

**PCP 2017/2 19 September 2017**

**THE TAKEOVER PANEL**

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

**STATEMENTS OF INTENTION AND  
RELATED MATTERS**

The Code Committee of the Takeover Panel (the “**Panel**”) invites comments on this Public Consultation Paper. Comments should reach the Code Committee by Tuesday, 31 October 2017.

Comments may be sent by e-mail to:

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

Alternatively, please send comments in writing to:

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The Takeover Panel  
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All responses to formal consultation will be made available for public inspection and published on the Panel’s website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk), unless the respondent explicitly requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure. Personal information, such as telephone numbers or e-mail addresses, will not be edited from responses.

Unless the context otherwise requires, words and expressions defined in the Takeover Code have the same meanings when used in this Public Consultation Paper.

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## 1. Introduction and summary

### (a) Introduction

1.1 In this Public Consultation Paper (“**PCP**”), the Code Committee of the Takeover Panel (the “**Code Committee**”) reviews certain information and timing requirements which apply to an offer for a company which is subject to the Takeover Code (the “**Code**”) and proposes amendments to Rules 2.7, 19.5, 19.6, 24 and 25 of the Code.

1.2 As indicated in its Procedures for Amending the Takeover Code<sup>1</sup>, the Code Committee welcomes representations from interested parties for possible amendments to the Code and the Code Committee is grateful for the valuable responses which it receives to its consultations. In reviewing the provisions of the Code referred to in this PCP, and in proposing the amendments set out in section 2 below, the Code Committee has taken into account recent commentary and public discussion in relation to takeovers and mergers as well as suggestions made by various parties, including the Department for Business, Energy and Industrial Strategy.

### (b) Summary

1.3 Section 2(a) of this PCP comprises a **summary of the proposals** and of the relevant provisions of the Code and the Takeovers Directive<sup>2</sup> (the “**Directive**”).

1.4 Section 2(b) proposes that, in addition to the current requirements for an offeror to make statements of intention with regard to the business, employees and pension schemes of the offeree company, an offeror should be required to make **specific statements of intention** with regard to the offeree company’s research and

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<sup>1</sup> <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2016/09/Procedures-for-amending-the-takeover-code-12-sep-2016.pdf>

<sup>2</sup> Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids

development functions, the balance of the skills and functions of the offeree company's employees and management, and the location of the offeree company's headquarters and headquarters functions.

- 1.5 Section 2(c) proposes that an offeror should be required to make **earlier statements of intention** than is currently the case, i.e. that statements of intention should be made at the time of the announcement by the offeror of its firm intention to make an offer.
- 1.6 Section 2(d) proposes that an **offeror must not publish an offer document for 14 days from the announcement of its firm intention to make an offer** without the consent of the board of the offeree company.
- 1.7 Section 2(e) proposes requiring offerors and offeree companies to **publish reports on post-offer undertakings and intention statements** given during the course of an offer.
- 1.8 Section 3 provides an assessment of the **impact of the proposals**.

*(c) Invitation to comment*

- 1.9 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Tuesday, 31 October 2017 and should be sent in the manner set out at the beginning of this PCP.
- 1.10 The proposed amendments to the Code are set out in Appendix A. Where amendments are proposed, underlining indicates proposed new text and striking-through indicates text that is proposed to be deleted.
- 1.11 A list of the questions that are put for consultation is set out in Appendix B.

## 2. Statements of intention and related matters

### (a) *Summary of proposals and relevant provisions of the Code and the Directive*

#### (i) *Summary of proposals*

2.1 The Code Committee is proposing amendments to the Code which would:

- (a) require an offeror, when making statements of intention with regard to the business, employees and pension schemes of the offeree company (and, where appropriate, of the offeror itself), to make specific statements of intention with regard to the company's research and development functions, the balance of the skills and functions of the company's employees and management, and the location of the company's headquarters and headquarters functions;
- (b) bring forward the requirement for an offeror to make statements of intention to the time of the announcement of its firm intention to make an offer;
- (c) introduce a requirement that an offeror must not publish an offer document for 14 days from the announcement of its firm intention to make an offer without the consent of the board of the offeree company; and
- (d) require offerors and offeree companies to publish reports on post-offer undertakings and post-offer intention statements given during the course of an offer.

