

RS 2008/3 Issued on 19 December 2008

THE TAKEOVER PANEL

**ELECTRONIC COMMUNICATIONS, WEBSITES
AND INFORMATION RIGHTS**

**STATEMENT BY THE CODE COMMITTEE OF
THE PANEL FOLLOWING THE EXTERNAL
CONSULTATION PROCESS ON PCP 2008/3**

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1. Introduction and overview

(a) *The consultation in relation to the use of electronic forms of communication, websites and persons nominated to enjoy “information rights”*

1.1 This Response Statement sets out the response of the Code Committee of the Takeover Panel (the “Code Committee”) to the external consultation process in relation to the proposals in PCP 2008/3 (“Electronic communications, websites and information rights”) issued by the Code Committee on 18 July 2008 (the “PCP”).

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

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

The amendments to the Code that the Code Committee believed would be required to give effect to these proposals were set out in the PCP.

1.3 Unless the context otherwise requires, words and expressions defined in the Code have the same meanings when used in this Response Statement. Documents, announcements or information required to be sent to shareholders or any other person under the Code are referred to in this Response Statement as “Code documents”.

(b) *Responses to the consultation*

1.4 Ten responses to the PCP were received. No responses were received on a confidential basis. A list of the respondents is set out in Appendix A to this Response Statement. The Code Committee would like to thank all of the respondents for their comments.

1.5 Generally, the respondents supported the objectives set out in the PCP. However, the respondents had conflicting views in relation to, among other things:

- (i) the point in time at which an offeree company should be required to instruct its registrar to provide a potential offeror with the offeree company’s shareholder register, and details of addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons for the receipt of documents in hard copy form or electronic form;
- (ii) the deadline by which a copy of a document, an announcement or any information that is sent to a person in electronic form or by means of website publication must be sent on request to that person in hard copy form;
- (iii) the detailed proposals requiring copies of all documents, announcements and information published in relation to an offer to be made available on a

website (including the question of how the requirement under Rule 19.2 to include a responsibility statement on documents and advertisements published in connection with an offer by, or on behalf of, the offeror or the offeree company should apply in this context); and

- (iv) the requirement to publish display documents on a website in addition to making them available for inspection in hard copy form under Rule 26 and the time period during which they must be so on display.
- 1.6 The respondents' views on these issues, and the Code Committee's response to them, are addressed in sections 4(a), 5(a), 9(a) and (c) and 10(a) respectively of this Response Statement.
- (c) *The Code Committee's conclusions*
- 1.7 In the light of the responses received, the Code Committee has largely adopted the proposals made in the PCP. However, the Code Committee has made a number of modifications and improvements to certain of the proposals, and has deferred reaching a conclusion in relation to other proposals pending a further review being undertaken, principally as a result of respondents' comments and suggestions, as described in this Response Statement.
- 1.8 The Code Committee believes that the amendments set out in this Response Statement constitute proportionate measures to achieve the objectives referred to in paragraph 1.2 above. The Code Committee believes that the amendments will be of benefit to parties to offers, their advisers, shareholders, persons with information rights and other market participants.
- 1.9 The Code Committee believes that the amendments set out in this Response Statement will not be likely to have significantly adverse cost implications. However, as noted in paragraph 11.15 of the PCP, the Code Committee has not

been able to determine how many persons will be nominated to enjoy information rights and, of those persons, how many will elect to receive copies of Code documents in hard copy form. As such, the Code Committee is not currently able to determine whether this is likely to result in a significant increase in the printing and posting costs incurred by offerors in satisfying such elections. However, on the basis of the information received to date, the Code Committee believes that the number of persons nominated to receive information rights is relatively small and therefore, in the immediate future, any increase in printing and posting costs that would be incurred in satisfying such elections would be likely to be non-material.

(d) Code amendments

- 1.10 The proposed amendments to the Code set out in Appendix B to the PCP have been adopted by the Code Committee subject to the amendments described in the main body of this Response Statement. As previously noted, the Code Committee has deferred reaching a conclusion in relation to certain of the amendments proposed in the PCP pending a further review being undertaken. Where new or amended provisions of the Code are set out in the main body of this Response Statement, they are marked to show changes from the provisions proposed in the PCP.
- 1.11 The provisions of the Code which are being introduced or amended as a result of the consultation exercise are set out in full in Appendix B to this Response Statement. In Appendix B, underlining indicates new text and striking through indicates deleted text, as compared to the current provisions of the Code. A summary of the Code amendments is set out in section 1(f) below.
- 1.12 In addition to this Response Statement, the Code Committee is also publishing today Response Statement 2008/2 (“Miscellaneous Code amendments”) (“RS 2008/2”). In a limited number of cases, the Code Committee has adopted

amendments in RS 2008/2 which affect provisions of the Code that have also been amended by the changes described in this Response Statement. Where a provision of the Code has been amended by both this Response Statement and RS 2008/2, the provision has been included in Appendix B marked to show both sets of changes.

(e) Implementation

1.13 The amendments to the Code introduced as a result of this Response Statement and RS 2008/2 will take effect on 30 March 2009. Amended pages of the Code will be published prior to that date.

1.14 The Code as revised will be applied to all offers and possible offers from 30 March 2009.

(f) Summary of the Code amendments

1.15 In summary, the principal Code amendments set out in Appendix B are as follows:

(i) Publication of Code documents

1.16 Offerors and offeree companies will be able to use electronic forms of communication (for example, e-mail and websites) to send information about offers to offeree company shareholders and other relevant persons. This means that a Code document will be treated as being 'sent' to a person if it is:

(i) sent in hard copy form (as is currently the case);

(ii) sent in electronic form (for example, by e-mail); or

- (iii) published on a website, provided that the intended recipient is sent a notification in respect of its publication setting out certain specified information.
- 1.17 The new regime will be permissive and a party to an offer will be free to choose whichever of these forms of communication is most convenient (or a combination of them). There will be no requirement for shareholder approval to be obtained (either from individual shareholders or in general meeting) in order to publish Code documents in electronic form or by means of website publication. However, in order to receive a copy of a Code document in electronic form, a shareholder or other relevant person will need to have provided the offeree company with an electronic address. Electronic addresses provided to the offeree company to receive communications from the offeree company generally and not only for certain specific types of information will be provided to an offeror by the offeree company's registrar upon request following the announcement of a firm intention to make an offer.
- 1.18 The way in which an offeree company is able to communicate with shareholders and other relevant persons might be restricted by the provisions of the company's articles, the 2006 Act, the FSA's Disclosure Rules and Transparency Rules and other relevant regulations. In view of this, an offeree company will need to ensure that the way in which it chooses to communicate with its shareholders and other relevant persons for Code purposes also satisfies any other applicable regulations. An offeror will not be bound by such restrictions on the way in which it may communicate with offeree company shareholders.
- 1.19 If a Code document is sent to a person in electronic form or by means of website publication, that person will be able to request a hard copy and elect to receive hard copies of all future Code documents published by any party in connection with an offer. Pre-existing elections to receive communications generally from the offeree company in hard copy form, and not only certain specific types of

- information, will apply equally to Code documents published by any other party to an offer.
- 1.20 Certain information required to be included in a Code document will be permitted to be incorporated into the relevant document by reference to other sources of information. The relevant information will be required to be published on a website at the same time as the document itself is published. In addition, any person sent a Code document which incorporates information by reference will be able to request a hard copy of the relevant information.
- (ii) *Publication of Code documents, announcements and offer-related information on websites*
- 1.21 Copies of certain Code documents, announcements and other information will be required, at the time of publication, also to be published on a website. The website is intended to form a single point of reference for all such information published by a party in relation to the offer. The documents, announcements and information that will need to be so published are:
- (i) Code documents and other information sent to shareholders, persons with information rights or other relevant persons; and
- (ii) announcements that are issued by a party by means of a Regulatory Information Service (whether related to an offer or not) apart from announcements in relation to certain specified matters.
- 1.22 All relevant documents, announcements and other offer-related information will be required to include details of the website on which a copy will be published. The website will need to be maintained during the course of an offer (and any related competition reference period) although the obligation to continue to

publish new documents, announcements and information on the website will cease at the end of the offer period.

(iii) *Persons with “information rights”*

1.23 Persons nominated to enjoy information rights pursuant to the provisions of the 2006 Act will have the same right to receive information in relation to offers as that enjoyed by shareholders. This means that any Code document sent to offeree company shareholders will need to be sent to “persons with information rights” also. Parties to offers will be able to send Code documents to persons with information rights in the same way as to offeree company shareholders.

(g) *Key differences between the Code and 2006 Act regimes for using electronic forms of communication*

1.24 The changes to the Code recognise the increasing use of electronic forms of communication between companies and their shareholders and permit companies involved in offers to make use of electronic forms of communication. As previously mentioned, the Code changes seek to introduce a permissive regime which, where possible, allows offerors and offeree companies to choose the form in which they communicate with shareholders and other relevant persons.

1.25 However, there are a number of important differences between the 2006 Act and Code regimes. These differences arise principally from the fact that the 2006 Act makes provision for a company to communicate with its shareholders whereas the Code makes provision for shareholders to receive communications from both offerors and offeree companies.

1.26 In view of this, the Code Committee believes that it may be helpful to highlight the key differences between the two regimes:

- (i) *Shareholder consent:* under the 2006 Act, a company may use electronic forms of communication to communicate with a shareholder if that shareholder's consent has been obtained (or has been deemed to have been obtained) and shareholders have approved the use of electronic forms of communication in general meeting. In contrast, under the Code, an offeror would be permitted to send Code documents to an offeree company shareholder in electronic form (assuming the shareholder has provided an electronic address to the offeree company), or by means of website publication, without having to obtain the shareholder's consent in order to do so;

- (ii) *Receiving documents in a particular form:*
 - (a) *Elections to receive documents in hard copy form:* under both the 2006 Act and the Code, if a shareholder has elected to receive communications from the offeree company in hard copy form, all communications with that shareholder must be in hard copy form;

 - (b) *Elections to receive documents in electronic form or by means of website publication:* under both the 2006 Act and the Code, if a shareholder has elected to receive communications from the offeree company in electronic form or by means of website publication, all communications with the shareholder may be in hard copy form notwithstanding that election;

 - (c) *Website publication and shareholder consent:* under the 2006 Act, an offeree company wishing to communicate with a shareholder by means of website publication will only be able to do so if that shareholder has consented (or been deemed to have consented) to receiving documents by this means. In contrast, under the Code, an offeror or offeree company would be able to publish Code

documents by means of website publication provided a website notification is sent to the relevant persons (in electronic form or hard copy form);

- (iii) *Contents of website notifications*: the information both required and permitted to be included in a website notification in respect of the publication of a Code document (as set out in the Note on the new definition of “website notification” and the new Rule 19.9) will be different from that required and permitted to be included in a notification of availability in respect of a document or information on a website under the 2006 Act;
- (iv) *Information to be included on a website*: the Code requires offerors and offeree companies to set up a website and sets out in the new Rule 19.11 a number of requirements relating to the information to be published and maintained on that website during the course of the offer. There is no equivalent requirement under the 2006 Act; and
- (v) *Definition of “electronic form”*: the definition of “electronic form” under the 2006 Act is wider than the equivalent definition under the Code. This means that, whereas it would be permissible under the 2006 Act for a company to send, for example, its Annual Report and Accounts to shareholders by post in the form of a computer disk or USB memory stick (provided the required shareholder approvals had been obtained), an offeror would not normally be able to send offeree company shareholders copies of Code documents in this form.

PART A: Publication of Code documents

2. Definitions and interpretation

(a) “Electronic form”

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

2.1 Paragraph 2.2 of the PCP proposed that a new definition of “electronic form” should be introduced into the Definitions section of the Code as follows:

“Electronic form

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

- (1) sent initially and received at its destination by means of electronic equipment for the processing or storage of data; and
- (2) entirely transmitted, conveyed and received by wire, radio, optical or other electromagnetic means,

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

2.2 One respondent considered that the proposed definition was too precise and, by way of example, did not need to recite the specific means of transmission. In contrast, another respondent questioned why the proposed definition was not consistent with the definition of “electronic form” in section 1168 of the 2006 Act, which is more detailed than the definition proposed in paragraph 2.2 of the PCP.

2.3 The Code Committee believes that definitions in the Code are not required to be as precise as statutory definitions since the provisions of the Code are not

intended to be framed in technical language and are interpreted to achieve their underlying purpose. However, the Code Committee also believes that the rules of the Code and the related definitions should be sufficiently specific so as to provide guidance to those involved in offers as to how the Code is likely to be interpreted and applied by the Panel. The Code Committee considers that the proposed definition of “electronic form” strikes the right balance in providing parties to offers with enough certainty as to the circumstances in which a Code document will be considered to be sent in “electronic form” without requiring a detailed technical explanation to be provided.

- 2.4 The Code Committee notes that the 2006 Act provides for documents or information to be sent by electronic means (for example, by e-mail or fax) or, as an alternative, by any other means while in an electronic form (for example, by sending a computer disk by post). The Code Committee believes that the definition of “electronic form” proposed in paragraph 2.2 of the PCP would enable copies of Code documents to be sent by the electronic means described in section 1168 of the 2006 Act (i.e. by e-mail or fax). However, the Code Committee does not believe that the Code should provide for Code documents to be published by any other means while in an electronic form. For example, the Code Committee believes that it should not normally be permissible for an offeror to send copies of its offer document by post to offeree company shareholders, persons with information rights and other relevant persons in the form of a computer disk or USB memory stick.
- 2.5 A further respondent suggested that the definition should not require a Code document to be “received at its destination”, and to be “received” by wire, radio, optical or other electronic means, in order for it to be considered to be sent in electronic form. This was on the basis that it may not be apparent to the sender of a Code document that a copy of it has been received by the intended recipient. The Code Committee accepts the substance of this suggestion and has therefore adopted the definition of “electronic form” in an amended form from that set out

in the PCP, as follows:

“Electronic form

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

- (1) sent ~~initially and received at its destination~~ by means of electronic equipment for the processing or storage of data; and
- (2) entirely transmitted; and conveyed ~~and received~~ by wire, radio, optical or other electromagnetic means,

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

(b) “Hard copy form”

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

2.6 Paragraph 2.3 of the PCP proposed that a new definition of “hard copy form” should be introduced into the Definitions section of the Code so as to differentiate Code documents that are published in the form of paper copies from documents that are published in electronic form. The proposed definition was as follows:

“Hard copy form

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

2.7 All of the respondents to Question 2 agreed with the introduction of the new definition of “hard copy form” and no comments were raised.

