

RS 2005/5 Issued on 21 April 2006

THE TAKEOVER PANEL

**THE IMPLEMENTATION OF THE TAKEOVERS
DIRECTIVE**

**STATEMENT BY THE PANEL AND THE CODE
COMMITTEE FOLLOWING THE EXTERNAL
CONSULTATION PROCESS ON
PCP 2005/5**

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SECTION A

INTRODUCTION

1. PCP 2005/5 and implementing legislation

1.1 On 18 November 2005, the Takeover Panel (the “Panel”) and the Code Committee published a Public Consultation Paper (“PCP 2005/5”) entitled “The Implementation of the Takeovers Directive”. PCP 2005/5 contained amendments to the Takeover Code (the “Code”) to reflect both the requirements of the European Directive on Takeover Bids (Directive 2004/25/EC - the “Directive”) and of the implementing legislation, contained in Chapter 1 of Part 22 of the Company Law Reform Bill (the “Bill”), which was introduced into the House of Lords on 1 November 2005. The consultation period ended on 10 February 2006.

1.2 Early in March 2006, the Department of Trade and Industry (the “DTI”) announced that since the Bill will not have completed the Parliamentary process by 20 May 2006, when the Directive must be implemented, it had been decided that regulations would be made under powers in the European Communities Act 1972 to make the necessary changes on an interim basis. The Takeovers Directive (Interim Implementation) Regulations 2006 (the “Regulations”) will come into force on 20 May, to meet the implementation deadline for the Directive. They will cease to have effect as soon as the relevant provisions in the Bill come into force. The Regulations and Guidance Notes on them can be found on the DTI’s website at: www.dti.gov.uk/cld/hottopics.htm.

1.3 The Regulations will apply to transactions that are covered by the Directive; for the most part, in the UK, that will mean bids for UK registered companies that are traded on a regulated market¹. Until the relevant provisions of the Bill come into force, therefore, the Code will have statutory effect only in relation

¹ Currently relevant UK markets are certain markets operated by the London Stock Exchange and virt-x but not AIM or OFEX.

to a transaction and rule subject to the requirements of the Directive. The Panel will continue to regulate all other transactions covered by the Code as it does now. In order to reflect this interim legal position, the Panel and the Code Committee have had to make some amendments to the new Introduction to the Code (the “Introduction”), which will have effect only during the interim period. The Introduction as it will apply in the interim period is attached at Appendix A, marked up to show all changes made to the Introduction published with PCP 2005/5.

- 1.4 Once the relevant provisions of the Bill come into force, the Panel’s statutory powers will extend to all transactions to which the Code applies and the Introduction will revert to the version originally proposed in PCP 2005/5, as amended by this paper. The Introduction as it will apply after the Bill enters into force is at Appendix B (also in marked-up form). This version may be subject to further amendment if the Bill is amended or to reflect similar legislation in the Channel Islands or the Isle of Man.
- 1.5 The purpose of this Response Statement is to set out the conclusions of the Code Committee in relation to the responses received to PCP 2005/5 and to set out the additional amendments required as a result of the interim regime under the Regulations.

2. Code amendments and transitional arrangements

2.1 *Code amendments*

- 2.1.1 In addition to this Response Statement, the Code Committee is also publishing today three other Response Statements, namely RS 2005/3, RS 2005/4 and RS 2006/1. The amendments adopted by the four Response Statements will come into force on 20 May. Owing to the volume of changes, the Panel intends to publish a new edition of the Code which will be despatched to subscribers shortly before 20 May.

2.1.2 In some cases the Code Committee has adopted amendments in different Response Statements which affect the same provision of the Code. In order to assist readers in understanding not only all the amendments, but also their origins, the Code Committee has, for the most part, included in the appropriate Appendix to each Response Statement² only those amendments that arise out of the Code Committee's conclusions in relation to that particular Response Statement. However, in certain cases, where the same part of a provision of the Code has been changed by more than one Response Statement, that provision has been included in the Appendix marked to show all changes from the current Code, i.e. incorporating the amendments made in the other Response Statement(s). The consolidated amendments, being the adopted amendments marked to show all changes from the current edition of the Code, taking account of the amendments made by all the Response Statements, have today been made available on the Panel's website (www.thetakeoverpanel.org.uk). Where the numbering of a Rule or Note has been changed by any of the amendments, relevant cross references in other Rules or Notes have been changed in the new edition of the Code. For the most part, changes to cross references have not been included in the consolidated amendments available on the Panel's website. References to General Principles have also been changed to refer to the relevant new General Principle.

2.2 *Transitional arrangements*

The Code, as revised, will come into effect on 20 May and will be applied from that date to all companies and transactions to which it then relates, including those on-going transactions which straddle that date, except where to do so would give the amendments retroactive effect. **Where parties have doubts as to the consequences of any of the rule changes, in particular the impact on any transaction which is in existence or contemplation (including a transaction involving a company to which the Code does not**

² Appendix C to this RS

currently relate but to which it will relate on or after 20 May), they should consult the Panel prior to 20 May to obtain a ruling or guidance.

3. Number of responses received

A total of nine responses was received to PCP 2005/5, mainly from practitioners and professional bodies. Seven of the responses were non-confidential. A list of public respondents is provided at Appendix D.

4. Overview of responses

4.1 There was general support from all respondents for the overall approach taken to the implementation of the Directive, both by the Government in the Bill and by the Panel, in amending the Code. However, a number of concerns were raised.

4.2 In relation to the Introduction these were, most notably, about: the continued application of the residency test to AIM and OFEX companies; the rule relating to loss of Code protection in section 3(e); section 3(f), relating to Code responsibilities; the Code Committee's consultation procedures; and the proposed rule in section 9(a) about dealing with and assisting the Panel.

4.3 In relation to the Rules of the Code, the main issues of concern arose in connection with: the proposals relating to offers including consideration in cash and the interpretation of new General Principle 5; and with the new Rule 30.3 and its Note, relating to the provision of information to shareholders and employees overseas. There was also general uncertainty about the application of the new Rules to the provision of information and documents to employees or their representatives.

4.4 The Code Committee's conclusions on these and other points raised are set out below.

SECTION B

The Code Committee's conclusions on the Introduction to the Code

5. Section 3, Companies, transactions and persons subject to the Code

5.1 Section 3(a), Companies

5.1.1 One respondent raised two points in relation to this section. First, while welcoming the removal of the residency test³ for UK registered companies traded on a UK regulated market, this respondent felt that the Code Committee should go further and extend the application of the Code to any company listed in the UK whose registered office is overseas, using the shared jurisdiction model outlined in the Directive. Secondly, this respondent went on to suggest that the residency test should also be removed for any company whose shares are admitted to trading on AIM or OFEX. In similar vein, one other respondent also suggested that the second limb only of the residency test, relating to place of central management, should be removed for UK companies whose shares are admitted to trading on AIM or OFEX.

5.1.2 As far as the first point is concerned, under the Directive, if a company has any of its securities admitted to trading on a regulated market in the UK but has its registered office in another Member State of the European Economic Area ("a Member State"), it will either be regulated by the takeover authority in the Member State where it has its registered office (if it also has securities admitted to trading on a regulated market in that Member State), or it will be covered by the shared jurisdiction provisions. If, however, it has its registered office in another country outside the EEA, the Directive will not apply and there will be no harmonised legal framework within which the shared jurisdiction model could operate. The Code Committee does not, therefore,

³ Currently, "The Panel will normally consider a company to be resident only if it is incorporated in the UK, the Channel Islands or the Isle of Man and has its place of central management in one of those jurisdictions."

regard the proposal to extend this model to such overseas companies as a practical proposition.

5.1.3 As regards the second point, the residency test has two limbs: first, the company must have its registered office in the UK, the Channel Islands or the Isle of Man and second, it must also have its place of central management in one of those jurisdictions. The Code Committee was required by the Directive to drop the second limb of the test in relation to UK companies covered by the Directive (those with registered offices in the UK if any of their securities are admitted to trading on a UK regulated market). It also considered it appropriate to drop this second limb of the test in relation to another limited category of companies (those with registered offices in the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market in the UK or on any stock exchange in the Channel Islands or the Isle of Man⁴), which it regarded as having equivalent status to the UK companies covered by Directive. A factor in this decision was the closeness of the relationship between the Panel and regulators in the Channel Islands and the Isle of Man, which can facilitate the Panel in pursuing enforcement of the Code against these companies.

5.1.4 The Code Committee does not believe that it would be appropriate to remove the residency test for AIM and OFEX companies or even to drop the second limb of the test (for those with a registered office in the UK, the Channel Islands or the Isle of Man to have their place of central management in one of those jurisdictions). It is often the case that the operations of AIM and OFEX companies are entirely overseas and since the Directive requirement for co-operation between regulators may not be effective in relation to regulatory authorities in such countries, the Code Committee foresees that there could be problems of enforcement if directors of such a target company breached the Code. It believes that it would be inappropriate for the Panel to take jurisdiction over cases in which the Code might not be effectively enforced.

⁴ Currently only CISX in Guernsey.

To do so could merely hold a false promise of protection for shareholders in these companies, which might not, in practice, be realised.

5.1.5 Another respondent asked for clarification on how the rules relating to shared jurisdiction would work in practice. It is difficult to provide detailed guidance on this matter until there have been more discussions between the authorities in all the Member States and for the time being, therefore, the Code Committee continues to advise parties to consult the Panel at the earliest opportunity if the shared jurisdiction provisions are likely to be relevant, so that guidance may be given on a case by case basis. This approach is also suggested in section 3(d) of the Introduction.

5.1.6 On a minor point, one respondent suggested that in the penultimate paragraph in section 3(a)(iii), the definition “information and company law matters” should read “employee information and company law matters”. The Code Committee has accepted this suggestion. A consequential amendment will be made in the last paragraph of section 3(a)(iii).

5.1.7 In addition, in response to oral comments, the Code Committee has made two more clarifying amendments to section 3(a)(iii). Subparagraph (A) will now read:

“(A) a company which has its registered office in the United Kingdom whose securities are admitted to trading on a regulated market in one or more member states of the European Economic Area ~~other than~~ but not on a regulated market in the United Kingdom;”

Subparagraph (C)(II) will read:

“(II) the securities of the company are simultaneously admitted to trading on more than one regulated market, but not on a regulated market in the member state of the European Economic Area in which it has its registered office, on or after 20 May 2006.....”

5.1.8 A further technical amendment has been made to correct the penultimate paragraph of section 3(a)(iii). This should now read:

“in relation to matters relating to the consideration offered.....the rules of the supervisory authority of the member state determined in accordance with Article 4(2)(b) and (c).....”.

5.2 Section 3(b), Transactions

In RS 2005/4, which has been published simultaneously with this Response Statement, the Code Committee has announced its conclusion that the Rules Governing Substantial Acquisitions of Shares (the “SARs”) should be abolished but that the rules relating to tender offers should be retained in a new Appendix 5 to the Code. It has therefore been necessary to add a reference to tender offers in section 3(b). The words “(including tender offers pursuant to Appendix 5)” have therefore been inserted after “partial offers” in the first paragraph of section 3(b). The word “all” has been deleted before “partial offers” as it is considered to be unnecessary.

5.3 Section 3(e), Loss of Code protection

- 5.3.1 Two respondents felt that section 3(e) should not be a rule, but only guidance. The purpose of section 3(e) is to ensure that, if a company which is subject to the Code and which has more than one shareholder is proposing to re-register as a private company and will lose Code protection as a result, the shareholders are given, in the relevant circular, information about the Code protections that will be lost, so that they can take this into account in deciding how to vote on the proposal. The Code Committee notes that section 3(e) will apply in a relatively small number of cases given that, even after re-registration, the Code continues to apply to the private companies covered by section 3(a)(ii)(A) to (D). While it believes that in those cases the company should provide the relevant information to shareholders, the Code Committee nonetheless accepts that it would be more appropriate for section 3(e) to be worded as guidance rather than as a rule. As a result, the first sentence of section 3 has been amended to make it clear that section 3(e) is not a rule. (The words in parentheses now read “except for sections 3(d) and (e)”).

5.3.2 The second sentence of section 3(e) has been amended to read:

“If the Code would no longer apply in such circumstances and the relevant company has more than one shareholder, ~~it must consult~~ early consultation with the Panel is advised before it re-registers as a private company...”

On consulting the Panel, the company will be directed to the procedure set out in the note to advisers on re-registration on the Panel’s website www.thetakeoverpanel.org.uk which includes guidance on the wording to be used in the relevant circular.

5.3.3 One other respondent felt that the provision in section 3(e) should contemplate other bases for the loss of Code protection. One such example could be if a company converted to become a European company (Societas Europea) and moved its registered office to another jurisdiction. The Code Committee acknowledges that there may be other circumstances in which Code protection may be lost but considers that, at least at present, re-registration is the most common situation in which this may happen and it is therefore appropriate for section 3(e) to provide only for this one set of circumstances. However, for clarification, it proposes to change the heading of section 3(e) to “**Re-registration of a public company as a private company**”.

5.4 **Section 3(f), Code responsibilities and obligations**

5.4.1 Section 3(f) sets out the persons to whom the Code applies and the nature of their responsibilities; it attracted comment from several respondents, who were, in general, concerned about the potential breadth of the rule.

5.4.2 In relation to the second paragraph, bodies representing practitioners commented that it was unreasonable to expect advisers to a company to ensure that their clients complied with the Code and that advisers would not be able to accept liability for unknown acts of their clients. The Code Committee accepts this, which is why in the second sentence, the rule qualifies the obligation on advisers to ensure that their clients are aware of their responsibilities under the Code and will comply with it by the phrase “so far as

they [ie the advisers] are reasonably able”. This qualification did not appear in the third sentence of the paragraph however and the Code Committee therefore proposes to amend this paragraph accordingly. The Code Committee also considers that it would be helpful to replace the word ‘necessary’ at the end of the third sentence with ‘appropriate’.

5.4.3 The second and third sentences will therefore be amended to read as follows:

“Financial advisers to whom the Code applies have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them. ~~Financial advisers must ensure~~ and that the Panel is consulted whenever ~~necessary~~ appropriate.”

5.4.4 The third paragraph of section 3(f) attracted comment both from practitioners and employers, who were concerned that it appeared to place a very wide obligation on them to provide formal training on the Code to all directors and employees as a matter of course. The Code Committee accepts that this would be unreasonable and can confirm that this was not its intention. What is important is that those directors and employees who are likely to have obligations and responsibilities under the Code receive appropriate guidance such that they are aware of their obligations and responsibilities under the Code and are able to comply with them at the appropriate time, which is when the company, partnership or other entity is engaged in a matter that is, or is potentially, subject to the Code. In order to make this clear, the second sentence of the third paragraph will be redrafted as follows:

“The Panel expects all bodies corporate, partnerships and other entities to which the Code applies to ensure that their relevant directors and employees receive appropriate ~~and timely training~~ guidance in respect of the Code.....”.

5.4.5 The fourth paragraph of section 3(f) alerts directors to the fact that if their company is in a takeover situation, their obligations under the Code may impinge on their fiduciary duties. The paragraph as proposed stated:

“While the directors of offeror and offeree companies and their advisers have a duty to act in the best interests of their respective shareholders, the Code will inevitably impinge on the freedom of action of directors and persons involved in takeovers, and there are limitations in connection with takeovers on the manner in which those interests can be pursued.”

Two respondents pointed out that this statement was incorrect in two respects: first, because a company’s advisers have no duty to act in the best interests of shareholders and second, because under current company law, directors’ duties are to the relevant company (not its shareholders) although, in discharging those duties, directors must consider the interests of shareholders. The Code Committee accepts these points and proposes to redraft the fourth paragraph as follows:

“The Code imposes limitations on the manner in which directors can act in connection with takeovers, which may impinge on the duties that the directors of offeror and offeree companies might owe.”

6. Section 4, The Panel and its Committees

6.1 Section 4(b), The Code Committee

6.1.1 Objections were raised by three respondents to the provisions enabling the Code Committee to make amendments to the Code without prior consultation in limited circumstances. Section 4(b) provides for amendment of the Code without prior consultation in three situations as follows:

- first, the Code Committee may, “in certain exceptional cases,...consider it necessary to amend the Code on an expedited basis, for example because a particular market development appears to the Code Committee to require that the proposed amendment is made more quickly than the usual public consultation process would permit”;

- the second situation is where, “in the opinion of the Code Committee, any proposed amendment to the Code either does not materially alter the intended effect of the provision”; and
- the third situation is where the proposed amendment “is a consequence of changes to relevant legislation or regulatory requirements”.

In the first situation, the Code Committee is obliged to follow publication of any such amendment with a full consultation process. No post-publication consultation is required in the second and third situations.

6.1.2 The Panel⁵ considers that it is important that the Code Committee should be able to amend the Code on an expedited basis, albeit that it would expect the Code Committee to do this only very rarely, when the need for the amendment is demonstrably urgent and clear. The “certain exceptional cases” envisaged might be where, in the Code Committee’s opinion, market developments or the market sensitivity of the proposed change or the need to rectify a loophole in the Code dictate that an amendment should be made more quickly than would be possible if a full consultation were entered into. It would be the practice of the Code Committee in these circumstances to make a public statement explaining the amendment and stating when it would come into effect. The amendments to the text of the Code, together with reasons for them, would then form part of a formal public consultation paper. The amendments would remain in force pending the outcome of the consultation exercise.

6.1.3 One respondent felt that the second situation, in which the Code Committee is able to publish the text of an amendment without any consultation where it does not materially alter the intended effect of the Code, gave too great a scope for the Code Committee to make changes which it felt did not change the “intended effect” but on which practitioners might have a different view. The Panel is clear, however, that the purpose of this provision is purely

⁵ The Panel is responsible for Section 4 of the Introduction (except for section 4(d)).

practical, to enable the Code Committee to make minor amendments, such as the introduction of clarifying cross-references or clearer grammar. Nonetheless, in order to make it clearer that the provision does not give the Code Committee scope for using this provision to make more substantial amendments, the Panel is proposing to amend it by changing “intended effect” to, simply, “effect”.

6.1.4 As regards the third situation, the Panel considers that its constituents need not be consulted about simple changes of references in rules arising from legislation or regulations (some examples are included in RS 2006/1 – see eg Rule 12). However, where changes brought about by legislation are material, even if they have to be made, the Code Committee’s practice will normally be to consult if sufficient time is available, as it has done in relation to changes arising from the Directive.

6.1.5 The first sentence of the second paragraph of section 4(b) sets out those sections of the Introduction for which the Panel (rather than the Code Committee) is responsible. The words in brackets in this sentence have been redrafted in order to clarify the position and section 5 has been included in the list of matters falling within the Panel’s responsibility.

7. Section 9, Providing information and assistance to the Panel and the Panel’s power to require documents and information

7.1 Section 9(a), Dealings with and assisting the Panel

7.1.1 One respondent felt that the requirement in section 9(a) for persons dealing with the Panel to disclose to the Panel “any information known to them and relevant to the matter being considered” was too broad and argued that matters might be relevant but not material. This respondent was concerned that the rule might be used retrospectively with the advantage of hindsight and, together with two other respondents, felt that the obligation to update and correct information should apply only in respect of material errors or changes in circumstances.

- 7.1.2 The Code Committee acknowledges that when a person is presenting a matter to the Panel, he or she will inevitably make some judgment as to what information is relevant, and this is provided for in the first paragraph, but the Code Committee believes it would be inappropriate to add to the consideration of relevance one of materiality. The purpose of this rule is to encourage persons dealing with the Panel to be open and co-operative. The first paragraph deals with the situation where the Panel is actively considering a matter. If the Panel is to make a fair ruling, it must be provided with all relevant facts and decide for itself whether they are material to the question in hand. Similarly, if, while a matter is being considered by the Panel, a person who has provided information to the Panel becomes aware that it contained errors or needs to be updated, then, if the Panel is to make a fair ruling it must be provided with the corrected or updated information and it should not be for the person concerned to make a judgment about the materiality of any errors or changes of circumstance. Thus, under the first paragraph, the Code Committee continues to believe that, while a matter is under consideration, the obligation to correct or update information provided to the Panel should be absolute.
- 7.1.3 The same considerations apply after the Panel has given a ruling if the parties become aware that information provided to the Panel in making that ruling was incorrect, incomplete or misleading. The Panel must be informed promptly so that it can determine whether having a proper understanding of all the true facts would have had a material effect on the ruling given. This is provided for in the first sentence of the third paragraph of section 9(a). The Code Committee believes that in these circumstances too it should be for the Panel, rather than the person concerned, to determine whether the inaccuracies were material or not.
- 7.1.4 The final sentence of section 9(a) deals with the situation where a ruling has been given with continuing effect, for example, where a person has been granted exempt status or where the existence of a concert party has been established. The Code Committee has considered this in the light of comments

received and on reflection, it considers that the requirement to notify the Panel of “any change in the information they supplied” is not required, given the general obligation in the previous sentence to notify the Panel if information supplied to the Panel was incorrect, incomplete or misleading.

7.1.5 The last phrase of the third paragraph will then require that the Panel be notified of any new information (such as a new development or change in circumstance) that has arisen after a ruling with continuing effect has been made, if that information is relevant. This recognises, as does the first paragraph, that any person will make a judgment about the relevance of information to the case when presenting that information for the first time. In order to provide consistency with the first paragraph, the Code Committee proposes to delete “material” in the penultimate line of section 9(a) and replace it with “relevant”. The Code Committee has also changed the emphasis in the paragraph so that the judgment to be made by parties in determining whether to notify the Panel of new information is not whether it would be likely to have been relevant to the Panel’s determination, but whether it would not (in which case, notification is not required).