(ii) *Relevant provisions of the Code*

2.2 The proposals in this PCP relate to certain information and timing requirements which apply to an offer for a company subject to the Code. The provisions of the Code relevant to these proposals are summarised below:

- (a) **Rule 2.2(a)** requires that an announcement is required when a firm intention to make an offer is notified to the board of the offeree company by or on behalf of an offeror, irrespective of the attitude of the board to the offer;
- (b) **Rules 2.7(c) and (d)** set out the content requirements for an announcement by an offeror of a firm intention to make an offer;
- (c) **Rule 5.1** provides that an offeror is restricted from acquiring interests in shares carrying 30% or more of the voting rights in a company, except as permitted by Rule 5.2. Under **Rule 5.2**, in the case of an offer which is not recommended by the board of the offeree company, the offeror may not generally acquire such interests (except from a single shareholder) until the “**first closing date**” of the offer (see the summary of Rule 31.1 below) has passed;
- (d) **Rule 19.5** requires that an offeror or offeree company which gives a “**post-offer undertaking**” (as defined in the Definitions section of the Code) must comply with the terms of the undertaking for the period of time specified in the undertaking and must submit reports to the Panel on the implementation of any course of action committed to (and, if so required by the Panel, publish those reports, in whole or in part);
- (e) **Rule 19.6** provides that if, within 12 months (or such other period of time as was specified) of its making a “**post-offer intention statement**” (as



defined in the Definitions section of the Code), an offeror or the offeree company takes a course of action which differs from that specified in the statement, it must promptly make an announcement describing the course of action taken and explain its reasons for taking that course of action;

- (f) **Rule 24.1** requires an offeror, normally within 28 days of the announcement of a firm intention to make an offer, to send an offer document to shareholders in the offeree company and that the document must be made readily available to (i) the employee representatives of both the offeree company and the offeror and (ii) the offeree company's pension scheme trustees;
- (g) **Rules 24.2 to 24.17** set out the content requirements for an offer document. Rule 24.2 requires the offeror to state (i) its intentions and strategic plans with regard to the business, employees and pension schemes of the offeree company and (ii) where the offeror is a company and insofar as it is affected by the offer, its intentions for its future business and employees and its strategic plans with regard to itself;
- (h) **Rule 25.1** requires the board of the offeree company, normally within 14 days of the publication of the offer document, to send a circular to shareholders in the offeree company and that the circular must be made readily available to (i) the employee representatives of the offeree company and (ii) the offeree company's pension scheme trustees;
- (i) **Rules 25.2 to 25.8** set out the content requirements for an offeree board circular. Rule 25.2(a) requires the board of the offeree company to set out its opinion on the offer and to include its views on:
  - (i) the effects of the implementation of the offer on all of the company's interests including, specifically, employment; and

- (ii) the offeror's strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's place of business.

Note 1 on Rule 25.2 states that the Code does not limit the factors that the board of the offeree company may take into account in giving its opinion on the offer and, in particular, states that the Code neither requires the board to consider the offer price as the determining factor nor precludes the board from taking into account any other factors which it considers relevant;

- (j) **Rule 25.9** provides that where the board of the offeree company receives in good time before publication of its circular an opinion from its employee representatives or pension scheme trustees, that opinion must be appended to the offeree board circular. Where an opinion is received but not in good time before publication of the circular, the offeree company must promptly publish the opinion on a website and announce that it has been so published;
- (k) **Rule 31.1** provides that the “**first closing date**” of an offer must be at least 21 days after the date on which the offer document is published;<sup>3</sup> and
- (l) **Rule 31.9** provides that the board of the offeree company should not, except with the consent of the Panel, announce any material new information, including trading results, profit forecasts, dividend forecasts, asset valuations, quantified financial benefits statements, or proposals for dividend payments or for any material acquisition or disposal, after the

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<sup>3</sup> Rule 31 applies where a takeover is effected by means of a contractual offer but is disapplied when a takeover is effected by means of a scheme of arrangement.

39th day following the publication of the initial offer document (“**Day 39**”).

(iii) *Relevant provisions of the Directive*

2.3 Since May 2006, the requirements of Rules 24.1 and 24.2 have implemented Article 6(2) (first subparagraph) and Article 6(3)(i) of the Directive. These provide as follows:

“*Article 6*

**Information concerning bids**

...

2. Member States shall ensure that an offeror is required to draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company’s securities to reach a properly informed decision on the bid. ... When it is made public, the boards of the offeree company and of the offeror shall communicate it to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

...

3. The offer document referred to in paragraph 2 shall state at least:

...

(i) the offeror’s intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror’s strategic plans for the two companies and the likely repercussions on employment and the locations of the companies’ places of business;”.

2.4 The requirements of Rules 25.1, 25.2(a) and 25.9 implement Article 9(5) of the Directive, which provides as follows:

“Article 9

**Obligations of the board of the offeree company**

...