(c) *“Website notification”*

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

2.8 Paragraph 2.5 of the PCP proposed to amend the Code to introduce a new definition of a “website notification” into the Definitions section of the Code.

2.9 All of the respondents to Question 3 agreed that a new definition of “website notification” should be introduced into the Code. Two of the respondents to Question 3 agreed with the proposed definition and Note. However, opinions differed as between the other respondents in relation to the permitted form and content of website notifications. The comments raised fell into two broad categories:

- (i) the procedure for sending a website notification to shareholders, persons with information rights and other relevant persons, and related matters; and
 - (ii) the information required or permitted to be included in a website notification.
- (i) *Procedure for sending a website notification to shareholders, persons with information rights and other relevant persons, and related matters*

2.10 One of the respondents queried whether the Code should expressly prohibit parties to an offer from requiring shareholders, persons with information rights and other relevant persons to go through a registration process in order to gain access to the website to which a website notification refers. Another respondent questioned whether it should be made clear that the telephone number that would be required to be included in website notifications under paragraph (c) of the Note

- on the definition should not be a premium rate line.
- 2.11 The Code Committee agrees with the substance of the points raised by the respondents and believes that parties to offers should not attempt to restrict access to information required to be published on websites under the Code other than as permitted under Rule 30.3 (amended as described in this Response Statement). The Code Committee also believes that the telephone number required to be included in a website notification under paragraph (c) of the Note on the definition should not be a premium rate line. However, the Code Committee does not believe that it is necessary for the definition of “website notification” or the related Note to be amended to reflect these points.
- 2.12 Another respondent raised a number of points in relation to the circumstances in which a website notification should be required to be sent to offeree company shareholders, persons with information rights and other relevant persons in hard copy form only. The Code Committee considered these points in the context of Question 4, which relates to the manner in which Code documents (including website notifications) may be published, and the Code Committee’s view in relation to these matters is described in section 3(a) below.
- (ii) *Information required or permitted to be included in a website notification*
- 2.13 One respondent suggested that a website notification should be required to include a factual statement as to whether an offer is proceeding with the recommendation of the offeree company board.
- 2.14 Another respondent argued that, provided a website notification complies with the standards required of documents generally under the Code, the parties should be free to include in it whatever information they consider appropriate. In addition, the respondent noted that the proposed restrictions on the contents of website notifications set out in the Note on the definition would not apply to other

documents that may be sent with the website notification (for example, forms of acceptance and proxy forms). An observation was made that it was expected that forms of acceptance and proxy forms would continue to be sent to offeree company shareholders and other relevant persons in hard copy form.

2.15 The Code Committee is concerned to ensure that a person to whom a Code document is sent should receive sufficient information to enable that person to reach a properly informed decision on the bid. The Code Committee believes that it is the Code document itself that should include this level of information and not the website notification relating to the document. The Code Committee therefore believes that it would be undesirable for a website notification to become regarded as a substitute for the Code document to which it relates and regards a website notification as, in essence, a means of:

- (i) ensuring that a person entitled to be sent a copy of a Code document is alerted to the fact that a copy of the document has been published on a website; and
- (ii) conveying procedural information in relation to the publication of a Code document (for example, setting out information as to how a copy of the document may be obtained in hard copy form).

The Code Committee does not believe that a website notification should be regarded as a means of conveying substantive information, argument or invective in respect of an offer to persons to whom Code documents are sent.

2.16 The Code Committee believes that forms of acceptance and proxy forms relating to an offer should continue to be published in hard copy form. This is considered further in paragraphs 3.3 to 3.5 below.

2.17 The Code Committee believes that an offeror or offeree company that proposes to

publish a Code document by means of website publication should not send anything other than forms of acceptance, withdrawal forms, proxy cards and other forms connected with an offer to offeree company shareholders and other relevant persons in the same envelope as a website notification without first obtaining the consent of the Panel. The Code Committee is keen to ensure that offerors and offeree companies should not use website notifications as a means of conveying substantive information, argument or invective in respect of an offer to persons to whom Code documents are sent (for example, by sending information in the same envelope as a website notification that seeks to persuade offeree company shareholders to accept, or reject, the offer).

- 2.18 In view of the above, the Code Committee has adopted the definition of “website notification” in an amended form from that set out in the PCP. The amended definition also includes some minor amendments, as follows:

“Website notification

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

NOTE ON WEBSITE NOTIFICATION

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

The information in a website notification must be confined to non-controversial information about an offer and should not be used for argument or invective. A website notification should not include a recommendation to take or not to take any action in relation to, or contain any view on the merits of, an offer except for a factual statement as to whether or not the offer is proceeding with the recommendation of the

offeree company board. A party to an offer should not include anything other than acceptance forms, withdrawal forms, proxy cards and other forms connected with an offer in the same envelope as a website notification without the consent of the Panel.

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

- (a) details of the website on which the document, announcement or information is published;*
- (b) a statement setting out the right of persons to whom the document, announcement or information is sent to receive a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form and drawing attention to the fact that such persons will not receive a hard copy unless they so requested;*
- (c) details of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests for hard copies may be made); and*
- (d) a statement that the website notification is not a summary of the document, announcement or other information to which it relates and should not be regarded as a substitute for reading the document, announcement or information in full.”.*

3. Form of publication

(a) Form in which Code documents may be published

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

3.1 In paragraphs 3.3 to 3.6 of the PCP, the Code Committee proposed, among other things, to introduce a new Rule 19.8 setting out the manner in which Code documents may be published. The Code Committee proposed that a Code document would be treated as having been “sent” to a person if it is:

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

The new regime for the publication of Code documents would be permissive and would not require consent to be obtained from offeree company shareholders (either individually or in general meeting), persons with information rights or any other relevant persons before such persons could be sent Code documents in the forms contemplated in the proposed new Rule 19.8 (or any combination thereof).

3.2 All of the respondents to Question 4 agreed that the Code should be amended to permit Code documents to be published by sending a copy to the relevant persons in electronic form or by means of website publication as an alternative to hard copy form. The Code Committee has therefore adopted the new Rule 19.8 as proposed. However, the respondents also raised the following issues:

(i) *Publication of forms of acceptance and other forms related to an offer*

3.3 One of the respondents considered it to be imperative that forms of acceptance published in relation to an offer should be required to be published in hard copy form only. In the respondent's view, permitting forms of acceptance and other forms related to an offer to be published in electronic form or by means of website publication would be likely to result in significant difficulties for offerors and offeree companies and, in particular, for receiving agents, including in relation to assessing whether acceptances may be counted towards fulfilling an acceptance condition. The Code Committee understands that doing so would also lead to a significant increase in administrative costs.

- 3.4 The Code Committee notes that acceptance forms, withdrawal forms, proxy cards and other forms connected with an offer are not documents that are currently required by the Code to be sent to shareholders or other relevant persons but understands that they form an integral part of the legal documentation of transactions that are subject to the Code. In view of this, the Code Committee considered whether it would be appropriate for the Code to set out the means by which such forms should be published. However, the Code Committee accepts the substance of the point raised by the respondent and, in the interests of ensuring the smooth running of transactions to which the Code applies, has adopted a new Note on the new Rule 19.8, as follows:

“NOTE ON RULE 19.8

Forms

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

- 3.5 The Code Committee does not believe that the new Note on Rule 19.8 described above should prevent:
- (i) shareholders from appointing proxies electronically; or
 - (ii) shareholders who hold their shares in uncertificated form from accepting offers by means of CREST without an acceptance form.
- (ii) *Publication of announcements and summary circulars under Rule 2.6*
- 3.6 Another respondent suggested, in the context of Questions 3, 4 and 11, that copies of announcements or summary circulars sent by the offeree company to its shareholders and other relevant persons under Rule 2.6 should be sent to them in hard copy form in all cases. This was on the basis that the respondent considered

the commencement of an offer period to be of such importance that the risk of offeree company shareholders and other relevant persons failing to receive, or suffering a delay in receiving, a copy of the announcement or summary circular should be minimised. The respondent believed that continuing to require an offeree company to publish copies of announcements and summary circulars in hard copy form under Rule 2.6 would impose a relatively small cost burden on the offeree company.

3.7 The Code Committee does not believe that a separate regime should apply to the publication of copies of announcements or summary circulars under Rule 2.6 from the regime that applies to the publication of Code documents generally. This is on the basis that the Code Committee believes that copies of such announcements (or summary circulars) should be sent to offeree company shareholders, persons with information rights and other relevant persons for the following reasons :

- (i) in respect of an announcement commencing an offer period, to put offeree company shareholders on notice of the fact that an offer might be made for their shares in the offeree company, that further information in relation to that offer (or possible offer) may be sent to them and, therefore, to enable them to make arrangements to receive that information in the most convenient form; and
- (ii) in respect of announcements under Rule 2.5 (or summary circulars), to inform offeree company shareholders, persons with information rights and other relevant persons that an offeror has announced a firm intention to make an offer.

3.8 The Code Committee believes that these objectives would be equally well served by the offeree company sending a copy of the relevant announcement (or summary circular) to the relevant person in electronic form or by means of

- website publication as an alternative to sending a copy in hard copy form, provided that the relevant person has the right in all cases to request to be provided with a copy in hard copy form within a reasonable period of time.
- 3.9 In addition, the Code Committee believes that it would be preferable for the Code to have a unified regime that applies to all Code documents (including copies of announcements or summary circulars required to be sent to offeree company shareholders under Rule 2.6) as this would make the rules regarding the publication of Code documents clearer and simpler.
- (iii) *Publication of Code documents in “electronic form”*
- 3.10 One respondent suggested that it should not be possible to send a copy of a Code document to a relevant person in electronic form if:
- (i) that person has made an election under the 2006 Act to receive copies of only certain documents and information from the offeree company in electronic form (for example, the annual report and accounts only); or
 - (ii) the party publishing the Code document has obtained that person’s electronic address other than as provided under the Code.
- 3.11 The Code Committee agrees with the substance of this suggestion and has adopted a revised Section 4(a) of Appendix 4 as described in paragraph 4.8 below. This now requires, among other things, details to be provided to an offeror in respect of addresses, electronic addresses, elections and other information provided by shareholders, persons with information rights and certain other persons to the offeree company for the receipt of offeree company communications where those persons have elected to receive information generally, and not only certain specific types of information, in a particular form. This means that, for example, if an offeree company shareholder has elected to

receive a copy of the offeree company's annual report and accounts in electronic form but other documents and information generally in hard copy form, details of the shareholder's electronic address would not be required to be provided to an offeror.

- 3.12 The Code Committee also agrees with the respondent that an offeror should not generally be permitted to send a relevant person a copy of a Code document in electronic form if it has obtained details of that person's electronic address by a means other than as provided in the Code. However, the Code Committee believes that this should be permissible if the relevant person has specifically requested the offeror to do so and provides an electronic address for this purpose but the Code Committee does not believe that it is necessary for this to be specified in the Code.

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

Q5 Should the choice of whether to publish Code documents in hard copy form, electronic form or by website publication be left to an offeror and/or the offeree company to decide rather than be prescribed by the Code?

- 3.13 In paragraphs 3.8 and 3.9 of the PCP, the Code Committee noted that companies may be subject to a number of laws and regulations that may require compliance with different (and potentially overlapping) procedural requirements in order to communicate with shareholders, persons with information rights and other relevant persons in electronic form or by publishing information on a website.
- 3.14 In view of the differences in the way in which the provisions of the relevant laws and regulations may apply to, or have been taken advantage of by, companies involved in transactions to which the Code applies, the Code Committee did not consider it appropriate to prescribe in the Code how copies of Code documents should be published or the steps that must be followed in order to publish a Code document in electronic form or by means of website publication. Instead, the

- Code Committee proposed that the manner in which Code documents should be published should be left as a matter for an offeror and/or the offeree company (as the case may be) to decide, subject to any elections made by shareholders, persons with information rights and other relevant persons to receive documents, announcements and information in hard copy form.
- 3.15 Furthermore, the Code Committee proposed that the manner in which an offeror chooses to publish a Code document should not be constrained by the offeree company not having complied with any applicable procedural requirements in relation to the way in which it communicates with its shareholders and other relevant persons.
- 3.16 All of the respondents to Question 5 agreed that the choice of whether to publish Code documents in hard copy form, electronic form or by means of website publication should be left to an offeror and/or the offeree company to decide rather than be prescribed by the Code.
- 3.17 One respondent suggested that shareholders, persons with information rights and other relevant persons should only be sent copies of Code documents in electronic form if they have either:
- (i) agreed to receive all communications from the offeree company in electronic form; or
 - (ii) specifically agreed to receive all communications in relation to the offer in electronic form.
- 3.18 As noted above in the context of Question 4, the Code Committee agrees with the suggestion that an offeror should not be able to send a copy of a Code document in electronic form to a person who has agreed to receive copies of only certain documents and information published by the offeree company in electronic form.

In view of this, the Code Committee has adopted a revised Section 4(a) of Appendix 4 as described in paragraph 4.8 below.

3.19 The question of whether the consent of offeree company shareholders and other relevant persons should be obtained before those persons may be sent copies of Code documents in electronic form is discussed further in paragraphs 3.20 to 3.27 below.

(c) *No requirement for shareholder consent*

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

3.20 Paragraph 3.12 of the PCP noted that the Code Committee had concluded that an offeror should not be constrained in the manner in which it chooses to publish Code documents or communicate with an offeree company's shareholders, persons with information rights or other relevant persons by:

- (i) the corporate authorities which the offeree company has in place; or
- (ii) the fact that the relevant persons' addresses, electronic addresses and other information relating to the receipt of offeree company communications are not available to the offeror.

3.21 This conclusion was based on the belief that no party to an offer should enjoy an advantage over any other as a result of being able to communicate with shareholders, persons with information rights and other relevant persons in a particular manner.