7.1.6 The last paragraph of section 9(a) will therefore read:

“In addition, where a determination of the Panel has continuing effect (such as the grant of exempt status or a concert party ruling), the party or parties to that determination must promptly notify the Panel of ~~any change in the information they supplied to the Panel in connection with that determination and of any new information which (in either case)~~ unless they reasonably consider that it would not be likely to have been ~~material~~ relevant to that determination.”

8. Section 10, Enforcing the Code

8.1 The first sentence of the second paragraph of the introduction to section 10 was proposed to read as follows:

“It is the practice of the Panel, in discharging its functions under the Code, to focus on the specific consequences for shareholders of breaches of the Code

with the aim of providing appropriate remedial or compensatory action in a timely manner.”

The Code Committee considers that the Panel’s primary focus in considering breaches of the Code is and will continue to be the consequences for shareholders. However, on reflection, it believes it would be appropriate to delete the words “for shareholders” to acknowledge that breaches of the Code may also have consequences for other people.

9. Amendments arising from the Regulations

9.1 The following technical amendments are required to reflect the fact that pending entry into force of the relevant provisions in the Bill, the Panel’s functions pursuant to the Directive will derive from the Regulations.

9.2 **Section 1, Overview** is revised as follows:

“.....Its ~~Directive statutory~~ functions are set out in and under The Takeovers Directive (Interim Implementation) Regulations 2006 (the “Regulations”). Rules Chapter 1 of Part 22 of the Company Law Reform Act 2006 (the “Act”). ~~The Panel has exercised rule-making powers conferred on it under the Act by making the rules that~~ are set out in the Code (including this Introduction, the General Principles, the Definitions and the Rules (and the related Notes and Appendices)), ~~the SARs and the Rules of Procedure of the Hearings Committee. These rules may be changed from time to time, and rules may also be set out in other documents as specified by the Panel.”~~

One effect of this amendment, by virtue of the Regulations, is that, during the interim period (ie before the provisions of the Bill enter into force), the Panel may not amend the Code in relation to Directive matters. This is because it is not possible to give the Panel a rule-making power under regulations made pursuant to section 2(2) of the European Communities Act 1972.

9.3 **Section 2(a), Nature and purpose of the Code**

The last paragraph is amended as follows:

“.....Following the implementation of the Directive by means of the Regulations Act, the rules set out in the Code which are derived from the Directive now have a statutory basis and comply with the relevant requirements of the Directive.”

9.4 **Section 9 (b), Power to require documents and information**

This section is amended to read:

“Regulation 6 Section 622 of the Act gives the Panel certain powers to require documents and information in the case of a transaction and rule subject to the requirements of the Directive.

.....Where the Panel imposes a requirement under Regulation 6 Section 622 of the Act, the addressee must comply.....”

9.5 **Section 10, Enforcing the Code**

The introductory paragraphs will be amended as follows:

“Sections 10(a) to 10(c) set out certain rules.....the “offer document rules” and the “response document rules” for the purposes of Regulation 10 section 628 of the Act.

.....For the purposes of Regulation 12(2) in the case of a transaction and rule subject to the requirements of the Directive—section 631(2), no contravention.....”

9.6 **Section 10(c), Compensation rulings**, will read:

“Where a person has breached the requirements of any of Rules 6, 9, 11, 14, 15, 16 or 35.3 of the Code, the Panel may ~~(in exercise of the power granted to the Panel in section 629 of the Act)~~ make a ruling.....”

9.7 **Section 10(d), Enforcement by the Courts** will read:

“Under Regulation 11 in the case of a transaction and rule subject to the requirements of the Directive section 630 of the Act, the Panel may seek enforcement by the courts.....”

9.8 **Section 10(e), Bid documentation rules** will read:

“For the purposes of Regulation 10 in the case of a transaction and rule subject to the requirements of the Directive section 628 of the Act, the “offer document rules”.....”

9.9 **Section 12, Co-operation and information sharing**

The following amendments are required:

“This section summarises the relevant provisions of the RegulationsAct, and sets out the rules.....which does not fall within Regulation 7 section 623 of the Act.

~~The Under section 625 of the Act~~, the Panel ~~must~~, to the extent it has power to do so, takes take such steps as it considers appropriate.....

(a)....; or (b).....; or (c).....; or (d).....,
.....non-service.

Under Regulation 7 in the case of a transaction and rule subject to the requirements of the Directive section 623 of the Act, information received by the Panel in connection with the exercise of its Directive statutory functions may not be disclosed without the consent of the individual (where it concerns a person’s private affairs) or business to which it relates except as permitted by the RegulationsAct. Part 2 of Schedule 1 to 2 of the RegulationsAct includes gateways to allow the Panel to pass information it receives in the exercise of its Directive functions to United Kingdom and overseas regulatory authorities.....above.

Information (in whatever form) relating to the private affairs of an individual or to any particular business not falling within Regulation 7 section 623 of the Act which is created.....in the circumstances set out in Regulations 7 sections 623 (2), (3) and (6) 8 of the Act. A direct or indirect recipient of such information from the Panel may disclose it in the circumstances set out in Regulations 7 sections 623(2), (3), (4) 6 and (6) 8 of the Act.....”

9.10 **APPENDIX 6 – BID DOCUMENTATION RULES**

The heading of new Appendix 6 and the first sentence will be amended as follows:

“~~BID DOCUMENTATION RULES FOR THE PURPOSES OF SECTION 628 OF THE COMPANY LAW REFORM ACT REGULATION 10 OF THE TAKEOVERS DIRECTIVE (INTERIM IMPLEMENTATION) REGULATIONS 2006~~”

For the purposes of ~~section 628 of the Company Law Reform Act~~ Regulation 10 of the Takeovers Directive (Interim Implementation) Regulations 2006...”

For greater clarity, a new sentence has also been added at the end of the introductory paragraph to Appendix 6, referring to the relevance of Rule 27 to the bid documentation rules as follows:

“Rule 27 is also relevant to the extent set out in section 10(e) of the Introduction.”

10. Changes arising from the Rules of Procedure of the Hearings Committee and the Rules of the Takeover Appeal Board

10.1 A number of changes have been made to bring the Introduction into line with the Rules of Procedure of the Hearings Committee and the Rules of the Appeal Board, which had not been finalised at the time PCP 2005/5 was published. These will be available, respectively, on the Panel’s website www.thetakeoverpanel.org.uk and the website of the Takeover Appeal Board www.thetakeoverappealboard.org.uk. All these changes described below, together with some minor drafting changes, are marked in both versions of the Introduction at Appendix A and Appendix B.

10.2 Section 7(b), Time limits for applications for review by the Hearings Committee; frivolous or vexatious applications

10.2.1 The time period within which an appeal against a ruling of the Executive must be made was proposed to be “within one month of the event giving rise to the application for review” subject to the power of the Executive to shorten or lengthen this period. The first paragraph of section 7(b) has been amended to indicate that parties should notify the Panel of their intention to seek a review by the Hearings Committee within such time period as is reasonable in all the

circumstances of the case. Such time period may not, however, be longer than one month from the event that gave rise to the application for review.

10.2.2 The third paragraph of section 7(b) has been amended to make it clear that the Chairman (or the chairman of the hearing) may deal with applications for procedural directions, as well as with frivolous or vexatious requests for convening the Hearings Committee on his own, without convening the Hearings Committee or holding a hearing.

10.3 **Section 7(c), Conduct of hearings before the Hearings Committee**

10.3.1 Some amendments have been made to the first paragraph to provide for the appointment of a chairman for the Hearings Committee in the eventuality that the Chairman and both of the Deputy Chairmen are all unavailable.

10.3.2 The second paragraph now makes clear that the chairman of the hearing alone (as well as the whole Hearings Committee) may vary the procedure for hearings as he (or it) considers appropriate, for the fair and just conduct and determination of the case.

10.4 **Section 7(e), Right of appeal**

The first paragraph has been redrafted to make it clear that the right of appeal is available only to parties to the hearing of the Hearings Committee or any person who was denied permission to be such a party.

10.5 **Section 8(b), Conduct of hearings before the Board**

Similar amendments to those described in paragraph 10.3.1 above have been made to cater for the non-availability of both the Chairman and Deputy Chairman of the Takeover Appeal Board.

SECTION C

The Code Committee's conclusions in relation to changes proposed for the Code

Matters in this section are dealt with in the order in which they appear in PCP 2005/5.

11. Definitions

11.1 "Acting in concert"

11.1.1 PCP2005/5 proposed the addition of a new Note 9 on the definition of 'acting in concert' in order to make a derogation from the definition which would codify existing practice in relation to the givers of irrevocable commitments. The proposed Note reads as follows:

"9. Irrevocable commitments

A person will not normally be treated as acting in concert with an offeror or the offeree company by reason only of giving an irrevocable commitment. However, the Panel will consider the position of such a person in relation to the offeror or the offeree company (as the case may be) in order to determine whether he is acting in concert if either:

(a) the terms of the irrevocable commitment give the offeror or the offeree company (as the case may be) either the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to the shares or general control of them; or

(b) the person acquires an interest in more shares.

The Panel should be consulted before the acquisition of any interest in shares in such circumstances."

11.1.2 One respondent expressed concern about the breadth of application of paragraph (b) of the Note above. The concern centred on the position of institutional investors and the terms on which they might give irrevocable commitments. Typically, this respondent stated, an institutional shareholder will undertake to assent a certain stated number of shares to an offer but gives

no undertaking to assent any further shares that might be acquired. Such a shareholder who then acquires more shares is free either to hold them or assent them to a competing offer. In this situation, the respondent argued, the requirement to consult the Panel in advance of further purchases would be overly restrictive and could act as a disincentive on such shareholders from signing irrevocable commitments at all. They suggested therefore that paragraph (b) should be restricted to cases only where a person was acquiring more shares that would, under the terms of their irrevocable commitment, be assented to the offer.

11.1.3 The Code Committee accepts that there will be situations in which an institutional shareholder, which has committed to assent a specific number of shares to an offer with no undertaking to assent further shares acquired, may wish to acquire more shares to retain for investment purposes or to commit to a competing offer. In such circumstances, it is unlikely that the Panel would regard that shareholder as acting in concert with the original offeror. However, the Code Committee considers that, equally, an institutional shareholder which has given such a commitment may subsequently wish to acquire more shares with the express purpose of assenting those additional shares to the offer, for example if it had concerns that the offer might not succeed unless it did so. In these circumstances, the question of concertedness might well arise, with possible consequences under Rules 6, 9 and 11. Without being made aware of the further acquisition, the Panel would not be in a position to make the appropriate ruling. The Code Committee has not, therefore, accepted the proposed amendment to paragraph (b) of the Note.

11.1.4 The same respondent suggested that in cases where the shareholder was a target company director who had given an irrevocable commitment to assent any further shares acquired to the offer, it might be desirable to provide a carve-out for his acquiring more shares through the exercise of pre-existing options. For similar reasons to those set out in the previous paragraph, the Code Committee considers that this amendment too cannot be accepted.

11.1.5 A cross reference to new Note 9 has been added to Note 14 on Rule 8.

11.2 “Regulated market”

- 11.2.1 PCP 2005/5 proposed to define the term “regulated market” by reference to Article 1(13) of the Investment Services Directive (Directive 93/22/EEC, the “ISD”), in which the term is currently defined. Recognising that this definition was going to be superseded by the Markets in Financial Instruments Directive (Directive 2004/39/EC, “MiFID”) and, indeed, that it could be further amended, the definition was drafted to say:

“A regulated market is a market within the meaning of Article 1(13) of [the ISD] as amended or replaced from time to time.....”

One respondent queried whether the Panel was able to use the words underlined, since to do so might amount to sub-delegation of its rule-making power. The Code Committee has been advised that this is correct and therefore the words underlined above have been deleted. The reference to the ISD will be updated once MiFID has been implemented.

- 11.2.2 One respondent noted that the specific references to website addresses could quickly become outdated. The Code Committee agrees. For regulated markets in the EEA, the definition will therefore now refer to the EU Commission’s homepage, through which the full list of all regulated markets may be found. Regulated markets in the UK will be listed on the Panel’s website.

12. The “equitable price”

- 12.1 In paragraph C4.3.1 of PCP 2005/5, the Code Committee explained that the reference period for determination of the price to be paid under a Rule 9 offer needed to change to bring it into line with Article 5.4 of the Directive. Rule 9.5 could no longer refer to the price paid by the offeror “during the offer period and within the 12 months prior to its commencement” because this period could be longer than the period of “not more than 12 months before the bid” permitted in Article 5.4. Rule 9.5(a) was therefore amended as follows:

“9.5 CONSIDERATION TO BE OFFERED

(a) ~~Offers~~ An offer made under this Rule 9 must, in respect of each class of share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class during the offer period and within 12 months prior to its commencement the announcement of that offer.”

12.2 Article 5.4 of the Directive requires also that if, in the period after announcement of the mandatory offer and *“before the offer closes for acceptance, the offeror or any person acting in concert with him/her purchases securities at a price higher than the offer price, the offeror shall increase his/her offer so that it is not less than the highest price paid for the securities so acquired.”* The Code Committee had thought that this requirement was adequately dealt with by Rule 6.2(a), but it has been pointed out that Rule 6.2(a) may not make it sufficiently clear that a cash consideration would be required in these circumstances.

12.3 The Code Committee has therefore concluded that it is necessary to make a further amendment to Rule 9.5 to clarify this point. This amendment will take the form of a new subparagraph (b), which will read as follows:

“(b) If, after an announcement of an offer made under Rule 9 for a class of share capital and before the offer closes for acceptance, the offeror or any person acting in concert with it acquires any interest in shares of that class at above the offer price, it shall increase its offer for that class to not less than the highest price paid for the interest in shares so acquired.”

Paragraph (b) of the Rule as set out in PCP 2005/5 will become (c) and (c) will become (d). The reference in Rule 9.5(c) (as amended) to paragraph (a) of the Rule will then refer to paragraphs (a) and (b).

12.4 Note 2(c) on Rule 9.5 has also been amended as follows (also taking account of amendments introduced by RS 2005/3):

“2. Calculation of price

(c).....If subscription rights were acquired either during the offer period or within 12 months prior to the announcement of the offer made under Rule 9 its commencement or after the announcement and before the offer closes for acceptance, they will be treated as if they were purchases of the underlying shares at a price calculated by reference to the purchase price and the relevant conversion or exercise terms.

.....

13. Dispensations from the “equitable price”

- 13.1 PCP 2005/5 contained amendments to Note 3 on Rule 9.5 relating to the circumstances in which the Panel has the discretion to agree an adjusted price for an offer made under Rule 9.1. In particular, the following sentence was added at the end of the Note:

“In any case where the highest price is adjusted under Rule 9.5(b), the Panel will publish its decision.”

Two respondents suggested that this should be amended to say that the Panel will substantiate its decision. As stated in the PCP, the requirement of Article 5.4 of the Directive is that any decision of the supervisory authority to adjust the ‘equitable price’ must be substantiated and made public. The Panel is therefore required to substantiate its decision. The Code Committee does not believe this needs to be spelt out in the Note; publication of any such decision will include substantiation.

- 13.2 RS 2005/3, which has been published simultaneously with this RS, has introduced a new Note 12 on Rule 9.1, relating to gifts. The Code Committee has therefore amended the reference in Note 3(f) on Rule 9.5 to refer to the new Note 12 on Rule 9.1. It will therefore read as follows:

“(f) if an offer is required in the circumstances set out in Note 9 12 on Rule 9.1; and”

14. Dispensations from Rule 9

14.1 Note 2 *Enforcement of security for a loan*

This Note has been amended further to take account of changes introduced by RS 2005/3 as indicated below:

“Note 2 *Enforcement of security for a loan*

Where shares or other securities are a shareholding in a company is charged as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a general offer under this Rule, the Panel will not normally require an offer if sufficient interests in shares are sold disposed of within a limited period to persons unconnected with the lender, so that the percentage of shares carrying voting rights in which the lender, together with persons acting in concert with it, is interested is reduced to below 30% in a manner satisfactory to the Panel. The lender must consult the Panel as to its ability to exercise or procure the exercise of the voting rights attaching to its the shares in which it is interested at any time before sufficient shares are sold or interests are disposed of, or if the holding interest in excess of 29.9% is likely to be temporary (for example because the company will be issuing more shares).

14.2 Note 4 *Inadvertent mistake*

This Note has been amended further to take account of changes introduced by RS 2005/3 as indicated below:

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

14.3 Note 9 on Rule 5.1 Gifts

This note has been renumbered as Note 7 and amended further by RS 2005/3. It will therefore read as follows:

“79. Gifts

If a person receives a gift of shares or an interest in shares which takes ~~his~~ holding the aggregate number of shares carrying voting rights in which he is interested to 30% or more, he must consult the Panel (See also Note 3 on Rule 9.5.)”

15. Offer announcements

15.1 In order to comply with the requirement in Articles 6.1 and 8.2 taken together that the “decision to make a bid” must be made “readily and promptly available” to offeree shareholders and employee representatives or, where there are none, the employees, the Code Committee proposed the introduction of a new Rule 2.6(b), requiring the appropriate distribution of an announcement made under Rule 2.5. Rule 2.6(a) (formerly Rule 2.6) was amended as follows, with the intention of its covering the distribution to shareholders and the Panel of any announcement that might start an offer period other than one made under Rule 2.5.

“(a) ~~Promptly after the commencement of an offer period~~ **When an offer period commences with an announcement made under Rule 2.4(a), a copy of the relevant that announcement, or a circular summarising the terms and conditions of the offer, must be sent promptly by the offeree company to its shareholders and to the Panel.**”

One commentator observed to the Code Committee that the new introductory wording to this Rule was somewhat narrower in scope than the former introduction. Announcements made under Rule 2.4(a) are only announcements that talks are taking place or that a potential offeror is considering making an offer. The former wording, “Promptly after the commencement of an offer period” also embraced situations such as the offeree company announcing that it was seeking potential buyers. The Code Committee accepts this comment

and has therefore reinstated the original introduction to the Rule and further amended Rule 2.6(a) as follows:

“(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 that the relevant announcement must be sent promptly by the offeree company to its shareholders and to the Panel.**”

16. The offer document

16.1 *Its publication and circulation*

16.1.1 On reflection, the Code Committee considers that one element of Article 6.2 was not reflected in the revision of Rule 30.1. Article 6.2 requires that the offer document be “[made] public”. Under Rule 30.1 the offer document must be posted to offeree shareholders and made readily available at the same time to employee representatives or employees of the offeror and the offeree company but there is no specific requirement for making the document public. In order to comply with this requirement, the Code Committee proposes to add to Rule 30.1 a new requirement for the offeror to announce in accordance with Rule 2.9 that the offer document has been published and where the document can be inspected. A new sentence will therefore be added to Rule 30.1(a) as follows:

“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.”

A cross reference to Rule 30.1 will be added to Note 2 on Rule 2.9.

16.1.2 One respondent asked whether the new requirement in Rule 19.7 for a copy of the offer document to be lodged with the Panel before it is made public would change existing market practice, under which documents are despatched under the direction of a financial adviser to the Panel at the same time as they are

being posted to shareholders. The Code Committee considers that it will be acceptable for this practice to continue.

16.2 *Disclosure of persons acting in concert with the offeror/offeree*

16.2.1 The Code Committee proposed a new Note 4 on Rule 24.2(d) which provided a general derogation from the requirement in Rule 24.2(d)(iii) for disclosure in the offer document of information about all persons acting in concert with the offeror and, to the extent that it is known, persons acting in concert with the offeree company. The Note required the disclosure, among others, of all connected advisers to the offeror and the offeree company. One respondent suggested that this was too broad and would catch accountants, actuaries, PR advisers, benefits consultants, lawyers and others who could be said to be advising on the offer. The Code Committee accepts this point and therefore proposes to restrict this particular disclosure to “*any financial adviser which is advising the offeror or the offeree company in relation to the offer; and any corporate broker to either of them*”. The Code Committee notes that any other connected adviser who has an interest in or has dealt in relevant securities of the offeree company will also be identified, either under this Note or Rule 24.3.

16.2.2 The Code Committee has also made two more changes to Note 4. One is designed to adjust the emphasis of the disclosure requirement in order to ensure that the derogation properly respects General Principle 2 (Article 3.1(b)). The other takes account of changes introduced by RS 2005/3. The amended Note will read as follows:

“4. *Persons acting in concert with the offeror*

For the purposes of Rule 24.2(d)(iii), the identity of a person acting in concert with the offeror or the offeree company ~~need only~~ must be disclosed if the offeree company shareholders need details of that person in order to reach a properly informed decision on the offer. Disclosure will normally include: a person who ~~holds~~ is interested in shares in the offeree company and (in the case of a securities exchange offer only) the offeror; any person with whom the offeror or the offeree company and any person acting in concert with either of them has any arrangement of the kind referred to in Note 6(b) on

Rule 8; ~~and any connected financial adviser which is advising the offeror or the offeree company in relation to the offer; and any corporate broker to the offeror or the offeree company~~ either of them. In cases of doubt, the Panel should be consulted.”

16.3 *Disclosure of conditions*

In the light of amendments that have been made in RS 2006/1 to reflect changes in the Listing Rules introduced with effect from 1 July 2005, Rule 24.2(d)(vi) has been amended as follows:

“(vi) all conditions (including normal conditions relating to acceptances, admission to listing, admission to trading and increase of capital).....”

17. **The offeree board circular**

17.1 The Code Committee proposed a number of amendments to Rules 25.1 and 25.2 in order to reflect the requirements of Article 9.5 that the offeree board must publish and make available its views on the offer, including its views on the effects of the offer on employment, and on the offeror’s strategic plans for the offeree company, including the likely repercussions on employment and locations of the offeree company’s places of business.

