hard copy form and sending them to the relevant persons either by post or by some other means of physical delivery. The Code

Committee believes that the benefits of amending the Code to provide for alternative forms of publication of Code documents would include:

- (i) reducing the number of Code documents published in hard copy form and therefore reducing the printing and posting costs that are currently borne by offerors and offeree companies in relation to the publication of Code documents;
- (ii) increasing the speed and efficiency of communications between parties to offers and shareholders in the offeree company and other relevant persons;
- (iii) giving shareholders, persons with information rights and other persons to whom Code documents are required to be sent greater choice as to the manner in which they receive them;
- (iv) reducing the environmental impact of publishing Code documents since fewer documents would be likely to be printed in hard copy form and those which would be printed would be shorter; and
- (v) enabling certain companies to use forms of communication that they are currently able to make use of under other legal and regulatory regimes, including the 2006 Act and the Disclosure Rules and Transparency Rules (the “DTRs”) and Prospectus Rules (the “Prospectus Rules”) of the Financial Services Authority.

3.2 In view of the above, the Code Committee proposes to amend the Code to enable parties to offers to publish Code documents in electronic form or by means of website publication as an alternative to hard copy form on the basis described in the remainder of this Part A.

(b) *Form in which Code documents may be published*

3.3 The Code Committee proposes to:

- (i) delete the existing Rule 19.7 in its entirety and re-number the existing Rule 19.8 as Rule 19.7 as a consequence of the proposed amendments to the Code described below; and
- (ii) introduce a new Rule 19.8 setting out the manner in which Code documents may be published.

3.4 The Code Committee proposes that the provisions of the new Rule 19.8 should apply to, among other things:

- (i) offer documents, revised offer documents and other circulars from the offeror;
- (ii) offeree board circulars;
- (iii) announcements made under Rule 2.4 (in so far as they are required to be sent to shareholders in the offeree company under the provisions of Rule 2.6(a));
- (iv) announcements made under Rule 2.5, or circulars summarising the terms and conditions of an offer (in so far as they are required to be sent to shareholders in the offeree company under the current provisions of Rule 2.6(b)); and
- (v) offers or proposals required to be despatched to holders of convertible securities, options or subscription rights under Rule 15 (“Rule 15 securities”) and documents required to be issued to holders of Rule 15

securities under Note 1 on Rule 15.

3.5 The Code Committee proposes that a Code document would be treated as having been “sent” to a person if it is:

- (i) sent to the relevant person in hard copy form;
- (ii) sent to the relevant person in electronic form; or
- (iii) 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.

3.6 In view of the foregoing, the Code Committee proposes to introduce a new Rule 19.8 as follows:

**“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.”.**

Q4 Should the Code be amended to permit Code documents to be published by sending a copy to the relevant person in electronic form or by means of website publication as an alternative to hard copy form? Do you have any comments on the proposed new Rule 19.8?

(c) Form of publication to be left to an offeror and/or the offeree company

3.7 The Code Committee notes that companies may be subject to laws and regulations

that affect the manner in which they are able to communicate with shareholders, persons with information rights and other relevant persons. In particular, the Code Committee understands that the manner in which a company may communicate with its shareholders and other relevant persons may be affected by:

- (i) the provisions of the company's articles of association;
- (ii) in the case of a company that is incorporated in the United Kingdom, the provisions of the 2006 Act; and
- (iii) in the case of a company that has shares (including depository receipts representing shares) or debt securities admitted to trading on a regulated market in the United Kingdom, the DTRs.

3.8 The Code Committee understands that the application of the relevant laws and regulations may mean that a company has to comply with a number of different (and potentially overlapping) procedural requirements in order to communicate with its shareholders, persons with information rights and other relevant persons in particular ways. In summary, these requirements may include:

- (i) obtaining general shareholder approval (in the form of a shareholder resolution or in the form of an amendment to the company's articles of association);
- (ii) obtaining the individual consent of the affected person(s);
- (iii) the giving of notice to the affected persons(s); and
- (iv) the expiry of waiting periods after the giving of notice.

3.9 In view of the differences in the way in which the provisions of the relevant laws

and regulations may apply to, or have been taken advantage of by, companies involved in offers, the Code Committee does not consider it appropriate to prescribe in the Code how copies of Code documents should be published or the steps that must be followed in order to publish a Code document in electronic form or by means of website publication. Instead, the Code Committee believes that the manner in which Code documents should be published should be left as a matter for an offeror and/or the offeree company (as the case may be) to decide, subject to any elections made by shareholders, persons with information rights and other relevant persons to receive documents, announcements and information in hard copy form (as described more fully in paragraphs 5.1 to 5.3 below). For example, this would mean that an offeror would be able to send a Code document to some shareholders, persons with information rights and other relevant persons in hard copy form, some in electronic form and the remainder by means of website publication. The Code Committee does not consider the publication of Code documents in different forms to give rise to any inequality of treatment of the persons entitled to be sent the documents for the purposes of General Principle 1 (as described more fully in paragraphs 5.4 to 5.8 below).

- 3.10 Furthermore, the Code Committee believes that the manner in which an offeror chooses to publish a Code document should not be constrained by virtue of the fact that the offeree company has not complied with any applicable procedural requirements in relation to the way in which the offeree company communicates with its shareholders and other relevant persons (as described more fully in paragraphs 3.11 and 3.12 below). For example, the Code Committee believes that an offeror should be able to publish a Code document by making a copy available on a website provided that shareholders, persons with information rights and other persons entitled to receive the document, announcement or information are sent a website notification notwithstanding that the offeree company has not sought shareholder approval to communicate with its shareholders electronically.

Q5 Should the choice of whether to publish Code documents in hard copy form,

electronic form or by website publication be left to an offeror and/or the offeree company to decide rather than be prescribed by the Code?

(d) No requirement for shareholder consent

3.11 The Code Committee has considered whether the Code should require an offeror to obtain the consent of offeree company shareholders, persons with information rights and other relevant persons at either a general or individual level before publishing Code documents in electronic form or by means of website publication. In considering this, the Code Committee took the following factors into account:

- (i) the Code applies both to communications sent by an offeree company to its shareholders and also to communications sent by third parties to the offeree company's shareholders. In contrast, the relevant provisions of, for example, the 2006 Act and the DTRs, apply only to communications sent by a company to its own shareholders;
- (ii) any general or individual shareholder approval to receive communications in electronic form provided by shareholders to a company in advance of an offer would be likely to relate only to communications sent in electronic form by the company to its own shareholders, and not to communications sent in electronic form by an offeror or any other third party to those shareholders. The Code Committee believes that there would be little incentive for a company to seek shareholder approval to enable third parties (such as offerors) to communicate with its shareholders in electronic form. The Code Committee considers this to be especially true given that this is only likely to be an issue in the context of a non-recommended offer since, in the context of a recommended offer, the offeree board would be likely to provide assistance in publishing Code documents;

- (iii) if the Code were to require the consent of offeree company shareholders to be obtained in order for them to receive communications from an offeror or other third party in electronic form, an offeror would normally not be in a position to convene a general meeting of the offeree company for the purpose of passing an appropriate shareholder resolution or amending the offeree company's articles and, as noted above, there would be little incentive for the offeree company to do so;
- (iv) a requirement to obtain the consent of offeree company shareholders (at either a general or individual level) to receive communications from an offeror in electronic form would be unlikely to be fulfilled within the standard offer timetable, at least without the co-operation of the offeree company board; and
- (v) if the Code were to require the express consent of offeree company shareholders to be obtained to receive communications from an offeror or other third party in electronic form, and an offeror was unable to obtain or procure that consent, offeree shareholders would be more likely in certain contexts (for example, a non-recommended offer) to receive documents from the offeree company in electronic form (for example, an offeree board circular) but documents from the offeror in hard copy form (for example, the offer document from a non-recommended offeror).

3.12 After considering the factors above, the Code Committee has concluded that an offeror should not be constrained in the manner in which it chooses to publish Code documents or communicate with an offeree company's shareholders, persons with information rights or other relevant persons by:

- (i) the corporate authorities which the offeree company has in place; or
- (ii) the fact that the relevant persons' addresses, electronic addresses and other

information relating to the receipt of offeree company communications are not currently available to the offeror.

The Code Committee believes that no party to an offer should enjoy an advantage over any other as a result of being able to communicate with shareholders, persons with information rights and other relevant persons in a particular manner. In the view of the Code Committee, it would be undesirable, for example in the context of a non-recommended offer, for an offeror to be required to publish its offer document in hard copy form if the offeree company board were able to publish its circular in electronic form, given the inherent timing advantages attaching to electronic communications.

Q6 The Code Committee considers that the Code should not require (i) a shareholder resolution; (ii) a provision in the offeree company's articles of association; or (iii) any other procedural requirement to be satisfied, before copies of Code documents may be published by an offeror or the offeree company in electronic form or by means of website publication. Do you agree?

4. Provision of addresses, electronic addresses and other details

(a) *Requirement to provide an offeror with addresses, electronic addresses and other details*

4.1 Section 3 of Appendix 4 to the Code currently provides that, following the announcement of a firm intention to make an offer, the offeree company should instruct its registrar to provide the offeror with a copy of the offeree company's shareholder register within two business days of a request being received from the offeror for that information. Section 3 also provides that the copy of the offeree company's shareholder register should be updated to reflect the position as at the close of business on the date of the request and should be kept as up-to-date as the register maintenance system will allow.

- 4.2 The Code Committee understands that electronic addresses provided by shareholders for the purpose of receiving copies of documents, announcements and information in electronic form are generally not recorded as part of the offeree company's shareholder register and will not therefore be available publicly. The Code Committee also understands that details of addresses, electronic addresses and other information provided by, or on behalf of, persons with information rights and other relevant persons (for example, holders of Rule 15 securities) generally do not comprise part of the offeree company's shareholder register either.
- 4.3 Section 3 of Appendix 4 to the Code does not currently require an offeree company to furnish an offeror with details of:
- (i) electronic addresses provided by offeree company shareholders for the receipt of Code documents in electronic form; or
 - (ii) addresses, electronic addresses and other information provided by, or on behalf of, persons with information rights and other relevant persons (including the holders of Rule 15 securities) for the receipt of Code documents in hard copy form or in electronic form.

In view of the amendments proposed in this PCP, the Code Committee believes that Appendix 4 to the Code should be amended to require the offeree company to provide, or instruct its registrar to provide, an offeror with these details.