- 3.22 Six of the respondents to Question 6 agreed that that the Code should not require (i) a shareholder resolution; (ii) a provision in the offeree company's articles of association; or (iii) any other procedural requirement to be satisfied, before copies of Code documents may be published by an offeror or the offeree company in electronic form or by means of website publication. However, one respondent noted that its agreement was subject to the Code providing that, in all cases, a shareholder or other relevant person to whom a Code document is sent in electronic form or by means of website publication should be able to request a copy of the Code document in hard copy form. This is considered further in paragraphs 5.1 to 5.13 below.
- 3.23 One respondent agreed that it would be impractical and undesirable to require the consent of offeree company shareholders to be obtained (or other procedural requirements to be satisfied) before an offeror would be permitted to communicate with them electronically (for example, by publishing Code documents in electronic form or by means of website publication). However, the respondent expressed concern that this could result in an offeror enjoying a competitive advantage over an offeree company that had not obtained the authorities required to enable it to communicate with its shareholders electronically. This, it was suggested, would not be consistent with the Code Committee's stated belief that no party to an offer should enjoy an advantage over any other as a result of being able to communicate with shareholders, persons with information rights and other relevant persons in a particular manner.
- 3.24 The Code Committee considered this issue prior to the publication of the PCP and concluded that, in circumstances where an offeree company had not obtained the authorities required to enable it to communicate with its shareholders electronically under the 2006 Act, or under any other regulatory requirements, and was therefore able to publish Code documents in hard copy form only, an offeror would not enjoy a significant competitive advantage over the offeree company. This was on the basis that, in those circumstances, an offeror would, in

practical terms, be faced with a choice of publishing a Code document in hard copy form or by means of website publication (as it is assumed that offeree company shareholders, persons with information rights and other relevant persons would not supply electronic addresses and other information for the receipt of offeree company communications in electronic form if the offeree company did not have the authorities required to communicate with them electronically). As such, an offeror would send offeree company shareholders, persons with information rights and other relevant persons a hard copy of either:

- (i) the relevant Code document; or
- (ii) a website notification in respect of the publication of the Code document on a website.

3.25 In view of this, the Code Committee does not believe that an offeror would enjoy any significant timing advantages in communicating with offeree company shareholders as compared with the offeree company. However, the Code Committee believes that, in so far as an offeror chooses to publish a Code document by means of website publication, it would enjoy the benefit of not having to print and send as many hard copies of the document as it would have done had it published the document in hard copy form. Whilst the Code Committee recognises that this would have some benefits for the offeror (for example, the document's print run would be shorter than it would otherwise have been and the related printing costs would be reduced), it does not consider this to be a significant "competitive" advantage as compared with the offeree company.

3.26 The same respondent also suggested that the Code Committee's approach in this area was not consistent with the requirement in the proposed new Rule 19.9(f) that an election by, or on behalf of, a person entitled to receive copies of Code documents to receive communications from a company in hard copy form should be treated by each party to an offer as also applying in respect of Code

documents.

3.27 The Code Committee does not believe that a comparison with the requirement under the new Rule 19.9(f) in respect of pre-existing elections for hard copy documents is instructive in this context. The new Rule 19.9(f), amended as described in paragraph 5.27 below, is based on the pragmatic consideration that, if an offeree company shareholder, person with information rights or other relevant person has indicated a preference to receive documents generally from the offeree company in hard copy form, it would be unnecessary and unhelpful to require that person to make a further election to receive copies of Code documents in this form. The Code Committee does not believe that the same pragmatic consideration is relevant to the question of whether an offeror should be permitted to send copies of Code documents to offeree company shareholders, persons with information rights and other relevant persons in a manner which is not available to the offeree company itself.

4. Provision of addresses, electronic addresses and other details

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

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

4.1 Paragraph 4.7 of the PCP proposed introducing a new Section 4 of Appendix 4 to require an offeree company to furnish an offeror with details of:

(i) electronic addresses provided by offeree company shareholders for the

receipt of Code documents in electronic form; and

- (ii) addresses, electronic addresses and other information provided by, or on behalf of, persons with information rights and other relevant persons (including the holders of convertible securities, options or subscription rights under Rule 15 (“Rule 15 securities”)) for the receipt of Code documents in hard copy form or in electronic form.
- 4.2 In addition, the Code Committee proposed amending Section 3 of Appendix 4 to require the offeree company to instruct its registrar to provide the offeree company’s shareholder register to an offeror upon request following the announcement of a possible offer rather than following the announcement of a firm intention to make an offer as is currently the case. It was also proposed that the offeree company should provide, or instruct its registrar to provide, the information referred to in paragraph 4.1 above at this time. This was on the basis that the Code Committee believed that potential offerors may, in certain circumstances, want to send information to offeree company shareholders, persons with information rights and other relevant persons in advance of announcing a firm intention to make an offer.
- 4.3 The Code Committee also proposed amending the Code to require that any such information provided by, or on behalf of, the offeree company to an offeror should be updated in the same manner in which Section 3 of Appendix 4 to the Code currently requires the offeree company to update the copy of the offeree company’s shareholder register provided to an offeror.
- 4.4 Six of the respondents to Question 7 agreed that the Code should be amended to require the offeree company to provide, or instruct its registrar to provide, an offeror with details of addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons for the

receipt of Code documents in hard copy form or electronic form as proposed. One respondent thought that this requirement would be essential to safeguard the smooth operation of the publication of Code documents, and another thought that it would be in-keeping with the spirit of the 2006 Act.

- 4.5 One respondent suggested that it was not clear that, in providing an electronic address to the offeree company, a shareholder or other relevant person had consented to that electronic address being provided to third parties. The respondent noted that this could be made clear at the point in time at which the electronic address was provided to the offeree company but that this would not be a matter for the Code. In view of this, the respondent suggested that it may be better for the first communication to a shareholder, person with information rights or other relevant person in relation to an offer to be in hard copy form with a mechanism for such persons to elect to receive further communications in relation to an offer in electronic form.
- 4.6 As stated in paragraph 3.11 and 3.12 of the PCP, the Code Committee believes that an offeror should not be constrained in the manner in which it chooses to publish Code documents or communicate with an offeree company's shareholders, persons with information rights or other relevant persons by, among other things, the fact that the relevant persons' addresses, electronic addresses and other information relating to the receipt of offeree company communications are not available to the offeror. In particular, the Code Committee does not believe that, as a practical matter, a requirement for offeree company shareholder consent to be obtained by an offeror (either from individual shareholders or in general meeting) before being able to use electronic addresses provided by the relevant persons to the offeree company would be capable of being obtained within the Code timetable. The Code Committee believes that a requirement of this kind would therefore have the potential effect of enabling the offeree company to send Code documents to certain offeree company shareholders, persons with information rights and other relevant persons in electronic form in circumstances

where an offeror would not be able to do so unless and until the relevant consents had been obtained. The Code Committee considers that this would be undesirable since it would give the offeree company a competitive advantage over an offeror given the inherent timing advantages attaching to electronic communications.

- 4.7 Two of the respondents to Question 7 raised concerns in relation to the time at which details of addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons for the receipt of communications in hard copy form or electronic form should be provided to an offeror. Specifically, the respondents considered that this information should only be provided to an offeror following the announcement of a firm intention to make an offer under Rule 2.5 and not following the announcement of a possible offer as was proposed in the PCP. These concerns are discussed further in the context of the responses received to Question 8 below.
- 4.8 As referred to in paragraph 3.11 above, the Code Committee has adopted a new Section 4(a) of Appendix 4 in a different form from that described in the PCP. This is because the Code Committee does not believe that details of addresses, electronic addresses, elections and other information provided by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons only for the receipt of specific types of information (for example, the annual report and accounts) rather than for information generally should be provided to an offeror as of right. The Code Committee has therefore adopted a new Section 4(a) of Appendix 4, as follows:

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

- (a) ... the offeree company should respond, or instruct its registrar to respond, within two business days to a request from the ~~an~~ offeror for details in respect of:**

- (i) **electronic addresses provided to the offeree company by shareholders in the offeree company for the receipt of documents, announcements and other information in electronic form;**
- (ii) **addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, persons with information rights for the receipt of documents, announcements and other information in hard copy form or electronic form;**
- (iii) **addresses, electronic addresses and other information provided to the offeree company by any other persons entitled to receive copies of documents, announcements or information for the receipt of such communications in hard copy form or electronic form (including a copy of any register(s) of persons entitled to receive documents under Rule 15); and**
- (iv) **elections made in accordance with applicable legal or regulatory provisions by, or on behalf of, shareholders in the offeree company, persons with information rights or any other relevant persons to receive communications from the offeree company in hard copy form,**

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

The Code Committee has also made a further change to the form of the new Section 4(a) of Appendix 4 from that described in the PCP, as set out in the context of Question 8 below. In addition, the Code Committee has adopted the new Rule 19.9(f) in a revised form from that described in the PCP, as described in paragraph 5.27 below.

- 4.9 One respondent suggested that a minor drafting amendment be made to the proposed new Section 4(b) of Appendix 4. The Code Committee accepts the substance of this suggestion and has therefore adopted the last sentence of the new Section 4(b) of Appendix 4 in a revised form from that described in the PCP, as follows:

“(b) ... The offeree company shall ensure, or shall instruct its registrar to ensure, that the information described in (a) above is kept as up-to-date as the relevant maintenance system will allow and updates shall be provided to the offeror, or its receiving agent, in respect of any changes in that information at the same time as updates to the company’s register are provided under Section 3 above to the offeror’s receiving agent.

...”.

- Q8 Should the Code be amended to require the offeree company to instruct its registrar to provide an offeror with the offeree company’s shareholder register following the announcement of a possible offer and not solely following the announcement of a firm intention to make an offer? Do you have any comments on the proposed amendments to Section 3 of Appendix 4?**
- 4.10 Paragraph 4.4 of the PCP proposed amending Section 3 of Appendix 4 to require the offeree company to instruct its registrar to respond within two business days to a request from the offeror for the provision of the offeree company’s shareholder register following the announcement of a possible offer. This was on the basis that the Code Committee believed that potential offerors might, in certain circumstances, wish to send information to offeree company shareholders, persons with information rights and other relevant persons in advance of announcing a firm intention to make an offer.
- 4.11 Four of the respondents to Question 8 agreed that the Code should be amended to require the offeree company to instruct its registrar to provide an offeror with the offeree company’s shareholder register following the announcement of a possible offer and not solely following the announcement of a firm intention to make an offer. One of these respondents suggested some minor drafting changes to Section 3(c) of Appendix 4.
- 4.12 Three of the respondents to Question 8 disagreed with the proposed amendments to Section 3 of Appendix 4 and did not believe that the previous position of

providing the offeree company's shareholder register to an offeror following the announcement of a firm intention to make an offer should be changed. By extension, and as referred to in the context of Question 7 above, the same respondents thought that details of electronic addresses and other information provided to the offeree company by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons for the receipt of offeree company communications should not be provided to an offeror prior to the announcement of a firm intention to make an offer. The principal arguments raised by these respondents against making the proposed amendments to Section 3 of Appendix 4 included that:

- (i) the proposed change seemed to reflect the increasing use of "virtual bid" tactics by potential offerors whereby a potential offeror seeks to persuade offeree company shareholders indirectly (usually through statements released to the media) to put pressure on the offeree company board to enter into negotiations with the offeror in relation to an offer. These tactics were, it was argued, extremely disruptive for the management of the offeree company and led to offeree company shareholders making decisions without the benefit of an orderly Code timetable or adequate information. In view of this, it was argued that the Code should not make the use of "virtual bid" tactics easier for potential offerors by enabling them to send information concerning a possible offer to offeree company shareholders and other relevant persons directly before announcing a firm intention to make an offer;
- (ii) the proposed change in the time at which the offeree company's shareholder register should be provided to an offeror has little connection with the subject matter of a consultation in relation to the use of electronic communications and websites and the position of persons with information rights. As such, it was argued that the proposed amendments were outside the scope of the consultation and could not be supported

without a separate debate;

- (iii) it was not clear that, in practice, potential offerors seek to send information to offeree company shareholders and other relevant persons directly in advance of the announcement of a firm intention to make an offer and that therefore the proposed changes were not being made in response to a market necessity; and
 - (iv) the offeree company and its registrar could be required to update information provided to a potential offeror in relation to offeree company shareholders, persons with information rights and other relevant persons for a long period and this could be an onerous obligation. This was because, although a potential offeror could at any time obtain the shareholder register of the offeree company under the provisions of United Kingdom company law, the proposed amendments would require more information to be provided to a potential offeror than would be provided under company law and this information would be required to be updated on a continuing basis whereas there is no obligation to update information provided under company law.
- 4.13 The Code Committee has considered these arguments but continues to believe that there is merit in requiring the offeree company's shareholder register to be provided to an offeror prior to the announcement of a firm intention to make an offer. The Code Committee also continues to believe that there is merit in requiring details of addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons for the receipt of offeree company communications to be provided to an offeror prior to the announcement of a firm intention to make an offer.
- 4.14 However, the Code Committee notes that a number of respondents believed that

this issue should be the subject of a wider discussion about “virtual bid” tactics and their impact on the Code. The Code Committee proposes to defer reaching a conclusion in relation to this issue for the time being and has not amended Section 3 of Appendix 4 to require copies of the offeree company register to be provided to an offeror following the announcement of a possible offer as was proposed in the PCP. The offeree company register will therefore continue to be provided to an offeror on request only after the announcement of a firm intention to make an offer.

- 4.15 Similarly, the Code Committee has adopted the new Section 4 of Appendix 4 in an amended form from that proposed in the PCP to reflect the fact that details of addresses, electronic addresses and other information provided by, or on behalf of, offeree company shareholders, persons with information rights and other relevant persons should be provided to an offeror following the announcement of a firm intention to make an offer but not following the announcement of a possible offer. Section 4 of Appendix 4 has therefore been amended as follows:

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

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

...”.

- Q9 Should the Code be amended to require the offeree company to provide an offeror with details of the issued shares and the other information set out in Note 3 on Rule 10 upon request following the announcement of a possible offer and not solely following the announcement of a firm intention to make an offer? Do you have any comments on the proposed amendments to Note 3 on Rule 10?**

- 4.16 The responses received to Question 9 were broadly consistent with the responses received in respect of Question 8.

4.17 In accordance with the views expressed in relation to Questions 7 and 8 above above, the Code Committee has not adopted the change proposed in paragraphs 4.10 to 4.12 to the PCP to the time when an offeror is able to request information under Note 3 on Rule 10. The Code Committee also proposes to defer reaching a conclusion in relation to this issue for the time being. As such, following the announcement of a firm intention to make an offer (but not the announcement of a possible offer), the offeree company will continue to be required, on request, to provide the offeror as soon as possible with all relevant details of the issued shares and, to the extent not issued, the allotted shares and details of any conversion or subscription rights or any other rights pursuant to the exercise of which shares may be unconditionally allotted or issued during the offer period.

(b) *Data Protection Act 1998 and requirement to satisfy one or more fair processing conditions*

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

4.18 In paragraph 4.18 of the PCP, the Code Committee proposed to amend the Code to inform an offeror that it may be subject to restrictions on the use that it is able to make of information provided to it by the offeree company or its registrar pursuant to the proposed new Section 4 of Appendix 4.