17.2 *The role of the Rule 3 adviser*

Two respondents were concerned that advice provided to the offeree company’s board by the Rule 3 adviser, (the substance of which, under Rule 25.1, must be provided to shareholders) should not have to cover the non-financial interests of the company, such as employment and the locations of the company’s places of business. The Code Committee can confirm that the amendments to Rules 25.1 and 25.2 are not intended to require any change in the role of the Rule 3 adviser.

17.3 *Structure of Rules 25.1 and 25.2*

In RS 2006/1, the Code Committee has announced its decision to adopt a new Rule 25.2 requiring the disclosure of financial and other information by the offeree company. As a result of this change, the Code Committee has combined Rules 25.1 and 25.2 as proposed in PCP 2005/5 into a new Rule 25.1 as follows:

“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 its opinion on the offer, (including any alternative offers). It must, at the same time, make known to its shareholders the substance of the advice given to it by the independent advisers appointed pursuant to Rule 3.1.

~~(b) If any document~~”

~~25.2 VIEWS OF THE BOARD ON THE OFFEROR’S PLANS FOR THE COMPANY AND ITS EMPLOYEES~~

~~(b) The opinion referred to in Rule 25.1(a) above must include the views of the board of the offeree company on:~~

~~(ai) the effects of implementation of the offer on all the company’s interests, including, specifically, employment; and~~

~~(bii) the offeror’s strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company’s places of business, as set out in the offer document pursuant to Rule 24.1;~~

~~and must state the board’s reasons for forming its opinion.~~

~~(bc) If any document~~”

A consequential amendment has been made in Appendix 6 under “Response Document Rules” where the reference to “**Rule 25.1(a), 25.2**” has been changed to “**Rules 25.1(a) and (b)**”.

17.4 *The opinion of employee representatives*

17.4.1 New Rule 30.2(b) provides, in compliance with Article 9.5:

“(b) The board of the offeree company must append to the circular containing its opinion a separate opinion from the representatives of its employees on the effects of the offer on employment, provided such opinion is received in good time before publication of that circular.”

Two respondents asked questions about how this Rule will operate in practice. Both of these respondents appeared to believe that the requirement in the Rule was for employees to be consulted before the offeree board publishes its opinion and were concerned that there would not always be sufficient time to do this. In fact, neither the Directive itself nor the Rule requires that employees must be consulted.

17.4.2 Recital 23 of the Directive provides that matters relating to the disclosure of information and consultation of representatives of the offeror and the offeree company will be covered by relevant national provisions, including those implementing the Information and Consultation Directive (Directive 2002/14/EC)⁶. The only information requirements imposed by this Directive, and therefore by the Code, are that: the boards of both the offeror and the offeree company must *inform* their employee representatives or employees about the announcement of the offer and *communicate* the offer document to them; and the board of the offeree company must *communicate* its opinion on the offer to its employee representatives or employees.

17.4.3 The additional requirement for the offeree board to append an opinion from its employee representatives on the effects of the offer on employment does not embrace a requirement for the offeree board to consult them. That opinion must be appended to the offeree board’s opinion if it is received “**in good time**”. This is the Directive requirement and the Code Committee understands “in good time” to mean ‘in sufficient time to publish it with the offeree board’s opinion’. One respondent pointed out that in a recommended offer, the

⁶ The Information and Consultation of Employees Regulations 2004 in the UK.

announcement under Rule 2.5 and the offer document (which could include the offeree board's opinion) could be published on the same day, in which case there might be no time for the opinion of the employee representatives to be appended; (although it is possible that the employee representatives will have been consulted in advance under The Information and Consultation of Employees Regulations 2004 before the offer is announced and will therefore have had sufficient time to prepare their opinion to be attached to the offeree board circular). The respondent asked whether, in a situation where the employee representatives were not able to provide their opinion "in good time", there would be a requirement on the offeree board to circulate the opinion of its employee representatives when it became available. There is no requirement in the Directive or the Code for the offeree board to do this.

17.4.4 In this context, the Code Committee wishes to allay the concerns of one respondent and confirm that the requirement in Rule 30.2 for the offeree board to publish a circular containing its opinion is not intended to prevent the quite common practice referred to above whereby, in a recommended offer, the boards of the offeror and of the offeree company publish a joint document, comprising both the offer document and the offeree board's response.

17.5 *Publication of the offeree board circular*

The Code Committee considers that the same amendment that is explained above in paragraph 16.1.1 in relation to the offer document is also required in relation to the offeree board circular. It has therefore added a new sentence at the end of Rule 30.2(a) which mirrors that added at the end of Rule 30.1(a) as follows:

“On the day of posting, 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 and where it can be inspected.”

A cross reference to Rule 30.2(a) will be added to Note 2 on Rule 2.9.

18. Revised offers

18.1 *Contents of revised offer documents*

The Code Committee explained in PCP 2005/5 that the provisions of the Directive applying to the publication and circulation of offer documents and the offeree board's opinion applied equally to revised offer documents and opinions thereon. An amendment was therefore made to Rule 32.1 as follows:

“If an offer is revised, a revised offer document, drawn up in accordance with Rules 24 and 27, must be posted to shareholders of the offeree company.”

A new Rule 32.6 was also introduced as follows:

“(a) The board of the offeree company must post to the company's shareholders a circular containing its opinion on the revised offer under Rule 25.1(a), drawn up in accordance with Rules 25 and 27.”

- 18.2 One respondent raised a concern that these Rules could be interpreted to mean that, contrary to current practice, the revised offer document and offeree response statement would have to repeat all the information required by Rules 24 and 25 respectively, showing material amendments as required by Rule 27. The Code Committee confirms that it does not envisage any change to current practice and that the Rules may be complied with by making cross-references to previous documents.

18.3 *Publication of revised documents*

The same amendment as is made above in paragraphs 16.1.1 and 17.5 in respect of offer documents and offeree board circulars also has to be made in respect of revised offer documents and offeree board circulars in Rules 32.1 and 32.6(a) and cross references to these Rules will also be added to Note 2 on Rule 2.9. The Rules will read as follows:

“32.1 OFFER OPEN FOR 14 DAYS AFTER POSTING 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 to shareholders of the offeree company. On the day of posting, 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 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. Therefore....acceptances.”

“32.6 THE OFFEREE BOARD’S OPINION

(a) The board of the offeree company must post to the company’s shareholders 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, 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.”

Cross references to these two Rules will also be added to Note 2 on Rule 2.9.

19. Making information and documents available to shareholders, employee representatives and employees

19.1 *Shareholders, employee representatives and employees overseas*

19.1.1 The Code Committee proposed a new Rule 30.3 which provided that the requirements in various Rules to provide information or make documents available to shareholders and employee representatives or employees would apply wherever those shareholders or employees might be located unless there were sufficient objective justification for their not applying. It then provided a derogation in a Note on the Rule, which was intended both to set out circumstances in which there would be a “sufficient objective justification” for not applying the Rule, and also to provide the Panel with a general power to grant a dispensation in cases which did not fall within those circumstances.

19.1.2 Four respondents expressed concerns about the arguments underlying and the operation of both the Rule and its accompanying Note. Their concerns fell, broadly, into two groups. First, some expressed the view that, in so far as they related to non-EEA jurisdictions, the information and documentation requirements in Rule 30.3 and the Note both went beyond existing practice and, moreover, were not required by the Directive. Secondly, certain suggestions were made as to how the scope and meaning of the Note might be clarified.

19.1.3 Those respondents in the first group cited Article 8(2), which imposes a minimum requirement on Member States to provide that offer documentation must be made readily and promptly available:

“..to the holders of securities at least in those Member States on the regulated markets of which the offeree company’s securities are admitted to trading..”.

They argued that the Directive did not, therefore, require bid documentation to be sent to shareholders outside the EEA. Furthermore, they suggested that it would be undesirable for the Code to impose such a requirement, and that it would place a costly burden on companies. These respondents accepted that Article 3(1)(a) (new General Principle 1) requires that all shareholders must receive equivalent treatment and that Article 5(1) requires an offer to be made to all holders of the offeree company’s securities. However, they did not accept that, as a consequence, the information provisions of Article 8(2) should apply in respect of all offeree shareholders wherever they might be located. Making an offer to all shareholders, they argued, need not involve sending all of them all the bid documentation.

19.1.4 The Code Committee has considered these arguments carefully. It continues to be of the view (based on advice) that the requirements in Article 8(2) must be interpreted in the light of the general principles in Article 3, particularly Article 3(1)(a), which requires equivalent treatment for all shareholders, and Article 3(1)(b), which requires that shareholders must have sufficient time and information to enable them to reach a properly informed decision on the bid.

The Code Committee also notes that the minimum requirement in Article 8(2) applies only to the provision of information to “*holders of [the offeree company’s] securities*”; it does not apply in respect of the provision of information and documents to employees or their representatives. In the light of these points, the Code Committee has concluded that the extension of the information and documentation requirements to all shareholders, wherever they may be, is in accordance with the Directive.

19.1.5 However, the Code Committee recognises that this conclusion may create practical problems where offeree companies have shareholders and employees overseas. A derogation may be provided if the general principles (and, in particular, the two referred to above) are respected. The Code Committee is advised that the requirement to afford all shareholders of the same class equivalent treatment in Article 3(1)(a) is respected if the derogation is objectively justified.

19.1.6 As mentioned above, the second group of comments related to the terms of the derogation in the Note. The basic condition in the Note, which has to be fulfilled before the derogation may apply, was set out in the Note as:

“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....”

One respondent suggested adding the words underlined below, to make it clearer that the basic condition is to be assessed by reference to the exposure arising if the information or documentation is sent or made available to shareholders in the relevant jurisdiction without amendment.

“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 to or made available to shareholders or employees in that jurisdiction without amendment and unless they can avoid such exposure by making minor amendments...”

The Code Committee has accepted this suggestion.

19.1.7 Provided the basic condition was fulfilled, the Note then went on to state that the derogation would apply:

“if less than 3% of the shares of the offeree company are held by shareholders located there.”

Respondents interpreted this to mean that the derogation was limited only to situations below the 3% threshold. It was not the Code Committee’s intention to limit the derogation in this way. It has therefore restructured the Note to make it clear that either a general derogation will be available in the circumstances where the 3% threshold applies (and that there will be no need to consult the Panel on this) - see (a) below) or that an individual dispensation may be granted by the Panel in cases not falling under the threshold, taking into account the particular circumstances of the case. This is set out in (b) below, which makes clear the proportionality test that must be met by applicants for an individual dispensation, and the criteria which will be taken into account by the Panel in its assessment of such applications, including the cost involved, any delay to the transaction timetable, the number (and hence the percentage) of registered shareholders in the relevant jurisdiction and the number (and hence percentage) of shares involved.

19.1.8 In relation to the 3% threshold, respondents asked how the test was to be interpreted. In particular, when referring to shareholders, did it mean ‘beneficial’ or ‘registered’ shareholders? They also asked about the date on which the calculation would have to be made. The Code Committee accepts that these points were not clear in the Note as proposed and it has therefore made two more amendments, to clarify first that the shareholders referred to are registered shareholders and second, that the date will be determined by reference to the date on which the information is to be provided or documents are to be sent or made available.

19.1.9 There was also some doubt about the application of the dispensations in respect of employees located overseas. The Code Committee can confirm that

the general derogation will apply in respect of information or documents which are provided or required to be made available to employee representatives or employees of the offeror or the offeree company if less than 3% of the employees are located in the relevant jurisdiction. Alternatively, an individual dispensation may be granted in cases not falling under the 3% threshold.

19.1.10 The revised Note will be amended as follows:

“NOTE ON RULE 30.3

Shareholders, 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 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 or made available either;

(a) the offeror or the offeree company need not provide such information or send or make such information or documents available to registered shareholders of the offeree company 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 or made available (and there is no need to consult the Panel in these circumstances); or ~~A similar dispensation will apply in respect of information or documents which are provided or required to be made available to employee representatives or employees of the offeror or the offeree company, if less than 3% of the employees are located in the relevant non-EEA jurisdiction.~~

(b) ~~In all other cases, the Panel may grant a dispensation where it would be proportionate in the circumstances to do so having regard, notably, to the cost involved, any resulting delay to the transaction timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company. should be consulted if the offeror or the offeree company does not intend to provide such information or to send or make such documents available to all shareholders of the offeree company or to all employee representatives or employees of the offeror or the offeree company (as the case may be).~~

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

The Panel will not normally ~~be able to~~ grant any dispensation in relation to shareholders, employee representatives or employees of the offeree company who are located within the EEA.”

19.1.11 Finally, certain respondents questioned whether derogations should be available in respect of EEA jurisdictions. In the light of the free movement provisions of the EC Treaty, the increasingly harmonised state of company law within the EEA and the objectives of the Directive, the Code Committee considers that it would be unlikely that the criteria set out in the Note for an individual dispensation would be met in respect of an EEA jurisdiction. However, the Note permits applications for such individual dispensations, which will be considered on the basis of all of the circumstances of the individual case and on the basis of the individual dispensation criteria set out in the Note.

19.2 *How to make information available to employee representatives and employees*

19.2.1 Some respondents asked for clarification from the Code Committee as to how the new requirements in Rules 2.6, 30.1, 30.2 and 32.7 relating to the provision of information and documents to employee representatives or employees should be satisfied. The terminology used in the Directive, which is reflected in the Code, is that information and documents must be “made readily and promptly available” to them. In paragraph C5.6.1 of PCP 2005/5, the Code Committee said that it understood that companies have a wide variety of means of communicating with their employee representatives and employees, which was why it did not consider it necessary or appropriate to specify in the Code how the offeror and the offeree company would satisfy these new requirements (other than in the example in new Note 1 on Rule 2.6 which refers to placing the offer announcement on the company’s website).

19.2.2 For the same reason, the Code Committee still considers that it is difficult to give specific clarification on this point. However, in general, it understands that the Panel would consider that the Rules had been complied with if

employee representatives or employees were informed of the existence of the relevant announcement or document and of where and how they might gain access to it. Employee representatives and/or employees could be informed through whatever means the company normally uses to communicate with its employees at large; one example might be a general email distribution through the company's normal channels, combined with posting appropriate notices on staff notice boards. The information or documents could be made available in hard copy or electronically, for example by placing them on the company's website.

20. Timetable of offers

The Code Committee proposed that a general derogation should be written into Rule 31.7 to reflect current practice in relation to the exercise of the Panel's discretion to extend the period within which all conditions of the offer (other than the acceptance condition) must be fulfilled. One respondent suggested a drafting amendment, as follows:

“31.7 TIME FOR FULFILMENT OF ALL OTHER CONDITIONS

.....The Panel's consent will not normally ~~only~~ be granted unless if the outstanding condition involves a material official authorisation or regulatory clearance relating to the offer and it had not been possible to obtain an extension under Rule 31.6.”

The Code Committee has not accepted this amendment, since it wants to avoid any implication, which it believes this wording carries, that if the outstanding condition does involve a material official authorisation etc, then the Panel will automatically give its consent. In practice, the Panel will consider each case in the light of its own particular circumstances.

21. Frustrating action – Article 9

One respondent noted that Article 9 of the Directive provided an express carve-out from new General Principle 3 (Article 3(1)(c)) for the seeking of alternative bids but not for the defence of a hostile bid. They therefore asked

for clarification that an offeree company board could take action relating to mounting a defence, such as appointing advisers or lobbying competition authorities, without obtaining shareholders' approval. The Code Committee is advised that such action would not usually constitute frustrating action.

22. Offers including consideration in cash

22.1 In PCP 2005/5, the Code Committee stated, in paragraph C8.2.6, that if the consideration for an offer included cash and the cash was raised through debt, any conditions attaching to the loan would have to be made conditions of the offer if their fulfilment was not within the effective control of the directors. This view derived from an interpretation of new General Principle 5 (Article 3(1)(e)), which states:

“An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.”

22.2 Respondents expressed concern about the Code Committee's interpretation of this new General Principle, which, they felt, was overly restrictive and seemed to imply that a greater degree of certainty in relation to funding would be required than is currently the case. Given the already strict requirements of current General Principle 3 and Rule 24.7 in relation to certainty of funding, respondents asked whether it was necessary to take this strict line, which would prevent offerors and their advisers from exercising any element of judgment in determining whether or not funding from a proposed source would be available.

22.3 The Code Committee has reviewed the matter and concluded that it should not be necessary to make conditions attaching to a loan also conditions of the offer. New General Principle 5 requires only that the offeror should take all reasonable steps, judged on an objective basis, to ensure that it can fulfil any cash consideration. As a result, the Code Committee believes that the changes to the Code should not result in any change in current practice for financial

advisers when discharging their responsibilities associated with the provision of a cash confirmation statement.

- 22.4 The revised Note on Rules 13.1 and 13.3 set out requirements for the conditions to be attached to an offer when the consideration is for cash, or includes an element of cash and that cash is to be raised by an issue of new securities. In particular, the Note stated:

“Conditions which will normally be considered necessary for such purposes include:

(i).....; and

(ii) where the new securities are to be admitted to the Official List or to trading on AIM, an appropriate listing or admission to trading condition.”

One respondent asked why this provision was limited to an offeror listed on the Official List or traded on AIM and suggested that it should be extended to offerors admitted to trading elsewhere in the world, whether within or outside the EEA.

- 22.5 The Code Committee accepts this point and, in the light of the amendment made to Rule 24.9 in RS 2006/1, which has been published simultaneously with this RS, has amended the Note as follows:

“(ii) where the new securities are to be admitted to ~~the Official List listing or to trading on AIM, an appropriate~~ any investment exchange or market, any necessary listing or admission to trading condition (see also Rule 24.9).”

- 22.6 The Code Committee has also clarified the reference to the Note on Rules 13.1 and 13.3 in Note 3 on Rule 9.3 as follows:

“3. *When dispensations may be granted*

.....

(a) when the necessary cash is to be provided, wholly or in part, by an issue of new securities. ~~(See the Note on Rules 13.1 and 13.3.)~~ The Panel will normally require ~~in these circumstances~~ that both the announcement of the offer and the offer document include statements that if the acceptance condition is satisfied but the other conditions required by the Note on Rule 13.1 and 13.3 are not within the time required.....

APPENDIX A

THE INTERIM INTRODUCTION

THE CITY CODE ON TAKEOVERS AND MERGERS

INTRODUCTION

1 OVERVIEW

The Panel on Takeovers and Mergers (the "Panel") is an independent body, established in 1968, whose main functions are to issue and administer the City Code on Takeovers and Mergers (the "Code") and to supervise and regulate takeovers and other matters to which the Code applies in accordance with the rules set out in the Code. It has been designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers pursuant to the Directive on Takeover Bids (2004/25/EC) (the "Directive"). Its ~~statutory~~ Directive functions are set out in and under ~~Chapter 1 of Part 22 of the Company Law Reform Act 2006 (the "Act")~~ The Takeovers Directive (Interim Implementation) Regulations 2006 (the "Regulations"). ~~The Panel has exercised rule-making powers conferred on it under the Act by making the rules~~ Rules that are set out in the Code (including this Introduction, the General Principles, the Definitions and the Rules (and the related Notes and Appendices)), ~~the SARs and the Rules of Procedure of the Hearings Committee. These rules may be changed from time to time, and rules may also be set out in other documents as specified by the Panel.~~

Further information relating to the Panel and the Code can be found on the Panel's website at www.thetakeoverpanel.org.uk. The Code is also available on the Panel's website.

2 THE CODE

Save for section 2(c) (which sets out a rule), this section gives an overview of the nature and purpose of the Code.

(a) Nature and purpose of the Code

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

The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the company and its shareholders. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies.

The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to shareholders and an orderly framework for takeovers can be achieved. Following the implementation of the Directive by means of the ~~Act~~ Regulations, the rules set out in the Code which are derived from the Directive now have a statutory basis and comply with the relevant requirements of the Directive.

(b) General Principles and Rules

The Code is based upon a number of General Principles, which are essentially statements of standards of commercial behaviour. These General Principles are the same as the general principles set out in Article 3 of the Directive. They apply to takeovers and other matters to which the Code applies. They are expressed in broad general terms and the Code does not define the precise extent of, or the limitations on, their application. They are applied in accordance with their spirit in order to achieve their underlying purpose.

In addition to the General Principles, the Code contains a series of rules. Although most of the rules are expressed in less general terms than the General Principles, they are not framed in technical language and, like the General Principles, are to be interpreted to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter.

(c) Derogations and Waivers

The Panel may derogate or grant a waiver to a person from the application of a rule (provided, in the case of a transaction and rule subject to the requirements of the Directive, that the General Principles are respected) either:

- (i) in the circumstances set out in the rule; or
- (ii) in other circumstances where the Panel considers that the particular rule would operate unduly harshly or in an unnecessarily restrictive or burdensome or otherwise inappropriate manner (in which case a reasoned decision will be given).

3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

This section (except for sections 3(d) and (e)) sets out the rules as to the companies, transactions and persons to which the Code applies.

(a) Companies

- (i) UK, Channel Islands and Isle of Man registered and traded companies

The Code applies to all offers (not falling within paragraph (iii) below) for companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man.

- (ii) Other companies

The Code also applies to all offers (not falling within paragraph (i) above or paragraph (iii) below) for public and private companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:-

- (A) any of their securities have been admitted to the Official List at any time during the 10 years prior to the relevant date; or
- (B) dealings and/or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise; or
- (C) any of their securities have been subject to a marketing arrangement as described in section 163(2)(b) of the Companies Act 1985 at any time during the 10 years prior to the relevant date; or
- (D) they were required to file a prospectus for the issue of securities with the registrar of companies or any other relevant authority in the United Kingdom, the Channel Islands or the Isle of Man or to have a prospectus approved by the UKLA at any time during the 10 years prior to the relevant date.