- 4.4 Section 3 of Appendix 4 currently requires the offeree company to instruct its registrar to respond within two business days to a request from the offeror for the provision of the offeree company's shareholder register following the announcement of a firm intention to make an offer. However, the Code Committee considers that this requirement, in addition to the requirement for the offeree company to provide, or instruct its registrar to provide, an offeror with the details described in paragraph 4.3 above, should apply following the

- announcement of a possible offer in addition to following the announcement of a firm intention to make an offer. This is on the basis that the Code Committee believes that potential offerors may, in certain circumstances, want to send information to offeree company shareholders, persons with information rights and other persons in advance of announcing a firm intention to make an offer.
- 4.5 The Code Committee believes that any such information provided by, or on behalf of, the offeree company to an offeror should be updated in the same manner in which Section 3 of Appendix 4 to the Code currently requires the offeree company to update the copy of the offeree company's shareholder register.
- 4.6 Amending the Code in the manner suggested above would also remedy an issue that has arisen from time to time in relation to the provision of information by an offeror to holders of Rule 15 securities in the offeree company. The Code Committee understands that questions have previously arisen, typically in the context of a non-recommended offer, in relation to the way in which an offeror should send offer-related information to the holders of Rule 15 securities in the offeree company and whether the offeree company should be required to provide the offeror with its register(s) of holders of Rule 15 securities. Since the Code does not currently require the offeree company to provide an offeror with a copy of its register(s) of holders of Rule 15 securities, the Code Committee understands that, in circumstances where the offeree company has declined to provide such details to the offeror, the Executive has previously required an offeror to deposit copies of the relevant documents with the offeree company and then required the offeree company to send the documents to holders of Rule 15 securities on behalf of the offeror (at the offeror's cost). The Code Committee believes that the offeree company's register(s) of holders of Rule 15 securities should not be treated differently from its shareholder register.
- 4.7 In view of the above, the Code Committee proposes to introduce a new Section 4

into Appendix 4 to the Code as follows (and, as a consequence, to re-number the existing Sections 4 to 7 of Appendix 4):

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

(a) When an offer or possible offer is announced, the offeree company should respond, or instruct its registrar to respond, within two business days to a request from an 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

...

(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.

...”.

- 4.8 In addition, the Code Committee proposes to amend Section 3 of Appendix 4 to the Code as follows:

“3 THE PROVISION OF THE OFFEREE COMPANY’S REGISTER

(a) When a ~~firm intention to make an offer~~ or possible offer is announced, the offeree company should instruct its registrar to respond within two business days to a request from an offeror for the provision of the register which should be updated to reflect the position as at the close of business on the date of the request. ...”.

4.9 The Code Committee recognises that Appendix 4 to the Code is drawn up in consultation with the Confederation of British Industry, the British Bankers’ Association and the Registrars Group of the Institute of Chartered Secretaries and Administrators. The Code Committee has consulted each of these bodies in relation to the proposed amendments to Appendix 4.

Q7 Should the Code be amended to require the offeree company to provide, or instruct its registrar to provide, an offeror with details of addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons for the receipt of Code documents in hard copy form or electronic form as proposed? Do you have any comments on the proposed new Section 4 of Appendix 4?

Q8 Should the Code be amended to require the offeree company to instruct its registrar to provide an offeror with the offeree company’s shareholder register following the announcement of a possible offer and not solely following the announcement of a firm intention to make an offer? Do you have any comments on the proposed amendments to Section 3 of Appendix 4?

4.10 In view of the changes proposed above, the Code Committee believes that an equivalent change should also be made to the time when an offeror is able to request information under Note 3 on Rule 10. At present, following the announcement of a firm intention to make an offer, the offeree company must, on request, provide the offeror as soon as possible with all relevant details of the issued shares and, to the extent not issued, the allotted shares and details of any conversion or subscription rights or any other rights pursuant to the exercise of

which shares may be unconditionally allotted or issued during the offer period.

- 4.11 The Code Committee believes that it would be consistent with the other changes described above in relation to the provision of the offeree company’s register and other information in respect of offeree company shareholders, persons with information rights and other relevant persons (including a copy of any register(s) of persons entitled to receive documents under Rule 15), for this information to be capable of being requested following the announcement of a possible offer. The Code Committee believes that this would also assist financial advisers to offerors (or other appropriate third parties) in confirming in the announcement of a firm intention to make an offer as required under Rule 2.5(c) that resources are available to the offeror sufficient to satisfy full acceptance of the offer.
- 4.12 In view of the above, the Code Committee proposes to amend Note 3 on Rule 10 as follows:

“NOTES ON RULE 10

...

3. *Information to offeror during offer period and extension of offer to new shares*

~~Following the announcement of a firm intention to make~~ When an offer or possible offer is announced, the offeree company must, on request, provide the offeror as soon as possible with all relevant details of the issued shares (including the extent to which any such shares are held in treasury and details of any agreements to transfer or sell such shares out of treasury) and, to the extent not issued, the allotted shares and details of any conversion or subscription rights or any other rights pursuant to the exercise of which shares may be unconditionally allotted or issued during the offer period. ...

...”.

- Q9** **Should the Code be amended to require the offeree company to provide an offeror with details of the issued shares and the other information set out in Note 3 on Rule 10 upon request following the announcement of a possible**

offer and not solely following the announcement of a firm intention to make an offer? Do you have any comments on the proposed amendments to Note 3 on Rule 10?

(b) *Data Protection Act 1998*

4.13 The Code Committee understands that amending the Code to require the offeree company to provide an offeror with the following information could raise potential concerns under the Data Protection Act 1998 (the “DPA”):

- (i) electronic addresses and other information provided by offeree company shareholders for the receipt of documents, announcements and information (for example, elections to receive communications in a particular form); and
- (ii) addresses, electronic addresses and other information provided by, or on behalf of, persons with information rights in respect of the offeree company and other persons entitled to receive copies of documents, announcements and information for the receipt of such communications (for example, elections to receive communications in a particular form), including a copy of any register(s) of persons entitled to receive documents under Rule 15.

The information described above is referred to in this PCP as “DPA Information”.

4.14 The Code Committee understands that the Executive has discussed the amendments proposed in this PCP with the Information Commissioner and that the Executive has been advised that a requirement for the offeree company to provide DPA Information to an offeror, and the use of that information by the offeror, would raise two potential issues under the DPA as follows:

- (i) whether the provision of DPA Information by the offeree company to an

offeror, and the subsequent use of that information by the offeror, would satisfy the requirement under the DPA to meet one or more of the conditions for the “fair processing” of data when using information that is subject to the DPA; and

- (ii) whether the disclosure of DPA Information by the offeree company to an offeror would require the offeree company to issue a “fair processing notice” to the persons who provided that information to the offeree company.

Summary details in relation to both of these issues are set out below. This information is provided for illustrative purposes only. Parties to offers proposing to use DPA Information for any purpose other than as required under the Code should take appropriate advice as to how to comply with their obligations under the DPA.

(c) ***Requirement to satisfy one or more fair processing conditions***

- (i) *Provision of DPA Information to an offeror by the offeree company*

4.15 The Code Committee understands that the Information Commissioner has confirmed that the requirement under the DPA to meet one of the conditions for the fair processing of data would be satisfied by the offeree company providing DPA Information to an offeror pursuant to an obligation under the Code. This is on the bases that:

- (i) the processing of data by a “data controller” (in this case, the offeree company) pursuant to a legal obligation would satisfy the relevant condition; and
- (ii) an obligation under the Code would be treated as a legal obligation for

these purposes since the Code has the status of delegated legislation.

(ii) *Use of DPA Information by an offeror*

4.16 The Code Committee understands that, if the offeree company provided DPA Information to an offeror, the offeror would itself become a “data controller” in respect of that information. As such, the Code Committee has been informed that the offeror would be required to ensure that its use of that information satisfied one of the fair processing conditions under the DPA. The Code Committee understands that the Information Commissioner has confirmed that this requirement would be satisfied by an offeror obtaining and using DPA Information pursuant to an obligation under the Code on the same bases as described in paragraph 4.15 above.

4.17 However, the Code Committee understands that the use of DPA Information by an offeror for purposes that are not required under the Code (for example, using DPA Information to distribute marketing information following a failed offer) would not satisfy the fair processing condition referred to above and such use would therefore not comply with the DPA unless one of the other fair processing conditions were to be fulfilled. The Code Committee considers that DPA Information would be provided to an offeror solely to enable the offeror to send Code documents to offeree company shareholders, persons with information rights and other relevant persons and not for any other purpose.

4.18 In view of the above, the Code Committee proposes to amend the Code to inform an offeror that it may be subject to restrictions on the use that it is able to make of DPA Information provided to it by the offeree company or its registrar pursuant to the proposed new Section 4 of Appendix 4 to the Code. The Code Committee proposes to amend the Code as follows:

“4 THE PROVISION OF ADDRESSES, ELECTRONIC

ADDRESSES, ELECTIONS AND OTHER DETAILS

...

(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.”.

Q10 Should the Code be amended to inform an offeror that the use of information provided to it by the offeree company or its registrar pursuant to the new Section 4 of Appendix 4 to the Code for purposes that are not related to the offer may be subject to legal restrictions? Do you have any comments on the proposed new Section 4(c) of Appendix 4?

(d) Requirement to provide fair processing notices

4.19 The Code Committee understands that, unless a specific exemption is available, the offeree company would be required under the DPA to ensure that a fair processing notice is provided or made readily available to offeree company shareholders, persons with information rights or any other person entitled to be sent Code documents before providing DPA Information in respect of them to an offeror. The Code Committee further understands that the notice would be required to specify the reasons for providing DPA Information to the offeror and the offeror’s identity.

4.20 The Code Committee has been advised that the Information Commissioner has confirmed that, save as provided below, no fair processing notice would be required to be sent by the offeree company to offeree company shareholders, persons with information rights and other relevant persons before providing DPA Information to an offeror. This is on the basis that a requirement under the Code for the offeree company to provide DPA Information to an offeror would constitute a requirement to make a disclosure of personal data “by or under an enactment” and would therefore fall within an applicable exemption under the DPA.

- 4.21 However, the Code Committee has been advised that the relevant exemption would only apply to the extent that compliance with the requirement to provide or make available a fair processing notice would be inconsistent with the relevant enactment. The Code Committee has therefore been advised that, in the Information Commissioner's view, it would be helpful for the Code to include a requirement for offeree company shareholders, persons with information rights and other relevant persons to be notified that DPA Information in respect of them may be provided to an offeror during the offer period.
- 4.22 In view of the above, the Code Committee proposes to amend Rule 2.6 to require the offeree company to explain to offeree company shareholders and persons with information rights that their addresses, electronic addresses and certain other information provided by them for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under the proposed new Section 4 of Appendix 4 to the Code.
- 4.23 In addition, the Code Committee proposes to amend Note 1 on Rule 15 to make it clear that a copy of all announcements and other information sent to offeree company shareholders or persons with information rights in connection with an offer must also, where practicable, be sent to holders of Rule 15 securities. This would include a copy of an announcement commencing an offer period and/or a copy of an announcement made under Rule 2.5 sent to shareholders and persons with information rights under Rule 2.6. As a result of the proposed amendment to Rule 2.6 described above and set out in Appendix B to this PCP, such an announcement would be required to be accompanied by an explanation of its implications, including the fact that addresses, electronic addresses and other information provided by offeree company shareholders, persons with information rights and other relevant persons (including holders of Rule 15 securities) for the receipt of communications from the offeree company may be provided to an offeror during the offer period. The Code Committee anticipates that this should

ensure that, where practicable, holders of Rule 15 securities and other relevant persons are informed that their addresses, electronic addresses and other information may be provided to an offeror during an offer period under the new Section 4 of Appendix 4 to the Code. The full text of the amendments to Rule 2.6 and Note 1 on Rule 15 is set out in Appendix B to this PCP.