4.19 All of the respondents to Question 10 agreed with the proposals. Three of these respondents suggested that it would be helpful to offerors for an indication to be provided of what the nature of the principal restrictions on the use of the relevant information may be.

4.20 Whilst the Code Committee does not believe that it would be appropriate for it to advise offerors in respect of the legal restrictions that may apply to their use of

information, the Code Committee agrees that it may be helpful to draw offerors' attention to the fact that the legal restrictions to which they are subject may include data protection issues.

- 4.21 In view of this, the Code Committee has adopted the proposed Section 4(c) of Appendix 4 in an amended form from that proposed in the PCP, as follows:

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

...

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

- (d) Requirement to provide fair processing notices*

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

- 4.22 In paragraph 4.22 of the PCP, the Code Committee proposed to amend Rule 2.6(c) to require the offeree company to explain to shareholders and persons with information rights that their addresses, electronic addresses and certain other information provided by them for the receipt of communications from the offeree company may be provided to an offeror during the course of an offer as required under the proposed new Section 4 of Appendix 4 to the Code.

- 4.23 Six of the respondents agreed that Rule 2.6(a) should be amended as proposed and the Code Committee has adopted the amendments.

- 4.24 One respondent suggested amending the heading of Rule 2.6 to refer to the obligation on the offeror and offeree company to “publish” rather than “distribute” announcements, on the basis that the change would be consistent with other changes proposed in the PCP. The respondent also suggested that a definition should be added to the Code in relation to what is meant by the terms “publish” and “publication”.
- 4.25 The Code Committee agrees with this respondent’s suggested amendment to the heading of Rule 2.6 and has therefore amended the heading to Rule 2.6, as follows:

**“2.6 OBLIGATION ON THE OFFEROR AND THE OFFEREE
COMPANY TO ~~CIRCULATE~~PUBLISH
ANNOUNCEMENTS”.**

- 4.26 The Code Committee does not believe that it is necessary to introduce a definition of the terms “publish” or “publication” into the Code. This is on the basis that:
- (i) Rule 2.9 sets out how announcements about an offer or possible offer should be published;
 - (ii) the new Rule 19.8 sets out how copies of Code documents may be sent to persons entitled to receive them under the Code; and
 - (iii) the new Rule 19.10 sets out how copies of documents, announcements and information should be sent to the Panel and other parties to an offer.

The Code Committee therefore believes that no further explanation is required as to how copies of Code documents, announcements and other information in relation to an offer should be published.

- 4.27 In paragraph 4.23 of the PCP, the Code Committee proposed to amend Note 1 on Rule 15 to make it clear that a copy of all relevant announcements and other information sent to offeree company shareholders or persons with information rights in connection with an offer must also, where practicable, be sent to holders of Rule 15 securities.
- 4.28 None of the respondents raised any comments in relation to the proposal. However, on reflection, the Code Committee believes that it would be helpful also to introduce a new Note 3 on Rule 2.6 as a reminder to parties to offers and their advisers that copies of announcements sent to shareholders and persons with information rights under Rule 2.6 should also be sent to holders of Rule 15 securities. In view of this, the Code Committee has adopted a new Note 3 on Rule 2.6, as follows:

“NOTES ON RULE 2.6

...

3. Holders of convertible securities, options or subscription rights

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

- 5. Receiving copies of certain documents, announcements and information in hard copy form**
- (a) Right to receive copies of certain documents, announcements and information in hard copy form*

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

5.1 In paragraphs 5.1 to 5.3 of the PCP, the Code Committee proposed amending the Code to introduce a new Rule 19.9 providing that any person to whom a Code document is sent in electronic form or by means of website publication should be able to request a copy of it in hard copy form. The Code Committee proposed that this right should also extend to any future Code documents sent to that person in relation to an offer, and that any such person should be able to notify any party to an offer that he would like to receive copies of all Code documents (whether published by that party or any other party) in hard copy form.

5.2 All of the respondents to Question 12 agreed that a person to whom a Code document is sent in electronic form or by means of website publication should be able to request to be provided with a copy of it in hard copy form and the Code Committee has adopted Rules 19.9(a) to (d) as proposed in the PCP.

5.3 Five of those respondents also agreed that this right should extend to any future Code documents sent to that person in relation to an offer and that any such person should be able to notify any party to an offer that he would like to receive copies of all Code documents (whether published by that party or any other party) in hard copy form.

5.4 One respondent noted that a request for a hard copy of a Code document would not necessarily be treated for the purpose of the 2006 Act as an election for copies of future communications from the offeree company to be sent to that person in hard copy form. As such, the respondent noted that elections for copies of Code documents in hard copy form would need to be recorded separately by the offeree

- company's registrar from elections made under the 2006 Act and that this would be likely to require development work by offeree companies and their registrars and would increase administrative costs.
- 5.5 The Code Committee understands that the respondent is correct in stating that an election for hard copy documents under the Code would not necessarily be treated as an election for hard copy documents under other applicable legal and regulatory provisions. However, the Code Committee does not believe that significant development work would have to be undertaken, or significant costs would have to be incurred, by offeree companies and their registrars to record hard copy elections for Code purposes separately from other elections.
- 5.6 Five of the respondents to Question 12 raised concerns about the proposed requirement in the new Rule 19.9(d) that, if a request is made for a hard copy of a Code document, the party responsible for its publication must ensure that a hard copy is sent to the person entitled to receive it as soon as possible and in any event within two business days of the request being received.
- 5.7 One of these respondents suggested that hard copies of Code documents should be required to be sent to persons requesting them within one business day of the request being received so as to encourage parties to offers to ensure that they are in a position to send Code documents in hard copy form to the intended recipients quickly. It was argued that the need for urgency was compounded by the possibility that a recipient of a hard copy document may subsequently need to request separately a hard copy of information incorporated into the document by reference to another source.
- 5.8 The Code Committee believes that a deadline of one business day would be unduly onerous. However, the Code Committee also believes that the two business day deadline represents the outer limit of what would be considered to be an acceptable delay, as the obligation under the proposed Rule 19.9(d) was to

- send a hard copy “as soon as possible” following a request being received. The Code Committee believes that the statements required to be included in a document that incorporates information by reference to another source under Rules 19.9(e) and 24.14(d) would mitigate the risk of a significant delay occurring between a person receiving a copy of the relevant Code document and that person realising that a further specific request would need to be made in order to receive information incorporated into the document by reference to another source in hard copy form.
- 5.9 Another respondent noted that the Code does not generally differentiate between business days and calendar days and that, by referring to business days in the new Rule 19.9(d), a potential delay of four or five days could occur between an offeree company shareholder, person with information rights or other relevant person requesting a copy of a Code document in hard copy form and that person receiving it if a weekend intervened between the request being made and the document being despatched. In view of this, the respondent questioned whether two calendar days would be a more appropriate deadline for the despatch of hard copy documents.
- 5.10 The Code Committee does not believe that the respondent’s view that the Code does not generally differentiate between calendar days and business days is correct. The Code Committee believes that, whilst the Code timetable is based on calendar days, other obligations in the Code (for example, the deadlines by which dealings must be publicly disclosed under Rule 8) are set by reference to business days. The Code Committee did not therefore consider it to be inconsistent with the Code generally for the deadline for the despatch of hard copy documents following a request to be set by reference to business days.
- 5.11 Three of the respondents to Question 12 suggested that the deadline for the despatch of hard copy documents was too short. One respondent argued that, in the event of a large volume, or a re-print, of a Code document being required, it

might not be possible to meet a two business day deadline and that the obligation on the relevant party should be to use “all reasonable endeavours” to despatch the documents by that time. Another respondent argued that printing and mailing “one-off” requests might not be possible within two business days of a request for hard copies being received and, in view of this, significant wastage might occur if the number of hard copies required had to be estimated. A third respondent noted that, whilst in most cases, parties to offers would be able to comply with the requirement to despatch hard copies within two business days of a request being received, in some cases this time frame might be too tight and that the Code should therefore contain a discretion for the Panel to extend this time period if required. Certain of these arguments were also raised in the context of Questions 13, 14 and 15 and the Code Committee’s response is set out below.

- 5.12 The Code Committee has considered all of the points raised by the respondents, but remains of the view that hard copies of Code documents should be sent to persons who have requested them within two business days of the request being received. The Code Committee understands that parties to offers will be required to put in place systems to meet this deadline and acknowledges that, in exceptional circumstances, the two business day deadline might prove challenging. However, the Code Committee believes that this inconvenience to parties to offers must be balanced against shareholders’ interests in having sufficient time and information to enable them to reach a properly informed decision on the bid as provided in General Principle 2.
- 5.13 Paragraphs 5.9 to 5.13 of the PCP recorded the Code Committee’s view that the timetable within which offers are conducted should afford shareholders and other relevant persons (including those who do not have access to computers or other electronic devices capable of accessing documents on websites) sufficient opportunity following the announcement of an offer or possible offer to make arrangements to receive Code documents in hard copy form. The Code Committee believes that a further protection for shareholders is the fact that a

person to whom a Code document is sent in electronic form or by means of website publication would be able to receive a copy in hard copy form if that person so wished within a reasonable period of time and still have sufficient time to reach a properly informed decision on the offer. The Code Committee remains of the view that a maximum delay of two business days between a person making such a request and the hard copy document being despatched would be reasonable in this context.

(b) General Principle 1: equivalent treatment

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

5.14 Paragraph 5.5 of the PCP described the Code Committee's view that sending Code documents in different forms to different persons would not preclude the recipients of those documents from being considered to have been afforded equivalent treatment for the purpose of General Principle 1. This was on the basis that all such persons would have an equivalent opportunity to put in place alternative arrangements for receiving the documents either in advance of, or following, publication.

5.15 Five of the respondents to Question 13 agreed with this view.

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

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

properly informed decision on the offer?

5.16 Paragraph 5.12 of the PCP described the Code Committee's view that, if a person to whom a Code document is sent by means of website publication requests a copy of the document in hard copy form, that person would be considered to have sufficient time to reach a properly informed decision on the offer provided a hard copy of the document is sent to that person within two business days of the request being received.

5.17 Five of the respondents to Question 14 agreed with this view.

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

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

5.18 In paragraph 5.15 of the PCP, the Code Committee proposed amending the Code to require that, if a Code document is published in electronic form or by means of website publication, the document (and any related website notification) must contain a statement describing the recipient's right to request that:

- (i) a hard copy of the document (and any information incorporated into the document by reference to another source) should be sent to that person; and
- (ii) all future Code documents sent to that person in relation to the offer should be in hard copy form.

5.19 All of the respondents to Question 15 agreed that a Code document that is sent to

- a person in electronic form or by means of website publication, including any related website notification, should contain a statement that a person to whom it is sent may request a copy of the Code document (and any information incorporated into it by reference to another source) in hard copy form and may also request that all future Code documents sent to that person should be in hard copy form.
- 5.20 Another respondent thought that it would be sufficient for the statement to be included in the first document sent to offeree company shareholders, persons with information rights and other relevant persons but not in subsequent documents. This was on the basis that the statement would, in the respondent's view, become a part of the "boiler-plate" wording in Code documents.
- 5.21 The Code Committee does not agree with this suggestion and, in view of the importance it attaches to offeree company shareholders and other relevant persons knowing that they have a right to receive copies of Code documents in hard copy form, the Code Committee continues to believe that a statement of this right should appear in every Code document that is sent to a person in electronic form or by means of website publication (and any related website notification).
- 5.22 A third respondent suggested a drafting change to Rule 19.9(e) with which the Code Committee agrees. In view of this, the Code Committee has adopted Rule 19.9(e) in a revised form from that proposed in the PCP, as follows:

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

...

(e) Any document, announcement or information that is sent to a person in electronic form or by means of being published on a website, and any related website notification, must contain a statement that the person to whom it is sent may request a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form

and may also request that all future documents, announcements and information sent to that person in relation to the offer should be in hard copy form. Attention should be drawn to the fact that a hard copy of the document, announcement or information will not be sent to that person unless so requested and details must be provided of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests may be submitted).”.

(e) Existing elections

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

5.23 In paragraph 5.17 of the PCP, it was noted that the Code Committee believes that, if an election to receive communications from a company in hard copy form has been made by, or on behalf of, a person entitled to received copies of Code documents, that election should be treated by each party to the offer as also applying to the form in which Code documents should be sent to them.

5.24 Five of the respondents to Question 16 agreed that elections made by offeree company shareholders, persons with information rights and other persons in accordance with applicable legal and regulatory provisions to receive communications from the offeree company in hard copy form should also apply to Code documents required to be sent to them by a party to an offer.

5.25 One respondent was unsure whether a person entitled to receive Code documents should be regarded as having given implied consent to receive copies of Code documents in a particular form.

5.26 The Code Committee believes that it is pragmatic to treat elections made in accordance with applicable law or regulation by persons entitled to receive Code

documents to receive communications from the offeree company in hard copy form as also applying to the form in which Code documents are sent to that person. The Code Committee does not believe that a shareholder or other relevant person who has already indicated a preference for receiving copies of communications from the offeree company in hard copy form should be required to make a separate request to receive Code documents in hard copy form.

- 5.27 In view of the changes in the form in which the new Section 4(a) of Appendix 4 has been adopted as described in paragraphs 3.11 and 4.8 above, the Code Committee has adopted the new Rule 19.9(f) in a revised form from that set out in the PCP, as follows:

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

...

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

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

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

- 5.28 Five of the respondents to Question 17 agreed with this proposal and the Code

Committee has adopted Section 4(a)(iv) of Appendix 4 as proposed in the PCP.

5.29 One respondent raised the same concern in relation to a shareholder, person with information rights or other person entitled to receive Code documents being regarded as having given implied consent to receive copies of Code documents in a particular form as was discussed in the context of Question 16 above.

(g) *Overseas shareholders*

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

5.30 All of the respondents to Question 18 agreed with this proposal and the Code Committee has adopted the amendments to Rule 30.3 and the Note thereon as proposed in the PCP.

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

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

6.1 In paragraph 6.1 of the PCP, the Code Committee proposed introducing a new Rule 19.10 into the Code which would amend the provisions that are currently set out in Rule 19.7. These amendments would require, among other things:

- (i) copies of offer documents to be sent to the Panel and to the advisers to all other parties to the offer in electronic form in addition to hard copy form; and
- (ii) all other information published in connection with an offer to be sent to the Panel and the advisers to all other parties to the offer in electronic form

in addition to hard copy form.