5. The board of the offeree company shall draw up and make public a document setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company’s interests and specifically employment, and on the offeror’s strategic plans for the offeree company and their likely repercussions on employment and the locations of the company’s places of business as set out in the offer document in accordance with Article 6(3)(i). The board of the offeree company shall at the same time communicate that opinion to the representatives of its employees or, where there are no such representatives, to the employees themselves. Where the board of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the document.”

**(b) Content requirements for offeror statements of intention**

**(i) Background**

2.5 The Code has for many years included requirements for an offeror to publish in the offer document its intentions with regard to the offeree company’s business. The Code Committee notes that the Panel’s 1973 Annual Report included the following comments in relation to the requirement to state such intentions under the Code at that time:

“[The Code], in requiring that shareholders must be put in possession of all the facts necessary for the formation of an informed judgement as to the merits or demerits of an offer, provides in particular that an offeror must state its intentions in regard to the future of the offeree. ... Not only is it essential that offerors fulfil their obligations in this respect but it is the duty of the directors of offeree companies, in the case of agreed take-overs or mergers, to insist that they do so. The intentions of the offeror as to the future conduct of the offeree’s business, and the likely effect of any such intentions on the future livelihood of the offeree company’s employees, may be a significant factor for shareholders in deciding whether or not to

accept an offer. The Panel regards this requirement ... as a most important provision of the Code ...”.

- 2.6 The requirement for an offeror to state its intentions and strategic plans in the offer document is currently set out in Rule 24.2. The full text of Rule 24.2 is as follows:

**“24.2 INTENTIONS OF THE OFFEROR WITH REGARD TO THE BUSINESS, EMPLOYEES AND PENSION SCHEME(S)**

**(a) In the offer document, the offeror must explain the long-term commercial justification for the offer and must state:**

**(i) its intentions with regard to the future business of the offeree company;**

**(ii) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment;**

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

**(iv) its intentions with regard to employer contributions into the offeree company’s pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;**

**(v) its intentions with regard to any redeployment of the fixed assets of the offeree company; and**

**(vi) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.**

**(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(ii) to (v) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company’s places of business, it must make a statement to that effect.**

(c) **Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also state its intentions with regard to its future business and comply with (a)(ii) and (iii) with regard to itself.”.**

2.7 As regards Rule 24.2(a):

- (a) the requirements in subparagraph (i) (*intentions with regard to the future business of the offeree company*), subparagraph (ii) (*intentions with regard to the continued employment of employees and management*) and subparagraph (iii) (*strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company’s places of business*) implement Article 6(3)(i) of the Directive (see section 2(a) above);
- (b) the requirements in paragraph (a) itself (*long-term commercial justification for the offer*) and in subparagraph (v) (*redeployment of fixed assets*) are in addition to the requirements of the Directive and were included in the Code before the Directive came into force;
- (c) the requirement in subparagraph (iv) (*intentions with regard to pension scheme contributions, accruals and membership*) was introduced following PCP 2012/2<sup>4</sup>, in which the Code Committee proposed that the provisions of the Code which apply to employee representatives (see below) should apply also to the trustees of the offeree company’s pension schemes (the “**2013 Amendments**”); and
- (d) the requirement in subparagraph (vi) (*intentions with regard to the maintenance of trading facilities*) was introduced following PCP 2011/1<sup>5</sup>.

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<sup>4</sup> PCP 2012/2 (“Pension scheme trustee issues”), 5 July 2012, followed by RS 2012/2, 22 April 2013

<sup>5</sup> PCP 2011/1 (“Review of certain aspects of the regulation of takeover bids: proposed amendments to the Takeover Code”), 21 March 2011, followed by RS 2011/1, 21 July 2011

- 2.8 Rule 25.2(a) requires the board of the offeree company to set out its opinion on the offer in its initial circular. The full text of Rule 25.2, and Note 1 on Rule 25.2, is as follows:

**“25.2 VIEWS OF THE OFFEREE BOARD ON THE OFFER, INCLUDING THE OFFEROR’S PLANS FOR THE COMPANY AND ITS EMPLOYEES**

**(a) The offeree board circular must set out the opinion of the board on the offer (including any alternative offers) and the board’s reasons for forming its opinion and must include its views on:**

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

**(ii) the offeror’s strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company’s places of business, as set out in the offer document pursuant to Rule 24.2.**

**(b) In addition, the circular must include the substance of the advice given to the board of the offeree company by the independent adviser appointed under Rule 3.1.**

***NOTES ON RULE 25.2***

***1. Factors which may be taken into account***

*The provisions of the Code do not limit the factors that the board of the offeree company may take into account in giving its opinion on the offer in accordance with Rule 25.2(a). In particular, when giving its opinion, the board of the offeree company is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors which it considers relevant.”*