- 4.24 The Code Committee has been advised that the Information Commissioner has confirmed that, if the Code were to be amended as proposed and the offeree company provided an appropriate explanation to shareholders, persons with information rights and other relevant persons, the requirement for the offeree company to provide or make available a fair processing notice to those persons would be satisfied.
- 4.25 In addition, the Code Committee proposes to clarify that what is currently the final paragraph of Rule 2.6(b) applies equally to Rule 2.6(a) by making that final paragraph a new Rule 2.6(c).
- 4.26 The Code Committee therefore proposes to amend the Code as follows:

**“2.6 OBLIGATION ON THE OFFEROR AND THE OFFEREE
COMPANY TO ~~CIRCULATE~~DISTRIBUTE
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.the takeoverpanel.org.uk).

Q11 Should the Code be amended to require the offeree company to explain to offeree company shareholders, persons with information rights and other relevant persons that their addresses, electronic addresses and certain other information provided by them for the receipt of communications from the offeree company may be provided to an offeror during the course of an offer as required under the proposed new Section 4 of Appendix 4 to the Code? Do you have any comments on the proposed new paragraph (c) of Rule 2.6?

5. Receiving copies of certain documents, announcements and information in hard copy form

(a) Right to receive copies of certain documents, announcements and information in hard copy form

5.1 The Code Committee recognises that certain shareholders, persons with information rights and other persons to whom copies of Code documents are sent:

(i) may find it more convenient to receive Code documents in hard copy form than in electronic form or by means of website publication; or

(ii) may not have access to computers or other electronic devices that are capable of receiving documents in electronic form or of accessing websites.

The Code Committee is keen to ensure that such persons are not prejudiced as a result of being sent Code documents in electronic form or by means of website publication. The Code Committee therefore intends to amend the Code to provide that any person to whom a Code document is sent in electronic form or by means of website publication should be able to request to be provided with a copy of it in hard copy form. The Code Committee proposes that this right should also extend to any future Code documents which will be sent to that person in relation to an offer by a party to the offer.

- 5.2 The Code Committee believes that a shareholder, person with information rights or other relevant person should be able to notify any party to an offer that he would like to receive copies of all future Code documents sent to him in connection with an offer (whether published by that party or any other party) in hard copy form. For example, the Code Committee believes that any such person should be able to contact an offeror and request that future Code documents that are sent to him in connection with the offer by that offeror, the offeree company or any other offeror should be sent to him by the relevant party in hard copy form without having to make separate requests of those other parties.
- 5.3 In view of the above, the Code Committee proposes to amend the Code by introducing a new Rule 19.9 as follows:

**“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.

...

(f) ... 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 any 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."

- Q12** If a document, an announcement or any information is required to be published under the Code and is sent to a person (i) in electronic form; or (ii) by means of website publication, should that person have a right to require a hard copy of the document, announcement or information to be sent to him as proposed? Do you agree that this right should extend to future communications from a party to the offer? Do you have any comments on the proposed Rule 19.9?

(b) *General Principle 1: equivalent treatment*

5.4 General Principle 1 provides that:

“[a]ll holders of the securities of an offeree company of the same class must be afforded equivalent treatment”.

5.5 The Code Committee does not consider the fact that Code documents may be sent in different forms (whether hard copy form, electronic form or by means of website publication) to different persons would preclude the recipients of those documents from being considered as having been afforded equivalent treatment for the purposes of General Principle 1. The Code Committee therefore believes that, if the Code is amended as proposed, an offeror would be able (if it so wished) to send a Code document to some offeree company shareholders, persons with information rights and other relevant persons in hard copy form, others in electronic form and the remainder by means of website publication, without breaching the principle of affording equivalent treatment to all holders of the securities of an offeree company of the same class.

5.6 In particular, the Code Committee does not consider that publishing a Code document by means of website publication would breach the principle of equivalent treatment for persons who do not have access to computers or other electronic devices that would enable them to access a copy of the relevant document. This is on the basis that the Code Committee believes that all persons to whom Code documents are required to be sent would have an equivalent opportunity to:

- (i) gain access to suitable computers or other electronic devices, or make other arrangements to access information published electronically, if they wished to do so; or
- (ii) elect to receive communications from a party to an offer in hard copy form

either in advance of, or following, publication.

- 5.7 The fact that a person may not have arrangements in place to gain access to a Code document immediately upon publication does not, in the opinion of the Code Committee, preclude such person from being considered to have been afforded equivalent treatment to other persons in the same position for the purposes of General Principle 1.
- 5.8 The Code Committee recognises that, if a Code document is published by means of website publication and the recipient has not made a prior election under the Code or any other applicable legal or regulatory provisions to receive documents in hard copy form and/or does not have access to a computer or other electronic device capable of accessing websites via the internet, there is likely to be a delay before access to the Code document is gained, or a hard copy is received. Provided this delay is no longer than is reasonably necessary, for example, to enable the party which published the Code document to take the practical steps required to send a hard copy to the requesting person, the Code Committee does not believe that such person will have been prejudiced as a result and should not therefore be precluded from being considered as having been afforded treatment equivalent to that afforded to persons who received hard copies at the outset or who have access to appropriate computers or electronic devices. The Code Committee believes that it is reasonable for these purposes to require a party publishing a Code document by means of website publication to send a hard copy of it to a person requesting a hard copy within two business days of that request being received.

Q13 Do you agree that all persons to whom Code documents are required to be sent would have an equivalent opportunity to (i) gain access to suitable computers or other electronic devices, or make other arrangements to access information published electronically; or (ii) elect to receive communications from a party to an offer in hard copy form either in advance of, or following, publication?

(c) *General Principle 2: timing implications of requesting copies in hard copy form*

5.9 General Principle 2 provides that:

“The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid”.

5.10 The Code Committee recognises that, if a person is sent a Code document by means of website publication and that person does not have access to a computer or other electronic device capable of accessing the document on the relevant website, he will need to:

- (i) make arrangements to gain access to a suitable computer or electronic device; or
- (ii) request to be provided with a copy in hard copy form.

In either case, the Code Committee realises that such a person would be likely to have less time to review the document once he has been able to gain access to a copy than a person who had made arrangements to gain access to the relevant Code document immediately or who had a pre-existing election in place to receive copies of all communications from the offeree company in hard copy form.

5.11 However, on the same basis as described above in relation to General Principle 1, the Code Committee believes that all persons to whom Code documents are required to be sent under the Code have an equivalent opportunity to:

- (i) gain access to suitable computers or other electronic devices, or make other arrangements to access information published on a website, if they wish to do so; or

- (ii) elect to receive communications from a party in hard copy form either in advance of, or following, publication by means of website publication.

5.12 Furthermore, the Code Committee believes that the timetable within which offers are conducted under the Code should afford shareholders and other relevant persons sufficient opportunity following the announcement of an offer or possible offer to make arrangements to receive Code documents in hard copy form. In addition, the Code Committee believes that, if a person requests a copy of a Code document in hard copy form, and a copy is sent to that person within a reasonable period of time (which, in the opinion of the Code Committee, would be within two business days of the request being received by the relevant party) such person ought still to have sufficient time to reach a properly informed decision on the offer.

5.13 The Code Committee therefore believes that, provided the amendments to the Code proposed in the new Rule 19.9 are implemented and complied with, the requirements of General Principle 2 will have been satisfied.

Q14 Do you agree that, provided a person to whom a document, an announcement or any information is sent by means of website publication is sent a hard copy within two business days of the request being received by the relevant party, that person should have sufficient time to reach a properly informed decision on the offer?

(d) Statement of right to receive copies of Code documents in hard copy form

5.14 The right of a person to whom a Code document has been sent in electronic form or by means of website publication to be provided with a hard copy of the Code document or any Code document published in relation to the offer in the future is only likely to be effective if that person is made aware that he has such a right.

5.15 The Code Committee therefore proposes to amend the Code to require that, if a

Code document is:

- (i) sent to a person in electronic form; or
- (ii) published by means of website publication,

the document (and any related website notification) must contain a statement that the person to whom it is sent may request a copy of the Code document (and any information incorporated into it by reference to another source) in hard copy form and may also request that all future Code documents sent to that person should be sent in hard copy form. The Code Committee considers that any such Code document (or website notification) should draw attention to the fact that a hard copy of the Code document will not be sent to the relevant person unless requested. In addition, 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 for hard copies may be submitted).

5.16 The Code Committee therefore proposes to include the following new paragraph (e) in the proposed new Rule 19.9 set out above:

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

...

(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 a 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 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 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).

...”.

Q15 Should a Code document, including any related website notification, contain a statement that a person to whom it is sent may request a copy of the Code document (and any information incorporated into it by reference to another source) in hard copy form and may also request that all future Code documents sent to that person should be in hard copy form? Do you have any comments on the proposed new Rule 19.9(e)?

(e) Existing elections

5.17 The Code Committee understands that, under the provisions of the 2006 Act and the DTRs, shareholders and persons with information rights may elect to receive communications from a company in a particular form (for example, a shareholder may elect to receive all communications in hard copy form). The Code Committee believes that, if an election to receive communications from a company in hard copy form has been made by, or on behalf of, a person entitled to receive copies of Code documents, that election should be treated by each party to an offer as also applying in respect of Code documents. However, the Code Committee believes that if no such election has been made by a person who is entitled to receive a particular Code document, the publishing party should be entitled to choose to publish that document in either hard copy form, electronic form or by means of website publication (or any combination thereof).

5.18 The Code Committee therefore proposes to amend the Code by introducing a new Rule 19.9(f) into the Code as follows:

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

...

(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, such 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). ... ”.

Q16 Should elections made by offeree company shareholders, persons with information rights and other persons in accordance with applicable legal and regulatory provisions to receive communications from the offeree company in hard copy form also apply to Code documents required to be sent to them by a party to an offer? Do you have any comments in relation to the proposed new Rule 19.9(f)?

(f) Details of elections to be provided to other parties

5.19 The Code Committee intends to amend the Code to require the offeree company to provide an offeror, or instruct its registrar to provide, details of existing elections made by a person entitled to be sent copies of Code documents in accordance with applicable legal and regulatory provisions to receive communications from the offeree company in hard copy form.

5.20 The Code Committee therefore proposes to amend the Code by introducing a new paragraph (a)(iv) into the proposed new Section 4 of Appendix 4 to the Code as follows:

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

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

...

(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.

...”.

5.21 Separately, the Code Committee proposes to require an offeree company to update an offeror, or its receiving agent, in respect of any changes in such elections in the same manner as changes in the shareholder register, as previously described in paragraphs 4.1 to 4.9 above.

Q17 Should the Code be amended to require the offeree company to provide, or instruct its registrar to provide, an offeror with details of elections made by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons to receive communications from the offeree company in hard copy form?

(g) *Overseas shareholders*

5.22 The Code Committee recognises that requiring a party to an offer to send hard copies of Code documents to persons in overseas jurisdictions may raise issues under local securities laws and regulations. The Code Committee considers that persons in overseas jurisdictions should be able to request to be provided with a hard copy of a Code document unless there is a sufficient objective justification for the party which publishes it not doing so on the basis described in Rule 30.3 and the Note on Rule 30.3.