- 6.2 All of the respondents to Question 19 agreed with the proposed new Rule 19.10 and the Code Committee has adopted the new Rule 19.10(a) and (c) as proposed in the PCP.
- 6.3 One of the respondents suggested that it seemed to be inconsistent with the objective of the PCP to require that the Panel should be provided with a copy of Code documents in both hard copy form and electronic form.
- 6.4 The Code Committee does not believe that there is any inconsistency in requiring Code documents to be provided to the Panel in both hard copy form and electronic form. The Code Committee believes that the Panel should be able to supervise all aspects of transactions to which the Code applies in order to ensure that the Code is complied with. In doing so, the Code Committee believes that it is important for the Panel to be able to supervise the contents of Code documents in whatever form they are sent to offeree company shareholders, persons with information rights and other relevant persons. This will be the case irrespective of whether a Code document is published in hard copy form, electronic form or by means of website publication.
- 6.5 However, on reflection, the Code Committee believes that copies of announcements and other information published in connection with an offer should be sent to the Panel and to the advisers to all other parties to the offer in electronic form only. In view of this, the Code Committee has adopted the new Rule 19.10(b) in an amended form from that proposed in the PCP. The Code Committee has also made a number of minor amendments to the form of the new Rule 19.10(b), as follows:

“(b) A copyCopies of all other documents, announcements and information, including advertisements and other material released to the media, published in connection with an offer by, or on behalf of,

an offeror or the offeree company, including advertisements and any material released to the media (including any notes to editors), must at the time of publication or release be sent in ~~hard copy form~~ and electronic form to:

- (i) the Panel; and
- (ii) the advisers to all other parties to the offer.

Documents must also be sent in hard copy form to the Panel and the advisers to all other parties to the offer at the time of publication. Such documents, announcements or information must not be released to the media under an embargo (see also the Note 4 on Rule 26).”.

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

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

7.1 In paragraph 7.6 to 7.9 of the PCP, the Code Committee proposed amending the Code to introduce a new Rule 24.14 and a related Note and a new Note on Rule 19.10 that would enable certain information to be incorporated into Code documents by reference to other sources.

7.2 All of the respondents to Question 20 agreed with the proposal.

7.3 One of the respondents suggested that the proposed new Rule 24.14(c) should provide that, if the recipient of a Code document which incorporates information by reference to another source requests a hard copy of that information, a hard copy should be sent to that person within one business day of the request being received rather than two. This was consistent with the respondent’s view in relation to the timing of the despatch of hard copy documents generally following a request being received.

7.4 The Code Committee remains of the view that two business days rather than one

- is the appropriate time frame within which hard copies of Code documents must be sent to a shareholder or other relevant person who requests a copy in hard copy form.
- 7.5 The same respondent suggested that the Code should require copies of Code documents that contain information incorporated by reference to another source, and which are published in electronic form, to contain an electronic link, or “hyperlink”, which would provide direct access from the Code document to the source of the information incorporated by reference.
- 7.6 As noted in paragraph 7.15 below, the Code Committee believes that it would be good practice for electronic copies of Code documents which incorporate information by reference to another source to include a “hyperlink” to the relevant source document(s). The Code Committee believes that this would be helpful to shareholders and other relevant persons wishing to locate and review the relevant information but does not believe that it is necessary to include a rule to this effect in the Code.
- 7.7 Another respondent raised a concern about whether the directors who take responsibility for the information contained in a Code document would be required also to take responsibility for the whole of the source document from which information had been incorporated into the Code document. This was on the basis that, since the source document from which information is incorporated must be published on a website, and since the PCP proposed introducing a requirement that a responsibility statement should be included on each page of the party’s website (or the gateway to it), it could be argued that the directors of the publishing party would, in effect, be required to take responsibility for the whole of the source document and not only the part which is incorporated by reference into the Code document.
- 7.8 The Code Committee’s response to this concern is described in the response to the

comments made in relation to Question 28 in paragraphs 9.35 to 9.41 below.

- 7.9 A third respondent suggested that, in addition to the list of information specified in the proposed new Rule 24.14(a), there should be a general ability to incorporate information into a Code document from another document that is being published at the same time as the Code document. By way of example, the respondent suggested that the information required by Rule 24.2(d)(xi) (relating to particulars of securities being offered in the context of a securities exchange offer) would often be included in a prospectus or equivalent document and could therefore be incorporated into the offer document by reference.
- 7.10 The Code Committee agrees in substance with the point raised by the respondent. As noted in paragraph 7.3 of the PCP, the Code Committee understands that the Panel Executive has previously permitted information to be incorporated into offer documents by reference to information included in a prospectus or a company's annual report and accounts, provided that the source document was sent to shareholders in the same envelope as the offer document, and the document included appropriate cross-references detailing where the information required by the Code could be found. The Code Committee believes that the respondent's suggestion would be consistent with this practice and considers that the same considerations should apply to all Code documents.
- 7.11 On reflection, the Code Committee believes that the ability to incorporate information into Code documents should not be limited to:
- (i) the financial information referred to in the proposed Rule 24.14(a) as set out in the PCP; and
 - (ii) information set out in documents that are published at the same time as the Code document.

This is on the basis that, provided the information to be incorporated into a Code document by reference is readily available to persons to whom the document is sent, the Code Committee does not see any reason to impose a limitation on the nature of the information that may be so incorporated. However, in the Code Committee's view, it would be undesirable for a Code document to incorporate such significant amounts of information by reference to other sources that the document would in substance become a list of cross-references to other documents. The Code Committee believes that this would be unhelpful and potentially confusing to offeree company shareholders and other recipients of the document. In view of this, the Code Committee believes that the Panel's prior consent should be obtained before a party to an offer may incorporate information other than the financial information referred to in the proposed Rule 24.14(a) as set out in the PCP into a Code document by reference to another source.

- 7.12 In view of the above, the Code Committee has adopted Rule 24.14 and the Note on Rule 19.10 as proposed in the PCP, save that it has adopted Rule 24.14(a) in a revised form from that proposed in the PCP, as follows:

“24.14 INCORPORATION OF INFORMATION BY REFERENCE

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

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

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

... ”.

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

7.13 All of the respondents to Question 21 agreed with this proposal.

7.14 One respondent raised the same issue as was raised in the response to Question 20 above in relation to the maximum permitted time period for the despatch of hard copy documents following a request being received. The Code Committee's response to this issue is set out in the response to the comments received in respect of Question 20.

7.15 The Code Committee believes that information that is incorporated into a Code document by reference to another source should be capable of being accessed by shareholders, persons with information rights and other relevant persons as quickly and easily as possible. The Code Committee is aware that, in a number of instances where the Panel Executive has permitted information to be incorporated by reference to another source, the relevant information has been published on a website in a form that has made it difficult for interested persons to locate and review that information quickly. In view of this, the Code Committee believes that it would be good practice for parties to offers to consider the following points when publishing information that is incorporated into a Code document by reference to another source:

- (i) in electronic copies of Code documents, a reference to the website on which information incorporated by reference is published should be in the form of an electronic link or "hyperlink" to the relevant source document and, if possible, to the relevant pages;
- (ii) source documents from which information is incorporated by reference into a Code document should be published on a website in separate electronic files rather than in one large electronic file;

- (iii) if the Panel Executive permits non-financial information to be incorporated into a Code document by reference to another source, the source information in respect of a particular rule of the Code should comprise a single document (for example, an extract from a prospectus) and should not be drawn from multiple source documents (for example, extracts from several documents published over a period of years);
- (iv) the reference to the website on which information incorporated by reference to another source is published should be to the actual website page on which the relevant information is published and not simply to a website page that requires a shareholder or other interested person to search through a number of other website pages before locating the information; and
- (v) offer-related sections of an offeror or offeree company's website should be capable of being accessed from the relevant party's home page and the link to the offer-related information must be prominently displayed.

8. Consequential amendments

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

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

- 8.1 All of the respondents to Question 22 agreed that the Code should be amended as proposed.

8.2 Three of the respondents to Question 22 suggested some drafting points, including that the meaning of the terms “send”, “sent”, “publish” and “publication” should be clarified by adding definitions of those terms into the Code. However, the Code Committee does not believe that any further clarification of the meaning of these terms is required. The question of whether definitions of “publish” and “publication” are required in the Code is considered further in paragraphs 4.24 to 4.26 above.

8.3 On reflection, the Code Committee believes that the consequential amendments to Rules 3.1, 3.2, 15(b) and Note 1 on Rule 25.1, and certain of the consequential amendments to Rule 25.1, should not be adopted in the form proposed in Appendix B to the PCP. In view of this, Rule 25.1 has therefore been amended as described in Appendix B to this Response Statement.

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

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

8.4 All of the respondents to Question 23 agreed with this proposal.

(c) Other consequential and non-material amendments

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

8.5 All of the respondents to Question 24 agreed with the proposed amendments referred to in paragraph 8.7 of the PCP.

PART B: Publication of documents, announcements and information on websites**9. Requirement to publish copies of documents, announcements and information on a website****(a) *Requirement to publish copies of documents, announcements and information on a website*****Q25 Should the Code require copies of all documents, announcements and information published in relation to an offer to be made available on a website? Do you have any comments on the proposed new Rule 19.11?**

9.1 Paragraphs 9.7 to 9.15 of the PCP described the Code Committee's proposal to introduce a new Rule 19.11 into the Code which would require a party to an offer to publish on a website a copy of all documents, announcements and information published by it in relation to the offer as soon as possible following publication.

9.2 Five of the respondents to Question 25 agreed that the Code should require copies of all documents, announcements and information published in relation to an offer to be made available on a website.

9.3 One of the respondents suggested that the use of websites by a party to an offer should be optional if that party does not intend to publish documents in electronic form or by means of website publication.

9.4 The Code Committee does not agree with this suggestion. As stated in paragraph 9.7 of the PCP, the Code Committee believes that a website should be a single point of reference for documents, announcements and information published in connection with an offer. The Code Committee continues to believe that this should be the case for all offers, and not only an offer where a party chooses to publish Code documents in electronic form or by means of website publication.

- 9.5 The same respondent noted that, whilst as a practical matter many companies involved in offers would be likely to have websites that could be used for Code purposes, some parties might not have a website (for example, an investment vehicle formed by a management team in the context of an MBO). In view of this, the respondent questioned whether the benefit to shareholders of having access to a website on which all offer-related documents, announcements and information would be published would be outweighed by the additional time, cost and money required to establish a website.
- 9.6 The Code Committee acknowledges that not all parties to offers will have a website that could be used for the purpose of the proposed new Rule 19.11 and that, as a result, a party to an offer might need to set up a website specifically for the purpose of the offer. However, as noted in paragraph 9.13 of the PCP, the Code Committee understands that a website may be set up relatively inexpensively and quickly. The Code Committee has been informed that it should be possible to set up a website capable of complying with the new Rule 19.11 at a cost of a few thousand pounds within 24 to 48 hours of the need arising. The Code Committee believes that this cost would not normally be material in the context of the other offer-related costs.
- 9.7 In addition, Note 1 on the new Rule 19.11 makes it clear that, if a party to an offer does not have a website, or proposes to use a website maintained by a third party, the Panel should be consulted. In such circumstances, the Code Committee understands that the Panel Executive may permit the relevant party a short additional period within which to arrange for the relevant documents, announcements or information to be published on a website but that this would need to be considered at that time in the light of all available facts. In exceptional circumstances, the Panel Executive might even grant a dispensation from the need to establish a website.

- 9.8 In view of the above, the Code Committee remains of the view that a requirement for parties to an offer to publish offer-related documents, announcements and information on a website would be a proportionate measure in view of the benefits that could be obtained by shareholders and the market generally. The Code Committee also believes that the requirement should apply equally to relevant documents, announcements and information published in the context of a possible offer since the same benefits would be obtained.
- 9.9 Another respondent questioned whether the proposed new Rule 19.11(a) was sufficiently clear in respect of when the obligation to publish offer-related documents, announcements and information arose. The respondent also questioned whether it would be beneficial for the relevant party to have a “grace period” to enable it to have sufficient time to set up its website (or relevant section of it).
- 9.10 The Code Committee believes that the obligation to make copies of offer-related documents, announcements and information available on a website arises at the time when the relevant document, announcement or other information is published. The Code Committee recognises that the relevant party may require a short period of time in which to make the appropriate administrative arrangements but believes that this should be done “as soon as possible” following publication. In view of this, the Code Committee does not believe that the proposed new Rule 19.11(a) requires further clarification in this respect.
- 9.11 The same respondent questioned whether the proposed new Rule 19.11(a) is sufficiently clear about when a document, an announcement or information in relation to an offer would be considered to be “published” and therefore required to be made available on a website. The respondent questioned, for example, whether analysts’ presentations or communications with employees in connection with an offer would be treated as being “published” for the purposes of the new Rule 19.11(a) and would therefore be required to be made available on a website.

In view of this, the respondent thought that the new Rule 19.11(a) might be made clearer if the obligation were to be limited to documents that are required to be published under the Code.

9.12 The Code Committee agrees with the substance of the point raised by the respondent. The Code Committee believes that the proposed new Rule 19.11 should therefore apply only to:

- (i) Code documents and other information sent to shareholders, persons with information rights or other relevant persons; and
- (ii) announcements (whether related to the offer or not) published by a party by means of a Regulatory Information Service (a “RIS”) other than certain specified announcements.

9.13 The Code Committee therefore believes that the question of whether, for example, analysts’ presentations or communications with employees would be required to be published on a website under the new Rule 19.11 should be determined by whether, as a matter of fact, such communications had been sent to shareholders or other relevant persons or included in an announcement published by means of a RIS. The Code Committee further believes that, in turn, the question of whether those communications should be required to be sent to shareholders and other relevant persons, or published by means of a RIS, would fall to be determined in accordance with the usual application of Rule 20.1 (“Equality of information to shareholders”), which requires that 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.

9.14 On reflection, the Code Committee considers that, save as provided below, the requirement to publish on a website copies of announcements published by means of a RIS should apply to all such announcements published during the course of

the offer (including any related competition reference period) and not only those directly relating to the offer. This means that, for example, a party to an offer which publishes by means of a RIS half-yearly financial reports or interim management statements during the course of an offer would be required to publish a copy of the relevant announcement on its website.