- 2.9 Rule 25.2 implements the first sentence of Article 9(5) of the Directive.
- 2.10 In June 2010, the Code Committee published PCP 2010/2<sup>6</sup>, in which it set out suggestions from various interested parties for possible amendments to the Code following the takeover of Cadbury plc by Kraft Foods Inc. in the first quarter of

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<sup>6</sup> PCP 2010/2 (“Review of certain aspects of the regulation of takeover bids”), 1 June 2010

2010. In PCP 2010/2 and the subsequent PCP 2011/1, the Code Committee reviewed, among other things, Rules 24.2 and 25.2. In PCP 2011/1, the Code Committee proposed certain amendments to the Code with the objective of improving the quality of disclosure by offerors and offeree companies in relation to the offeror's intentions regarding the offeree company and its employees. These and various other amendments proposed in PCP 2011/1 were adopted in RS 2011/1 (the "**2011 Amendments**").

2.11 Paragraph 7.2 of Statement 2012/8<sup>7</sup>, which set out the conclusions of the Code Committee's "**12 month review**" of the 2011 Amendments, stated as follows:

"The Code Committee has been informed by the Executive that there has been an improvement in the quality and detail of disclosures of intention made by offerors under Rule 24.2 (and by the boards of offeree companies under Rule 25.2). However, the Code Committee is disappointed that, in many cases, disclosures have been general, and not specific, and that, for example, a number of offerors (including offerors which have secured a recommendation from the offeree company board) have sought to satisfy the requirements of Rule 24.2 by stating that their intention is to undertake a review of the offeree company's business following completion of the takeover. The Code Committee wishes to reiterate its views in this regard, which were set out in paragraph 7.8 of RS 2011/1, as follows:

'The Code Committee believes that any statement of intention by an offeror should be as detailed as is possible on the basis of the information that is known to the offeror at the time it is made. The Code Committee acknowledges that it might be legitimate for a hostile offeror which has not had an opportunity to undertake full due diligence on the offeree company to state that it will undertake a review of the offeree company's business once it has obtained control of the company. However, the Code Committee believes that the offeror must have a fundamental business rationale for seeking to acquire the offeree company, which it should disclose as fully as possible. The Code Committee also considers that statements of a general nature are unlikely to be acceptable in the context of a recommended offer where the offeror has had an opportunity to undertake full due diligence.'

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<sup>7</sup> Statement 2012/8 ("Review of the 2011 Amendments to the Takeover Code"), 26 November 2012



2.12 The Code Committee understands that the Panel Executive (the “**Executive**”) has sought to ensure high standards of disclosure under Rules 24.2 and 25.2 and notes that, in December 2016, the Executive introduced new checklists and forms which are required to be completed and submitted by the financial adviser to an offeror or an offeree company (as appropriate) in order to demonstrate the compliance of an offer document or offeree board circular with the requirements of the Code, including Rules 24 and 25 (see Statement 2016/9<sup>8</sup>). The Code Committee understands that the quality of disclosures made under Rules 24.2 and 25.2 has improved since the 12 month review of the 2011 Amendments but that statements of intention made by offerors under Rule 24.2(a) sometimes lack the specificity expected by the Code Committee. Where this is the case, it may be difficult for the offeree board to provide meaningful views under subparagraphs (i) and (ii) of Rule 25.2(a).

2.13 In addition, the Code Committee understands that, on occasion, an offeror may seek to qualify statements made under Rule 24.2(a) by referring to its “current” or “present” intentions. The Code Committee believes that such words should not be regarded as qualifying an offeror’s statements of intention and considers that they should, therefore, be avoided.

(ii) *Proposals*

2.14 In order to address the lack of specificity of certain statements of intention made by offerors under Rule 24.2(a), the Code Committee considers that Rule 24.2(a) should be amended so as to require an offeror to make specific statements in relation to certain matters. The Code Committee considers that:

- (a) Rule 24.2(a)(i) (*intentions with regard to the future business of the offeree company*) should include a requirement for an offeror to state its intentions for the offeree company’s research and development functions;

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<sup>8</sup> Statement 2016/9 (“New checklists”), 14 December 2016

- (b) Rule 24.2(a)(ii) (*intentions with regard to the continued employment of employees and management*) should include a requirement for an offeror to state its intentions with regard to any material change in the balance of the skills or functions of the offeree company's employees and management; and
  - (c) Rule 24.2(a)(iii) (*strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business*) should include a requirement for an offeror to state the likely repercussions of its strategic plans on the location of the offeree company's headquarters and headquarters functions.
- 2.15 The Code Committee notes that Rule 24.2(b) (*requirement for negative statements*) and Rule 24.2(c) (*requirement for an offeror company to make statements in relation to itself insofar as it is affected by the offer*) would apply to the proposed new statements.
- 2.16 The Code Committee therefore proposes to amend Rule 24.2(a), as follows:

**“24.2 INTENTIONS OF THE OFFEROR WITH REGARD TO THE BUSINESS, EMPLOYEES AND PENSION SCHEME(S)**

- (a) **In the offer document, the offeror must explain the long-term commercial justification for the offer and must state:**
  - (i) **its intentions with regard to the future business of the offeree company including, in particular, its intentions for the offeree company's research and development functions;**
  - (ii) **its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment or in the balance of the skills and functions of the employees and management;**

**(iii) its strategic plans for the offeree company, and their likely repercussions on employment and on the locations of the offeree company's places of business (including on the location of the offeree company's headquarters and headquarters functions);**"

2.17 In addition, the Code Committee notes that the requirement in Rule 24.2(b) for an offeror which has no intention to make any changes in relation to certain of the matters described in Rule 24.2(a) currently extends only to subparagraphs (ii) to (v) of Rule 24.2(a). The Code Committee considers that this requirement should extend to all of the matters described under Rule 24.2(a) and therefore proposes to amend Rule 24.2(b), as follows:

**“(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(ii) to (v) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business, it must make a statement to that effect.”**

**Q1 Should Rule 24.2(a) be amended so as to require an offeror to make specific statements of intention with regard to the offeree company's research and development functions, the balance of the skills and functions of the offeree company's employees and management, and the location of the offeree company's headquarters and headquarters functions?**

**Q2 Do you have any comments on the proposed amendments to Rules 24.2(a) and (b)?**

**(c) *Timing requirements for offeror statements of intention***

**(i) *Background***

2.18 Rule 25.9 sets out the ability for the offeree company's employee representatives and pension scheme trustees to give their opinion on the effects of the offer on, respectively, employment and the offeree company's pension schemes. Rule 25.9 was adopted in its present form as part of the 2011 Amendments following the consultation on PCP 2011/1.

2.19 In November 2012, Statement 2012/8 set out the Code Committee's conclusions following its 12 month review of the 2011 Amendments. Paragraph 8.1 of Statement 2012/8 summarised the 2011 Amendments insofar as they related to employee representatives' opinions, as follows:

- “(a) amendments to Rule 2.12 [now Rule 2.11] so as to require that an offeree company must make an announcement of a possible offer readily available to its employee representatives and, at the same time, must inform the employee representatives of their right to have an opinion on the effects of the offer on employment appended to the offeree board circular; and
- (b) the adoption of a new Rule 25.9, including provisions requiring that:
  - (i) where an employee representatives' opinion is received, but not in good time before the publication of the offeree board circular, the offeree company must publish the employee representatives' opinion on a website and announce via a Regulatory Information Service that it has been so published; and
  - (ii) the offeree company must pay for the publication of the employee representatives' opinion and for the costs reasonably incurred by the employee representatives in obtaining any advice required for the verification of the information contained in that opinion in order to comply with the standards of Rule 19.1.”

2.20 The 2013 Amendments subsequently extended the provisions of the Code which apply to employee representatives so as to apply to the trustees of the offeree company's pension schemes.

2.21 The Code Committee notes that the large majority of offers are recommended by the board of the offeree company and, in such cases, the offer document and the offeree board circular are not published as separate documents. Instead, the offeree board circular is combined with the offer document into a single offer document or scheme circular. Therefore, if the offeree company's employee representatives or pension scheme trustees wish to have their opinion on the effects of the offer appended to the combined document, the opinion will need to

be prepared on the basis of the information included in the firm offer announcement made by the offeror in accordance with Rule 2.7.

2.22 However, although Rule 2.7 requires the offeror to include certain key information in its firm offer announcement, and although market participants may regard a firm offer announcement as being, in terms of the information included, of at least equal importance as the offer document, there is no requirement in Rule 2.7 for the offeror to set out its intentions with regard to the offeree company's business, employees and pension schemes similar to the requirement in Rule 24.2 in relation to the offer document. If the firm offer announcement does not include such intentions, it is then difficult for the employee representatives or pension scheme trustees to give a meaningful opinion on the effects of the offer on employment or on the offeree company's pension schemes for inclusion in the combined document.

2.23 Whilst it is open to the employee representatives or pension scheme trustees to await the publication of the combined offer document/offeree board circular prepared in accordance with Rules 24 and 25 before giving their opinion on the effects of the offer, which opinion the offeree company will then be required promptly to publish on a website (and to announce that it has been so published), the Code Committee recognises that publishing the opinion on a website is likely to be a less effective means of communicating the opinion to shareholders in the offeree company than including it in the combined document.