5.23 In view of this, the Code Committee proposes to make the right to receive hard copies of Code documents that are published in electronic form or by means of website publication expressly subject to the provisions of Rule 30.3 by including the proposed new Rule 19.9 in the list of Rules that are subject to Rule 30.3. In addition, the Code Committee proposes to make certain other amendments to Rule 30.3 that flow from the proposals in this PCP or which otherwise aid

understanding of the Rule. Further information in relation to these amendments is set out in paragraphs 9.16 to 9.20 below and the full text of the proposed amendments to Rule 30.3 and the Note on Rule 30.3 is set out in Appendix B.

Q18 Should the right of persons located in non-EEA jurisdictions to receive hard copies of Code documents that are published in electronic form or by means of website publication be made subject to the provisions of Rule 30.3 and the Note on Rule 30.3?

6. Distribution of documents, announcements and information to the Panel and other parties to an offer

6.1 In addition to requiring Code documents to be sent to offeree company shareholders, the Code currently requires under Rule 19.7 that, among other things, documents and announcements should be distributed to the Panel and to the advisers to all other parties to the offer. In the light of the proposed amendments in relation to the publication of documents, announcements and information in electronic form and by means of website publication, the Code Committee proposes to introduce a new Rule 19.10 which would restate in substance the provisions currently set out in Rule 19.7, subject to a few minor amendments.

6.2 The Code Committee therefore proposes to amend the Code by introducing a new Rule 19.10 into the Code which will amend the provisions currently set out in Rule 19.7 as follows:

“19.107 DISTRIBUTION AND AVAILABILITY OF DOCUMENTS, AND ANNOUNCEMENTS AND INFORMATION TO THE PANEL AND OTHER PARTIES TO AN OFFER”

(a) Before an 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) A copy Copies of all other documents and, announcements bearing on an offer and of and information, including advertisements and other any material released to the media (including any notes to editors), published in connection with an offer by, or on behalf of, an offeror or the offeree company, must at the time of publication release be sent in hard copy form and electronic form to:- lodged with

(i) the Panel; and

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

Such documents, announcements or information and must not be released to the media under an embargo (see also the Note 1 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.

...”.

Q19 Do you have any comments on the proposed new Rule 19.10?

7. Incorporation of information into documents by reference to other sources

(a) Increase in volume of information sent to offeree company shareholders

7.1 The Code Committee believes that, in recent years, the volume of information that has been printed and sent to shareholders and other relevant persons in transactions that are subject to the Code has been significantly greater than was the case historically. As part of its review of how information in relation to offers is provided to shareholders generally under the Code, the Code Committee considered whether it should propose amendments to the Code intended to reduce

the volume of information sent to shareholders (notwithstanding the other changes proposed in this PCP in relation to the manner in which Code documents may be published). In considering this issue, the Code Committee was mindful of General Principle 2, which provides that the holders of securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid.

7.2 In its consideration of possible Code amendments, the Code Committee considered certain provisions of the Prospectus Rules in relation to the publication of prospectuses. These provisions enable companies that are subject to the Prospectus Rules to incorporate information that is required to be included in prospectuses by reference to other sources (referred to in this PCP as “incorporation by reference”). The Code Committee understands that these provisions were intended to make the process of producing prospectuses simpler and to reduce the related printing and posting costs.

(b) Current position under the Code

7.3 No provision is currently made in the Code for information to be incorporated into Code documents by reference to other sources of information. However, the Code Committee understands that, in certain circumstances, the Executive has been prepared to accept a limited form of incorporation by reference. For example, the Executive has permitted information to be incorporated into offer documents by reference to information included in a prospectus or a company’s annual report and accounts, provided that the source document was sent to shareholders in the same envelope as the offer document and that the offer document included appropriate cross references detailing where the information required by the Code could be found. The Code Committee understands that this policy developed in response to situations where the Executive considered that a strict application of the relevant Rules would be unnecessarily burdensome.

7.4 In contrast, the Code Committee understands that the Executive has not acceded to requests from offeree companies for dispensations from the requirement to include historical financial information in an offer document on the basis that the company had recently published its annual report and accounts, or published a prospectus, in circumstances where that document would not be re-sent to shareholders together with the offer document. This was on the basis that shareholders may not have been sent or retained a copy of the document, or may not have a copy conveniently available, and that the information should therefore be reproduced in the offer document.

7.5 The Code Committee considers that the incorporation of information into documents by reference to other sources should now be permitted expressly in the Code. The Code Committee considers that incorporation by reference would be likely to reduce the length of documents and have the same benefits as are described in paragraph 3.1 above in relation to the electronic communications proposals as regards cost savings, environmental impact and enabling certain companies to use forms of communication that they are able to make use of under other legal and regulatory provisions.

(c) Incorporation of information by reference to other sources

7.6 The Code Committee therefore proposes to amend the Code to enable certain information to be incorporated into documents by reference to other sources. The Code Committee believes that, in particular, historical financial information in respect of an offeror and the offeree company should be capable of being so incorporated.

7.7 While the Code Committee believes that it would benefit parties involved in offers to amend the Code to provide that information may be incorporated by reference into Code documents, the Code Committee is of the view that it is important that shareholders and other persons sent such documents should not be

prejudiced as a result. With this in mind, the Code Committee is proposing amendments that are aimed at safeguarding the interests of shareholders and other persons to whom documents are sent. The effect of the proposed amendments would be as follows:

- (i) in order for information to be incorporated by reference into a Code document, that information would be required to be published on a website by no later than the date on which the Code document is published;
- (ii) information incorporated by reference into a Code document would be required to be published on the relevant website in “read-only” format, thereby averting the possibility of the information being amended (inadvertently or otherwise), and should be capable of being printed, read and retained by an intended recipient of the document;
- (iii) the persons to whom Code documents are sent would have a right to be provided with a hard copy of information incorporated by reference;
- (iv) any document which incorporates information by reference (and any related website notification) would be required to contain a statement that a shareholder, person with information rights or other person to whom it is sent may request a hard copy of any information incorporated by reference. Attention must also 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);
- (v) any document which incorporates information by reference would be required to include a consolidated list of all such information and, in each

case, a cross reference to the source of the relevant information specifying in precise terms where it may be located (for example, referring to the website address, document, page and paragraph where the information may be found). The Code Committee would not consider it to be acceptable for a general reference to be made to where information may be found (for example, simply stating that information may be found “*in the company’s annual report and accounts*” or “*on the company’s website*”); and

- (vi) information that is incorporated by reference into Code documents would be required to be sent to the Panel, and the advisers to any other parties to the offer, in electronic form at the same time as the relevant Code document.

7.8 The Code Committee therefore proposes to amend the Code by introducing a new Rule 24.14 and a related Note into the Code, as follows:

“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).

(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.”.

- 7.9 In addition, the Code Committee proposes to amend the Code by introducing a new Note on Rule 19.10, as follows:

“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.”.

7.10 The Code Committee recognises that sending hard copies of information that is incorporated by reference into Code documents to persons in overseas jurisdictions may raise issues under local securities laws and regulations. The Code Committee therefore proposes to make the right to receive copies of such information in hard copy form expressly subject to the provisions of Rule 30.3 by including the proposed new Rule 24.14 in the list of Rules that are subject to Rule 30.3. The full text of the proposed amendments to Rule 30.3 is set out in Appendix B to this PCP.

Q20 Should the Code be amended to enable information to be incorporated into documents by reference to other sources as proposed? Do you have any comments on the proposed new Rule 24.14 or new Note on Rule 19.10?

Q21 Should shareholders, persons with information rights and other relevant persons be entitled to receive a hard copy of any information incorporated into a document by reference to another source?

8. Consequential amendments

(a) *References to Code documents being “posted”, “despatched”, “issued” or “sent” to persons*

8.1 If the proposed new Rule 19.8 is adopted, the Code Committee believes that a number of consequential amendments to the Code would need to be made. Specifically, since a Code document would be treated as being “sent” to persons entitled to receive a copy of it by, for example, sending a copy to them in electronic form, or publishing a copy on a website and sending them a website notification, it may no longer be appropriate to require that the document should be “posted”, “despatched” or “issued” to the relevant persons.

8.2 The Code Committee therefore believes that the current references in the Code to

documents being “posted”, “despatched” or “issued” to persons should be amended to refer to a copy of the relevant Code document as being required to be “sent” to the relevant person. For example, the Code Committee believes that the first sentence of Rule 30.1(a) should be amended as follows:

“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. ...”.

- 8.3 In addition, the words “posting” and “posted” are currently used in the Code to refer to the act of sending documents to shareholders and other relevant persons and also to refer to the point in time at which those documents are sent. The Code Committee believes that references in the Code to “posting” and “posted”, and in certain contexts existing references to documents being “sent”, should be amended to refer instead to “publication” and “published”. For example, the Code Committee believes that the second and third sentences of Rule 30.1(a) of the Code should be amended as follows:

“30.1 THE OFFER DOCUMENT

(a) ... 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.”.

- 8.4 The full text of the amendments that the Code Committee proposes to make to the Code to reflect the points referred to above is set out in Appendix B to this PCP.

Q22 Should references to Code documents being “posted”, “despatched” or “issued” and to the “posting” of such documents be amended to refer instead to those documents being “sent” to the relevant persons or “published” and/or to their “publication”? Do you have any comments on the proposed

amendments set out in Appendix B?

(b) *References to an offer having been “posted”*

8.5 The word “posted” is also used in the Code to refer to an offer that has been “made” by an offeror. On the basis of the proposed amendments in relation to the way in which Code documents are sent to shareholders and other persons, the Code Committee believes that references to the “posting” of an offer should refer instead to an offer being “made”. For example, the Code Committee believes that Rule 35.1 should be amended as follows:

“35.1 DELAY OF 12 MONTHS

Except with the consent of the Panel, where an offer has been announced or madeposted ...”.

8.6 The full text of the amendments that the Code Committee proposes to make to the Code to reflect the point referred to above is set out in Appendix B to this PCP.

Q23 Should references to an offer having been “posted” be changed to refer instead to the offer having been “made”? Do you have any comments on the proposed amendments set out in Appendix B?

(c) *Other consequential and non-material amendments*

8.7 In addition to the amendments described above, the Code Committee proposes to make a number of consequential and other non-material amendments to the Code. These amendments, among other things, amend certain references in the Code to documents, announcements and information being “circulated”, “addressed”, “disclosed” and “provided”, and certain references to persons being “informed in writing”, to reflect the principal amendments described in this PCP. A number of similar changes are also proposed.

8.8 The full text of the amendments that the Code Committee proposes to make to the

Code to reflect the points referred to above is set out in Appendix B to this PCP.

**Q24 Do you agree with the proposed amendments referred to in paragraph 8.7?
Do you have any comments on the proposed amendments set out in
Appendix B?**

PART B: Publication of documents, announcements and information on websites**9. Requirement to publish copies of documents, announcements and information on a website****(a) Background**

9.1 The Executive's policy regarding the disclosure of offer-related information on websites was developed in the late 1990s, when the use of websites as a means of making documents and information available publicly was still a recent phenomenon and the current provisions of the Code do not reflect the step-change in the use of websites that has occurred since that time. The Code Committee believes that websites are now one of the principal tools used by public companies to communicate with shareholders, potential investors and other interested persons.