9.15 However, the Code Committee believes that certain announcements should not be required to be published on a website as they are likely to be issued relatively frequently during offer periods in the ordinary course and are therefore likely to be of less interest to shareholders, persons with information rights and other relevant persons than other announcements published during this period. In addition, the Code Committee believes that any person who would like to review these announcements would be able to do so quickly and easily via a Secondary Information Provider (a “SIP”). Links to a number of SIPs for retail investors can be found on the Panel’s website. The Code Committee therefore believes that copies of the following announcements should not be required by the Code to be published on a website:

- (i) notifications pursuant to the FSA’s Disclosure Rules and Transparency Rules or any similar provisions of other regulatory regimes in relation to:
 - (a) transactions by directors or other persons discharging managerial responsibilities in respect of a company;
 - (b) the acquisition or disposal of major shareholdings; and
 - (c) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares (including treasury shares); and

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

9.16 In view of the above, the Code Committee has adopted a new Rule 19.11(a) in a revised form from that proposed in the PCP, and has also adopted a new Note 5 on Rule 19.11 as follows:

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

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

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

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

~~As soon as possible following the publication of any document, announcement or information in relation to an offer, the offeror or offeree company as relevant must, as soon as possible and in any event by no later than 12 noon on the following business day following publication, the party which published the relevant document, announcement or information must ensure that a copy of it is published on a website. Dealing disclosures publicly disclosed published under Rule 8.1 Copies of announcements referred to in Note 5 below do not need to be published on a website.~~

...

5. Announcements not required to be published on a website

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

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

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

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

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

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

9.17 The Code Committee believes that it may also be useful to clarify that, although copies of documents, announcements and information required to be published on a website under the new Rule 19.11(a) must continue to be made available on a website during the course of the offer (and any related competition reference period), the obligation to publish new documents, announcements and information on the website will cease following the end of the offer period. In view of this, the Code Committee has adopted the new Rule 19.11(b) in an amended form from that set out in the PCP, as follows:

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

9.18 A third respondent suggested that the proposed new Rule 19.11(c) should be amended to make it clear that the required statement relating to the website on which a party must publish the relevant offer-related documents, announcements and information is not required to refer to websites maintained by other parties to the offer.

9.19 The Code Committee agrees with the respondent’s suggestion and has therefore adopted the new Rule 19.11(c) in a revised form from that proposed in the PCP as follows:

“(c) Any document, announcement or information published in relation to an offer by an offeror or the offeree company in the manner described in (a)(i) or (ii) above (other than dealing disclosures published under Rule 8.1 the announcements referred to in Note 5 below) must contain a statement providing details of the website on which a copy will be published ~~all such documents, announcements and information are published.~~

...”.

9.20 The Code Committee believes that it would be undesirable for the release of an offer-related announcement to be delayed pending confirmation of the address of the website on which a copy of the announcement will be published (for example, if the offeror or offeree company, as the case may be, does not have a website and is therefore required to set a website up specifically for this purpose). In such circumstances, the Code Committee understands that it would be acceptable to the Panel Executive for a separate announcement, which includes the relevant website address, to be released as soon as possible thereafter. However, the Code Committee does not believe that it is necessary to include a provision to this effect in the Code.

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

9.21 Six of the respondents to Question 26 agreed with this proposal.

9.22 One of the respondents suggested, as it did in relation to Question 25 above, that the use of websites by a party to an offer should be optional if that party does not intend to publish documents in electronic form or by means of website publication. The Code Committee does not agree with this suggestion for the reason described in paragraph 9.4 above.

9.23 Another respondent suggested that it might be beneficial for the Panel or a “neutral” third party to maintain a central website on which offer-related

documents, announcements and information published by all parties in the context of all offers could be viewed.

9.24 The Code Committee has previously considered implementing a proposal of this nature. However, the Code Committee concluded that, since the publication of offer-related documents, announcements and information is the responsibility of the parties to an offer, it would be appropriate for those parties to take responsibility for the publication of the relevant documents, announcements and information on a website and not the Panel or some other “neutral” third party.

9.25 A third respondent suggested that, in view of the frequency with which newly incorporated companies, formed solely for the purpose of making an offer, may be required to consult the Panel under the proposed new Note 1 on Rule 19.11 for permission to use a website belonging to a third party (for example, the offeror’s parent company), it might be helpful for the Note to set out explicitly the Panel’s approach to these situations.

9.26 The Code Committee notes that Note 1 on the new Rule 19.11 contemplates the possibility of a party to an offer using a website maintained by a third party for the publication of offer-related documents, announcements and information. The Code Committee also believes that the Panel Executive would be unlikely to have any objection to a “Newco” offeror using its parent company’s website for this purpose provided it is consulted, and its consent obtained, before that offeror does so. However, the Code Committee does not consider it necessary for the new Rule 19.11 to make reference expressly to the position of a newly incorporated offeror.

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

Q27 Should the Code permit restrictions on access to Code documents on websites by persons located in non-EEA jurisdictions? Do you have any comments on

the proposed new Note 3 on Rule 19.11 or the proposed amendments to Rule 30.3?

- 9.27 All of the respondents to Question 27 agreed with the proposal and the Code Committee has adopted the new Note 3 on Rule 19.11 as proposed.
- 9.28 One respondent noted that the effect of the proposed new Note 3 on Rule 19.11 might be to make certain documents available to overseas shareholders and other relevant persons which would not have been available to them previously.
- 9.29 The Code Committee agrees that Rule 19.11 might have the effect of making certain offer-related documents, announcements and other information more readily available to overseas shareholders. This information has historically been available for review by such persons but, for example, they may have been required to travel to the United Kingdom in order to gain access to the information. The Code Committee recognises that, under the new Rule, certain information will become more widely available but the Code Committee believes that this would be a positive development.

(c) Codification of the Panel Executive's policy in respect of information published on websites

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

- 9.30 Paragraph 9.22 of the PCP described the Code Committee's intention to introduce two Notes on the proposed new Rule 19.11 on the following bases:
- (i) Note 4 on Rule 19.11 would require a responsibility statement from the directors of the offeror or the offeree company (as appropriate) to be attached to offer-related information published on a website. The Code Committee proposed that this could be done either by including a

responsibility statement on each offer-related page of the website or by including a responsibility statement on the gateway to the area of the website containing offer-related information, provided that access to the relevant area may only be obtained through this gateway; and

- (ii) Note 5 on Rule 19.11 would provide that, save for publication as expressly permitted by the new Rule 19.8, the disclosure of information on a website would not satisfy the obligation to notify all offeree shareholders of material new information or significant new opinions in relation to an offer. The Code Committee considered that parties to offers should therefore continue to notify material new information or significant new opinions in relation to an offer by publishing a Code document in accordance with the new Rule 19.8 or by making an announcement in accordance with Rule 2.9.
- 9.31 Four of the respondents to Question 28 agreed with the proposal to introduce the proposed new Notes 4 and 5 on the proposed new Rule 19.11.
- 9.32 Three of the respondents to Question 28 noted that, under the proposed new Rule 19.11, offer-related documents, announcements and other information would be required to be published on a website and that all such information would need to be covered by a responsibility statement from the directors of the relevant party as required under the new Note 4 on Rule 19.11. The respondents therefore noted that the previous distinction between announcements (which do not require a responsibility statement under Rule 19.2) and documents (which do require a responsibility statement) would, in practical terms, cease to exist.
- 9.33 Two of these respondents also argued that, if the Code Committee's proposal to permit information to be incorporated by reference to other sources under the proposed new Rule 24.14 were to be adopted, the Code should make clear that a responsibility statement would be required to apply only to that information

- which had been incorporated into a document by reference and not to the whole of the source document.
- 9.34 In addition, one of the respondents argued that it might not be appropriate for a responsibility statement to attach to certain of the information that would be required to be published on a website. For example, it was argued that the directors of a party to an offer should not be required to take responsibility for the content of material contracts and certain other documents put on display under Rule 26 (amended as proposed in the PCP).
- 9.35 As explained in paragraphs 9.21 and 9.22 of the PCP, the proposed new Note 4 on Rule 19.11 was based on the Code Committee's understanding of the way in which the Panel Executive applied Rule 19.2 as described in the Panel's Annual Report for 1999-2000 (the "2000 Annual Report").
- 9.36 The Code Committee agrees with the substance of the points raised by the respondents. The Code Committee believes that the current distinction between announcements and documents for the purpose of Rule 19.2 is based on the fact that announcements often need to be published quickly (for example, following the offeree company becoming the subject of rumour and speculation or an untoward movement occurring in the offeree company's share price) and it would not be acceptable for such an announcement to be delayed while the relevant party confirms that its directors will take responsibility for it.
- 9.37 The Code Committee notes that, pursuant to Rule 19.1, each document or advertisement issued, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy and the information given must be adequately and fairly presented. In addition, the Code Committee notes that Section 1 of Appendix 3 provides that, while a board of directors may delegate the day-to-day conduct of an offer to individual directors or a committee of them, the board as a whole must ensure that proper arrangements are in place to

enable it to monitor that conduct in order that each director may fulfil his responsibilities under the Code.

9.38 The Code Committee believes that, as a result, the board of an offeror or offeree company will, as a practical matter, be responsible for ensuring that the information contained in a document, announcement or other information published in relation to an offer is in accordance with the facts and, where appropriate, does not omit anything likely to affect the import of such information. The Code Committee believes that this will be the case whether or not a statement of the kind referred to in Rule 19.2 is included in the document, announcement or other information.

9.39 However, the Code Committee had no intention to change the application of Rule 19.2 as part of the proposals put for consultation in the PCP and, having taken this into consideration, has not adopted the proposed new Note 4 on Rule 19.11.

9.40 The Code Committee also understands that, in the light of the respondents' comments in relation to Question 28, the Panel Executive has reconsidered its position in relation to requiring responsibility statements to appear on websites as set out in the 2000 Annual Report and will no longer expect such statements to appear on websites.

9.41 In view of the change in approach described above, the Code Committee has adopted the new Note 5 on Rule 19.11 re-numbered as Note 4.

10. Documents to be on display

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

Q29 Should the Code be amended to require display documents to be made available for inspection on a website in addition to hard copy form until the

end of the offer (and any related competition reference period)? Do you have any comments on the proposed amendments to Rule 26 or the new Notes 2, 3 and 4?

- 10.1 Paragraph 10.4 of the PCP described the Code Committee's belief that the Code should be amended to require that copies of all documents put on public display by an offeror or offeree company under Rule 26 should be published on its website in addition to their being made available for physical inspection. The Code Committee also proposed amending Rule 26 to extend the period during which documents on display should be made available so that the documents would be displayed until the end of the offer (including any competition reference period) rather than until the end of the offer period. In view of this, the Code Committee proposed to amend Rule 26, and to introduce new Notes 2, 3, 4 and 5 on the basis set out in paragraph 10.8 of the PCP.
- 10.2 Five of the respondents to Question 29 agreed that the Code should be amended to require display documents to be made available for inspection on a website in addition to hard copy form until the end of the offer (and any related competition reference period). Four of these respondents had no comments in relation to the proposed amendments to Rule 26 or the new Notes 2, 3, 4 and 5, and the other respondent had a minor comment in relation to Note 2 only which was considered by the Code Committee in the context of Question 26.
- 10.3 Three of the respondents to Question 29 raised substantive issues in relation to the proposed amendment of Rule 26 and the introduction of new Notes 2, 3, 4 and 5 on Rule 26.
- 10.4 One of these respondents noted that, whilst it was agreed generally that material offer-related display documents should be available on a website, the respondent had major concerns about the amount of information required to be put on display on a website. Another respondent was concerned that the proposed amendments represented a significant shift from the present position. In summary, the specific

concerns raised by the respondents related to the following aspects of the proposed amendments:

(i) *Changing the means by which display documents may be reviewed*

10.5 Three of the respondents argued that requiring display documents to be made available for inspection on a website in addition to hard copy form would fundamentally change the terms of access for those documents. One of these respondents noted that, whilst publicly available at present, the availability of display documents is limited in practice because it takes a degree of effort from an interested person to review the documents. However, it was noted that this was not thought to deter persons with a genuine interest in the transaction from reviewing display documents. In contrast, the respondent noted that making display documents available on a website would mean that an interested person would be able to review display documents anonymously and possibly without limit of time. This, it was argued, may be a benefit to competitors of a party to an offer who themselves have no interest in the offer.

10.6 Whilst the Code Committee accepts that the effect of the proposed amendments to Rule 26 and the related Notes would change the means by which documents put on display under Rule 26 may be reviewed, the Code Committee considers that the information contained in the relevant documents would already be in the public domain as a result of copies of the documents having been put on display in hard copy form. Furthermore, the Code Committee believes that all such public information in relation to an offer should be easily accessible to a person wishing to review that information. The Code Committee accepts that display documents may have previously been put on display in circumstances that were not conducive to shareholders and other relevant persons carrying out a detailed review of the documents. However, the Code Committee believes that the difficulty that has historically faced shareholders and other interested persons in

reviewing documents on display under Rule 26 is a result of a shortcoming in Rule 26 as currently framed rather than a virtue worthy of preservation.

(ii) *Making commercially sensitive information more widely available*

10.7 One respondent argued that making information more widely available was a particular concern in relation to material contracts that are not related to the offer. It was argued that such contracts will often contain commercially sensitive information and may also include confidentiality provisions restricting the terms from being made public. Another respondent noted that the ability to redact copies of commercially sensitive documents would not be sufficient to address its concerns in this area. The respondent considered the potentially adverse impact on offerors and offeree companies from making commercially sensitive information available to competitors as outweighing the need of shareholders and other relevant persons to review this information.

10.8 The Code Committee does not agree with the arguments made by these respondents. As noted above, the Code Committee believes that, as a result of the documents being put on display under Rule 26 in hard copy form, the information contained in the documents would be in the public domain. The Code Committee therefore believes that a person with an interest in reviewing information on display under Rule 26 (whether an offeree company shareholder or, in practice, a competitor of the offeree company seeking to review commercially sensitive material contracts) has historically been able to access that information if it chose to do so. The Code Committee understands that the Panel Executive has permitted some degree of redaction of information in display documents for matters which are of a commercially sensitive nature (for example, an offeror disclosing in its financing documents the level to which its offer could potentially be raised) but that the Panel Executive would decide whether particular information should be permitted to be redacted in the light of all available facts.

The Code Committee understands that this is likely to continue to be the case in the future.

(iii) *Extending the time period in which documents must be on display*

10.9 Two of the respondents did not agree that documents should be required to be on display under Rule 26 following the end of the offer period. This was on the bases that:

(i) extending the period in which the documents were available for review would compound the perceived problems identified in paragraphs 10.5 to 10.8 above; and

(ii) shareholders would, in any event, be unlikely to need to access this information after the end of the offer period.