In each case, the relevant date is the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code.

The Panel appreciates that the provisions of the Code may not be appropriate to all statutory and chartered companies referred to in paragraphs (i) and (ii) above or to all private companies falling within the categories listed in paragraph (ii) above and may accordingly apply the Code with a degree of flexibility in suitable cases.

(iii) Shared jurisdiction – UK and other EEA registered and traded companies

The Code also applies (to the extent described below) to offers for the following companies:

- (A) a company which has its registered office in the United Kingdom whose securities are admitted to trading on a regulated market in one or more member states of the European Economic Area ~~other than~~ but not on a regulated market in the United Kingdom;
- (B) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading only on a regulated market in the United Kingdom; and
- (C) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on regulated markets in more than one member state of the European Economic Area including the United Kingdom if:
 - (I) the securities of the company were first admitted to trading only in the United Kingdom; or
 - (II) the securities of the company are simultaneously admitted to trading on more than one regulated market, but not on a regulated market in the member state of the European Economic Area in which it has its registered office, on or after 20 May 2006, if the company notifies the Panel and the relevant regulatory authorities on the first day of trading that it has chosen the Panel to regulate it; or
 - (III) the Panel is the supervisory authority pursuant to the second paragraph of Article 4(2)(c) of the Directive.

A company referred to in paragraphs (C)(II) or (III) must notify a Regulatory Information Service of the selection of the Panel to regulate it without delay.

The provisions of the Code which will apply to such offers shall be determined by the Panel on the basis set out in Article 4(2)(e) of the Directive. In summary, this means that:

- in cases falling within paragraph (A) above, the Code will apply in respect of matters relating to the information to be provided to the employees of the offeree company and matters relating to company law (in particular the percentage of voting rights which confers control and any derogation from the obligation to launch an offer, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of an offer) (“employee information and company law matters”); in relation to matters relating to the consideration offered (in particular the price) and matters relating to the offer procedure (in particular the information on the offeror’s decision to make an offer, the contents of the offer document and the disclosure of the offer) (“consideration and procedural matters”), the rules of the supervisory authority of the member state determined in accordance with Article 4(2)(b) and (c) of the Directive as the relevant supervisory authority will apply; and

- in cases falling within paragraphs (B) or (C) above, the Code will apply in respect of consideration and procedural matters; in relation to employee information and company law matters, the rules of the supervisory authority in the member state where the offeree company has its registered office will apply.

(iv) Open-ended investment companies

The Code does not apply to offers for open-ended investment companies as defined in Article 1(2) of the Directive.

(b) Transactions

In cases falling within paragraphs (a)(i) or (ii) above, the Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected, including by means of statutory merger or Court approved scheme of arrangement. The Code is also concerned with regulating other transactions (including offers by a parent company for shares in its subsidiary, dual holding company transactions, new share issues, share capital reorganisations and offers to minority shareholders) which have as their objective or potential effect (directly or indirectly) obtaining or consolidating control of the relevant companies, as well as all partial offers (including tender offers pursuant to Appendix 5) to shareholders for securities in the relevant companies. The Code also applies to unitisation proposals which are in competition with another transaction to which the Code applies.

In cases falling within paragraph (a)(iii) above, “offers” means only any public offer (other than by the company itself) made to the holders of the company’s securities to acquire those securities (whether mandatory or voluntary) which follows or has as its objective the acquisition of control of the company concerned.

The Code applies to all the above transactions at whatever stage of their implementation, including possible transactions which have not yet been announced.

References in the Code to “takeovers” and “offers” include all transactions subject to the Code as referred to in this section.

The Code does not apply to offers for non-voting, non-equity capital unless they are offers required by Rule 15.

(c) Related matters

In addition to regulating the transactions referred to in section 3(b) above, the Code also contains rules for the regulation of things done in consequence of, or otherwise in relation to, takeovers and about cases where any such takeover is, or has been, contemplated or apprehended or an announcement is made denying that any such takeover is intended.

(d) Dual jurisdiction

Takeovers and other matters to which the Code applies may from time to time be subject to the dual jurisdiction of the Panel and an overseas takeover regulator, including offers for those companies within paragraph (a)(iii) above. In such cases, early consultation with the Panel is advised so that guidance can be given on how any conflicts between the relevant rules may be resolved and, where relevant, which provisions of the Code apply pursuant to Article 4(2)(e) of the Directive.

(e) ~~Loss of Code protection~~ Re-registration of a public company as a private company

A public company incorporated in the United Kingdom, the Channel Islands or the Isle of Man may decide to re-register as a private company as a result of which, pursuant to section 3(a) above, the Code may no longer apply to it. If the Code would no longer apply in such

circumstances and the relevant company has more than one shareholder, ~~it must consult~~ early consultation with the Panel is advised before it re-registers as a private company so that guidance can be given by the Panel on the appropriate disclosure to be made to its shareholders about the implications of the loss of Code protection.

(f) Code responsibilities and obligations

The Code applies to a range of persons who participate in, or are connected with, or who in any way seek to influence, intervene in, or benefit from, takeovers or other matters to which the Code applies.

The Code also applies to all advisers to such persons, and all advisers in so far as they advise on takeovers or other matters to which the Code applies. Financial advisers to whom the Code applies have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them. ~~Financial advisers must ensure~~ and that the Panel is consulted whenever necessary appropriate.

The Code also applies to any directors, employees or representatives through whom any body corporate, partnership or other entity to which the Code applies acts. The Panel expects all bodies corporate, partnerships and other entities to which the Code applies to ensure that their relevant directors and employees receive appropriate and timely training guidance in respect of the Code and will hold any such entity responsible for its directors' and employees' acts or omissions.

~~While the directors of offeror and offeree companies and their advisers have a duty to act in the best interests of their respective shareholders, the Code will inevitably impinge on the freedom of action of directors and persons involved in takeovers, and there are limitations. The Code imposes limitations on the manner in which directors can act in connection with takeovers, which may impinge on the duties that the directors of offeror and offeree companies might owe, on the manner in which those interests can be pursued.~~

The Code applies in respect of the acts and omissions of any person in connection with a takeover or any other matter to which the Code applies, notwithstanding that the offeree company may since have ceased to be subject to the Code.

In this section 3(f), references to "directors" means, in relation to any body corporate, its directors and officers, in relation to any partnership, its partners, and, in relation to any other entity, those persons exercising equivalent functions on behalf of the entity concerned.

In cases of doubt, the Panel must be consulted as to the persons to whom the Code applies.

4 THE PANEL AND ITS COMMITTEES

Save for section 4(d) (which sets out a rule), this section gives an overview of the membership, functions, responsibilities and general activities of the Panel and certain of its Committees.

Details of various other Committees of the Panel are available on the Panel's website.

(a) The Panel

The Panel assumes overall responsibility for the policy, financing and administration of the Panel's functions and for the functioning and operation of the Code. The Panel operates through a number of Committees and is directly responsible for those matters which are not dealt with through one of its Committees.

The Panel comprises up to 34 members:

- (i) the Chairman, who is appointed by the Panel;
- (ii) up to two Deputy Chairmen, who are appointed by the Panel;
- (iii) up to twenty other members, who are appointed by the Panel; and
- (iv) individuals appointed by each of the following bodies:-

The Association of British Insurers
 The Association of Investment Trust Companies
 The Association of Private Client Investment Managers and Stockbrokers
 The British Bankers' Association
 The Confederation of British Industry
 The Institute of Chartered Accountants in England and Wales
 Investment Management Association
 The London Investment Banking Association (with separate representation
 also for its Corporate Finance Committee and Securities Trading
 Committee)
 The National Association of Pension Funds.

The Chairman and the Deputy Chairmen are designated as members of the Hearings Committee. Each other Panel member appointed by the Panel under paragraphs (i) to (iii) above is designated upon appointment to act as a member of either the Panel's Code Committee or its Hearings Committee.

Up to twelve Panel members appointed by the Panel under paragraph (iii) above are designated as members of the Code Committee. The Panel may appoint designated alternates for such members of the Code Committee, ~~each of whom~~ One designated alternate may act as a member of the Panel (or the Code Committee) in a relevant member's place when he is unavailable.

Up to eight Panel members appointed by the Panel under paragraph (iii) above are designated as members of the Hearings Committee. The Panel may appoint designated alternates for such members of the Hearings Committee, ~~each of whom~~ One designated alternate may act as a member of the Panel (or the Hearings Committee) in a relevant member's place when he is unavailable.

The Panel members appointed by the bodies under paragraph (iv) above become members of the Panel's Hearings Committee without further designation by the Panel. Each of these bodies may appoint designated alternates for its appointees, ~~each of whom~~ One designated alternate may act as a member of the Panel (or the Hearings Committee) in the relevant member's place when he is unavailable. In performing their functions on the Hearings Committee, these members (and their alternates) act independently of the body which has appointed them (and not as that body's agent or delegate) and exercise their own judgment as to how to perform their functions and how to vote.

Details of the Panel and its Committees, and the names of members of the Panel and the designated alternates, are available on the Panel's website.

(b) The Code Committee

The Code Committee represents a spread of shareholder, corporate, practitioner and other interests within the Panel's regulated community. Up to twelve members of the Panel are designated by the Panel as members of the Code Committee. Its membership from time to time and Terms of Reference are available on the Panel's website.

The Code Committee carries out the rule-making functions of the Panel and is solely responsible for keeping the Code (other than those matters set out in sections 1, 2(a) and (b) ~~(except for section 2(c))~~, 4(a),(b) and (c)~~(except for section 4(d))~~, 5, 7, 8 and 13 of the Introduction, which are the responsibility of the Panel) under review and for proposing,

consulting on, making and issuing amendments to those parts of the Code. The Code Committee's consultation procedures are set out in its Terms of Reference. Amendments to those matters set out in sections 1, 2(a) and (b) ~~(except for section 2(e))~~, 4(a), (b) and (c) ~~(except for section 4(d))~~, 5, 7 and 13 of the Introduction will usually be issued by the Panel. Amendments to those matters set out in section 8 of the Introduction will be agreed by the Takeover Appeal Board and will be issued by the Panel with immediate effect.

Matters leading to possible amendment to the Code might arise from a number of sources, including specific cases which the Panel has considered, market developments or particular concerns of those operating within the markets.

Once it has agreed that a particular matter is to be pursued, the Code Committee will prepare and publish a Public Consultation Paper ("PCP") seeking the views of interested parties on the proposals and setting out the background to, reasons for and (where available) full text of the proposed amendment. Consultation periods in relation to PCPs vary depending on the complexity of the subject, but will usually be between one and two months.

Following the end of the consultation period, the Code Committee will publish its conclusions on the proposed amendment, taking account of the responses to the PCP received, together with the final Code amendments in a Response Statement ("RS"). It is the Code Committee's policy to make copies of all non-confidential responses it receives to a PCP available on request.

In certain exceptional cases, the Code Committee might consider it necessary to amend the Code on an expedited basis, for example because a particular market development appears to the Code Committee to require that the proposed amendment be made more quickly than the usual public consultation process would permit. In such cases, the Code Committee will publish the amendment with immediate effect and without prior formal consultation, followed in due course by a PCP seeking views on the amendment, which might be later modified, or removed altogether, depending on the Code Committee's conclusions following the consultation process.

Where, in the opinion of the Code Committee, any proposed amendment to the Code either does not materially alter the ~~intended~~ effect of the provision in question or is a consequence of changes to relevant legislation or regulatory requirements, the Code Committee may publish the text of the amendment without any formal consultation process.

PCPs and RSs are available on the Panel's website.

(c) The Hearings Committee

The Hearings Committee of the Panel comprises the Chairman, up to two Deputy Chairmen, up to eight other members designated by the Panel and the individuals appointed by the bodies listed at paragraph (a)(iv) above. Its membership from time to time, Terms of Reference and Rules of Procedure are available on the Panel's website.

The principal function of the Hearings Committee is to review rulings of the Executive. The Hearings Committee also hears disciplinary proceedings, instituted by the Executive, when the Executive considers that there has been a breach of the Code (see section 11 below).

The Hearings Committee may also be convened for hearings in certain other circumstances. The operations of the Hearings Committee are described in more detail in section 7 below.

The Hearings Committee is assisted in its proceedings by a secretary to the Hearings Committee, usually a partner in a law firm, acting as an officer of the Panel.

(d) Membership and representation restrictions

No person who is or has been a member ~~of the Code Committee~~ (or an alternate of a member) ~~of the Code Committee~~ may simultaneously or subsequently be a member (or an alternate of a member) of the Hearings Committee or the Takeover Appeal Board.

When acting in relation to any proceedings before the Hearings Committee or the Takeover Appeal Board, the Panel shall do so only by an officer or member of staff (or a person acting as such).

5 THE EXECUTIVE

This section gives an overview of the functions, responsibilities and general activities of the Executive.

The day-to-day work of takeover supervision and regulation is carried out by the Executive. In carrying out these functions, the Executive operates independently of the Panel. This includes, either on its own initiative or at the instigation of third parties, the conduct of investigations, the monitoring of relevant dealings in connection with the Code and the giving of rulings on the interpretation, application or effect of the Code. The Executive is available both for consultation and also the giving of rulings on the interpretation, application or effect of the Code before, during and, where appropriate, after takeovers or other relevant transactions.

The Executive is staffed by a mixture of employees and secondees from law firms, accountancy firms, corporate brokers, investment banks and other organisations. It is headed by the Director General, usually an investment banker on secondment, who is an officer of the Panel. The Director General is assisted by Deputy Directors General, Assistant Directors General and Secretaries, each of whom is an officer of the Panel, and the various members of the Executive's permanent and seconded staff. In performing their functions, the secondees act independently of the body which has seconded them (and not as that body's agent or delegate). Further information about the membership of the Executive is available on the Panel's website.

6 INTERPRETING THE CODE

This section sets out the rules according to which the Executive issues guidance and rulings on the interpretation, application or effect of the Code.

The Executive gives guidance on the interpretation, application and effect of the Code. In addition, it gives rulings on points of interpretation, application or effect of the Code which are based on the particular facts of a case. References to "rulings" shall include any decision, direction, determination, order or other instruction made by or under rules.

(a) Interpreting the Code - guidance

The Executive may be approached for general guidance on the interpretation or effect of the Code and how it is usually applied in practice. It may also be approached for guidance in relation to a specific issue on a "no names" basis, where the person seeking the guidance does not disclose to the Executive the names of the companies concerned. In either case, the guidance given by the Executive is not binding, and parties or their advisers cannot rely on such guidance as a basis for taking any action without first obtaining a ruling of the Executive on a named basis.

In addition, the Executive may from time to time publish Practice Statements which provide informal guidance as to how the Executive usually interprets and applies particular provisions of the Code in certain circumstances. Practice Statements do not form part of the Code and,

accordingly, are not binding and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. Practice Statements are available on the Panel's website.

Panel Statements (see section 7(c) below), statements of the Takeover Appeal Board (see section 8(b) below) and publications of the Code Committee may also contain guidance on the interpretation, application or effect of the Code.

(b) Interpreting the Code - rulings of the Executive and the requirement for consultation

When a person or its advisers are in any doubt whatsoever as to whether a proposed course of conduct is in accordance with the General Principles or the rules, or whenever a waiver or derogation from the application of the provisions of the Code is sought, that person or its advisers must consult the Executive in advance. In this way, they can obtain a conditional ruling (on an ex parte basis) or an unconditional ruling as to the basis on which they can properly proceed and thus minimise the risk of taking action which might, in the event, be a breach of the Code. To take legal or other professional advice on the interpretation, application or effect of the Code is not an appropriate alternative to obtaining a ruling from the Executive.

In addition to giving rulings at the request of a party, the Executive may, on its own initiative, give rulings on the interpretation, application or effect of the Code where it considers it necessary or appropriate to do so.

The nature of the Executive's rulings will depend on whether or not the Executive is able to hear the views of other parties involved. If the Executive is not able to hear the views of other parties involved, it may give a conditional ruling (on an ex parte basis), which may be varied or set aside when any views of the other parties have been heard; if the Executive is able to hear the views of other parties involved, it may give an unconditional ruling. An unconditional ruling is binding on those who are made aware of it unless and until overturned by the Hearings Committee or the Takeover Appeal Board. In addition, such persons must comply with any conditional ruling given by the Executive for the purpose of preserving the status quo pending the unconditional ruling.

Rulings of the Executive, including any grant or refusal to grant a waiver or derogation from the application of any rules, may be referred to the Hearings Committee for review as set out in section 7 below.

7 HEARINGS COMMITTEE

This section gives an overview of the procedural rules which apply to the commencement of proceedings before the Hearings Committee and the procedures followed by the Hearings Committee in connection with hearings before it. The full Rules of Procedure of the Hearings Committee are available on the Panel's website.

(a) Hearings before the Hearings Committee

The Hearings Committee can be convened in the following circumstances:

- (i) if a party to a takeover or any other person affected by a ruling of the Executive and with a sufficient interest in the matter, wishes to contest a ruling of the Executive, that party or person is entitled to request that the matter be reviewed by the Hearings Committee; or
- (ii) the Executive may refer a matter for review by the Hearings Committee without itself giving a ruling where it considers that there is a particularly unusual, important or difficult point at issue; or

- (iii) the Executive may institute disciplinary proceedings before the Hearings Committee when it considers that there has been a breach of the Code or of a ruling of the Executive or the Panel; or
- (iv) in other circumstances where the Executive or the Hearings Committee considers it appropriate to do so.

The Hearings Committee can be convened at short notice, where appropriate.

(b) Time limits for applications for review by the Hearings Committee; frivolous or vexatious applications

Where a party to a takeover or any other person affected by a ruling of the Executive and with sufficient interest in the matter wishes a matter to be reviewed by the Hearings Committee, the Panel must be notified as soon as possible and, in any event (subject to the following paragraph), within such period as is reasonable in all the circumstances of the case (which shall not be longer than one month or from the event giving rise to the application for review).

Where it considers necessary, the Executive may stipulate a reasonable time within which the Panel must be notified. Such time may, depending on the facts of the case, range from a few hours to the one month period referred to above. The Executive may also extend the usual one month period within which the Panel must be notified.

The Chairman (or, failing that, the Hearings Committee or its Chairman of the hearing as specified below) may, on behalf of the Hearings Committee, (or, failing that, one of the Deputy Chairmen) retain a discretion to deal summarily with applications for procedural directions or frivolous or vexatious requests that the Hearings Committee be convened applications without convening the Hearings Committee and without holding a hearing.

(c) Conduct of hearings before the Hearings Committee

The quorum for Hearings Committee proceedings is five. The Chairman or, where he is unavailable, one of the Deputy Chairmen will usually preside as chairman of the proceedings in question ("chairman of the hearing"), although if they Chairman and both Deputy Chairmen are unavailable, another member of the Hearings Committee will be appointed by the Chairman (or, failing that, by the other members of the Hearings Committee) to act as chairman of the hearing.

The Hearings Committee usually conducts its hearings using the procedure set out in its Rules of Procedure, but it (or the chairman of the hearing) may vary such procedure in such manner as it (or he) thinks fit if it considers appropriate for the that fairness and justice would be better served by doing so conduct and determination of the case.

At hearings before the Hearings Committee, the case is usually presented in person by the parties, which include the Executive, or their advisers. Although not usual, parties may, if they so wish, be represented by legal advisers. Usually, the parties are required to set out their case briefly in writing beforehand. The parties are permitted to call such witnesses as they consider necessary, with the consent of the chairman of the hearing.

Proceedings before the Hearings Committee are usually in private, although the chairman of the hearing may, at his discretion, direct otherwise. Parties may request that the hearing be held in public. Any such request is considered and ruled upon by the chairman of the hearing (or, at the discretion of the chairman, by the Hearings Committee itself). In the event of a public hearing, the Hearings Committee or the chairman of the hearing may direct that the Hearings Committee should hear part or parts of the proceedings in private and may impose such other conditions relating to the non-disclosure of information relating to the proceedings as it or he considers necessary and appropriate.

In general, all parties are entitled to be present throughout the hearing and to see all papers submitted to the Hearings Committee. Occasionally, however, a party may wish to present

evidence to the Hearings Committee which is of a confidential or commercially sensitive nature. In such exceptional cases, the Hearings Committee or the chairman of the hearing may, if satisfied that such course is justified, direct that the evidence in question be heard in the absence of some, or all, of the other parties involved.

The parties must at the earliest opportunity raise with the chairman of the hearing issues concerning possible conflicts of interest for members of the Hearings Committee and any other objections in relation to the proceedings. Any such issues will be resolved by ~~decision~~ a ruling of the chairman of the hearing.

Proceedings before the Hearings Committee are informal. There are no rules of evidence. A recording is taken for the Hearings Committee's own administrative purposes, but ~~it is~~ will not be normally retained once the proceedings are at an end. In addition, a transcript of the hearing is usually made. A party to the hearing may request a copy of the transcript, which may be provided subject to conditions, including conditions as to its confidentiality and use.