9.2 The importance of websites as a form of communication by companies has been reflected in recent years by changes to United Kingdom company law and other regulations. Many of these changes affect companies to which the Code applies. For example:

- (i) the 2006 Act requires that, where a poll is taken at a general meeting of a quoted company (which includes a company whose equity share capital has been admitted to the Official List in accordance with the Financial Services and Markets Act 2000 or is officially listed in an EEA state), that company must make information in relation to the resolution and the poll available on a website. The company is also required to maintain that information on its website for a period of two years thereafter;
- (ii) the AIM Rules for Companies require a company whose securities are admitted to trading on AIM to maintain a website on which key

information about the company, its business and its management should be disclosed;

- (iii) the DTRs require, among other things, that a company which has a website and has securities admitted to trading on a regulated market must make available on its website all inside information announced by means of a Regulatory Information Service for a period of one year following publication; and
- (iv) the Combined Code on Corporate Governance published by the Financial Reporting Council requires that, after a vote has been taken on a resolution at a general meeting (except where taken on a poll), a company should ensure that specified information about proxy appointments and voting is made available on a website as soon as reasonably practicable.

The Code Committee therefore believes that, in effect, many offerors and offeree companies that are subject to the Code are now required to have a website in order to comply with the applicable regulatory requirements or to have a website constructed and hosted on their behalf.

(b) Use of websites by the Panel

9.3 The Code currently makes extensive reference to the Panel's own website as a source of information. For example, details of the Panel and related information is referred to in the Code as being available on the Panel's website. Guidance is also provided as to the nature of the dealings disclosure obligations that arise during offer periods and how they may be fulfilled together with details of the fees and charges payable to the Panel. The Panel also utilises website publication as a means of disseminating information to the market in relation to specific offers (in the form of Panel Statements) and in relation to Code issues generally (for example, Executive Practice Statements, Public Consultation Papers and

Response Statements are available on the Panel's website together with a copy of the Code itself and the instruments that amend it from time to time).

(c) *Use of websites by offerors and offeree companies*

9.4 The Code currently makes very limited provision for the use of websites and other forms of electronic communication by offerors and offeree companies. The exception is Note 1 on Rule 2.6, which provides that a copy of the full text of an announcement made under Rule 2.5 could be made readily and promptly available to shareholders, employee representatives or employees by, for example, placing it on the website of the offeror or the offeree company.

(d) *Executive's policy to date in respect of information published on websites*

9.5 The Executive's application of the Code to the publication of information on websites was described in the Panel's Annual Report for 1999-2000 (the "2000 Annual Report"). The Code Committee understands that this policy sought to apply the same standards to information published on a website as to information published in any other form.

9.6 In summary, the 2000 Annual Report provided that the following Rules should apply to the publication of information on websites:

- (i) Rules 19.1 (*standards of care*) and 19.3 (*unacceptable statements*) should be applied to documents and information published on websites or distributed in electronic form in the same way as to other offer-related information. This means that such information should be prepared with the highest standards of care and accuracy, should be adequately and fairly presented and should not mislead shareholders or the market or create uncertainty;

- (ii) Rule 19.2 (*responsibility*) should be applied to all offer-related information published on websites or distributed in electronic form. In particular, this means that a responsibility statement from the directors of an offeror or the offeree company (as appropriate) must be attached to the information disclosed on the website or in electronic form, even if the information was first announced without the inclusion of such a statement. This could be done either by including a responsibility statement on each page of the website or document or information stored in electronic form or, alternatively, by including a responsibility statement on the gateway to the area of the website or electronic storage device where the offer-related information is located, provided that access to the relevant area may only be obtained through this gateway;

- (iii) Rule 19.7 (*distribution and availability of documents and announcements*) should be applied so that copies of all relevant website pages (whether or not previously published in another medium) should be lodged with the Panel and the advisers to all other parties to the offer at the time of release; and

- (iv) Rule 20.1 (*equality of information to shareholders*) should be applied so that the posting of information on a website will not satisfy the obligation to notify all offeree shareholders of material new information or significant new opinions. Accordingly, a financial adviser to the offeror or offeree company should, by 12 noon on the business day following the posting of information on a website, provide the Executive with a letter confirming that no material information or significant new opinions have been placed on a website.

(e) *Requirement to publish copies of documents, announcements and information on a website*

- 9.7 The Code Committee believes that the Code should be amended so as to require a party to an offer to publish on a website a copy of all documents, announcements and information published by it in relation to the offer. That website would form a single point of reference for all such information and, in the opinion of the Code Committee, would make it easier for shareholders and other interested persons to obtain information in relation to offers quickly and efficiently.
- 9.8 The Code Committee considered whether to propose the introduction of a requirement that each party to an offer should publish on a website a copy of all documents, announcements and information published in connection with the offer (i.e. including those first published by another party to the offer). However, the Code Committee concluded that doing so would involve a degree of duplication which may be both unnecessary and unhelpful.
- 9.9 The Code Committee recognises that, in the context of a recommended offer, both the recommended offeror and the offeree company may want to publish documents, announcements and information first published by the other party on their respective websites. The Code Committee considers that this should be permissible but not required under the proposed revisions to the Code. On the other hand, in the context of a non-recommended offer, an offeror would not be required to publish on its website a copy of the offeree company's board circular and the offeree company would not be required to publish on its website an offeror's offer document.
- 9.10 The Code Committee anticipates that the documents, announcements and information that would be published by a party to an offer on a website would include:

- (i) Code documents published by that party;
- (ii) announcements issued by that party by means of a Regulatory Information Service (other than disclosure forms published under Rule 8); and
- (iii) documents put on public display by that party under Rule 26 (this is considered further in paragraph 10 below).

9.11 The Code Committee does not propose to extend the requirement to publish offer-related information on a website to cover disclosure forms published in connection with dealings in relevant securities during the offer period. This is on the basis that those shareholders who would like to review dealings disclosures notified to a Regulatory Information Service will be able to do so quickly and easily via a Secondary Information Provider (a “SIP”). Links to a number of SIPs for retail investors can be found on the Panel’s website.

9.12 The Code Committee considers that it would be appropriate for the Code to require documents, announcements and information published in relation to an offer to include a statement providing details of the website on which all such information will be published. However, the Code Committee does not propose that the Code should require such a statement to include details of similar websites maintained by other parties to the offer (for example, in the case of an offeror, the websites maintained by the offeree company or any competing offerors).

9.13 The Code Committee believes that most parties to an offer are likely to have an existing website and, in any event, understands that a website may be set up inexpensively and relatively quickly. The Code Committee has therefore concluded that a requirement for parties to an offer to publish offer-related documents, announcements and information on a website would be a proportionate measure in view of the benefits that could be obtained by

shareholders and the market generally. The Code Committee believes that a party to an offer should normally use its own website for publishing copies of offer-related documents, announcements and information. However, if a party to an offer does not have its own website, and proposes to use a website belonging to a third party for this purpose, the Code Committee considers that this should be permitted subject to the Panel's prior consent.

9.14 The Code Committee believes that offer-related documents, announcements and information should be available on a website during the course of an offer since that information may be relevant to shareholders seeking to reach a properly informed decision on the offer. In addition, the Code Committee believes that such documents, announcements and information should continue to be made available on a website during a competition reference period since they may be of continuing interest to shareholders in the offeree company, persons with information rights and other relevant persons notwithstanding that the offer may have lapsed. The Code Committee does not believe that there would be significant cost implications for parties to offers in continuing to make such documents, announcements and information available on a website during this period.

9.15 In view of the above, the Code Committee proposes to introduce a new Rule 19.11 into the Code as follows:

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

(a) As soon as possible following the publication of any document, announcement or information in relation to an offer, and in any event by no later than 12 noon on the business day following publication, the party which published the relevant document, announcement or information must ensure that a copy of it is published on a website. Dealing disclosures published under Rule 8.1 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).

(c) Any document, announcement or information published in relation to an offer by an offeror or the offeree company (other than dealing disclosures published under Rule 8.1) must contain a statement providing details of the website on which all such documents, announcements and information are 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.

...”.

Q25 Should the Code require copies of all documents, announcements and information published in relation to an offer to be made available on a website? Do you have any comments on the proposed new Rule 19.11?

Q26 Should a party to an offer be able to use a website maintained by a third party to publish copies of documents, announcements and information in connection with an offer (subject to the Panel’s consent)?

(f) Restricting access to websites to persons in overseas jurisdictions

9.16 The Code Committee recognises that requiring a party to an offer to publish offer-related documents, announcements and information on a website may require advice to be obtained in overseas jurisdictions in relation to local securities laws

and regulations. The Code Committee has been advised that, in many cases, applicable securities laws and regulations may need to be complied with, for example, by ensuring that appropriate disclaimers are added to the gateway to the website or by restricting access to websites from certain jurisdictions.

9.17 The Code Committee believes that, if a party to an offer proposes to restrict shareholders, persons with information rights or any other persons in overseas jurisdictions from accessing a website or any part of it, the same considerations as are set out in Rule 30.3 and the Note on Rule 30.3 should apply. This would mean (in summary) that the relevant part of the website should be made available to all shareholders, persons with information rights and other relevant persons in all jurisdictions unless there is a sufficient objective justification for not doing so. The Code Committee believes that, in considering whether there is a sufficient objective justification for restricting access to the relevant part of a website to persons in a particular jurisdiction, the considerations described in the Note on Rule 30.3 should apply. As such, the Code Committee believes that if the laws or regulations of a particular non-EEA jurisdiction may result in a significant risk of civil, regulatory or criminal exposure for an offeror or the offeree company if certain information is published on a website, and that exposure is not capable of being avoided by making minor amendments to the relevant information or the relevant part of the website then:

- (i) the offeror or the offeree company need not provide access to the relevant part of the website to persons located in that jurisdiction if less than 3% of the shares of the offeree company are held by registered shareholders there at the date on which information is to be published on the website (and there is no need to consult the Panel in these circumstances); or
- (ii) in all other cases, the Panel may grant a dispensation where it considers that it would be proportionate in the circumstances to do so having regard, notably, to the costs involved, any resulting delay to the transaction

timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company.

9.18 The Code Committee believes that a dispensation should not normally be granted in relation to a proposal to restrict shareholders, persons with information rights or any other persons located within the EEA from accessing Code documents published on a website.

9.19 The Code Committee therefore proposes to introduce a new Note 3 on the proposed new Rule 19.11 as follows:

“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.”

9.20 In addition, the Code Committee proposes to include the proposed new Rule 19.11 in the list of Rules that are subject to Rule 30.3, and to make certain other consequential amendments to Rule 30.3 that flow from the other proposals in this PCP. The Code Committee believes that, for ease of reference and understanding, Rule 30.3 should be restructured as follows:

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

If a document, an announcement or any information is required to be sent, published or made available to:

(a) shareholders in the offeree company;

(b) persons with information rights; or

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

pursuant to 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.”.