(ii) *Proposals*

2.24 In order to address this concern, the Code Committee proposes that Rule 2.7 should require a firm offer announcement to state the offeror's intentions with regard to the business, employees and pension schemes of the offeree company, as currently required by Rule 24.2 in relation to an offer document. The Code Committee considers that this would:

- (a) make it more practicable for the offeree company's employee representatives and pension scheme trustees to have their opinion on the effects of the offer appended to the offeree board circular or combined document (rather than published on a website);
  - (b) enable an earlier and more informed debate to be held by shareholders and other stakeholders as to the merits and demerits of an offer and as to the offeror's intentions with regard to the business, employees and pension schemes of the offeree company;
  - (c) assist the board of the offeree company in the preparation of the opinion and views it is required to give on the offer under Rule 25.2(a), given that, in forming that opinion and those views, it would be able to take into account any opinions on the effects of the offer it may have received from the employee representatives and pension scheme trustees; and
  - (d) provide additional time for employees in offeree companies which do not have recognised employee representatives to decide whether to elect or appoint a person to represent them for the purpose of providing an opinion.
- 2.25 Accordingly, the Code Committee proposes to introduce into Rule 2.7 a requirement for the firm offer announcement to include the intentions of the offeror with regard to the business, employees and pension schemes of the offeree company (and, where appropriate, the offeror). The detailed requirements for those intentions (which would mirror those in Rule 24.2, as proposed to be amended) would be set out in a new Note 1 on Rule 2.7. The Code Committee proposes to delete the current Note 1 on Rule 2.7 (*Unambiguous language*) on the basis that it replicates the requirements of Rule 19.1 (*Standards of care*) and is therefore unnecessary.

- 2.26 The Code Committee notes that, if Rule 2.7 were to be amended as proposed, the offeror would still be required also to state its intentions in the offer document in accordance with Rule 24.2. This is because, as noted above, the relevant requirements of Rule 24.2 implement Article 6(3)(i) of the Directive. In addition, the Code Committee notes that Rule 24.2 is an “**offer document rule**” referred to in section 953 of the Companies Act 2006 (the “**Act**”) (and listed as such in Appendix 6 of the Code) and that an offence may be committed under sub-section 953(2) of the Act if an offer document does not comply with an offer document rule and a relevant person knew that the offer document did not so comply, or was reckless as to whether it complied, and if the person failed to take all reasonable steps to secure that it did comply.
- 2.27 The Code Committee therefore proposes to introduce a new subparagraph (iv) into Rule 2.7(c), to delete the current Note 1 on Rule 2.7, and to introduce a new Note 1 on Rule 2.7, as follows:

**“2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO  
MAKE AN OFFER**

...

**(c) When a firm intention to make an offer is announced, the announcement must include:**

...

**(iv) the intentions of the offeror with regard to the business, employees and pension scheme(s) of the offeree company (see Note 1);**

...

***NOTES ON RULE 2.7***

**1. — Unambiguous language**

*The language used in announcements should clearly and concisely reflect the position being described. In particular, the word “agreement” should be used with the greatest care. Statements should be avoided which may give the impression that persons have committed themselves to certain courses of action (eg accepting in respect of their own shares) when they have not in fact done so.*

**1. Intentions of the offeror with regard to the business, employees and pension scheme(s)**

(a) For the purpose of Rule 2.7(c)(iv), the offeror must explain the long-term commercial justification for the offer and must state:

(i) its intentions with regard to the future business of the offeree company including, in particular, its intentions for the offeree company’s research and development functions;

(ii) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment or in the balance of the skills and functions of the employees and management;

(iii) its strategic plans for the offeree company, and their likely repercussions on employment and on the locations of the offeree company’s places of business (including on the location of the offeree company’s headquarters and headquarters functions);

(iv) its intentions with regard to employer contributions into the offeree company’s pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;

(v) its intentions with regard to any redeployment of the fixed assets of the offeree company; and

(vi) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.

(b) If the offeror has no intention to make any changes in relation to the matters described under (a) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment



or the location of the offeree company's places of business, it must make a statement to that effect.

(c) Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also state its intentions with regard to its future business and comply with (a)(ii) and (iii) with regard to itself.”