The Hearings Committee provides a copy of its decision ruling to the parties in writing as soon as practicable following the hearing. As part of the ~~decision ruling~~, the Hearings Committee may give directions regarding the effects of the ~~Panel Executive's ruling (if any)~~ and/or its ~~decision ruling~~ pending the outcome of an appeal (if any). ~~A decision may be redacted (following a request by one of the parties to the hearing and at the discretion of the chairman of the hearing) so as to protect information of a confidential or commercially sensitive nature.~~

It is the usual policy of the Hearings Committee to publish its ~~decisions~~ rulings by means of a Panel Statement issued as promptly as possible, having regard to all the circumstances of the case, after the ~~decision ruling~~ has been provided in writing to the parties. In certain circumstances, the Hearings Committee may issue a Panel Statement of its ~~decision ruling~~ (without providing supporting reasons) in advance of the publication of its full ~~decision ruling~~. ~~Any Panel Statement setting out a decision of the Hearings Committee (whether or not including the full decision) may be redacted for publication so as to protect confidential or commercially sensitive information. Redaction is at the discretion of the chairman of the hearing.~~

If there is, or may be, an appeal to the Takeover Appeal Board against a decision ruling of the Hearings Committee (see section 8 below), the Hearings Committee (or the chairman of the hearing) may suspend publication of any Panel Statement, although an interim announcement may be made in these circumstances where appropriate. If there is an appeal, publication may, at the discretion of the chairman of the hearing, be suspended until after the decision of the Takeover Appeal Board or, in particular if the appeal is upheld, withheld altogether.

Panel Statements are available on the Panel's website.

Rulings of the Hearings Committee are binding on the parties to the proceedings and on those invited to participate in those proceedings, unless and until overturned by the Takeover Appeal Board.

(d) Procedural rulings

The chairman of the hearing may give such procedural rulings as he considers appropriate for the conduct and determination of the case. This includes, for the avoidance of doubt, the ability to extend or shorten any specified time limits.

(e) Right of appeal

~~In all cases, there is a right of~~ Any party to the hearing before the Hearings Committee (or any person denied permission to be a party to the hearing before the Hearings Committee) may appeal to the Takeover Appeal Board against any ~~decision~~ ruling of the Hearings Committee or the chairman of the hearing (including in respect of procedural directions).

Notice of appeal, including a summary of the grounds of appeal and the remedy requested, must be given within such time as is stipulated by the Hearings Committee or the chairman of the hearing (or, at the discretion of the chairman, by the Hearings Committee itself) or, in the absence of such stipulation, within two business days of the receipt in writing of the decision ruling of the Hearings Committee or the chairman of the hearing in question.

8 TAKEOVER APPEAL BOARD

This section gives an overview of the Takeover Appeal Board (the “Board”) and the procedures followed by the Board in connection with hearings before it. The full procedures of the Board are set out in its Rules, a copy of which is available on the Board’s website at www.thetakeoverappealboard.org.uk.

(a) Status, purpose and membership of the Board

The Board is an independent body which hears appeals against rulings of the Hearings Committee. The Board’s procedures are described in greater detail below.

The Chairman and Deputy Chairman of the Board will usually have held high judicial office, and are appointed by the Master of the Rolls. Other members, who will usually have relevant knowledge and experience of takeovers and the Code, are appointed by the Chairman (or, failing that, the Deputy Chairman) of the Board. The names of the members of the Board are available on the Board’s website.

The Board is assisted in its proceedings by a secretary to the Board (who will not be the person who acted as secretary to the Hearings Committee in the same matter), usually a partner in a law firm.

(b) Conduct of hearings before the Board

The quorum for Board proceedings is three. However, the Board hearing an appeal will usually comprise at least five members. The Chairman or, where he is unavailable, the Deputy Chairman will usually preside as chairman of the proceedings in question (“chairman of the hearing”), although if they are unavailable, another member of the Board will be appointed by the Chairman (or, failing that, by the other members of the Board) to act as chairman of the hearing.

Proceedings before the Board are generally conducted in a similar way to those before the Hearings Committee as set out in section 7(c) above, using the procedure set out in the Board’s Rules. In addition, the Board or the chairman of the hearing may give such directions as it or he considers appropriate for the conduct and determination of the case.

The chairman of the hearing may, on behalf of the Board, deal with appeals relating to procedural directions of the Hearings Committee or frivolous or vexatious appeals without convening the Board and without holding an oral hearing.

The Board provides its decision to the parties in writing as soon as practicable. Decisions of the Board are usually published in a public statement, save for matters redacted in order to protect confidential or commercially sensitive information (redaction being allowed following a request by one of the parties to the hearing and at the discretion of the chairman of the hearing). Any public statement of the Board will usually be issued as promptly as possible, having regard to all the circumstances of the case, after the decision has been provided in writing to the parties. In certain circumstances, the Board may issue a public statement of its decision (without providing reasons at this stage) in advance of the publication of the full decision.

(c) Remedies

The Board may confirm, vary, set aside, annul or replace the contested ruling of the Hearings Committee. On reaching its decision, the Board remits the matter to the Panel Hearings Committee with such directions (if any) as the Board (or the chairman of the hearing) considers appropriate for giving effect to its (or his) decision. The ~~Panel~~-Hearings Committee will give effect to the Board's decision.

9 PROVIDING INFORMATION AND ASSISTANCE TO THE PANEL AND THE PANEL'S POWERS TO REQUIRE DOCUMENTS AND INFORMATION

This section sets out the rules according to which persons dealing with the Panel must provide information and assistance to the Panel.

(a) Dealings with and assisting the Panel

The Panel expects any person dealing with it to do so in an open and co-operative way. It also expects prompt co-operation and assistance from persons dealing with it and those to whom enquiries and other requests are directed. In dealing with the Panel, a person must disclose to the Panel any information known to them and relevant to the matter being considered by the Panel (and correct or update that information if it changes). A person dealing with the Panel or to whom enquiries or requests are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel.

A person is entitled to resist providing information or documents on the grounds of legal professional privilege.

Where a matter has been determined by the Panel and a person becomes aware that information they supplied to the Panel was incorrect, incomplete or misleading, that person must promptly contact the Panel to correct the position. In addition, where a determination of the Panel has continuing effect (such as the grant of exempt status or a concert party ruling), the party or parties to that determination must promptly notify the Panel ~~of any change in the information they supplied to the Panel in connection with that determination~~ and of any new information ~~which (in either case) unless~~ they reasonably consider that it would not be likely to have been ~~material~~ relevant to that determination.

(b) Power to require documents and information

Regulation 6 Section 622 of the Act gives the Panel certain powers to require documents and information in the case of a transaction and rule subject to the requirements of the Directive. It provides that, where documents or information are reasonably required in connection with the exercise of its functions, the Panel may by notice in writing require any person:

- (i) to produce any documents that are specified or described in the notice; or
- (ii) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice,

within such reasonable period and at such place as is specified in the notice. It may also require any information or document so provided to be verified or authenticated in such manner as it may reasonably require. Where the Panel imposes a requirement under Regulation 6 section 622 of the Act, the addressee must comply with that requirement. Failure to comply with any requirement is a breach of the Code.

A person is entitled to resist providing information or documents on the grounds of legal professional privilege.

10 ENFORCING THE CODE

Sections 10(a) to 10(c) set out certain rules pursuant to which the Panel enforces the Code. Section 10(e) sets out the “offer document rules” and the “response document rules” for the purposes of ~~Regulation 10~~~~section 628 of the Act.~~

It is the practice of the Panel, in discharging its functions under the Code, to focus on the specific consequences for ~~shareholders~~ of breaches of the Code with the aim of providing appropriate remedial or compensatory action in a timely manner. Furthermore, in respect of certain breaches of the Code disciplinary action may be appropriate (see section 11 below). For the purposes of Regulation 12(2) in the case of a transaction and rule subject to the requirements of the Directive section 631(2), no contravention of any requirement imposed by or under rules shall render any transaction void or unenforceable or affect the validity of any other thing.

(a) Requirement of promptness in dealings with the Executive

If a complaint is to be made that the Code has been breached, it must be made promptly, in default of which the Executive may, at its discretion, decide not to consider the complaint. Similarly, where a person who has made a complaint to the Executive fails to comply with a deadline set by the Executive, the Executive may decide to disregard the complaint in question.

(b) Compliance rulings

If the Panel is satisfied that:

- (i) there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules; or
- (ii) a person has contravened a requirement imposed by or under rules,

the Panel may give any direction that appears to it to be necessary in order:

- (A) to restrain a person from acting (or continuing to act) in breach of rules; or
- (B) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules; or
- (C) otherwise to secure compliance with rules.

(c) Compensation rulings

Where a person has breached the requirements of any of Rules 6, 9, 11, 14, 15, 16 or 35.3 of the Code, the Panel may ~~(in exercise of the power granted to the Panel in section 629 of the Act)~~ make a ruling requiring the person concerned to pay, within such period as is specified, to the holders, or former holders, of securities of the offeree company such amount as it thinks just and reasonable so as to ensure that such holders receive what they would have been entitled to receive if the relevant Rule had been complied with. In addition, the Panel may make a ruling requiring simple or compound interest to be paid at a rate and for a period (including in respect of any period prior to the date of the ruling and until payment) to be determined.

(d) Enforcement by the Courts

Under Regulation 11, in the case of a transaction and rule subject to the requirements of the Directive section 630 of the Act, the Panel may seek enforcement by the courts. If the court is satisfied that:

- (i) there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules; or
- (ii) a person has contravened a requirement imposed by or under rules or a requirement imposed under ~~section 622 of the Act~~ Regulation 6,

the court may make any order it thinks fit to secure compliance with the requirement. Any failure to comply with a resulting court order may be a contempt of court.

(e) Bid documentation rules

For the purposes of Regulation 10, in the case of a transaction and rule subject to the requirements of the Directive section 628 of the Act, the "offer document rules" and the "response document rules" are those parts of Rules 24 and 25 respectively which are set out in Appendix 6 and, in each case, Rule 27 to the extent that it requires the inclusion of material changes to, or the updating of, the information in those parts of Rules 24 or 25, as the case may be, in relation to the offer documents and offeree board circulars referred to in Rules 30.1 and 30.2 respectively and the revised offer documents and subsequent offeree board circulars referred to in Rules 32.1 and 32.6(a) respectively.

11 DISCIPLINARY POWERS

This section sets out the disciplinary rules of the Panel in connection with breaches and alleged breaches of the Code.

(a) Disciplinary action

The Executive may itself deal with a disciplinary matter where the person who is to be subject to the disciplinary action agrees the facts and the action proposed by the Executive. In any other case, where it considers that there has been a breach of the Code, the Executive may commence disciplinary proceedings before the Hearings Committee. The person concerned is informed in writing of the alleged breach and of the matters which the Executive will present to the Hearings Committee. Disciplinary actions are conducted in accordance with the Rules of Procedure of the Hearings Committee, which are available on the Panel's website.

(b) Sanctions or other remedies for breach of the Code

If the Hearings Committee finds a breach of the Code or of a ruling of the Panel, it may:

- (i) issue a private statement of censure; or
- (ii) issue a public statement of censure; or
- (iii) suspend or withdraw any exemption, approval or other special status which the Panel has granted to a person, or impose conditions on the continuing enjoyment of such exemption, approval or special status, in respect of all or part of the activities to which such exemption, approval or special status relates; or
- (iv) report the offender's conduct to a United Kingdom or overseas regulatory authority or professional body (most notably the Financial Services Authority ("FSA")) so that that authority or body can consider whether to take disciplinary or enforcement action (for example, the FSA has power to take certain actions against an authorised person or

an approved person who fails to observe proper standards of market conduct, including the power to fine); or

- (v) publish a Panel Statement indicating that the offender is someone who, in the Hearings Committee's opinion, is not likely to comply with the Code. The rules of the FSA and certain professional bodies oblige their members, in certain circumstances, not to act for the person in question in a transaction subject to the Code, including a dealing in relevant securities requiring disclosure under Rule 8 (so called "cold-shouldering"). For example, the FSA's rules require a person authorised under the Financial Services and Markets Act 2000 ("FSMA") not to act, or continue to act, for any person in connection with a transaction to which the Code applies if the firm has reasonable grounds for believing that the person in question, or his principal, is not complying or is not likely to comply with the Code.

12 CO-OPERATION AND INFORMATION SHARING

This section summarises the relevant provisions of the Regulations Act and sets out the rules as to the basis on which the Panel will effect service of documents under Article 4(4) of the Directive and the professional secrecy obligations applying in relation to information held by the Panel in connection with the exercise of its functions which does not fall within Regulation 7 section 623 of the Act.

~~The Under section 625 of the Act, the Panel must,~~ to the extent it has power to do so, takes such steps as it considers appropriate to co-operate with the FSA, other supervisory authorities designated for the purposes of the Directive and regulators outside the United Kingdom having functions similar to the FSA or to the Panel, including by the sharing of information which the Panel is permitted to disclose (see below). It may also exercise its powers to require documents and information (see section 9(b) above) for this purpose.

Where any supervisory authority designated for the purposes of the Directive by another member state or any authority responsible for the supervision of capital markets in another member state requests the Panel to serve any legal document in pursuance of its obligation of co-operation under Article 4(4) of the Directive, the Panel shall serve that document by first class post to the address specified for service in the request, and shall inform the requesting authority accordingly. No other method of service will be adopted by the Panel, even where the request specifies another method of service. In cases where:

- (a) no address for service is specified in the request; or
- (b) the request specifies an address for service outside of the United Kingdom; or
- (c) service of the document is validly refused by the party upon whom it is to be served; or
- (d) the Panel has been unable to serve the document for any other reason,

the Panel shall return the document unserved to the requesting authority, along with a statement of the reasons for non-service.

Under Regulation 7, in the case of a transaction and rule subject to the requirements of the Directives section 623 of the Act, information received by the Panel in connection with the exercise of its Directive statutory functions may not be disclosed without the consent of the individual (where it concerns a person's private affairs) or business to which it relates except as permitted by the Regulations Act. Part 2 of Schedule 1 to 2 of the Regulations Act includes gateways to allow the Panel to pass information it receives in the exercise of its Directive functions to United Kingdom and overseas regulatory authorities and other persons in accordance with the conditions laid down in that Schedule. The circumstances in which this may occur include, but are not limited to, the circumstances falling within paragraph 11(b)(iv) above.

Information (in whatever form) relating to the private affairs of an individual or to any particular business not falling within ~~Regulation 7 section 623 of the Act~~ which is created or held by the Panel in connection with the exercise of its functions, will not be disclosed by the Panel except as permitted in the circumstances set out in ~~Regulations 7 sections 623(2), (3) and (6)8 of the Act~~. A direct or indirect recipient of such information from the Panel may disclose it in the circumstances set out in ~~Regulations 7 sections 623(2), (3), (4)6 and (6)8 of the Act~~.

The Panel works closely with the FSA in relation to insider dealing and market abuse.

13 FEES AND CHARGES

The document charges set out in the Code shall be payable by the persons and in the circumstances set out in the Code.

Third parties shall pay such charges as the Panel may reasonably require for any goods (including copies of the Code) or services (including in relation to the granting, and maintenance, of exempt principal trader or exempt fund manager status as set out in the Definitions section of the Code) it provides. These charges are set out on the Panel's website.

APPENDIX B

**THE INTRODUCTION AFTER ENTRY INTO FORCE OF THE
LEGISLATION**

THE CITY CODE ON TAKEOVERS AND MERGERS

INTRODUCTION

1 OVERVIEW

The Panel on Takeovers and Mergers (the “Panel”) is an independent body, established in 1968, whose main functions are to issue and administer the City Code on Takeovers and Mergers (the “Code”) and to supervise and regulate takeovers and other matters to which the Code applies in accordance with the rules set out in the Code. It has been designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers pursuant to the Directive on Takeover Bids (2004/25/EC) (the “Directive”). Its statutory functions are set out in and under Chapter 1 of Part 22 of the Company Law Reform Act 2006 (the “Act”). The Panel has exercised rule-making powers conferred on it under the Act by making the rules that are set out in the Code (including this Introduction, the General Principles, the Definitions and the Rules (and the related Notes and Appendices)), ~~the SARs~~ and the Rules of Procedure of the Hearings Committee. These rules may be changed from time to time, and rules may also be set out in other documents as specified by the Panel.

Further information relating to the Panel and the Code can be found on the Panel’s website at www.thetakeoverpanel.org.uk. The Code is also available on the Panel’s website.

2 THE CODE

Save for section 2(c) (which sets out a rule), this section gives an overview of the nature and purpose of the Code.

(a) Nature and purpose of the Code

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

The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the company and its shareholders. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies.

The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to shareholders and an orderly framework for takeovers can be achieved. Following the implementation of the Directive by means of the Act, the rules set out in the Code now have a statutory basis and comply with the relevant requirements of the Directive.

(b) General Principles and Rules

The Code is based upon a number of General Principles, which are essentially statements of standards of commercial behaviour. These General Principles are the same as the general principles set out in Article 3 of the Directive. They apply to takeovers and other matters to which the Code applies. They are expressed in broad general terms and the Code does not define the precise extent of, or the limitations on, their application. They are applied in accordance with their spirit in order to achieve their underlying purpose.

In addition to the General Principles, the Code contains a series of rules. Although most of the rules are expressed in less general terms than the General Principles, they are not framed in technical language and, like the General Principles, are to be interpreted to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter.

(c) Derogations and Waivers

The Panel may derogate or grant a waiver to a person from the application of a rule (provided, in the case of a transaction and rule subject to the requirements of the Directive, that the General Principles are respected) either:

- (i) in the circumstances set out in the rule; or
- (ii) in other circumstances where the Panel considers that the particular rule would operate unduly harshly or in an unnecessarily restrictive or burdensome or otherwise inappropriate manner (in which case a reasoned decision will be given).

3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

This section (except for sections 3(d) and (e)) sets out the rules as to the companies, transactions and persons to which the Code applies.

(a) Companies

- (i) UK, Channel Islands and Isle of Man registered and traded companies

The Code applies to all offers (not falling within paragraph (iii) below) for companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices in the United Kingdom, the Channel Islands or the Isle of Man if any of their securities are admitted to trading on a regulated market in the United Kingdom or on any stock exchange in the Channel Islands or the Isle of Man.

- (ii) Other companies

The Code also applies to all offers (not falling within paragraph (i) above or paragraph (iii) below) for public and private companies and Societas Europaea (and, where appropriate, statutory and chartered companies) which have their registered offices in the United Kingdom, the Channel Islands or the Isle of Man and which are considered by the Panel to have their place of central management and control in the United Kingdom, the Channel Islands or the Isle of Man, but in relation to private companies only when:-

- (A) any of their securities have been admitted to the Official List at any time during the 10 years prior to the relevant date; or
- (B) dealings and/or prices at which persons were willing to deal in any of their securities have been published on a regular basis for a continuous period of at least six months in the 10 years prior to the relevant date, whether via a newspaper, electronic price quotation system or otherwise; or
- (C) any of their securities have been subject to a marketing arrangement as described in section 163(2)(b) of the Companies Act 1985 at any time during the 10 years prior to the relevant date; or
- (D) they were required to file a prospectus for the issue of securities with the registrar of companies or any other relevant authority in the United Kingdom, the Channel Islands or the Isle of Man or to have a prospectus approved by the UKLA at any time during the 10 years prior to the relevant date.

In each case, the relevant date is the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code.

The Panel appreciates that the provisions of the Code may not be appropriate to all statutory and chartered companies referred to in paragraphs (i) and (ii) above or to all private companies falling within the categories listed in paragraph (ii) above and may accordingly apply the Code with a degree of flexibility in suitable cases.

(iii) Shared jurisdiction – UK and other EEA registered and traded companies

The Code also applies (to the extent described below) to offers for the following companies:

- (A) a company which has its registered office in the United Kingdom whose securities are admitted to trading on a regulated market in one or more member states of the European Economic Area ~~other than~~ but not on a regulated market in the United Kingdom;
- (B) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading only on a regulated market in the United Kingdom; and
- (C) a company which has its registered office in another member state of the European Economic Area whose securities are admitted to trading on regulated markets in more than one member state of the European Economic Area including the United Kingdom if:
 - (I) the securities of the company were first admitted to trading only in the United Kingdom; or
 - (II) the securities of the company are simultaneously admitted to trading on more than one regulated market, but not on a regulated market in the member state of the European Economic Area in which it has its registered office, on or after 20 May 2006, if the company notifies the Panel and the relevant regulatory authorities on the first day of trading that it has chosen the Panel to regulate it; or
 - (III) the Panel is the supervisory authority pursuant to the second paragraph of Article 4(2)(c) of the Directive.

A company referred to in paragraphs (C)(II) or (III) must notify a Regulatory Information Service of the selection of the Panel to regulate it without delay.

The provisions of the Code which will apply to such offers shall be determined by the Panel on the basis set out in Article 4(2)(e) of the Directive. In summary, this means that:

- in cases falling within paragraph (A) above, the Code will apply in respect of matters relating to the information to be provided to the employees of the offeree company and matters relating to company law (in particular the percentage of voting rights which confers control and any derogation from the obligation to launch an offer, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of an offer) ("employee information and company law matters"); in relation to matters relating to the consideration offered (in particular the price) and matters relating to the offer procedure (in particular the information on the offeror's decision to make an offer, the contents of the offer document and the disclosure of the offer) ("consideration and procedural matters"), the rules of the supervisory authority of the member state determined in accordance with Article 4(2)(b) and (c) of the Directive as the relevant supervisory authority will apply; and

- in cases falling within paragraphs (B) or (C) above, the Code will apply in respect of consideration and procedural matters; in relation to employee information and company law matters, the rules of the supervisory authority in the member state where the offeree company has its registered office will apply.

(iv) Open-ended investment companies

The Code does not apply to offers for open-ended investment companies as defined in Article 1(2) of the Directive.