10.10 For the reasons stated above, the Code Committee does not believe that the issues identified by the respondents in paragraphs 10.5 to 10.8 above are compelling arguments against the proposed extension of the time period in which documents must be on display. In addition, the Code Committee continues to believe that offeree company shareholders and other relevant persons might have an interest in reviewing display documents notwithstanding that the offer may have lapsed. In any event, as stated in paragraph 10.6 of the PCP, the Code Committee does not believe that there would be significant additional cost implications for parties to offers in continuing to make display documents available during this period.

(iv) *Whether the changes are necessary at all*

10.11 One of the respondents noted that the proposed amendments to Rule 26 may not be required at all. This was on the basis that offerors and potential offerors already have access to display documents since they have the right under the

existing Note on Rule 26 to be provided with a copy of the documents on request, and shareholders rarely review display documents as their primary focus is on the offer document. In any event, the respondent argued that the material contracts of an offeree company incorporated in the United Kingdom would be available for review by shareholders at the company's Annual General Meeting ("AGM").

10.12 The Code Committee believes that there is continued merit in making display documents available for inspection by the public. The Code Committee does not believe that the fact that certain display documents are available for review by shareholders at a company's AGM is relevant for Code purposes. In addition, the Code Committee considers that an offeror's display documents may be of interest to shareholders and other relevant persons and that an offeror may not be a company subject to the rules relating to making certain documents available at meetings under United Kingdom company law.

(v) *Position under the Prospectus Rules*

10.13 One respondent suggested that a review should be conducted in relation to whether copies of material contracts should be required to be put on display if the provisions are summarised in Code documents. The respondent noted that the list of display documents required under the FSA's Prospectus Rules is more restrictive than under Rule 26 and that the Prospectus Rules do not, for example, require copies of an issuer's material contracts to be put on display.

10.14 The Code Committee accepts that the provisions of the Prospectus Rules do not require copies of an issuer's material contracts to be put on public display notwithstanding that there is still a requirement to summarise the provisions of material contracts in the prospectus. The Code Committee notes that a similar requirement exists under the FSA's Listing Rules in relation to certain shareholder circulars. However, the Code Committee considers a substantive review of the list of documents required to be put on display under Rule 26 to be

outside the scope of the current consultation. The consultation, in the context of Rule 26, was intended to relate only to the means by which information is made available to shareholders and other relevant persons and not to the nature or extent of the substantive information made so available (save to the extent provided in Question 30 below). The Code Committee intends to undertake a review in due course of what documents should continue to be required to be put on display.

(vi) *Conclusion*

10.15 After considering the arguments raised above, the Code Committee has concluded that it would be consistent with the objectives of the PCP for display documents to be published on a website in addition to being made available for inspection in hard copy form. This is on the basis that the Code Committee believes that a party to an offer should have a website that would form a single point of reference for documents, announcements and information published in connection with an offer (including display documents). However, the Code Committee has decided to defer the adoption and implementation of the proposed amendments to Rule 26 relating to the requirement to publish copies of display documents on a website, and of the new Notes 2, 3, 4 and 5, until it has undertaken the review referred to in paragraph 10.14 above. Following that review, the Code Committee believes that it is likely that the proposed amendments to Rule 26 and the new Notes 2, 3, 4 and 5 will be adopted substantially in the form set out in the PCP.

10.16 Certain other consequential amendments to Rule 26 have been adopted in the form set out in Appendix B to this Response Statement.

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

Q30 Should offer documents, revised offer documents, offeree board circulars and offeree board opinions on revised offer documents be added to the list of

documents to be on display under Rule 26? Do you have any comments on the proposed new Rules 26(p) and (q)?

- 10.17 All of the respondents to Question 30 agreed with this proposal.
- 10.18 One of the respondents suggested that, in the interests of transparency, an offeror's website should also state that the Code documents published by the offeree company are available on the offeree company's website.
- 10.19 The Code Committee does not believe that a party to an offer should be required to include details of websites maintained by other parties to the offer on its website or in any offer-related document, announcement or information. The Code Committee believes that each party should be responsible for including details of its own website in all relevant Code documents, announcements and information. This would be consistent with the approach taken in the new Rule 19.11 (amended as described in paragraphs 9.12 to 9.20 above) which requires a party to an offer to disclose on a website, among other things, Code documents that it has sent to shareholders and other relevant persons, and announcements issued by means of a RIS (other than certain specified announcements), but not Code documents and announcements issued by other parties to the offer.
- 10.20 In view of the above, the Code Committee has adopted new Rules 26(p) and (q) in the form proposed in the PCP.

(c) Rule 32.7(a)

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

- 10.21 All of the respondents to Question 31 agreed that Rule 32.7(a) should be amended as proposed in Appendix B to the PCP.

PART C: Persons with “information rights”**11. Persons with information rights****(a) *Recognition of persons with information rights under the 2006 Act*****Q32 Do you agree that the Code should be amended to recognise the position of persons with information rights under the 2006 Act?**

11.1 Paragraph 11.14 of the PCP described the Code Committee’s belief that the Code should be amended to recognise the position of persons nominated to enjoy information rights under the 2006 Act.

11.2 All of the respondents to Question 32 agreed that the Code should be so amended.

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

11.3 Paragraph 11.16 of the PCP described the Code Committee’s proposal to introduce a new definition of a “person with information rights” under the Code.

11.4 Four of the respondents agreed with the new definition of “person with information rights”.

11.5 Three of the respondents to Question 33 questioned whether the definition made it sufficiently clear that a nomination in respect of a “person with information rights” would, for the purposes of the Code, be a nomination made pursuant to either section 145 or 146 of the 2006 Act rather than a nomination made pursuant to a separate provision of the Code. In view of this, the respondents suggested that a specific reference to the 2006 Act should be included in the new definition

of a “person with information rights” which would make the position clear. One of these respondents also suggested a minor drafting change in order to make the definition more consistent with the corresponding section of the definition in the 2006 Act.

- 11.6 The Code Committee agrees with the respondents’ suggestions and has therefore adopted the new definition of a “person with information rights” in a revised form from that proposed in the PCP, as follows:

“Person with information rights

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

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

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

- 12.1 All of the respondents to Question 34 agreed with the proposal.
- 12.2 One of the respondents noted that Code documents should only be sent to persons who have been nominated to enjoy information rights prior to the deadline for the publication of the relevant Code document.
- 12.3 The Code Committee believes that, if a person with information rights has not been nominated to enjoy information rights by the nominating registered shareholder by the time at which a Code document is published, that person would not be considered to be a “person with information rights” within the

meaning of the Code when the document is published. As such, that person would not be entitled to receive a copy of the relevant Code document. The Code Committee does not think that it is necessary to clarify this in the Code.

13. Consequential amendments

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

12.4 All of the respondents to Question 35 agreed with the proposed consequential amendments.

12.5 On reflection, the Code Committee believes that a further consequential amendment is required in respect of Rule 20.2 in addition to those set out in Appendix B to the PCP. The Code Committee believes that information in relation to shareholders, persons with information rights and other relevant persons given to one offeror or potential offeror would, on request, also be required to be given equally and promptly to another offeror or bona fide potential offeror under Rule 20.2. In this regard, the Code Committee does not believe that there ought to be any distinction between this information and other information provided to an offeror or potential offeror. In view of this, the Code Committee does not believe that a specific reference to “particulars of shareholders” or indeed to “persons with information rights or other relevant persons” is required in Rule 20.2.

12.6 The Code Committee has therefore amended Rule 20.2, as follows:

“20.2 EQUALITY OF INFORMATION TO COMPETING OFFERORS

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

APPENDIX A

Respondents to the consultation

1. Berwin Leighton Paisner LLP
2. GC 100 Group
3. Hermes Fund Managers Limited
4. The Institute of Chartered Accountants in England and Wales (ICAEW)
5. London Investment Banking Association (LIBA)
6. London Stock Exchange plc
7. Prudential plc
8. Registrars Group of the Institute of Chartered Secretaries and Administrators (ICSA)
9. Standard Life plc
10. Takeovers Joint Working Party of the City of London Law Society Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law

APPENDIX B

Amendments to the Code

DEFINITIONS

Electronic form

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

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

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

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

...

Hard copy form

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

...

Person with information rights

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

...

Website notification

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

NOTE ON WEBSITE NOTIFICATION

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

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

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

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

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

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

(d) a statement that the website notification is not a summary of the document, announcement or other information to which it relates and should not be

regarded as a substitute for reading the document, announcement or information in full.

Rule 2.5

2.5 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

...

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

...

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

...

NOTES ON RULE 2.5

...

3. Subjective conditions

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

...

5. Pre-conditions

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

...

Rule 2.6

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

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

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

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

...

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

NOTES ON RULE 2.6

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

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

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

See the Note on Rule 30.3.

3. Holders of convertible securities, options or subscription rights

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

Rule 2.7

2.7 CONSEQUENCES OF A “FIRM ANNOUNCEMENT”

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

NOTE ON RULE 2.7

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

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

Rule 2.8

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

...

NOTES ON RULE 2.8

1. *Prior consultation*

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

...

Rule 2.9**2.9 PUBLICATION OF AN ANNOUNCEMENT ABOUT AN OFFER OR POSSIBLE OFFER**

...

NOTES ON RULE 2.9

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

See Rule 19.107.

Rule 3.1**3.1 BOARD OF THE OFFEREE COMPANY**

...

NOTES ON RULE 3.1

...

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

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

...

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

...

NOTES ON RULE 3.2

1. *General*

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

...

Rule 4

4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR

...

4.2 RESTRICTIONS ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES

...

NOTES ON RULES 4.1 and 4.2

...

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

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

5. *No dealing contrary to published advice*

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

...

Rule 5.2**5.2 EXCEPTIONS TO RESTRICTIONS**

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

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

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

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

...

Rule 8

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

...

NOTES ON RULE 8

...

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

(a) *Public disclosure*

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

...

(b) Private disclosure

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

...

14. Irrevocable commitments and letters of intent

...

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

...

Rule 9.1

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

...

NOTES ON RULE 9.1

...

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

...

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

period for which the offer will remain open following ~~the publication~~posting of the document.

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

...

Rule 9.3

9.3 CONDITIONS AND CONSENTS

...

NOTES ON RULE 9.3

...

3. When dispensations may be granted

...

(b) when any official authorisation or regulatory clearance is required before the offer document is published~~posted~~. ~~The person who has incurred the obligation under Rule 9 must endeavour to obtain authorisation or clearance with all due diligence. If authorisation or clearance is obtained, the offer document must be published~~posted~~ immediately.~~ ...

[Note: this note also reflects amendments adopted by RS 2008/2.]

NOTES ON DISPENSATIONS FROM RULE 9

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

...

The appropriate provisions of the Code apply to whitewash proposals. Full details of the potential number and percentage of shares in which the person or group of persons acting in concert might become interested (together with details of the different interests concerned) must be disclosed in the document ~~sent to shareholders relating to~~published in connection with the issue of the new securities, which must also include competent independent advice on the

proposals the shareholders are being asked to approve, together with a statement that the Panel has agreed to waive any consequent obligation under this Rule to make a general offer. ...

...

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

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

...

Rule 11.1

11.1 WHEN A CASH OFFER IS REQUIRED

...

NOTES ON RULE 11.1

...

5. Acquisitions for securities

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

...

Rule 11.2

11.2 WHEN A SECURITIES OFFER IS REQUIRED

...

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

Rule 13.3

13.3 ACCEPTABILITY OF PRE-CONDITIONS

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

...

Rule 15

RULE 15. APPROPRIATE OFFER FOR CONVERTIBLES ETC.

...

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

...

NOTES ON RULE 15

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

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

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

...

Rule 17.1

17.1 TIMING AND CONTENTS

...

NOTES ON RULE 17.1

...

4. Publication of announcements

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

...

Rule 19

19.1 STANDARDS OF CARE

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

NOTES ON RULE 19.1

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

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

...

2. *Unambiguous language*

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

...

8. *Merger benefits statements*

... These additional requirements include publication of:

...

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

...

19.2 RESPONSIBILITY

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

...

NOTES ON RULE 19.2

...

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

Where a party ~~publishes~~~~company issues~~ a document or advertisement containing information about another party~~company~~ which makes it clear that such information has been compiled from previously published sources, the directors of the party ~~publishing~~~~company issuing~~ the document or advertisement need, as regards the information so compiled, only take responsibility for the correctness and fairness of its reproduction or presentation and the responsibility statement

may be amended accordingly. Where statements of opinion or conclusions concerning another ~~party company~~ or unpublished information originating from another ~~party company~~ are included, these must normally be covered by a responsibility statement by the directors of the ~~party publishing company~~ issuing the document or advertisement or by the directors of the other ~~party company~~; the qualified form of responsibility statement provided for in this Note is not acceptable in such instances. ...

...

5. When an offeror is controlled

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

19.3 UNACCEPTABLE STATEMENTS

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

NOTES ON RULE 19.3

...

2. Statements of support

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

19.4 ADVERTISEMENTS

...

The categories are as follows:-

...

(ix) advertisements published with the specific prior consent of the Panel. (As examples, this might be given if it were necessary to ~~communicate with~~

shareholders publish a document, announcement or information during a postal strike or in the circumstances referred to in Note 3 on Rule 20.1.)

NOTES ON RULE 19.4

...

4. *Use of alternative media*

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

...

19.6 INTERVIEWS AND DEBATES

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

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

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

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

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

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

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

19.8 PUBLICATION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION

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

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

NOTE ON RULE 19.8

Forms

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

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

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

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

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

(b) A person entitled to receive a document, an announcement or any information may request that all future documents, announcements and

information sent to that person in relation to an offer should be sent by the party which publishes it in hard copy form.

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

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

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

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

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

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

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

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

(i) the Panel; and

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

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

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

NOTE ON RULE 19.10

Information incorporated by reference

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

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

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

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

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

the offeror or offeree company as relevant must, as soon as possible and in any event by no later than 12 noon on the following business day, ensure that a copy is published on a website. Copies of announcements referred to in Note 5 below do not need to be published on a website.

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

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

NOTES ON RULE 19.11

1. Website to be used

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

2. “Read-only” format

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

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

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

4. Equality of information to shareholders

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

5. Announcements not required to be published on a website

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

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

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

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

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

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

Rule 20

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

Information about parties to companies involved in an offer must be made equally available to all offeree company shareholders and persons with

information rights as nearly as possible at the same time and in the same manner.

NOTES ON RULE 20.1

...