Q27 Should the Code permit restrictions on access to Code documents on websites by persons located in non-EEA jurisdictions? Do you have any comments on the proposed new Note 3 on Rule 19.11 or the proposed amendments to Rule 30.3?

(g) *Codification of the Executive’s policy in respect of information published on websites*

9.21 The Code Committee understands that the description of the Executive’s policy in relation to websites in the 2000 Annual Report no longer accurately reflects the way in which the Executive currently applies the Code, following the step-change that has occurred in the use of websites. In particular, the Code Committee understands that:

(i) the Executive no longer expects copies of all website pages to be lodged with the Panel and the advisers to all other parties to the offer at the time of release; and

(ii) a financial adviser to an offeror or the offeree company is no longer expected to provide the Executive with a letter confirming that no material information or significant new opinions have been placed on a website by 12 noon on the business day following the disclosure of information on a website.

9.22 However, the Code Committee understands that the description in the 2000 Annual Report of the application of certain other provisions of the Code to website publications does continue to reflect aspects of the Executive's policy in respect of websites and believes that these should now be codified. In particular, the Code Committee proposes to amend the Code to provide that:

- (i) a responsibility statement from the directors of the offeror or the offeree company (as appropriate) should be attached to offer-related information published on a website. The Code Committee proposes that this could be done either by including a responsibility statement on each offer-related page of the website or by including a responsibility statement on the gateway to the area of the website containing offer-related information, provided that access to the relevant area may only be obtained through this gateway; and
- (ii) save for publication as expressly permitted by the new Rule 19.8 (as described in paragraph 3.6 above), the disclosure of information on a website will not satisfy the obligation to notify all offeree shareholders of material new information or significant new opinions in relation to an offer. The Code Committee considers that parties to offers should therefore continue to notify material new information or significant new opinions in relation to an offer by publishing a Code document in accordance with the new Rule 19.8 or by making an announcement in accordance with Rule 2.9.

9.23 In view of the above, the Code Committee proposes to introduce the following Notes on the proposed new Rule 19.11:

"4. Responsibility statements

A statement from the directors of an offeror or the offeree company (as appropriate) in the form described in Rule 19.2 must be included in

relation to offer-related documents, announcements and information published on a website. A responsibility statement may be included in the required form either on each page of the website containing offer-related documents, announcements and information or on the gateway to the offer-related area of the website provided that access to the relevant area may only be obtained through this gateway.

5. 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 as nearly as possible at the same time and in the same manner.”.

Q28 Do you have any comments on the proposed new Notes 4 and 5 on the proposed new Rule 19.11?

10. Documents to be on display

(a) Current position under the Code

10.1 Rule 26 currently requires that, except with the consent of the Panel, copies of the documents referred to in that Rule (referred to in this PCP as “display documents”) must be made available for inspection from the time that the offer document or offeree board circular, as appropriate, is published until the end of the offer period. The offer document or offeree board circular must state which documents are being made available for inspection and the location at which they are displayed (which must be in the City of London or such other place as the Panel may agree).

10.2 The Note on Rule 26 provides that, on request, copies of all display documents must be made available by an offeror or the offeree company to the other party and to any competing offeror or potential offeror.

(b) *Requirement for display documents to be published on a website*

- 10.3 The Code Committee believes that, at present, hard copy display documents are sometimes put on display in circumstances that are not conducive to enabling shareholders and other interested persons to carry out a detailed review of the documents. In addition, representations have been made to the Code Committee that, given the increasing use of websites as a means of publishing material corporate information, website-based disclosure of display documents in connection with offers should be required since this would ensure a more broad-based and timely dissemination of information. This, it is argued, would lead to greater transparency for all stakeholders during the course of an offer.
- 10.4 The Code Committee believes that the Code should be amended to require that copies of all documents put on public display by a party under Rule 26 should be published on its website in addition to their being made available for physical inspection.
- 10.5 As explained above, the Code Committee considers that a party to an offer should normally use its own website for publishing copies of offer-related documents, announcements and information and the Code Committee believes that this should also be the case for display documents under Rule 26. However, if a party to an offer does not have its own website and proposes to use a website belonging to a third party for this purpose, the Code Committee considers that this may be permissible subject to the Panel's prior consent.
- 10.6 The Code Committee believes that copies of documents, announcements and information published by a party to the offer should be made available on a website from the time of publication of the offer document or offeree board circular (as appropriate) until the end of the offer and not only until the end of the offer period. This is on the basis that offer-related information may be relevant to shareholders seeking to reach a properly informed decision on the offer and that,

- in certain circumstances, shareholders' decisions may be taken after the end of the offer period. In view of this, the Code Committee proposes to extend the period during which documents on display under Rule 26 should be made available until the end of the offer. In addition, the Code Committee believes that display documents should continue to be made available for inspection and on a website during a competition reference period, since they may be of continuing interest to shareholders in the offeree company, persons with information rights and other relevant person notwithstanding that the offer may have lapsed. The Code Committee does not believe that there would be significant additional cost implications for parties to offers in continuing to make display documents available during this period.
- 10.7 The Code Committee also proposes to add a new Note on Rule 26 to make it clear that if a document on display under Rule 26 is amended, varied or updated during the period in which it is on display, then the amended, varied or updated document should also be put on display. The Code Committee believes that, as a matter of practice, parties to offers currently put such documents on display but that it would be helpful to make it clear that they are required to do so under the Code.
- 10.8 In view of the above, the Code Committee proposes to amend Rule 26, and to introduce new Notes 2, 3, 4 and 5, as follows:

“RULE 26. DOCUMENTS TO BE ON DISPLAY

Except with the consent of the Panel, copies of the following documents must be made available for inspection and published on a website from the time the offer document or offeree board circular, as appropriate, is published until the end of the offer ~~period~~ (and any related competition reference period). The offer document or offeree board circular must state which documents are so available ~~and~~, the place (being a place in the City of London or such other place as the Panel may agree) where inspection can be made and the address of the website on which the documents are published:—

...

NOTES ON RULE 26

1. Copies of documents

...

2. Website to be used for publication

A party to an offer should normally use its own website for publishing documents to be on display. If a party to an offer does not have its own website, or intends to use a website maintained by a third party for this purpose, the Panel should be consulted.

3. “Read-only” format

Documents on display on a website must be published in a “read-only” format so that they may not be amended or altered in any way.

4. Shareholders, persons with information rights and other persons in non-EEA jurisdictions

See Note 3 on Rule 19.11 and the Note on Rule 30.3.

5. Amendment, variation or updating of documents on display

If a document on display is amended, varied or updated during the period in which it is required to be on display under Rule 26, then the amended, varied or updated document should also be put on display.”

Q29 Should the Code be amended to require display documents to be made available for inspection on a website in addition to hard copy form until the end of the offer (and any related competition reference period)? Do you have any comments on the proposed amendments to Rule 26 or the new Notes 2, 3 and 4?

(c) *Offer documents, offeree board circulars, revised offer documents and offeree board opinions on revised offer documents*

10.9 Rule 30.1(a) provides that, on the day of 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 posted and where the document

can be inspected. Equivalent provisions are included in Rule 30.2(a) (in respect of offeree board circulars), Rule 32.1(a) (in respect of revised offer documents) and Rule 32.6(a) (in respect of offeree board opinions on revised offer documents). In each case, the relevant document is required to be put on display in accordance with Rule 26, although no reference to this requirement is made in Rule 26 itself.

- 10.10 The Code Committee believes that it would be clearer and more helpful to parties to offers and their advisers to amend Rule 26 to refer to the requirement for offer documents, offeree board circulars, revised offer documents and offeree board opinions on revised offer documents to be put on display by the parties which publish them.
- 10.11 In view of the above, the Code Committee proposes to introduce new Rules 26(p) and (q) as follows:

“... ”

(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)).”

- Q30 Should offer documents, revised offer documents, offeree board circulars and offeree board opinions on revised offer documents be added to the list of documents to be on display under Rule 26? Do you have any comments on the proposed new Rules 26(p) and (q)?**

(g) *Rule 32.7(a)*

- 10.12 The Code Committee has also reviewed Rule 32.7(a) and, in particular, has considered the second sentence of that Rule because it includes an equivalent provision to that included in Rules 30.1(a), 30.2(a), 32.1(a) and 32.6(a). The

Code Committee has concluded that the second sentence of Rule 32.7(a) is not necessary and therefore proposes to delete it, as set out in Appendix B to this PCP.

Q31 Should Rule 32.7(a) be amended as proposed?

PART C: Persons with “information rights”**11. Persons with information rights****(a) *Status under the Code of persons with indirect interests in securities***

11.1 The Code does not currently provide for persons with indirect interests in shares and other securities to be sent copies of Code documents or for such persons to exercise or enjoy any other rights in relation to offers since, until relatively recently, the rights of such persons were not recognised as a matter of United Kingdom company law.

(b) *Persons nominated to receive shareholder rights under the 2006 Act*

11.2 The Code Committee understands that the 2006 Act introduced a new regime in relation to the exercise of shareholders’ rights. The Code Committee has been advised that, in summary, the provisions of the 2006 Act enable registered shareholders to nominate other persons to enjoy certain of the rights that historically have been reserved for registered shareholders. The Code Committee understands that there are two ways in which the 2006 Act could be used by a registered shareholder to confer shareholder rights on another person.

(i) *Section 146 (“Traded companies: nomination of persons to enjoy information rights”)*

11.3 Section 146 of the 2006 Act provides that registered shareholders in companies whose shares are admitted to trading on a regulated market (which includes, among others, the London Stock Exchange’s regulated market and the PLUS-listed market operated by PLUS Markets plc) who hold shares on behalf of another person may nominate that person to enjoy “information rights”. The Code Committee understands that these provisions are in the nature of statutory

- rights and do not require any enabling provision to be included in a company's articles of association.
- 11.4 The Code Committee understands that a person with information rights under section 146 of the 2006 Act has a right to receive a copy of all communications that the company sends to its shareholders generally or to any class of its shareholders that includes the person making the nomination (the "nominating registered holder"). However, the Code Committee believes that this right does not extend to communications that are personalised for a particular shareholder and that any communications sent to a person with information rights must be sent to the person with information rights in addition to, and not as a substitute for, sending them to the nominating registered holder.
- 11.5 The Code Committee understands that the nomination of a person to enjoy information rights under the 2006 Act is at the option of the nominating registered holder and that a person purporting to be the holder of an indirect interest in shares is not able to nominate himself or otherwise elect to receive information rights. The Code Committee has been advised that a registered holder may not nominate more persons to receive information rights than he holds shares (for example, a registered holder of 10 shares may nominate a maximum of 10 persons to enjoy information rights).
- (ii) *Section 145 ("Effect of provisions of articles as to enjoyment or exercise of members' rights")*
- 11.6 The Code Committee understands that the second way in which the 2006 Act may be used by a shareholder to confer shareholder rights on another person is under section 145 of the 2006 Act. Under section 145, a company's articles may provide for a registered shareholder to nominate another person or persons as entitled to enjoy or exercise all or any specified rights of the shareholder in

relation to the company (other than in relation to the transfer or other disposition of the whole or any part of the shareholder's interest in shares).