(b) Transactions

In cases falling within paragraphs (a)(i) or (ii) above, the Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected, including by means of statutory merger or Court approved scheme of arrangement. The Code is also concerned with regulating other transactions (including offers by a parent company for shares in its subsidiary, dual holding company transactions, new share issues, share capital reorganisations and offers to minority shareholders) which have as their objective or potential effect (directly or indirectly) obtaining or consolidating control of the relevant companies, as well as all partial offers (including tender offers pursuant to Appendix 5) to shareholders for securities in the relevant companies. The Code also applies to unitisation proposals which are in competition with another transaction to which the Code applies.

In cases falling within paragraph (a)(iii) above, “offers” means only any public offer (other than by the company itself) made to the holders of the company’s securities to acquire those securities (whether mandatory or voluntary) which follows or has as its objective the acquisition of control of the company concerned.

The Code applies to all the above transactions at whatever stage of their implementation, including possible transactions which have not yet been announced.

References in the Code to “takeovers” and “offers” include all transactions subject to the Code as referred to in this section.

The Code does not apply to offers for non-voting, non-equity capital unless they are offers required by Rule 15.

(c) Related matters

In addition to regulating the transactions referred to in section 3(b) above, the Code also contains rules for the regulation of things done in consequence of, or otherwise in relation to, takeovers and about cases where any such takeover is, or has been, contemplated or apprehended or an announcement is made denying that any such takeover is intended.

(d) Dual jurisdiction

Takeovers and other matters to which the Code applies may from time to time be subject to the dual jurisdiction of the Panel and an overseas takeover regulator, including offers for those companies within paragraph (a)(iii) above. In such cases, early consultation with the Panel is advised so that guidance can be given on how any conflicts between the relevant rules may be resolved and, where relevant, which provisions of the Code apply pursuant to Article 4(2)(e) of the Directive.

(e) Loss of Code protection Re-registration of a public company as a private company

A public company incorporated in the United Kingdom, the Channel Islands or the Isle of Man may decide to re-register as a private company as a result of which, pursuant to section 3(a) above, the Code may no longer apply to it. If the Code would no longer apply in such circumstances and the relevant company has more than one shareholder, ~~it must consult~~

early consultation with the Panel is advised before it re-registers as a private company so that guidance can be given by the Panel on the appropriate disclosure to be made to its shareholders about the implications of the loss of Code protection.

(f) Code responsibilities and obligations

The Code applies to a range of persons who participate in, or are connected with, or who in any way seek to influence, intervene in, or benefit from, takeovers or other matters to which the Code applies.

The Code also applies to all advisers to such persons, and all advisers in so far as they advise on takeovers or other matters to which the Code applies. Financial advisers to whom the Code applies have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them. ~~Financial advisers must ensure~~ and that the Panel is consulted whenever necessary appropriate.

The Code also applies to any directors, employees or representatives through whom any body corporate, partnership or other entity to which the Code applies acts. The Panel expects all bodies corporate, partnerships and other entities to which the Code applies to ensure that their relevant directors and employees receive appropriate and timely training guidance in respect of the Code and will hold any such entity responsible for its directors' and employees' acts or omissions.

~~While the directors of offeror and offeree companies and their advisers have a duty to act in the best interests of their respective shareholders, the Code will inevitably impinge on the freedom of action of directors and persons involved in takeovers, and there are limitations~~ The Code imposes limitations on the manner in which directors can act in connection with takeovers, which may impinge on the duties that the directors of offeror and offeree companies might owe, on the manner in which those interests can be pursued.

The Code applies in respect of the acts and omissions of any person in connection with a takeover or any other matter to which the Code applies, notwithstanding that the offeree company may since have ceased to be subject to the Code.

In this section 3(f), references to "directors" means, in relation to any body corporate, its directors and officers, in relation to any partnership, its partners, and, in relation to any other entity, those persons exercising equivalent functions on behalf of the entity concerned.

In cases of doubt, the Panel must be consulted as to the persons to whom the Code applies.

4 THE PANEL AND ITS COMMITTEES

Save for section 4(d) (which sets out a rule), this section gives an overview of the membership, functions, responsibilities and general activities of the Panel and certain of its Committees.

Details of various other Committees of the Panel are available on the Panel's website.

(a) The Panel

The Panel assumes overall responsibility for the policy, financing and administration of the Panel's functions and for the functioning and operation of the Code. The Panel operates through a number of Committees and is directly responsible for those matters which are not dealt with through one of its Committees.

The Panel comprises up to 34 members:

- (i) the Chairman, who is appointed by the Panel;

- (ii) up to two Deputy Chairmen, who are appointed by the Panel;
- (iii) up to twenty other members, who are appointed by the Panel; and
- (iv) individuals appointed by each of the following bodies:-

- The Association of British Insurers
- The Association of Investment Trust Companies
- The Association of Private Client Investment Managers and Stockbrokers
- The British Bankers' Association
- The Confederation of British Industry
- The Institute of Chartered Accountants in England and Wales
- Investment Management Association
- The London Investment Banking Association (with separate representation also for its Corporate Finance Committee and Securities Trading Committee)
- The National Association of Pension Funds.

The Chairman and the Deputy Chairmen are designated as members of the Hearings Committee. Each other Panel member appointed by the Panel under paragraphs (i) to (iii) above is designated upon appointment to act as a member of either the Panel's Code Committee or its Hearings Committee.

Up to twelve Panel members appointed by the Panel under paragraph (iii) above are designated as members of the Code Committee. The Panel may appoint designated alternates for such members of the Code Committee, ~~each of whom~~ One designated alternate may act as a member of the Panel (or the Code Committee) in a relevant member's place when he is unavailable.

Up to eight Panel members appointed by the Panel under paragraph (iii) above are designated as members of the Hearings Committee. The Panel may appoint designated alternates for such members of the Hearings Committee, ~~each of whom~~ One designated alternate may act as a member of the Panel (or the Hearings Committee) in a relevant member's place when he is unavailable.

The Panel members appointed by the bodies under paragraph (iv) above become members of the Panel's Hearings Committee without further designation by the Panel. Each of these bodies may appoint designated alternates for its appointees, ~~each of whom~~ One designated alternate may act as a member of the Panel (or the Hearings Committee) in the relevant member's place when he is unavailable. In performing their functions on the Hearings Committee, these members (and their alternates) act independently of the body which has appointed them (and not as that body's agent or delegate) and exercise their own judgment as to how to perform their functions and how to vote.

Details of the Panel and its Committees, and the names of members of the Panel and the designated alternates, are available on the Panel's website.

(b) The Code Committee

The Code Committee represents a spread of shareholder, corporate, practitioner and other interests within the Panel's regulated community. Up to twelve members of the Panel are designated by the Panel as members of the Code Committee. Its membership from time to time and Terms of Reference are available on the Panel's website.

The Code Committee carries out the rule-making functions of the Panel and is solely responsible for keeping the Code (other than those matters set out in sections 1, 2(a) and (b)~~(except for section 2(c))~~, 4(a), (b) and (c)~~(except for section 4(d))~~, 5, 7, 8 and 13 of the Introduction, which are the responsibility of the Panel) under review and for proposing, consulting on, making and issuing amendments to those parts of the Code. The Code Committee's consultation procedures are set out in its Terms of Reference. Amendments to

those matters set out in sections 1, 2 (a) and (b) ~~(except for section 2(e)), 4(a),(b) and (c) (except for section 4(d))~~, 5, 7 and 13 of the Introduction will usually be issued by the Panel. Amendments to those matters set out in section 8 of the Introduction will be agreed by the Takeover Appeal Board and will be issued by the Panel with immediate effect.

Matters leading to possible amendment to the Code might arise from a number of sources, including specific cases which the Panel has considered, market developments or particular concerns of those operating within the markets.

Once it has agreed that a particular matter is to be pursued, the Code Committee will prepare and publish a Public Consultation Paper ("PCP") seeking the views of interested parties on the proposals and setting out the background to, reasons for and (where available) full text of the proposed amendment. Consultation periods in relation to PCPs vary depending on the complexity of the subject, but will usually be between one and two months.

Following the end of the consultation period, the Code Committee will publish its conclusions on the proposed amendment, taking account of the responses to the PCP received, together with the final Code amendments in a Response Statement ("RS"). It is the Code Committee's policy to make copies of all non-confidential responses it receives to a PCP available on request.

In certain exceptional cases, the Code Committee might consider it necessary to amend the Code on an expedited basis, for example because a particular market development appears to the Code Committee to require that the proposed amendment be made more quickly than the usual public consultation process would permit. In such cases, the Code Committee will publish the amendment with immediate effect and without prior formal consultation, followed in due course by a PCP seeking views on the amendment, which might be later modified, or removed altogether, depending on the Code Committee's conclusions following the consultation process.

Where, in the opinion of the Code Committee, any proposed amendment to the Code either does not materially alter the ~~intended~~ effect of the provision in question or is a consequence of changes to relevant legislation or regulatory requirements, the Code Committee may publish the text of the amendment without any formal consultation process.

PCPs and RSs are available on the Panel's website.

(c) The Hearings Committee

The Hearings Committee of the Panel comprises the Chairman, up to two Deputy Chairmen, up to eight other members designated by the Panel and the individuals appointed by the bodies listed at paragraph (a)(iv) above. Its membership from time to time, Terms of Reference and Rules of Procedure are available on the Panel's website.

The principal function of the Hearings Committee is to review rulings of the Executive. The Hearings Committee also hears disciplinary proceedings, instituted by the Executive, when the Executive considers that there has been a breach of the Code (see section 11 below). The Hearings Committee may also be convened for hearings in certain other circumstances. The operations of the Hearings Committee are described in more detail in section 7 below.

The Hearings Committee is assisted in its proceedings by a secretary to the Hearings Committee, usually a partner in a law firm, acting as an officer of the Panel.

(d) Membership and representation restrictions

No person who is or has been a member ~~of the Code Committee~~ (or an alternate of a member) of the Code Committee may simultaneously or subsequently be a member (or an alternate of a member) of the Hearings Committee or the Takeover Appeal Board.

When acting in relation to any proceedings before the Hearings Committee or the Takeover Appeal Board, the Panel shall do so only by an officer or member of staff (or a person acting as such).

5 THE EXECUTIVE

This section gives an overview of the functions, responsibilities and general activities of the Executive.

The day-to-day work of takeover supervision and regulation is carried out by the Executive. In carrying out these functions, the Executive operates independently of the Panel. This includes, either on its own initiative or at the instigation of third parties, the conduct of investigations, the monitoring of relevant dealings in connection with the Code and the giving of rulings on the interpretation, application or effect of the Code. The Executive is available both for consultation and also the giving of rulings on the interpretation, application or effect of the Code before, during and, where appropriate, after takeovers or other relevant transactions.

The Executive is staffed by a mixture of employees and secondees from law firms, accountancy firms, corporate brokers, investment banks and other organisations. It is headed by the Director General, usually an investment banker on secondment, who is an officer of the Panel. The Director General is assisted by Deputy Directors General, Assistant Directors General and Secretaries, each of whom is an officer of the Panel, and the various members of the Executive's permanent and seconded staff. In performing their functions, the secondees act independently of the body which has seconded them (and not as that body's agent or delegate). Further information about the membership of the Executive is available on the Panel's website.

6 INTERPRETING THE CODE

This section sets out the rules according to which the Executive issues guidance and rulings on the interpretation, application or effect of the Code.

The Executive gives guidance on the interpretation, application and effect of the Code. In addition, it gives rulings on points of interpretation, application or effect of the Code which are based on the particular facts of a case. References to "rulings" shall include any decision, direction, determination, order or other instruction made by or under rules.

(a) Interpreting the Code - guidance

The Executive may be approached for general guidance on the interpretation or effect of the Code and how it is usually applied in practice. It may also be approached for guidance in relation to a specific issue on a "no names" basis, where the person seeking the guidance does not disclose to the Executive the names of the companies concerned. In either case, the guidance given by the Executive is not binding, and parties or their advisers cannot rely on such guidance as a basis for taking any action without first obtaining a ruling of the Executive on a named basis.

In addition, the Executive may from time to time publish Practice Statements which provide informal guidance as to how the Executive usually interprets and applies particular provisions of the Code in certain circumstances. Practice Statements do not form part of the Code and, accordingly, are not binding and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. Practice Statements are available on the Panel's website.

Panel Statements (see section 7(c) below), statements of the Takeover Appeal Board (see section 8(b) below) and publications of the Code Committee may also contain guidance on the interpretation, application or effect of the Code.

(b) Interpreting the Code - rulings of the Executive and the requirement for consultation

When a person or its advisers are in any doubt whatsoever as to whether a proposed course of conduct is in accordance with the General Principles or the rules, or whenever a waiver or derogation from the application of the provisions of the Code is sought, that person or its advisers must consult the Executive in advance. In this way, they can obtain a conditional ruling (on an ex parte basis) or an unconditional ruling as to the basis on which they can properly proceed and thus minimise the risk of taking action which might, in the event, be a breach of the Code. To take legal or other professional advice on the interpretation, application or effect of the Code is not an appropriate alternative to obtaining a ruling from the Executive.

In addition to giving rulings at the request of a party, the Executive may, on its own initiative, give rulings on the interpretation, application or effect of the Code where it considers it necessary or appropriate to do so.

The nature of the Executive's rulings will depend on whether or not the Executive is able to hear the views of other parties involved. If the Executive is not able to hear the views of other parties involved, it may give a conditional ruling (on an ex parte basis), which may be varied or set aside when any views of the other parties have been heard; if the Executive is able to hear the views of other parties involved, it may give an unconditional ruling. An unconditional ruling is binding on those who are made aware of it unless and until overturned by the Hearings Committee or the Takeover Appeal Board. In addition, such persons must comply with any conditional ruling given by the Executive for the purpose of preserving the status quo pending the unconditional ruling.

Rulings of the Executive, including any grant or refusal to grant a waiver or derogation from the application of any rules, may be referred to the Hearings Committee for review as set out in section 7 below.

7 HEARINGS COMMITTEE

This section gives an overview of the procedural rules which apply to the commencement of proceedings before the Hearings Committee and the procedures followed by the Hearings Committee in connection with hearings before it. The full Rules of Procedure of the Hearings Committee are available on the Panel's website.

(a) Hearings before the Hearings Committee

The Hearings Committee can be convened in the following circumstances:

- (i) if a party to a takeover or any other person affected by a ruling of the Executive and with a sufficient interest in the matter, wishes to contest a ruling of the Executive, that party or person is entitled to request that the matter be reviewed by the Hearings Committee; or
- (ii) the Executive may refer a matter for review by the Hearings Committee without itself giving a ruling where it considers that there is a particularly unusual, important or difficult point at issue; or
- (iii) the Executive may institute disciplinary proceedings before the Hearings Committee when it considers that there has been a breach of the Code or of a ruling of the Executive or the Panel; or
- (iv) in other circumstances where the Executive or the Hearings Committee considers it appropriate to do so.

The Hearings Committee can be convened at short notice, where appropriate.

(b) Time limits for applications for review by the Hearings Committee; frivolous or vexatious applications

Where a party to a takeover or any other person affected by a ruling of the Executive and with sufficient interest in the matter wishes a matter to be reviewed by the Hearings Committee, the Panel must be notified as soon as possible and, in any event (subject to the following paragraph), within such period as is reasonable in all the circumstances of the case (which shall not be longer than one month ~~or from~~ the event giving rise to the application for review).

Where it considers necessary, the Executive may stipulate a reasonable time within which the Panel must be notified. Such time may, depending on the facts of the case, range from a few hours to the one month period referred to above. The Executive may also extend the usual one month period within which the Panel must be notified.

~~The Chairman (or, failing that, the Hearings Committee or its Chairman of the hearing as specified below) may, on behalf of the Hearings Committee, (or, failing that, one of the Deputy Chairmen) retain a discretion to deal summarily with applications for procedural directions or frivolous or vexatious requests that the Hearings Committee be convened~~ applications without convening the Hearings Committee and without holding a hearing.

(c) Conduct of hearings before the Hearings Committee

The quorum for Hearings Committee proceedings is five. The Chairman or, where he is unavailable, one of the Deputy Chairmen will usually preside as chairman of the proceedings in question ("chairman of the hearing"), although if the Chairman and both Deputy Chairmen are unavailable, another member of the Hearings Committee will be appointed by the Chairman (or, failing that, by the other members of the Hearings Committee) to act as chairman of the hearing.

The Hearings Committee usually conducts its hearings using the procedure set out in its Rules of Procedure, but it (or the chairman of the hearing) may vary such procedure in such manner as it (or he) thinks fit if it considers appropriate for the that fairness and justice would be better served by doing so ~~conduct and determination of the case.~~

At hearings before the Hearings Committee, the case is usually presented in person by the parties, which include the Executive, or their advisers. Although not usual, parties may, if they so wish, be represented by legal advisers. Usually, the parties are required to set out their case briefly in writing beforehand. The parties are permitted to call such witnesses as they consider necessary, with the consent of the chairman of the hearing.

Proceedings before the Hearings Committee are usually in private, although the chairman of the hearing may, at his discretion, direct otherwise. Parties may request that the hearing be held in public. Any such request is considered and ruled upon by the chairman of the hearing (or, at the discretion of the chairman, by the Hearings Committee itself). In the event of a public hearing, the Hearings Committee or the chairman of the hearing may direct that the Hearings Committee should hear part or parts of the proceedings in private and may impose such other conditions relating to the non-disclosure of information relating to the proceedings as it or he considers necessary and appropriate.

In general, all parties are entitled to be present throughout the hearing and to see all papers submitted to the Hearings Committee. Occasionally, however, a party may wish to present evidence to the Hearings Committee which is of a confidential or commercially sensitive nature. In such exceptional cases, the Hearings Committee or the chairman of the hearing may, if satisfied that such course is justified, direct that the evidence in question be heard in the absence of some, or all, of the other parties involved.

The parties must at the earliest opportunity raise with the chairman of the hearing issues concerning possible conflicts of interest for members of the Hearings Committee and any other objections in relation to the proceedings. Any such issues will be resolved by decision a ruling of the chairman of the hearing.

Proceedings before the Hearings Committee are informal. There are no rules of evidence. A recording is taken for the Hearings Committee's own administrative purposes, but it is will not be normally retained once the proceedings are at an end. In addition, a transcript of the hearing is usually made. A party to the hearing may request a copy of the transcript, which may be provided subject to conditions, including conditions as to its confidentiality and use.

The Hearings Committee provides a copy of its decision ruling to the parties in writing as soon as practicable following the hearing. As part of the decision ruling, the Hearings Committee may give directions regarding the effects of the Panel Executive's ruling (if any) and/or its decision ruling pending the outcome of an appeal (if any). ~~A decision may be redacted (following a request by one of the parties to the hearing and at the discretion of the chairman of the hearing) so as to protect information of a confidential or commercially sensitive nature.~~

It is the usual policy of the Hearings Committee to publish its decisions rulings by means of a Panel Statement issued as promptly as possible, having regard to all the circumstances of the case, after the decision ruling has been provided in writing to the parties. In certain circumstances, the Hearings Committee may issue a Panel Statement of its decision ruling (without providing supporting reasons) in advance of the publication of its full decision ruling. ~~Any Panel Statement setting out a decision of the Hearings Committee (whether or not including the full decision) may be redacted for publication so as to protect confidential or commercially sensitive information. Redaction is at the discretion of the chairman of the hearing.~~

If there is, or may be, an appeal to the Takeover Appeal Board against a decision ruling of the Hearings Committee (see section 8 below), the Hearings Committee (or the chairman of the hearing) may suspend publication of any Panel Statement, although an interim announcement may be made in these circumstances where appropriate. If there is an appeal, publication may, at the discretion of the chairman of the hearing, be suspended until after the decision of the Takeover Appeal Board or, in particular if the appeal is upheld, withheld altogether.

Panel Statements are available on the Panel's website.

Rulings of the Hearings Committee are binding on the parties to the proceedings and on those invited to participate in those proceedings, unless and until overturned by the Takeover Appeal Board.

(d) Procedural rulings

The chairman of the hearing may give such procedural rulings as he considers appropriate for the conduct and determination of the case. This includes, for the avoidance of doubt, the ability to extend or shorten any specified time limits.

(e) Right of appeal

~~In all cases, there is a right of~~ Any party to the hearing before the Hearings Committee (or any person denied permission to be a party to the hearing before the Hearings Committee) may appeal to the Takeover Appeal Board against any decision ruling of the Hearings Committee or the chairman of the hearing (including in respect of procedural directions).

Notice of appeal, including a summary of the grounds of appeal and the remedy requested, must be given within such time as is stipulated by the Hearings Committee or the chairman of the hearing (or, at the discretion of the chairman, by the Hearings Committee itself) or, in the absence of such stipulation, within two business days of the receipt in writing of the decision ruling of the Hearings Committee or the chairman of the hearing in question.

8 TAKEOVER APPEAL BOARD

This section gives an overview of the Takeover Appeal Board (the “Board”) and the procedures followed by the Board in connection with hearings before it. The full procedures of the Board are set out in its Rules, a copy of which is available on the Board’s website at www.thetakeoverappealboard.org.uk.

(a) Status, purpose and membership of the Board

The Board is an independent body which hears appeals against rulings of the Hearings Committee. The Board’s procedures are described in greater detail below.

The Chairman and Deputy Chairman of the Board will usually have held high judicial office, and are appointed by the Master of the Rolls. Other members, who will usually have relevant knowledge and experience of takeovers and the Code, are appointed by the Chairman (or, failing that, the Deputy Chairman) of the Board. The names of the members of the Board are available on the Board’s website.