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

Parties involved in an offer must take particular care not to ~~disclose~~~~release~~ new material in interviews or discussions with the media. If, notwithstanding this Note, any new information is ~~made public~~published as a result of such an interview or discussion, a circular must be sent to shareholders and persons with information rights and, where appropriate, paid newspaper space taken as required by Note 3 below (see also Note 1 on Rule 19.1).

3. Meetings

... If, notwithstanding the above, any material new information or significant new opinion does emerge at the meeting, a circular giving details must be sent to shareholders and persons with information rights as soon as possible thereafter: in the final stages of an offer it may be necessary to make use of paid newspaper space as well as a circular. ...

...

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

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

...

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

...

When an offer or possible offer is referred to the Competition Commission or the European Commission initiates proceedings, the offer period may end in

accordance with Rule 12.2(a). Associates must, however, consult the Panel about the ~~issue~~publication of circulars as described in this Note during the reference or proceedings. ...

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

See the Note on Rule 30.3.

20.2 EQUALITY OF INFORMATION TO COMPETING OFFERORS

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

Rule 21.1

21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED

...

NOTES ON RULE 21.1

...

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

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

...

Rule 23

RULE 23. THE GENERAL OBLIGATION AS TO INFORMATION

...

NOTES ON RULE 23

1. *Material changes*

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

2. *Offers conditional on shareholder action*

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

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

See the Note on Rule 30.3.

Rule 24.2

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

...

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

...

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

...

(viii) the middle market quotations for the securities to be acquired, and (in the case of a securities exchange offer) securities offered, for the first business day in each of the six months immediately before the date of the offer document, for the last business day before the commencement of the offer period and for the latest available date before the posting publication of the offer document (quotations stated in respect of securities admitted either to the Official List or to trading on AIM should be taken from the Stock Exchange Daily Official List and, if any of the securities are not so admitted, any

information available as to the number and price of transactions which have taken place during the preceding six months should be stated together with the source, or an appropriate negative statement);

...

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

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

Rule 24.3

24.3 INTERESTS AND DEALINGS

...

(c) If any person referred to in Rule 24.3(a) has dealt in any relevant securities of the offeree company (or, in the case of a securities exchange offer only, of the offeror) during the period beginning 12 months prior to the offer period and ending with the latest practicable date prior to the ~~posting~~publication of the offer document, the details, including dates, must be stated (see Note 5(a) on Rule 8). If no such dealings have taken place, this fact should be stated.

...

NOTES ON RULE 24.3

...

2. *Aggregation*

...

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

Rule 24.14

24.14 INCORPORATION OF INFORMATION BY REFERENCE

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

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

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

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

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

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

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

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

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

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

NOTE ON RULE 24.14

Source of information incorporated by reference

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

Rule 25.1

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

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

...

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

its recommendation or opinion in the form and context in which it is included.

NOTES ON RULE 25.1

...

2. *Split boards*

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

3. *Conflicts of interest*

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

...

Rule 25.2

25.2 FINANCIAL AND OTHER INFORMATION

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

NOTES ON RULE 25.2

1. *Offeree board circular combined with offer document*

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

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

Where the offeror has included in the offer document information on the offeree company as required by Rule 24.2(e) insofar as it applies to Rules 24.2(a)(iv) and

(v), such information does not need to be repeated in the first major circular ~~published by~~ ~~from~~ the offeree board provided that the statement made in accordance with this Rule makes specific reference to the relevant information disclosed by the offeror in the offer document.

Rule 25.3

25.3 INTERESTS AND DEALINGS

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

...

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

...

Rule 25.4

25.4 DIRECTORS' SERVICE CONTRACTS

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

...

Rule 25.5

25.5 ARRANGEMENTS IN RELATION TO DEALINGS

The first major circular published by ~~from~~ the offeree board ~~advising shareholders on an offer~~ in connection with the offer, (whether recommending acceptance or rejection of the offer), must disclose any arrangements of the kind referred to in Note 6(b) on Rule 8 which exist

between the offeree company, or any person who is an associate of the offeree company by virtue of paragraphs (1), (2), (3) or (4) of the definition of associate, and any other person; if there are no such arrangements, this should be stated. ...

Rule 25.6

25.6 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

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

...

Rule 26

RULE 26. DOCUMENTS TO BE ON DISPLAY

...

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

...

(g) where a profit forecast has been made:

...

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

...

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

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

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

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

Rule 27

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

27.1 MATERIAL CHANGES

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

...

27.2 CONTINUING VALIDITY OF PROFIT FORECASTS

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

Rule 28

28.1 STANDARDS OF CARE

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

28.2 THE ASSUMPTIONS

(a) When a profit forecast appears in any document ~~addressed to shareholders~~ published in connection with an offer, the assumptions,

including the commercial assumptions, upon which the directors have based their profit forecast, must be stated in the document.

...

NOTES ON RULE 28.2

1. Requirement to state the assumptions

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

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

...

2. General rules

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

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

...

(iii) ...

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

...

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

...

28.3 REPORTS REQUIRED IN CONNECTION WITH PROFIT FORECASTS

...

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

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

28.4 PUBLICATION OF REPORTS AND CONSENT LETTERS

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

28.5 SUBSEQUENT DOCUMENTS – CONTINUING VALIDITY OF FORECAST

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

...

28.7 TAXATION, EXTRAORDINARY ITEMS AND MINORITY INTERESTS

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

Rule 29.1

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

...

(d) Another party's assets

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

Rule 29.2

29.2 BASIS OF VALUATION

...

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

Rule 29.5

29.5 OPINION AND CONSENT LETTERS

...

(c) Valuation certificate to be on display

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

Rule 29.6

29.6 WAIVER IN CERTAIN CIRCUMSTANCES

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

Rule 30

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

30.1 THE OFFER DOCUMENT

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

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

30.2 THE OFFEREE BOARD CIRCULAR

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

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

...

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

...

NOTE ON RULE 30.2

Where there is no separate offeree board circular

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

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

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

- (a) shareholders in the offeree company;

(b) persons with information rights; or

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

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

NOTE ON RULE 30.3

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

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

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

...

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

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

Rule 31.1

31.1 FIRST CLOSING DATE

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

Rule 31.2

31.2 FURTHER CLOSING DATES TO BE SPECIFIED

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

Rule 31.5

31.5 NO EXTENSION STATEMENTS

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

NOTES ON RULE 31.5

...

1. Firm statements

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

2. Reservation of right to set statements aside

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

3. *Competitive situations*

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

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

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

...

4. *Recommendations*

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

5. *Rule 31.9 announcements*

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

Rule 31.6

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

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

...

NOTES ON RULE 31.6

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

...

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

...

4. *Competitive situations*

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

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

Rule 31.7

31.7 TIME FOR FULFILMENT OF ALL OTHER CONDITIONS

...

NOTES ON RULE 31.7

...

2. *Extensions*

Any extension to which the Panel consents must be announced by the offeror in accordance with Rule 2.9. The Panel should be consulted as to whether ~~notice~~

notification in respect of the extension should also be ~~posted~~sent to offeree company shareholders and persons with information rights.

Rule 31.8

31.8 SETTLEMENT OF CONSIDERATION

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

NOTE ON RULE 31.8

Extensions

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

Rule 31.9

31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39

The board of the offeree company should not, except with the consent of the Panel (which should be consulted in good time), announce any material new information (including trading results, profit or dividend forecasts, asset valuations and proposals for dividend payments or for any material acquisition or disposal) after the 39th day following the ~~posting~~publication of the initial offer document. ...

Rule 32.1

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

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

document has been ~~posted~~published and where the document can be inspected.

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

NOTES ON RULE 32.1

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

... If an announcement of a kind referred to in this Note might fall to be made during the offer period, the Panel must be consulted at the earliest opportunity and an offeror will not be permitted to make a no increase statement as defined in Rule 32.2 prior to the ~~release~~publication of the announcement.

...

3. *When revision is not permissible**

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

4. *Triggering Rule 9**

When an offeror, which is making a voluntary offer either in cash or with a cash alternative, acquires an interest in shares which causes it to have to extend a mandatory offer under Rule 9 at no higher price than the existing cash offer, the change in the nature of the offer will not be viewed as a revision (and will thus not be precluded by an earlier no increase statement), even if the offeror is obliged to waive any outstanding condition, but such an acquisition can only be made if the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is ~~posted~~published.

Rule 32.2

32.2 NO INCREASE STATEMENTS

If statements in relation to the value or type of consideration such as “the offer will not be further increased” or “our offer remains at xp per share and it will not be raised” (“no increase statements”) are included in documents

~~sent to offeree company shareholders~~ **or announcements published in connection with an offer**, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in wholly exceptional circumstances will the offeror be allowed subsequently to amend the terms of its offer in any way even if the amendment would not result in an increase of the value of the offer (eg the introduction of a lower paper alternative) except where the right to do so has been specifically reserved.

NOTES ON RULE 32.2

1. Firm statements

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

2. Reservation of right to set statements aside

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

3. Competitive situations

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

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

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

...

4. Recommendations

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

5. *Rule 31.9 announcements**

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

...

Rule 32.5

32.5 COMPETITIVE SITUATIONS

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

NOTES ON RULE 32.5

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

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

...

Rule 32.6**32.6 THE OFFEREE BOARD'S OPINION**

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

...

Rule 32.7**32.7 INFORMING EMPLOYEES**

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

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

Rule 33.2**33.2 SHUTTING OFF CASH UNDERWRITTEN ALTERNATIVES**

Where the value of a cash underwritten alternative provided by third parties is, at the time of announcement, more than half the maximum value of the offer, an offeror will not be obliged to keep that alternative open in accordance with Rules 31.4 or 33.1 if it has ~~given notice to shareholders in writing~~sent a notification to offeree company shareholders and persons with information rights that it reserves the right to close it on a stated date, being

not less than 14 days after the date on which the ~~written notice is posted~~ notification is published, or to extend it on that stated date. ...

NOTES ON RULE 33.2

1. Further notifications~~notices~~

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

...

Rule 35.1

35.1 DELAY OF 12 MONTHS

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

Rule 37.1

37.1 POSSIBLE REQUIREMENT TO MAKE A MANDATORY OFFER

...

NOTES ON RULE 37.1

...

5. *Disqualifying transactions*

...

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

Rule 37.3

37.3 REDEMPTION OR PURCHASE OF SECURITIES BY THE

OFFEREE COMPANY

...

(c) Disclosure in the offeree board circular

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

Rule 37.4

37.4 REDEMPTION OR PURCHASE OF SECURITIES BY THE OFFEROR COMPANY

...

(b) Disclosure in the offer document

The offer document must state (in the case of a securities exchange offer only) the number of relevant securities of the offeror which the offeror has redeemed or purchased between the start of the offer period and the latest practicable date prior to the ~~posting~~publication of the offer document and the details of any such redemptions and purchases, including dates and prices and the extent to which the shares redeemed or purchased were cancelled or held in treasury.

Rule 38.5

38.5 DISCLOSURE OF DEALINGS

...

NOTES ON RULE 38.5

...

2. *Method of disclosure*

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

...

Appendix 1

APPENDIX 1

WHITEWASH GUIDANCE NOTE

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

1 INTRODUCTION

...

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

...

2 SPECIFIC GRANT OF WAIVER REQUIRED

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

...

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

...

NOTES ON SECTION 2

1. *Early consultation*

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

...

3 DISQUALIFYING TRANSACTIONS

...

(a) the Panel will not normally waive an obligation under Rule 9 if the person to whom the new securities are to be issued or any person acting in concert with him has acquired any interest in shares in the company in the 12 months prior to the ~~posting to shareholders~~ publication of the circular relating to the proposals but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities;

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

4 WHITEWASH CIRCULAR TO SHAREHOLDERS

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

...

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

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

...

Appendix 2

APPENDIX 2

FORMULA OFFERS GUIDANCE NOTE

...

2 SPECIFICATION OF THE FORMULA

...

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

...

4 ESTIMATE OF THE FORMULA OFFER VALUE

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

...

Appendix 3

APPENDIX 3

DIRECTORS' RESPONSIBILITIES AND CONFLICTS OF INTEREST GUIDANCE NOTE

1 DIRECTORS' RESPONSIBILITIES

... These arrangements should ensure that:-

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

...

Appendix 4

APPENDIX 4

RECEIVING AGENTS' CODE OF PRACTICE

...

1 INTRODUCTION

... Co-operation is interpreted to include the provision of data in a form convenient for the receiving agent. For example, if the receiving agent so requests, following the announcement of an offer, the registrar should, if practicable, provide the register in electronic form~~computer-readable form (eg by magnetic tape)~~. ...

...

3 THE PROVISION OF THE OFFEREE COMPANY'S REGISTER

...

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

...

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

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

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

(ii) addresses, electronic addresses and other information provided to the offeree company by, or on behalf of, persons with information

rights for the receipt of documents, announcements and other information in hard copy form or electronic form;

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

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

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

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

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

54 COUNTING OF ACCEPTANCES

...

65 COUNTING OF PURCHASES

...

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

...

87 DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES

...

Appendix 5

APPENDIX 5

TENDER OFFERS

1 PANEL'S CONSENT REQUIRED

...

NOTES ON SECTION 1

...

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

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

...

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

...

2 PROCEDURE AND CLEARANCE

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

(b) In all other cases, the tender offer must be made by ~~sending means of~~ a circular to shareholders and persons with information rights (containing the

same information as for a tender offer advertisement as specified in Section 3) and must be open for acceptance for at least 21 days. A copy of the circular must be provided to the company concerned ~~at the same time as it is posted to shareholders~~ not later than the date on which it is published.

...

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

3 DETAILS OF TENDER OFFER ADVERTISEMENTS

...

NOTES ON SECTION 3

...

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

The limit on the amount of information permissible in tender advertisements and circulars is strictly enforced; no form of argument or persuasion is allowed. Consequently the offeror (or any person acting in concert with it) may not make any statement or otherwise ~~make public~~ publish any information in connection with the tender offer which is not already contained in the tender offer advertisement or circular itself.

4 CIRCULARS FROM THE BOARD OF THE OFFEREE COMPANY

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

...

Appendix 7

APPENDIX 7

SCHEMES OF ARRANGEMENT

DEFINITIONS AND INTERPRETATION

...

Offer documents and offeree board circulars

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

...

6 CHANGES TO THE EXPECTED SCHEME TIMETABLE

...

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

...

10 SETTLEMENT OF CONSIDERATION

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

DOCUMENT CHARGES

...

6 PAYMENT OF DOCUMENT CHARGES

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

...