- 11.7 The Code Committee therefore believes that section 145 of the 2006 Act could potentially be used to the same effect as section 146. For example, a company whose shares are not admitted to trading on a regulated market (and does not therefore fall within the scope of section 146 of the 2006 Act) could change its articles to provide that a shareholder who holds shares on behalf of another person may nominate that person to enjoy "information rights" (i.e. the right to receive a copy of all communications that the company sends to its shareholders generally or to any class of its shareholders that includes the person making the nomination).

(c) *Sending communications to persons with information rights under the 2006 Act*

- 11.8 The Code Committee understands that, under section 146 of the 2006 Act, a nominating registered shareholder may notify the company that a person with information rights wishes to receive communications in hard copy form and provide an address to which they may be sent.
- 11.9 The Code Committee has been advised that the provisions of the 2006 Act relating to companies sending communications in electronic form (for example, to shareholders) will also apply to communications with persons with information rights. For example, a company will be able to send documents or information to a person with information rights in electronic form if the nominating registered shareholder notifies the company that the person with information rights wishes to receive documents and information in that form and provides an address for this purpose.
- 11.10 The Code Committee also understands that, under the 2006 Act, a company may make enquiries of a person with information rights under section 146 once every

12 months as to whether that person wishes to retain their information rights. If no response is received within 28 days of such an enquiry, the nomination, and therefore that person's information rights, will cease to have effect and the company would not be required to act on it.

(d) *Implementation of sections 145 and 146 of the 2006 Act in practice*

11.11 The implementation of sections 145 and 146 of the 2006 Act is still at a relatively early stage. In view of this, the Executive consulted bodies representing companies, advisers and market participants during its informal consultation exercise to seek views as to how the regime introduced by the 2006 Act in relation to the exercise of shareholders' rights has been implemented in practice.

11.12 During this informal consultation, it became evident that there is uncertainty as to how sections 145 and 146 of the 2006 Act have been, and will in the future be, implemented. As far as the Code Committee is aware, there have been relatively few nominations under either section 145 or 146 of the 2006 Act and there is no consistent view in relation to:

- (i) how many persons are likely to be nominated to enjoy information rights;
- (ii) how many persons with information rights are likely to elect to receive communications in hard copy form; or
- (iii) how addresses, electronic addresses, elections and other details provided by nominating registered shareholders for the receipt of communications by persons with information rights will be recorded and stored.

11.13 In view of this, the Code Committee considered waiting for further information to emerge as to how the relevant provisions of the 2006 Act are operating in practice before proposing that the Code should be amended to introduce a right for persons

with information rights to be sent copies of Code documents in the same way as shareholders. However, on balance, the Code Committee concluded that the Code should be amended to introduce a right for persons with information rights to be sent copies of Code documents in the same way as shareholders. The principal reason for this conclusion is that, since such persons will have a right to receive all communications that a company sends to its shareholders generally, there would be a potential mismatch in the information received by such persons in the context of an offer if the Code did not require copies of Code documents to be sent to them. For example, a person nominated to receive information rights under the 2006 Act would receive a copy of an offeree board circular rejecting a non-recommended offer (because it would be a document sent by the company to its shareholders generally and should therefore be sent to persons with information rights) but not a copy of the offer document to which it relates (because the obligation on the offeror under the Code would be to send the offer document to offeree company shareholders and not to persons with information rights in respect of the offeree company).

(f) Proposed revised position under the Code

11.14 In view of the above, the Code Committee proposes to introduce a new definition of a “person with information rights” into the Code and, in summary, to ensure that there is a right for such persons to receive information in relation to an offer equivalent to that enjoyed by shareholders. The Code Committee proposes that, in order to have effect under the Code, the nomination of a person to receive information rights must not have been suspended, revoked or otherwise ceased to have effect. The Code Committee believes that, if a nomination of information rights is made by a shareholder and that nomination is then suspended, revoked or ceases to have effect for any reason, a party to an offer would not be required to act on that nomination for Code purposes.

11.15 In proposing amendments to the Code in relation to persons with information rights, the Code Committee recognises that this would impose an additional burden on offerors in terms of the obligation to make copies of Code documents available to them. In particular, in view of the uncertainty in relation to how many persons will be nominated to receive information rights and, of those persons, how many will elect to receive copies of Code documents in hard copy form, the Code Committee is not currently able to determine whether this is likely to result in a significant increase in the printing and posting costs incurred by offerors in satisfying such elections. However, on the basis of the information received by the Code Committee to date, the number of persons nominated to receive information rights is relatively small and therefore, in the immediate future, any increase in printing and posting costs that would be incurred in satisfying such requests would not be likely to be material.

Q32 Do you agree that the Code should be amended to recognise the position of persons with information rights under the 2006 Act?

(g) Proposed new definition

11.16 The Code Committee believes that a new definition of a “person with information rights” should be introduced into the Code which should include a person nominated to enjoy information rights under either section 145 or section 146 of the 2006 Act. The proposed new definition is as follows:

“Person with information rights

A person in respect of whom a nomination 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 shareholders that includes the registered shareholder making the nomination.”.

Q33 Do you have any comments on the proposed new definition of a “person with information rights”?

12. Sending copies of Code documents to persons with information rights

12.1 The Code Committee proposes that the Code should be amended to provide that Code documents should be sent to persons with information rights at the same time as they are sent to shareholders in the offeree company. For example, the Code Committee believes that Rules 2.6(a) and (b) should be amended as follows:

“2.6 OBLIGATION ON THE OFFEROR AND THE OFFEREE COMPANY TO DISTRIBUTE~~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

...”.

12.2 The Code Committee considers that any Code document sent to a person with information rights would be sent to them for information only and that this could be made clear in the relevant Code document if the party which publishes it wishes to do so.

12.3 The Code Committee does not believe that the Code should require forms of acceptance relating to an offer to be sent to persons with information rights on the

basis that such persons are not able to transfer or dispose of the whole or any part of a shareholder's interest in shares.

- 12.4 As described above, the Code Committee proposes to introduce a new Rule 19.8 to enable a Code document to be treated as having been sent to a person if it is:
- (i) sent to the relevant person in hard copy form;
 - (ii) sent to the relevant person in electronic form; or
 - (iii) published on a website, provided that the relevant person is sent a website notification by no later than the date on which it is published on the website.

The Code Committee believes that Code documents should be capable of being sent to persons with information rights in the same manner as they would be capable of being sent to shareholders in the offeree company. In addition, the Code Committee believes that any person with information rights should be entitled to request a hard copy of any document, announcement or information that is sent to him in electronic form or by means of website publication (as more fully described in paragraphs 5.1 to 5.3 above).

Q34 Should persons with information rights be entitled to be sent Code documents at the same time, and in the same manner, as they are sent to shareholders in the offeree company?

13. Consequential amendments

- 13.1 In view of the amendments to the Code proposed above, the provisions of the Code that refer to documents, announcements or information being required to be sent to shareholders will be required to be amended to refer also to "persons with information rights". In addition, a number of other consequential amendments

will be required. The full text of the relevant amendments is set out in Appendix B to this PCP.

Q35 Do you agree with the proposed consequential amendments relating to “persons with information rights” set out in Appendix B?

PART D: Assessment of the impact of the proposals

14. Proportionality, benefits and cost implications

14.1 The Code Committee believes that the proposals in this PCP constitute proportionate measures to:

- (i) enable electronic forms of communication to be used to send documents and information to shareholders and certain other relevant persons;
- (ii) facilitate and require a wider use of websites by parties to offers; and
- (iii) ensure that persons nominated to enjoy information rights receive the same information as shareholders.

14.2 The Code Committee believes that the proposals in this PCP would be of benefit to parties to offers, their advisers, shareholders, persons with information rights and other market participants.

14.3 The Code Committee believes that that the proposals in this PCP would not be likely to have significantly adverse cost implications. However, as noted in paragraph 11.15 above, the Code Committee is not currently able to determine how many persons will be nominated to receive information rights and, of those persons, how many will elect to receive copies of Code documents in hard copy form. As such, the Code Committee is not currently able to determine whether this is likely to result in a significant increase in the printing and posting costs incurred by offerors in satisfying such elections. However, on the basis of the information received by the Code Committee to date, the number of persons nominated to receive information rights is relatively small and therefore, in the immediate future, any increase in printing and posting costs that would be incurred in satisfying such requests would be likely to be non-material.

APPENDIX A

Persons consulted informally by the Executive (on a non-confidential basis)

1. Association of British Insurers (ABI)
2. British Bankers' Association (BBA)
3. Confederation of British Industry (CBI)
4. London Investment Banking Association (LIBA)
5. National Grid plc
6. Prudential plc
7. Registrars Group of the Institute of Chartered Secretaries and Administrators (ICSA)
8. Takeovers Joint Working Party of the City of London Law Society Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law
9. The Hundred Group of Finance Directors
10. The Share Centre

APPENDIX B

Proposed amendments to the Code

DEFINITIONS

Electronic form

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

(1) sent initially and received at its destination by means of electronic equipment for the processing or storage of data; and

(2) entirely transmitted, conveyed and received 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 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 shareholders that includes the registered shareholder making the nomination.

...

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 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. 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 requested;

(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 2.5**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~~ making of an offer is subject;

...

NOTES ON RULE 2.5

...

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 DISTRIBUTE~~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.

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

...

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.

...

Rule 2.9

2.9 PUBLICATION OF AN ANNOUNCEMENT ABOUT AN OFFER OR POSSIBLE OFFER

...

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

The board of the offeree company must obtain competent independent advice on any offer and the substance of such advice must be ~~made known to its shareholders~~ published.

NOTES ON RULE 3.1

...

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.

...

Rule 3.2

3.2 BOARD OF AN OFFEROR COMPANY

The board of an offeror must obtain competent independent advice on any offer when the offer being made is a reverse takeover or when the directors are faced with a conflict of interest. The substance of such advice must be ~~made known to its shareholders~~ published.

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**

...

4.2 RESTRICTIONS ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES

...

NOTES ON RULES 4.1 and 4.2

...

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

...

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.

...

Rule 9.1

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

...

NOTES ON RULE 9.1

...

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.

...

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 is published, 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.*

...

(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. ...*

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 published~~posted~~.

NOTES ON DISPENSATIONS FROM RULE 9

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

...

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.

...

RULE 10. THE ACCEPTANCE CONDITION*

...

NOTES ON RULE 10

...

3. *Information to offeror during offer period and extension of offer to new shares*

~~Following the announcement of a firm intention to make~~ When an offer or possible offer is announced, the offeree company must, on request, provide the offeror as soon as possible with all relevant details of the issued shares (including

the extent to which any such shares are held in treasury and details of any agreements to transfer or sell such shares out of treasury) and, to the extent not issued, the allotted shares and details of any conversion or subscription rights or any other rights pursuant to the exercise of which shares may be unconditionally allotted or issued during the offer period. ...

...

Rule 11.1

11.1 WHEN A CASH OFFER IS REQUIRED

...

NOTES ON RULE 11.1

...

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~~sent 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.