2.28 In addition, Appendix A sets out minor formatting amendments to Rule 25.9 and some minor consequential amendments to certain other provisions of the Code.<sup>9</sup>

**Q3 Should Rule 2.7 be amended so as to bring forward to the firm offer announcement the requirement for an offeror to state its intentions with regard to the business, employees and pension scheme(s) of the offeree company and, where appropriate, the offeror?**

**Q4 Do you have any comments on the proposed amendments to Rule 2.7 and Rule 25.9?**

*(d) Offeror not to publish offer document for 14 days without offeree board consent*

*(i) Background*

2.29 Rule 24.1(a) provides that an offeror must normally publish an offer document within a maximum of 28 days of the announcement of its firm intention to make an offer. However, an offeror will often wish to publish an offer document as soon as possible following the firm offer announcement. There are various reasons for this, including reducing the time for a potential competing offeror to prepare an offer and, in the case of a unilateral (or “hostile”) offer, to increase the pressure on the board of the offeree company.

2.30 Where a unilateral offeror publishes an offer document shortly after the announcement of its firm intention to make an offer, particularly if the offer period commences as a result of the firm offer announcement, the Code

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<sup>9</sup> Note 11 on the definition of “acting in concert”, Note 1 on the definition of “dealings”, Note 1 on Rule 2.10, Note 14 on Rule 8 and Rule 26.2(e)

Committee considers that it might be desirable for the board of an offeree company to have more time than the 14 days currently provided by Rule 25.1(a) in order to formulate the opinion, reasons and views that it is required to publish under Rule 25.2(a) or otherwise to prepare its initial arguments and “defence” against the offer.

(ii) *Proposals*

2.31 In the light of the above, the Code Committee proposes to amend Rule 24.1(a) so as to provide that an offeror must not publish an offer document for 14 days from the announcement of its firm intention to make an offer without the consent of the board of the offeree company.

2.32 The Code Committee considers that, where the board of the offeree company is working towards a recommended offer, it may be unlikely to withhold its consent to the publication of the offer document (given that, in such circumstances, there will customarily be a combined document). However, in the context of a unilateral offer, the ability to withhold its consent would provide the offeree board with the certainty that it would have at least 28 days from the date of the firm offer announcement until it had to publish its initial circular (i.e. the 14 days during which the offer document could not be published under the amended Rule 24.1(a) and the 14 days stipulated in Rule 25.1(a)). In addition, the board would also have the certainty that the restriction in Rule 5.1 on the offeror and persons acting in concert with it acquiring (except from a single shareholder) interests in shares in the offeree company carrying 30% or more of the voting rights would continue to apply for a minimum period of 35 days from the date of the firm offer announcement (i.e. the 14 days during which the offer document could not be published and the minimum of 21 days stipulated in Rule 31.1 until the first closing date).

- 2.33 Furthermore, the proposed ability to withhold consent to the publication of the offer document would increase the minimum time available for the offeree board to prepare its final response to the offer for inclusion in the “Day 39” circular, as contemplated by Rule 31.9. In this regard, the Code Committee is aware that, in the context of a unilateral offer, the board of the offeree company may wish to make announcements in relation to matters such as profit forecasts, quantified financial benefits statements, acquisitions or disposals, and that such announcements may take a significant period of time to prepare.
- 2.34 The Code Committee recognises that there is a balance to be struck between providing the board of an offeree company with more time in which to prepare its initial response to an offer and allowing the offeror to proceed to make its offer. Accordingly, the Code Committee considers that Rule 24.1(a) should provide that an offeror must not publish the offer document within the first 14 days following the firm offer announcement unless it has the consent of the board of the offeree company to do so.
- 2.35 The Code Committee therefore proposes to amend Rule 24.1, as follows:

**“24.1 THE OFFER DOCUMENT**

**(a) Except with the consent of the Panel, the offeror must, normally within 28 days of the announcement of a firm intention to make an offer, send an offer document to shareholders in the offeree company and persons with information rights, in accordance with Rule 30.2 and must make the document readily available to the trustees of the offeree company’s pension scheme(s). However, the offeror may only publish an offer document within the 14 days following the announcement of its firm intention to make an offer with the consent of the board of the offeree company.**

**(b) At the same time as the offer document is published;**

**(i) both the offeror and the offeree company must make the offer document readily available to their employee representatives (or, where there are no employee representatives, to the employees themselves); and, The Panel**

~~must be consulted if the offer document is not to be published within this period.~~

(ii) the offeror must make the offer document readily available to the trustees of the offeree company's pension scheme(s)."

2.36 In addition, the current Rule 24.1(b) would be renumbered as Rule 24.1(c) and minor drafting changes would be made to Rule 25.1, as set out in Appendix A.