The Board is assisted in its proceedings by a secretary to the Board (who will not be the person who acted as secretary to the Hearings Committee in the same matter), usually a partner in a law firm.

(b) Conduct of hearings before the Board

The quorum for Board proceedings is three. However, the Board hearing an appeal will usually comprise at least five members. The Chairman or, where he is unavailable, the Deputy Chairman will usually preside as chairman of the proceedings in question (“chairman of the hearing”), although if they are unavailable, another member of the Board will be appointed by the Chairman (or, failing that, by the other members of the Board) to act as chairman of the hearing.

Proceedings before the Board are generally conducted in a similar way to those before the Hearings Committee as set out in section 7(c) above, using the procedure set out in the Board’s Rules. In addition, the Board or the chairman of the hearing may give such directions as it or he considers appropriate for the conduct and determination of the case.

The chairman of the hearing may, on behalf of the Board, deal with appeals relating to procedural directions of the Hearings Committee or frivolous or vexatious appeals without convening the Board and without holding an oral hearing.

The Board provides its decision to the parties in writing as soon as practicable. Decisions of the Board are usually published in a public statement, save for matters redacted in order to protect confidential or commercially sensitive information (redaction being allowed following a request by one of the parties to the hearing and at the discretion of the chairman of the hearing). Any public statement of the Board will usually be issued as promptly as possible, having regard to all the circumstances of the case, after the decision has been provided in writing to the parties. In certain circumstances, the Board may issue a public statement of its decision (without providing reasons at this stage) in advance of the publication of the full decision.

(c) Remedies

The Board may confirm, vary, set aside, annul or replace the contested ruling of the Hearings Committee. On reaching its decision, the Board remits the matter to the Panel Hearings Committee with such directions (if any) as the Board (or the chairman of the hearing) considers appropriate for giving effect to its (or his) decision. The Panel-Hearings Committee will give effect to the Board’s decision.

9 PROVIDING INFORMATION AND ASSISTANCE TO THE PANEL AND THE PANEL'S POWERS TO REQUIRE DOCUMENTS AND INFORMATION

This section sets out the rules according to which persons dealing with the Panel must provide information and assistance to the Panel.

(a) Dealings with and assisting the Panel

The Panel expects any person dealing with it to do so in an open and co-operative way. It also expects prompt co-operation and assistance from persons dealing with it and those to whom enquiries and other requests are directed. In dealing with the Panel, a person must disclose to the Panel any information known to them and relevant to the matter being considered by the Panel (and correct or update that information if it changes). A person dealing with the Panel or to whom enquiries or requests are directed must take all reasonable care not to provide incorrect, incomplete or misleading information to the Panel.

A person is entitled to resist providing information or documents on the grounds of legal professional privilege.

Where a matter has been determined by the Panel and a person becomes aware that information they supplied to the Panel was incorrect, incomplete or misleading, that person must promptly contact the Panel to correct the position. In addition, where a determination of the Panel has continuing effect (such as the grant of exempt status or a concert party ruling), the party or parties to that determination must promptly notify the Panel ~~of any change in the information they supplied to the Panel in connection with that determination and~~ of any new information ~~which (in either case) unless~~ they reasonably consider that it would not be likely to have been ~~material~~ relevant to that determination.

(b) Power to require documents and information

Section 622 of the Act gives the Panel certain powers to require documents and information. It provides that, where documents or information are reasonably required in connection with the exercise of its functions, the Panel may by notice in writing require any person:

- (i) to produce any documents that are specified or described in the notice; or
- (ii) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice,

within such reasonable period and at such place as is specified in the notice. It may also require any information or document so provided to be verified or authenticated in such manner as it may reasonably require. Where the Panel imposes a requirement under section 622 of the Act, the addressee must comply with that requirement. Failure to comply with any requirement is a breach of the Code.

A person is entitled to resist providing information or documents on the grounds of legal professional privilege.

10 ENFORCING THE CODE

Sections 10(a) to 10(c) set out certain rules pursuant to which the Panel enforces the Code. Section 10(e) sets out the "offer document rules" and the "response document rules" for the purposes of section 628 of the Act.

It is the practice of the Panel, in discharging its functions under the Code, to focus on the specific consequences ~~for shareholders~~ of breaches of the Code with the aim of providing appropriate remedial or compensatory action in a timely manner. Furthermore, in respect of certain breaches of the Code disciplinary action may be appropriate (see section 11 below). For the purposes of section 631(2) of the Act, no contravention of any requirement imposed

by or under rules shall render any transaction void or unenforceable or affect the validity of any other thing.

(a) Requirement of promptness in dealings with the Executive

If a complaint is to be made that the Code has been breached, it must be made promptly, in default of which the Executive may, at its discretion, decide not to consider the complaint. Similarly, where a person who has made a complaint to the Executive fails to comply with a deadline set by the Executive, the Executive may decide to disregard the complaint in question.

(b) Compliance rulings

If the Panel is satisfied that:

- (i) there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules; or
- (ii) a person has contravened a requirement imposed by or under rules,

the Panel may give any direction that appears to it to be necessary in order:

- (A) to restrain a person from acting (or continuing to act) in breach of rules; or
- (B) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules; or
- (C) otherwise to secure compliance with rules.

(c) Compensation rulings

Where a person has breached the requirements of any of Rules 6, 9, 11, 14, 15, 16 or 35.3 of the Code, the Panel may (in exercise of the power granted to the Panel in section 629 of the Act) make a ruling requiring the person concerned to pay, within such period as is specified, to the holders, or former holders, of securities of the offeree company such amount as it thinks just and reasonable so as to ensure that such holders receive what they would have been entitled to receive if the relevant Rule had been complied with. In addition, the Panel may make a ruling requiring simple or compound interest to be paid at a rate and for a period (including in respect of any period prior to the date of the ruling and until payment) to be determined.

(d) Enforcement by the Courts

Under section 630 of the Act, the Panel may seek enforcement by the courts. If the court is satisfied that:

- (i) there is a reasonable likelihood that a person will contravene a requirement imposed by or under rules; or
- (ii) a person has contravened a requirement imposed by or under rules or a requirement imposed under section 622 of the Act,

the court may make any order it thinks fit to secure compliance with the requirement. Any failure to comply with a resulting court order may be a contempt of court.

(e) Bid documentation rules

For the purposes of section 628 of the Act, the "offer document rules" and the "response document rules" are those parts of Rules 24 and 25 respectively which are set out in

Appendix 6 and, in each case, Rule 27 to the extent that it requires the inclusion of material changes to, or the updating of, the information in those parts of Rules 24 or 25, as the case may be, in relation to the offer documents and offeree board circulars referred to in Rules 30.1 and 30.2 respectively and the revised offer documents and subsequent offeree board circulars referred to in Rules 32.1 and 32.6(a) respectively.

11 DISCIPLINARY POWERS

This section sets out the disciplinary rules of the Panel in connection with breaches and alleged breaches of the Code.

(a) Disciplinary action

The Executive may itself deal with a disciplinary matter where the person who is to be subject to the disciplinary action agrees the facts and the action proposed by the Executive. In any other case, where it considers that there has been a breach of the Code, the Executive may commence disciplinary proceedings before the Hearings Committee. The person concerned is informed in writing of the alleged breach and of the matters which the Executive will present to the Hearings Committee. Disciplinary actions are conducted in accordance with the Rules of Procedure of the Hearings Committee, which are available on the Panel's website.

(b) Sanctions or other remedies for breach of the Code

If the Hearings Committee finds a breach of the Code or of a ruling of the Panel, it may:

- (i) issue a private statement of censure; or
- (ii) issue a public statement of censure; or
- (iii) suspend or withdraw any exemption, approval or other special status which the Panel has granted to a person, or impose conditions on the continuing enjoyment of such exemption, approval or special status, in respect of all or part of the activities to which such exemption, approval or special status relates; or
- (iv) report the offender's conduct to a United Kingdom or overseas regulatory authority or professional body (most notably the Financial Services Authority ("FSA")) so that that authority or body can consider whether to take disciplinary or enforcement action (for example, the FSA has power to take certain actions against an authorised person or an approved person who fails to observe proper standards of market conduct, including the power to fine); or
- (v) publish a Panel Statement indicating that the offender is someone who, in the Hearings Committee's opinion, is not likely to comply with the Code. The rules of the FSA and certain professional bodies oblige their members, in certain circumstances, not to act for the person in question in a transaction subject to the Code, including a dealing in relevant securities requiring disclosure under Rule 8 (so called "cold-shouldering"). For example, the FSA's rules require a person authorised under the Financial Services and Markets Act 2000 ("FSMA") not to act, or continue to act, for any person in connection with a transaction to which the Code applies if the firm has reasonable grounds for believing that the person in question, or his principal, is not complying or is not likely to comply with the Code.

12 CO-OPERATION AND INFORMATION SHARING

This section summarises the relevant provisions of the Act and sets out the rules as to the basis on which the Panel will effect service of documents under Article 4(4) of the Directive and the professional secrecy obligations applying in relation to information held by the Panel in connection with the exercise of its functions which does not fall within section 623 of the Act.

Under section 625 of the Act, the Panel must, to the extent it has power to do so, take such steps as it considers appropriate to co-operate with the FSA, other supervisory authorities designated for the purposes of the Directive and regulators outside the United Kingdom having functions similar to the FSA or to the Panel, including by the sharing of information which the Panel is permitted to disclose (see below). It may also exercise its powers to require documents and information (see section 9(b) above) for this purpose.

Where any supervisory authority designated for the purposes of the Directive by another member state or any authority responsible for the supervision of capital markets in another member state requests the Panel to serve any legal document in pursuance of its obligation of co-operation under Article 4(4) of the Directive, the Panel shall serve that document by first class post to the address specified for service in the request, and shall inform the requesting authority accordingly. No other method of service will be adopted by the Panel, even where the request specifies another method of service. In cases where:

- (a) no address for service is specified in the request; or
- (b) the request specifies an address for service outside of the United Kingdom; or
- (c) service of the document is validly refused by the party upon whom it is to be served; or
- (d) the Panel has been unable to serve the document for any other reason,

the Panel shall return the document unserved to the requesting authority, along with a statement of the reasons for non-service.

Under section 623 of the Act, information received by the Panel in connection with the exercise of its statutory functions may not be disclosed without the consent of the individual (where it concerns a person's private affairs) or business to which it relates except as permitted by the Act. Schedule 2 of the Act includes gateways to allow the Panel to pass information it receives to United Kingdom and overseas regulatory authorities and other persons in accordance with the conditions laid down in that Schedule. The circumstances in which this may occur include, but are not limited to, the circumstances falling within paragraph 11(b)(iv) above.

Information (in whatever form) relating to the private affairs of an individual or to any particular business not falling within section 623 of the Act which is created or held by the Panel in connection with the exercise of its functions, will not be disclosed by the Panel except as permitted in the circumstances set out in sections 623(2), (3) and (8) of the Act. A direct or indirect recipient of such information from the Panel may disclose it in the circumstances set out in sections 623(2), (3), (6) and (8) of the Act.

The Panel works closely with the FSA in relation to insider dealing and market abuse.

13 FEES AND CHARGES

The document charges set out in the Code shall be payable by the persons and in the circumstances set out in the Code.

Third parties shall pay such charges as the Panel may reasonably require for any goods (including copies of the Code) or services (including in relation to the granting, and maintenance, of exempt principal trader or exempt fund manager status as set out in the Definitions section of the Code) it provides. These charges are set out on the Panel's website.

APPENDIX C

AMENDMENTS TO THE RULES AND APPENDICES

GENERAL PRINCIPLES

[These replace in their entirety the current General Principles. The Introduction to the General Principles has been deleted.]

- 1. All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.**
- 2. 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; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business.**
- 3. The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.**
- 4. False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.**
- 5. An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.**
- 6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.**

DEFINITIONS

Acting in concert

This definition.....

Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), ~~actively co-operate through the acquisition by any of them of shares in a company,~~ to obtain or consolidate control (as defined below) of ~~that a company~~ or to frustrate the successful outcome of an offer for a company. A person and each of its affiliated persons will be deemed to be acting in concert all with each other (see Note 2 below).

Without prejudice to the general application of this definition, the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:-

.....

(5) a connected adviser with its client and, if its client is acting in concert with an offeror or with ~~the directors of~~ the offeree company, with that offeror or with ~~those directors~~ that offeree company respectively, in each case.....

NOTES ON ACTING IN CONCERT

1.....

2. Affiliated persons

For the purposes of this definition an “affiliated person” means any undertaking in respect of which any person:

- (a) has a majority of the shareholders’ or members’ voting rights;
- (b) is a shareholder or member and at the same time has the right to appoint or remove a majority of the members of its board of directors;
- (c) is a shareholder or member and alone controls a majority of the shareholders’ or members’ voting rights pursuant to an agreement entered into with other shareholders or members; or
- (d) has the power to exercise, or actually exercises, dominant influence or control.

For these purposes, a person’s rights as regards voting, appointment or removal shall include the rights of any other affiliated person and those of any person or entity acting in his own name but on behalf of that person or of any other affiliated person.

Current Notes 2 – 7 are renumbered 3 – 8.

9. Irrevocable commitments

A person will not normally be treated as acting in concert with an offeror or the offeree company by reason only of giving an irrevocable commitment. However, the Panel will consider the position of such a person in relation to the offeror or the offeree company (as the case may be) in order to determine whether he is acting in concert if either:

(a) the terms of the irrevocable commitment give the offeror or the offeree company (as the case may be) either the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to the shares or general control of them; or

(b) the person acquires an interest in more shares.

The Panel should be consulted before the acquisition of any interest in shares in such circumstances.

Connected adviser

(1)

(2) in relation to a person who is acting in concert with the offeror or ~~with the directors of the~~ offeree company, an organisation which is advising that person.....

Connected fund managers and principal traders

.....

(2) the offeree company or any person acting in concert with the ~~directors of the~~ offeree company; or

NOTES ON EXEMPT FUND MANAGER AND EXEMPT PRINCIPAL TRADER

1.....

2.

(3) a person acting in concert with the offeror (for example as a result of being an investor in a consortium) or with the ~~directors of the~~ offeree company.

Offer

Offer includes, wherever appropriate, takeover and merger transactions however effected, including reverse takeovers, partial offers, Court schemes, offers by a parent company for shares in its subsidiary and dual holding transactions. In some circumstances, the Code may have relevance to unitisation proposals which are in

~~competition with an offer to which the Code applies; the Panel should, therefore, be consulted when such proposals are under consideration.~~

Any reference to an offer includes any transaction subject to the Code as referred to in section 3(b) of the Introduction.

Offeree company

Any reference to an offeree company includes a potential offeree company.

Offeror

Offeror includes companies wherever incorporated and individuals wherever resident.

Any reference to an offeror includes a potential offeror.

Official List

The list maintained by the FSA in accordance with section 74(1) of the FSMA for the purposes of Part VI of the FSMA.

Regulated market

A regulated market is a market within the meaning of Article 1(13) of Directive 93/22/EEC (the Investment Services Directive). A list of regulated markets within the EEA is maintained on the website of the EU Commission: europa.eu.int/comm/index_en.htm. UK regulated markets are listed on the Panel's website: www.thetakeoverpanel.org.uk.

Shares or securities

(1) Except as set out below or as the context otherwise requires, references to shares, including when used in other expressions such as shareholders (but excluding equity share capital), include securities, and vice versa.

(2) In paragraph 3(a)(iii) and in the second paragraph of section 3(b) of the Introduction, the securities referred to are only transferable securities carrying voting rights.

(3) In paragraphs 3(a)(i) and (ii) and in the first paragraph of section 3(b) of the Introduction, the shares/securities referred to are only those shares/securities comprised in the company's equity share capital (whether voting or non-voting) and other transferable securities carrying voting rights.

Stock Exchange

London Stock Exchange plc

UKLA

The FSA acting in its capacity as the competent authority for the purposes of Part VI of the FSMA

Voting rights

Except for the purpose of Rule 11, voting rights means all the voting rights attributable to the share capital of a company which are currently exercisable at a general meeting.

Rule 2.5

2.5 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

(a) An offeror should only announce a firm intention to make an offer after the most careful and responsible consideration. Such an ~~The announcement of a firm intention to make an offer should be made only~~offeror.

(b)

(c) Where the offer is for cash, or includes an element of cash, T ~~the announcement of an offer under Rule 9 should~~ must include confirmation....

NOTES ON RULE 2.5

.....

6. Financing conditions and pre-conditions

See the Note on Rules 13.1 and 13.3.

Rule 2.6

2.6 OBLIGATION ON THE OFFEROR AND THE OFFEREE COMPANY TO 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, or a circular summarising the terms and conditions of the offer must be sent by the offeree company to its shareholders 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 and to the Panel; and

(ii) both the offeror and the offeree company must make that announcement, or a circular summarising the terms and conditions of the

offer, readily available to their employee representatives or, where there are no such representatives, to the employees themselves.

Where necessary, the board offeror or the offeree company, as the case may be, should explain the implications of the announcement. Any circular published under this Rule.....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, employee representatives or employees, the full text of the announcement must be made readily and promptly available to them, for example, by placing it on the website of the offeror or the offeree company (as the case may be).

2. Shareholders, employee representatives and employees outside the EEA

See the Note on Rule 30.3.

Rule 2.9

2.9 PUBLICATION OF AN ANNOUNCEMENT ABOUT AN OFFER OR POSSIBLE OFFER

NOTES ON RULE 2.9

1.

2. Rules 6, 7, 9, 11, 17, 30, 31, 32, Appendix 1.6 ~~and SAR 4~~ and Appendix 5.

Announcements made under Rules 6.2(b), 7.1, 9.1 (Note ~~40~~9), Rule 11.1(Note 6), 17.1, 30.1(a), 30.2(a), 31.2, 31.6(c), 31.9, 32.1, 32.6(a).....

Rule 4.6

4.6 RESTRICTION ON SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND CERTAIN OTHER PARTIES

...

(f) any other person acting in concert with the offeror or with ~~the directors of~~ the offeree company.

Rule 5.1**5.1 RESTRICTIONS***NOTES ON RULE 5.1*

...

97. Gifts

The restrictions imposed by this Rule do not apply to the receipt of gifts. If a person receives a gift of shares or an interest in shares which takes ~~his holding~~ the aggregate number of shares carrying voting rights in which he is interested to 30% or more, he must consult the Panel. ~~Such a person would not normally be required to make an offer under Rule 9 but would (after receipt of the gift) be subject to Rule 5.1 (b) and Rule 9.1(b).~~ (See also Note 3 on Rule 9.5.)

Rule 6.2**6.2 PURCHASES ACQUISITIONS AFTER A RULE 2.5 ANNOUNCEMENT**

(a)

(b) Immediately after, ~~it must be announced~~ the offeror must announce that a revised offer will be made.....

.....

Rule 7**7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED**

.....

Immediately after....., an appropriate announcement must be made by the offeror. Whenever.....

7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS

....

(b) Similarly, discretionary fund managers and principal traders who, in either case, are connected with the offeree company, will not normally be presumed to be acting in concert with ~~the directors~~ of the offeree company until the commencement of the offer period.....

NOTES ON RULE 7.2

...

2. *Qualifications*

(a) *If a connected discretionary fund manager or principal trader is in fact acting in concert with an offeror or with ~~the directors of the offeree company~~, the usual concert party consequences will apply...*

Rule 8

NOTES ON RULE 8

.....

14. *letter of intent is procured.*

See also Note 9 on the definition of acting in concert.

Rule 9**9.1 WHEN IF A MANDATORY OFFER IS REQUIRED AND WHO IS PRIMARILY RESPONSIBLE FOR MAKING IT**

(a)

(b).....

such person shall extend offers, on the basis set out in Rules 9.3, 9.4 and 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of ~~voting non-equity share capital transferable securities carrying voting rights in which such person or persons acting in concert with him hold shares~~. Offers for different classes of equity share capital must be comparable; the Panel should be consulted in advance in such cases.

An offer will not be required under this Rule where control of the offeree company is acquired as a result of a voluntary offer made in accordance with the Code to all the holders of voting equity share capital and other transferable securities carrying voting rights.

NOTES ON RULE 9.1

.....

~~9. Preference shares with voting rights~~

~~*An offer for preference shares with voting rights is required under this Rule if the offeror or persons acting in concert with it hold any such preference shares, since the voting rights attaching to such shares will be taken into account in determining whether an obligation to make an offer arises. The Panel's prior approval of the terms of the offer for the preference shares must be obtained.*~~

.....

Notes 10 – 18 become 9 -17

9.3 CONDITIONS AND CONSENTS

NOTES ON RULE 9.3

.....

3. When dispensations may be granted

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

(a) ~~when the necessary cash is to be provided, wholly or in part, by an issue of new securities. a cash underwritten alternative which is conditional on the obtaining of a listing for new shares~~The Panel will normally require that both the announcement of the offer and the offer document include statements that if the acceptance condition is satisfied but the ~~listing~~other conditions required by the Note on Rule 13.1 and 13.3 ~~are is~~ not within the time required.....

(i)...

(ii)...

When a dispensation is given, the offeror must endeavour to ~~obtain a listing for the new shares~~fulfil the other conditions with all due diligence; or

9.5 CONSIDERATION TO BE OFFERED

(a) ~~Offers~~ **An offer made under this Rule 9 must, in respect of each class of share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class during the offer period and within 12 months prior to its commencement- the announcement of that offer. The cash offer or the cash alternative must remain open after the offer has become or been declared unconditional as to acceptances for not less than 14 days after the date on which it would otherwise have expired (see Rule 31.4). The Panel should be consulted where there is more than one class of share capital involved.**

(b) **If, after an announcement of an offer made under Rule 9 for a class of share capital and before the offer closes for acceptance, the offeror or any person acting in concert with it acquires any interest in shares of that class at above the offer price, it shall increase its offer for that class to not less than the highest price paid for the interest in shares so acquired.**

(bc) ~~If the offeror considers that the highest price should not apply in a particular case, the offeror should consult the Panel which has the discretion to~~

~~agree an adjusted price.~~ In certain circumstances, the Panel may determine that the highest price calculated under paragraph (a) and (b) should be adjusted. (See Note 3.)