...

(b) The board of the offeree company must obtain competent independent advice on the offer or proposal to the stockholders and the substance of such advice must be published~~made known to its stockholders~~, together with the board's views on the offer or proposal.

(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.

...

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 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. ...

3. Sources

The source for any fact which is material to an argument must be clearly stated, including sufficient detail to enable the significance of the fact to be assessed; however, if the information has been included in a document previously ~~sent to shareholders~~ published, an appropriate cross reference may be made.

...

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 ~~company issues~~ publishes 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~~ company ~~issuing~~ publishing 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 ~~partycompany~~ or unpublished information originating from another ~~partycompany~~ are included, these must normally be covered by a responsibility statement by the directors of the ~~partycompany~~ ~~issuing~~ ~~publishing~~ the document or advertisement or by the directors of the other ~~partycompany~~; 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 issuemake 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 would be deleted in its entirety and re-numbered as new 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 would be re-numbered as a new Rule 19.7, amended as follows:

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.**

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 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 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, such 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 would be re-numbered as a new Rule 19.10, amended as follows:

19.107 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 publishedmade 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) A copy Copies of all other documents and, announcements bearing on an offer and of and information, including advertisements and other any material released to the media (including any notes to editors), published in connection with an offer by, or on behalf of, an offeror or the offeree company, must at the time of publication release be sent in hard copy form and electronic form to:- lodged with

(i) the Panel; and

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

Such documents, announcements or information and must not be released to the media under an embargo (see also the Note 1 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) As soon as possible following the publication of any document, announcement or information in relation to an offer, and in any event by no later than 12 noon on the business day following publication, the party which published the relevant document, announcement or information must ensure that a copy of it is published on a website. Dealing disclosures published under Rule 8.1 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).

(c) Any document, announcement or information published in relation to an offer by an offeror or the offeree company (other than dealing disclosures published under Rule 8.1) must contain a statement providing details of the website on which all such documents, announcements and information are 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. Responsibility statements

A statement from the directors of an offeror or the offeree company (as appropriate) in the form described in Rule 19.2 must be included in relation to offer-related documents, announcements and information published on a website. A responsibility statement may be included in the required form either on each page of the website containing offer-related documents, announcements and information or on the gateway to the offer-related area of the website provided that access to the relevant area may only be obtained through this gateway.

5. 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.

Rule 20.1

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.

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).

(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~~ publish 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 to shareholders of the offeree company 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

1. *When a board has effective control*

A board whose shareholdings confer control over a company which is the subject of an offer must carefully examine the reasons behind the advice ~~it gives to shareholders~~ that it publishes and must be prepared to explain its decisions publicly. ...

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**

Except with the consent of the Panel, copies of the following documents must be made available for inspection and published on a website from the time the offer document or offeree board circular, as appropriate, is published until the end of the offer ~~period~~ (and any related competition reference period). The offer document or offeree board circular must state which documents are so available ~~and~~, the place (being a place in the City of London or such other place as the Panel may agree) where inspection can be made and the address of the website on which the documents are published:—

...

(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)).

NOTES ON RULE 26

1. _____ Copies of documents

...

2. _____ Website to be used for publication

A party to an offer should normally use its own website for publishing documents to be on display. If a party to an offer does not have its own website, or intends to use a website maintained by a third party for this purpose, the Panel should be consulted.

3. _____ “Read-only” format

Documents on display on a website must be published in a “read-only” format so that they may not be amended or altered in any way.

4. Shareholders, persons with information rights and other persons in non-EEA jurisdictions

See Note 3 on Rule 19.11 and the Note on Rule 30.3.

5. Amendment, variation or updating of documents on display

If a document on display is amended, varied or updated during the period in which it is required to be on display under Rule 26, then the amended, varied or updated document should also be put on display.

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~~ 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) 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~~ input 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 ~~post~~ make 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~~

~~written~~ **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 35.1

35.1 DELAY OF 12 MONTHS

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

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 38.5**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. ...

...

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, announcement 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

(a) When ~~a firm intention to make an offer or possible offer~~ is announced, the offeree company should instruct its registrar to respond within two business days to a request from an offeror for the provision of the register which should be updated to reflect the position as at the close of business on the date of the request. ...

...

(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 an offer or possible offer is announced, the offeree company should respond, or instruct its registrar to respond, within two business days to a request from an 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.

(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.

(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.

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 ~~sentsupplied with copies~~ a copy 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*

...

... Until the ~~posting~~publication 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.

...

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. ...

APPENDIX C

List of questions

- Q1** Should the Code be amended to include a new definition of “electronic form”? Do you have any comments on the proposed definition?
- Q2** Should the Code be amended to include a new definition of “hard copy form”? Do you have any comments on the proposed definition?
- Q3** Should the Code be amended to include a new definition of a “website notification”? Do you have any comments on the proposed definition and Note?
- Q4** Should the Code be amended to permit Code documents to be published by sending a copy to the relevant person in electronic form or by means of website publication as an alternative to hard copy form? Do you have any comments on the proposed new Rule 19.8?
- Q5** Should the choice of whether to publish Code documents in hard copy form, electronic form or by website publication be left to an offeror and/or the offeree company to decide rather than be prescribed by the Code?
- Q6** The Code Committee considers that the Code should not require (i) a shareholder resolution; (ii) a provision in the offeree company’s articles of association; or (iii) any other procedural requirement to be satisfied, before copies of Code documents may be published by an offeror or the offeree company in electronic form or by means of website publication. Do you agree?
- Q7** Should the Code be amended to require the offeree company to provide, or instruct its registrar to provide, an offeror with details of addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons for the receipt of Code documents in hard copy form or electronic form as proposed? Do you have any comments on the proposed new Section 4 of Appendix 4?
- Q8** Should the Code be amended to require the offeree company to instruct its registrar to provide an offeror with the offeree company’s shareholder register following the announcement of a possible offer and not solely following the announcement of a firm intention to make an offer? Do you have any comments on the proposed amendments to Section 3 of Appendix 4?

- Q9** Should the Code be amended to require the offeree company to provide an offeror with details of the issued shares and the other information set out in Note 3 on Rule 10 upon request following the announcement of a possible offer and not solely following the announcement of a firm intention to make an offer? Do you have any comments on the proposed amendments to Note 3 on Rule 10?
- Q10** Should the Code be amended to inform an offeror that the use of information provided to it by the offeree company or its registrar pursuant to the new Section 4 of Appendix 4 to the Code for purposes that are not related to the offer may be subject to legal restrictions? Do you have any comments on the proposed new Section 4(c) of Appendix 4?
- Q11** Should the Code be amended to require the offeree company to explain to offeree company shareholders, persons with information rights and other relevant persons that their addresses, electronic addresses and certain other information provided by them for the receipt of communications from the offeree company may be provided to an offeror during the course of an offer as required under the proposed new Section 4 of Appendix 4 to the Code? Do you have any comments on the proposed new paragraph (c) of Rule 2.6?
- Q12** If a document, an announcement or any information is required to be published under the Code and is sent to a person (i) in electronic form; or (ii) by means of website publication, should that person have a right to require a hard copy of the document, announcement or information to be sent to him as proposed? Do you agree that this right should extend to future communications from a party to the offer? Do you have any comments on the proposed Rule 19.9?
- Q13** Do you agree that all persons to whom Code documents are required to be sent would have an equivalent opportunity to (i) gain access to suitable computers or other electronic devices, or make other arrangements to access information published electronically; or (ii) elect to receive communications from a party to an offer in hard copy form either in advance of, or following, publication?
- Q14** Do you agree that, provided a person to whom a document, an announcement or any information is sent by means of website publication is sent a hard copy within two business days of the request being received by the relevant party, that person should have sufficient time to reach a properly informed decision on the offer?
- Q15** Should a Code document, including any related website notification, contain a statement that a person to whom it is sent may request a copy of the Code document (and any information incorporated into it by reference to another

- source) in hard copy form and may also request that all future Code documents sent to that person should be in hard copy form? Do you have any comments on the proposed new Rule 19.9(e)?
- Q16** Should elections made by offeree company shareholders, persons with information rights and other persons in accordance with applicable legal and regulatory provisions to receive communications from the offeree company in hard copy form also apply to Code documents required to be sent to them by a party to an offer? Do you have any comments in relation to the proposed new Rule 19.9(f)?
- Q17** Should the Code be amended to require the offeree company to provide, or instruct its registrar to provide, an offeror with details of elections made by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons to receive communications from the offeree company in hard copy form?
- Q18** Should the right of persons located in non-EEA jurisdictions to receive hard copies of Code documents that are published in electronic form or by means of website publication be made subject to the provisions of Rule 30.3 and the Note on Rule 30.3?
- Q19** Do you have any comments on the proposed new Rule 19.10?
- Q20** Should the Code be amended to enable information to be incorporated into documents by reference to other sources as proposed? Do you have any comments on the proposed new Rule 24.14 or new Note on Rule 19.10?
- Q21** Should shareholders, persons with information rights and other relevant persons be entitled to receive a hard copy of any information incorporated into a document by reference to another source?
- Q22** Should references to Code documents being “posted”, “despatched” or “issued” and to the “posting” of such documents be amended to refer instead to those documents being “sent” to the relevant persons or “published” and/or to their “publication”? Do you have any comments on the proposed amendments set out in Appendix B?
- Q23** Should references to an offer having been “posted” be changed to refer instead to the offer having been “made”? Do you have any comments on the proposed amendments set out in Appendix B?
- Q24** Do you agree with the proposed amendments referred to in paragraph 8.7? Do you have any comments on the proposed amendments set out in Appendix B?

- Q25** Should the Code require copies of all documents, announcements and information published in relation to an offer to be made available on a website? Do you have any comments on the proposed new Rule 19.11?
- Q26** Should a party to an offer be able to use a website maintained by a third party to publish copies of documents, announcements and information in connection with an offer (subject to the Panel's consent)?
- Q27** Should the Code permit restrictions on access to Code documents on websites by persons located in non-EEA jurisdictions? Do you have any comments on the proposed new Note 3 on Rule 19.11 or the proposed amendments to Rule 30.3?
- Q28** Do you have any comments on the proposed new Notes 4 and 5 on the proposed new Rule 19.11?
- Q29** Should the Code be amended to require display documents to be made available for inspection on a website in addition to hard copy form until the end of the offer (and any related competition reference period)? Do you have any comments on the proposed amendments to Rule 26 or the new Notes 2, 3 and 4?
- Q30** Should offer documents, revised offer documents, offeree board circulars and offeree board opinions on revised offer documents be added to the list of documents to be on display under Rule 26? Do you have any comments on the proposed new Rules 26(p) and (q)?
- Q31** Should Rule 32.7(a) be amended as proposed?
- Q32** Do you agree that the Code should be amended to recognise the position of persons with information rights under the 2006 Act?
- Q33** Do you have any comments on the proposed new definition of a "person with information rights"?
- Q34** Should persons with information rights be entitled to be sent Code documents at the same time, and in the same manner, as they are sent to shareholders in the offeree company?
- Q35** Do you agree with the proposed consequential amendments relating to "persons with information rights" set out in Appendix B?