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

NOTES ON RULE 9.5

...

2. Calculation of the price

...

(c) If subscription rights were acquired either during the offer period or within 12 months prior to the announcement of the offer made under Rule 9 its commencement or after the announcement and before the offer closes for acceptance, they will be treated as if they were purchases of the underlying shares at a price calculated by reference to the purchase price and the relevant conversion or exercise terms.

.....

3. Dispensation from the Adjustment of highest price

Factors Circumstances which the Panel might take into account when considering an application for an adjusted adjustment of the highest price include:-

(a)...(b)...(c)...; ~~and~~

(d)...;

(e) if an offer is required in order to enable a company in serious financial difficulty to be rescued;

(f) if an offer is required in the circumstances set out in Note 12 on Rule 9.1; and

(g) if an offer is required in the circumstances set out in Rule 37.1.

The price payable in the circumstances set out above will be the price that is fair and reasonable taking into account all the factors that are relevant to the circumstances.

In any case where the highest price is adjusted under Rule 9.5(c), the Panel will publish its decision.

NOTES ON DISPENSATIONS FROM RULE 9

2. Enforcement of security for a loan

Where shares or other securities are ~~a shareholding in a company~~ is charged as security for a loan and, as a result of enforcement, the lender would otherwise incur an obligation to make a general offer under this Rule, the Panel will not normally waive the requirement provided that the security was not given at a time when the lender had reason to believe that enforcement was likely an offer if sufficient interests in shares are disposed of within a limited period to persons unconnected with the lender, so that the percentage of shares carrying voting rights in which the lender, together with persons acting in concert with it, is interested is reduced to below 30% in a manner satisfactory to the Panel. The lender must consult the Panel as to its ability to exercise or procure the exercise of the voting rights attaching to the shares in which it is interested at any time before sufficient interests are disposed of, or if the interest in excess of 29.9% is likely to be temporary (for example because the company will be issuing more shares).

In any case where arrangements are to be made involving a transfer of voting rights to the lender, but which do not amount to enforcement of the security, the Panel will wish to be convinced that such arrangements are necessary to preserve the lender's security and ~~will also take into account the proviso above~~ that the security was not given at a time when the lender had reason to believe that enforcement was likely.

When, following enforcement, a lender ~~wishes to~~ sells all or part of a shareholding, the provisions of this Rule will apply to the purchaser. Although... such a person.

3. Rescue operations

There are occasions when a company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new shares without approval by a vote of independent shareholders or the acquisition of existing shares by the rescuer which would otherwise fall within the provisions of this Rule and normally require a general offer. The Panel ~~will~~ may, however, ~~consider waiving~~ waive the requirements of the Rule in such circumstances provided that either:

(a) approval for the rescue operation by a vote of independent shareholders is obtained as soon as possible after the rescue operation is carried out ; or

(b) some other protection for independent shareholders is provided which the Panel considers satisfactory in the circumstances; ~~particular attention will be paid to the views of the directors and advisers of the potential offeree company.~~

Where neither the approval of independent shareholders nor any other form of protection can be provided, a general offer under this Rule will be required. In such circumstances, however, the Panel may consider an adjustment of the highest price, pursuant to Note 3 on Rule 9.5.

.....

4. *Inadvertent mistake*

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

RULE 10 THE ACCEPTANCE CONDITION

It must be a condition of any offer for voting equity share capital or for other transferable securities carrying voting rights which, if accepted in full, would result in the offeror holding shares carrying over 50% of the voting rights of the offeree company that the offer will not become or be declared unconditional as to acceptances unless the offeror has acquired or agreed to acquire (either pursuant to the offer or otherwise) shares carrying over 50% of the voting rights attributable to:-

(a) ~~the equity share capital alone; and~~

(b) ~~the equity share capital and the non-equity share capital combined.~~

Rule 12.2

12.2 OFFER PERIOD CEASES DURING COMPETITION REFERENCE PERIOD

NOTE ON RULE 12.2

After a reference or initiation of proceedings

Following the ending of an offer period on a reference or initiation of proceedings, General Principle 7 3 and Rule 21.1.....

Rule 13

13.1 SUBJECTIVITY

.....

13.3 ACCEPTABILITY OF PRE-CONDITIONS

.....

NOTE ON RULES 13.1 AND 13.3Financing conditions and pre-conditions

An offer must not normally be made subject to a condition or pre-condition relating to financing. However:

(a) where the offer is for cash, or includes an element of cash, and the offeror proposes to finance the cash consideration by an issue of new securities, the offer must be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such securities or to have them listed or admitted to trading. Conditions which will normally be considered necessary for such purposes include:

(i) the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre-emptive basis (if relevant); and

(ii) where the new securities are to be admitted to listing or to trading on any investment exchange or market, any necessary listing or admission to trading condition (see also Rule 24.9).

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

(b) ~~In~~ exceptional cases.....

~~(a)~~(i)...

~~(b)~~(ii)...

Rule 14**14.1 COMPARABLE OFFERS**

Where a company has more than one class of equity share capital, a comparable offer must be made for each class whether such capital carries voting rights or not; the Panel should be consulted in advance. An offer for non-voting equity share capital should not be made conditional on any particular level of acceptances in respect of that class unless the offer for the voting equity share capital is also conditional on the success of the offer for the non-voting equity share capital. Classes of non-voting, non-equity share capital need not be the subject of an offer, except in the circumstances referred to in ~~Rules 9.1 and~~ Rule 15.

RULE 15 APPROPRIATE OFFER FOR CONVERTIBLES ETC

(a) When an offer is made for voting equity share capital or for other transferable securities carrying voting rights and the offeree company has

convertible securities outstanding, the offeror must make an appropriate offer or proposal to the stockholders to ensure that their interests are safeguarded.....

NOTES ON RULE 15

1. When conversion rights etc are exercisable during an offer

.....

2. Rules 9 and 14

If an offer for any convertible securities is required by Rule 9 or Rule 14, compliance with the relevant Rule will be regarded as satisfying the obligation in Rule15(a) in respect of those securities.

RULE 16 SPECIAL DEALS WITH FAVOURABLE CONDITIONS

.....

Note 4 Management retaining an interest and other management incentivisation

.....

The Panel will ~~normally~~ require, as a condition of its consent, that the independent adviser to the offeree company publicly states that in its opinion the arrangements with the management of the offeree company are fair and reasonable. In addition, ~~where the offeror and the management of the offeree company together hold more than 5% of the equity share capital of the offeree company, the Panel will also normally~~ require such arrangements to be approved at a general meeting of the offeree company's shareholders. At this meetingexercisable during an offer.

Where the offeror wishes to arrange other incentivisation for management to ensure their continued involvement in the business, the Panel will require, as a condition of its consent, that the independent adviser to the offeree company publicly states that in its opinion the arrangements are fair and reasonable.

The Panel must be consulted in all circumstances where this Note may be relevant.

Rule 19

19.1 STANDARDS OF CARE

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

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.....

.....

NOTES ON RULE 19.2

1. Delegation of responsibility

Offeror and offeree company boards must have regard to ~~the Introduction to the General Principles~~ section 3(f) of the Introduction and to Section 1 of Appendix 3.

.....

19.5 TELEPHONE CAMPAIGNS

NOTES ON RULE 19.5

1. Consent to use other callers

.....
(iii) *the caller's responsibilities under General Principle 21 and Rule 20.1; and*

.....

3. Gathering of irrevocable commitments

.....
Attention is, however, drawn to General Principles 21 and 42.

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..... new information to it.

Rule 20.1

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS

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

NOTES ON RULE 20.1

1 – 4...

5. Shareholders outside the EEA

See the Note on Rule 30.3.

Rule 21.1

21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED

During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board must not, ~~except in pursuance of a contract entered into earlier,~~ without the approval of the shareholders in general meeting:-

(a) take any action which may result in any offer or bona fide possible offer being frustrated or in shareholders being denied the opportunity to decide on its merits; or

~~(a)~~ (b) (i)

~~(b)~~ (ii) ... ;

~~(c)~~ (iii) ... ;

~~(d)~~ (iv) ... ; or

~~(e)~~ (v)

The Panel must be consulted in advance if there is any doubt as to whether any proposed action may fall within this Rule.

The notice convening ~~such a~~ any relevant meeting of shareholders must include information about the offer or anticipated offer.

Where it is felt that ~~an obligation or other special circumstance exists, although a formal contract has not been entered into,~~ :

(A) the proposed action is in pursuance of a contract entered into earlier or another pre-existing obligation; or

(B) a decision to take the proposed action had been taken before the beginning of the period referred to above which:

(i) has been partly or fully implemented before the beginning of that period; or

(ii) has not been partly or fully implemented before the beginning of that period but is in the ordinary course of business,

the Panel must be consulted and its consent to proceed without a shareholders' meeting obtained.

NOTES ON RULE 21.1

1 – 2

3. *Interim dividends*

The declaration and payment of an interim dividend.....may in certain circumstances be contrary to General Principle 73 and this Rule.....

4. *The Competition Commission and the European Commission*

.....The Panel will, however, normally consider that General Principle 73 and Rule 21.1 apply during the competition reference period.....

5. *When there is no need to post*

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

(a) the offeree company passes a resolution; or

(b) ~~announces a transaction which would require such a resolution but for the fact that it is pursuant to a contract entered into earlier or that the Panel has ruled that an obligation or other special circumstance exists.~~ the Panel has given consent for the offeree company to proceed with an action or transaction to which Rule 21.1 applies without a shareholders' meeting.

6 – 9.....

10. Shares carrying more than 50% of the voting rights

The Panel will normally waive the requirement for a general meeting under this Rule where the holders of shares carrying more than 50% of the voting rights state in writing that they approve the action proposed and would vote in favour of any resolution to that effect proposed at a general meeting.

RULE 23 THE GENERAL OBLIGATION AS TO INFORMATION

Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer. Such information must be available to shareholders early enough to enable them to make a decision in good time. No relevant information should be withheld from them. The obligation of the offeror.....

NOTES ON RULE 23

1.

2.

3. Shareholders outside the EEA

See the Note on Rule 30.3.

Rule 24

24.1 INTENTIONS REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND ITS THEIR EMPLOYEES

An offeror will ~~normally~~ be required ~~expected~~ to cover the following points in the offer document:

(a) its intentions regarding the ~~continuation of the~~ future business of the offeree company;

(b) its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business;

~~(b)(c)~~ its intentions regarding any ~~major changes to be introduced in the business, including any~~ redeployment of the fixed assets of the offeree company;

~~(e)~~ (d) the long-term commercial justification for the proposed offer; and

~~(d)~~ (e) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment.

Where the offeror is a company and insofar as it is affected by the offer, the offeror must also cover (a), (b) and (e) with regard to itself.

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:

(i)...

(ii) the date when the document is despatched, the name and address of the offeror (including, where the offeror is a company, the type of

company and the address of its registered office) and, if appropriate, of the person making the offer on behalf of the offeror;

(iii) the identity of any person acting in concert with the offeror and, to the extent that it is known, the offeree company, including, in the case of a company, its type, registered office and relationship with the offeror and, where possible, with the offeree company. (See Note 4);

~~(iii)~~ (iv) details of the each class of securities for which the offer is made, including whether they those securities will be transferred “cum” or “ex” any dividend and the maximum and minimum percentages of those securities which the offeror undertakes to acquire;

~~(iv)~~ (v) the terms of the offer, including the consideration offered for each class of security, the total consideration offered and particulars of the way in which the consideration is to be paid in accordance with Rule 31.8;

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

~~(v)~~ (vii) particulars of all documents required, and procedures to be followed, for acceptance of the offer;

~~(vi)~~ (viii) the middle market quotations.....;

~~(vii)~~ (ix) details of any agreements ...;

~~(viii)~~ (x) details of any irrevocable commitment ...;

~~(ix)~~ (xi) in the case of a securities exchange offer, full particulars of the securities being offered, including the rights attaching to them, the first dividend or interest payment in which the new securities will participate and how the securities will rank for dividends or interest, capital and redemption; and a statement indicating the effect of acceptance on the capital and income position of the offeree company’s shareholders; and (if the new securities are not to be identical in all respects with an existing security admitted to the Official List, full particulars of the rights attaching to the securities must also be included together with);

~~(x)~~ (xii) in the case ...; and

~~(xi)~~ (xiii) a summary ...;

(xiv) the national law which will govern contracts concluded between the offeror and holders of the offeree company’s securities as a result of the offer and the competent courts;

(xv) the compensation (if any) offered for the removal of rights pursuant to Article 11 of the Directive together with particulars of the way in which

the compensation is to be paid and the method employed in determining it; and

.....

NOTES ON RULE 24.2

.....

4. Persons acting in concert with the offeror

For the purposes of Rule 24.2(d)(iii), the identity of a person acting in concert with the offeror or the offeree company must be disclosed if the offeree company shareholders need details of that person in order to reach a properly informed decision on the offer. Disclosure will normally include: a person who is interested in shares in the offeree company and (in the case of a securities exchange offer only) the offeror; any person with whom the offeror or the offeree company and any person acting in concert with either of them has any arrangement of the kind referred to in Note 6(b) on Rule 8; any financial adviser which is advising the offeror or the offeree company in relation to the offer; and any corporate broker to either of them. In cases of doubt, the Panel should be consulted.

5. Offers made under Rule 9

When an offer is made under Rule 9, the information required under Rule 24.2(d)(v) must include the method employed under Rule 9.5 in calculating the consideration offered.

24.6 INCORPORATION OF OBLIGATIONS AND RIGHTS

The offer document must state the time allowed for acceptance of the offer and any alternative offer and must incorporate language.....

24.7 CASH CONFIRMATION

When the offer is for cash.....cash was available.)

~~In exceptional circumstances, with the consent of the Panel, a conditional form of confirmation may be allowed.~~

Rule 25

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 its ~~views~~ opinion on the offer, (including any alternative offers).

~~and~~ It must, at the same time, make known to its shareholders the substance of the advice given to it by the independent advisers appointed pursuant to Rule 3.1.

(b) The opinion referred to in (a) above must include the views of the board of the offeree company on:

(i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and

(ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business, as set out in the offer document pursuant to Rule 24.1,

and must state the board's reasons for forming its opinion.

~~(bc)~~ If any document....

~~25.2 VIEWS OF THE BOARD ON THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES~~

~~The board of the offeree company should, insofar as relevant, comment upon the statements in the offer document regarding the offeror's intentions in respect of the offeree company and its employees made pursuant to Rule 24.1.~~

25.3 INTERESTS AND DEALINGS

(a) The first major circular from the offeree board advising shareholders on an offer (whether recommending acceptance or rejection of the offer) must state:-

(ii) any connected adviser to the offeree company, or to a person acting in concert with ~~the directors of~~ the offeree company;
.....

(iv) details of any relevant securities of the offeree company and (in the case of a securities exchange offer only) the offeror which the offeree company or any person acting in concert with ~~the directors of~~ the offeree company has borrowed or lent.....

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

30.1 THE OFFER DOCUMENT

(a) The offer document should normally be posted to shareholders of the offeree company 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 posted within this period. 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.

(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 ~~should~~ must advise its shareholders of its views on the offer 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 it to its shareholders; and**
- (ii) make it readily and promptly available to its employee representatives or, where there are no such representatives, the employees themselves.**

On the day of posting, 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 and where it can be inspected.

(b) The board of the offeree company must append to the circular containing its opinion a separate opinion from the representatives of its employees on the effects of the offer on employment, provided such opinion is received in good time before publication of that circular.

30.3 MAKING DOCUMENTS AND INFORMATION AVAILABLE TO SHAREHOLDERS, 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.

NOTE ON RULE 30.3Shareholders, 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 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 or made available either:

(a) the offeror or the offeree company need not provide such information or send or make such information or documents available to registered shareholders of the offeree company 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 or made available (and there is no need to consult the Panel in these circumstances); or

(b) in all other cases, the Panel may grant a dispensation where it would be proportionate in the circumstances to do so having regard, notably, to the cost involved, any resulting delay to the transaction timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company.

Similar dispensations will apply in respect of information or documents which are 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, employee representatives or employees of the offeree company who are located within the EEA.

Rule 31**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 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.

31.6 FINAL DAY RULE.....

(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. The Panel's consent will normally only be granted:

- ...
- (iii) as provided for in Rule 31.9; or
 - (iv) ...Rule 10; or
 - (v) when withdrawal rights are introduced under Rule 13.5.
 - (b).....

31.7 TIME FOR FULFILMENT OF ALL OTHER CONDITIONS

Except with the consent of the Panel, all conditions must be fulfilled or the offer must lapse within 21 days of the first closing date or of the date the offer becomes or is declared unconditional as to acceptances, whichever is the later. The Panel's consent will normally only be granted if the outstanding condition involves a material official authorisation or regulatory clearance relating to the offer and it had not been possible to obtain an extension under Rule 31.6.

Rule 32

32.1 OFFER OPEN FOR 14 DAYS AFTER ~~REVISION~~POSTING 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 to shareholders of the offeree company. On the day of posting, 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 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. Therefore....acceptances.

32.6 THE OFFEREE BOARD'S OPINION

(a) The board of the offeree company must post to the company's shareholders 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, 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) The board of the offeree company must append to the circular containing its opinion on a revised offer a separate opinion from the representatives of its employees on the effects of the revised offer on employment, provided such opinion is received in good time before publication of that circular.

32.7 INFORMING EMPLOYEES

(a) When any revised offer document is 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 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 36

36.5 OFFER FOR 30% OR MORE REQUIRES 50% APPROVAL

Any offer shares carrying 30% or more of the voting rights of a company must ~~normally~~ be conditional, not only on the specified number of acceptances being received, but also on approval of the offer, normally signified by means of a separate box on the form of acceptance,.....

Rule 37

37.3 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEREE COMPANY

(a) Shareholders' approval

During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, no redemption or purchase by the offeree company of its own shares may, ~~except in pursuance of a contract entered into earlier,~~ be effected without the approval of the shareholders at a general meeting. The notice convening the meeting must include information about the offer or anticipated offer. Where it is felt that the redemption or purchase is in pursuance of a contract entered into earlier or another pre-existing obligation, ~~an obligation or other special circumstance exists, although formal contract has not been entered into,~~ the Panel must be consulted and its consent to proceed without a shareholders' meeting obtained (Notes 1, ~~and 5~~ and 10 on Rule 21.1 may be relevant).

APPENDIX 6

**BID DOCUMENTATION RULES FOR THE PURPOSES OF REGULATION
10 OF THE TAKEOVERS DIRECTIVE (INTERIM IMPLEMENTATION)
REGULATIONS 2006**

For the purposes of Regulation 10 of The Takeovers Directive (Interim Implementation) Regulations 2006, “offer document rules” and “response document rules” are those giving effect, respectively, to Article 6(3) and the first sentence of Article 9(5) of the Directive (see section 10(e) of the Introduction). The relevant parts of Rules 24 and 25 are set out below. Rule 27 is also relevant to the extent set out in section 10(e) of the Introduction.

“Offer document rules”

<u>Article</u>	<u>Those parts of the Rule set out below which give effect to the Article</u>
<i>Article 6(3)(a)</i>	<u>Rule 24.2(d)(v)</u>
<i>Article 6(3)(b)</i>	<u>Rule 24.2(d)(ii)</u>
<i>Article 6(3)(c)</i>	<u>Rule 24.2(d)(iv)</u>
<i>Article 6(3)(d)</i>	<u>Rule 24.2(d)(v) and Note 5 on Rule 24.2</u>
<i>Article 6(3)(e)</i>	<u>Rule 24.2(d)(xv)</u>
<i>Article 6(3)(f)</i>	<u>Rule 24.2(d)(iv)</u>
<i>Article 6(3)(g)</i>	<u>Rule 24.3(a)(i),(ii)</u>
<i>Article 6(3)(h)</i>	<u>Rule 24.2(d)(vi)</u>
<i>Article 6(3)(i)</i>	<u>Rule 24.1</u>
<i>Article 6(3)(j)</i>	<u>Rule 24.6 (first phrase)</u>
<i>Article 6(3)(k)</i>	<u>Rule 24.2(d)(xi)</u>
<i>Article 6(3)(l)</i>	<u>Rule 24.2(f)</u>
<i>Article 6(3)(m)</i>	<u>Rule 24.2(d)(iii) and Note 4 on Rule 24.2</u>
<i>Article 6(3)(n)</i>	<u>Rule 24.2(d)(xiv)</u>

“Response document rules”

<i>Article 9(5), first sentence</i>	<u>Rule 25.1(a) and (b)</u>
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DOCUMENT CHARGES

2 VALUATION OF OFFER FOR DOCUMENT CHARGES

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When there are alternative offers, the alternative with the highest value will be used to calculate the value of the offer. Offers for all classes of equity share capital and other transferable securities carrying voting rights will be included in the calculation of the value of the offer, but offers for non-voting, non-equity share capital, convertibles, options etc will not.

APPENDIX D**List of respondents**

British Bankers' Association

Clifford Chance

Hermes Pensions Management Ltd

Institute of Chartered Accountants in England and Wales

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

London Investment Banking Association

Seymour Pierce Ltd