**Q5 Should an offeror be obliged to seek the consent of the board of the offeree company in order to publish an offer document within the 14 days following its firm offer announcement?**

**Q6 Do you have any comments on the proposed amendments to Rule 24.1 and Rule 25.1?**

*(e) Reports on post-offer undertakings and post-offer intention statements*

*(i) Background*

2.37 In September 2014, in PCP 2014/2<sup>10</sup>, the Code Committee proposed a new framework for the regulation of statements made by offerors and offeree companies relating to any particular course of action they committed or intended to take, or not take, after the end of the offer period. This consultation followed the possible offer for AstraZeneca plc by Pfizer Inc., in the course of which Pfizer stated that, subject to successful completion of its combination with AstraZeneca, it would make a number of commitments, and that those commitments would be made for a minimum of five years.

2.38 The objectives of the new framework, which was adopted by the Code Committee in RS 2014/2, were to:

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<sup>10</sup> PCP 2014/2 ("Post-offer undertakings and intention statements"), 15 September 2014, followed by RS 2014/2, 23 December 2014

- (a) provide clarity for shareholders and other stakeholders as to the status of statements made by offerors and offeree companies in relation to action they will, or will not, take following the offer;
  - (b) increase the effectiveness of the enforcement tools available to the Panel when offerors or offeree companies choose to make voluntary commitments; and
  - (c) enable offerors and offeree companies to make informative statements of intention.
- 2.39 In summary, the framework introduced by RS 2014/2, which came into force in January 2015:
- (a) distinguishes between:
    - (i) “**post-offer undertakings**”, i.e. statements relating to any particular course of action that an offeror or offeree company *commits* to take, or not take, after the end of the offer period and with which it is required to comply for the period of time specified in the undertaking, unless a qualification or condition set out in the undertaking applies; and
    - (ii) “**post-offer intention statements**”, i.e. statements relating to any particular course of action that an offeror or offeree company *intends* to take, or not take, after the end of the offer period, which are required to be accurate statements of the party’s intentions at the time that they are made and based on reasonable grounds;
  - (b) in view of the distinction between them, applies separate requirements to post-offer undertakings and post-offer intention statements;

- (c) provides the Panel with the ability to monitor compliance with and, therefore, enforce post-offer undertakings by:
  - (i) enabling the Panel to require the appointment of an independent supervisor to monitor compliance with a post-offer undertaking (Rule 19.5(i)); and
  - (ii) requiring an offeror or offeree company which makes a post-offer undertaking to provide periodic written reports to the Panel, which reports the Panel may require to be published, in whole or in part (Rule 19.5(h)); and
- (d) requires that if, during the period of 12 months from the date on which the offer period ended, or such other period of time as was specified in a post-offer intention statement, an offeror or offeree company decides either:
  - (i) to take a course of action different from its stated intentions; or
  - (ii) not to take a course of action which it had stated it intended to take,

it must consult the Panel and, except with the consent of the Panel, if that course of action is then taken or not taken (as appropriate), it must promptly make an announcement describing the course of action it has taken, or not taken, and explain its reasons for taking, or not taking, that course of action (Rule 19.6(b)).

(ii) *Post-offer undertakings*

2.40 The Code Committee understands that the Executive's current practice is to require an offeror or offeree company which has made a post-offer undertaking to publish, in whole or in part, any report submitted to the Panel under Rule 19.5(h) as to its compliance with the undertaking, in accordance with Rule 19.5(h)(iv). The Code Committee considers that, where an offeror or offeree company has made a post-offer undertaking, the requirement for it to publish, in whole or in part, any report submitted to the Panel should apply in all cases, and not only at the discretion of the Panel, and that, where the post-offer undertaking has a duration of longer than a year, such reports should be published at least annually.

2.41 The Code Committee therefore proposes to amend Rule 19.5(h), as follows:

**“19.5 POST-OFFER UNDERTAKINGS**

...

**(h) A party to an offer which has made a post-offer undertaking must submit written reports to the Panel after the end of the offer period at such intervals (of not more than 12 months) and in such form as the Panel may require. Such reports must, as appropriate:**

...

**(iv) ~~if so required by the Panel,~~ be published, in whole or in part (as required by the Panel), in accordance with the requirements of Rule 30.1.”.**

**Q7 Should an offeror or offeree company which has made a post-offer undertaking always be required to publish, in whole or in part, any report submitted to the Panel under Rule 19.5(h)?**

**Q8 Do you have any comments on the proposed amendments to Rule 19.5(h)?**

(iii) *Post-offer intention statements*

2.42 Given the interest of post-offer intention statements to shareholders, or former shareholders, in the offeree company and to other stakeholders, the Code Committee believes that, where an offeror or offeree company has made such a statement, it should be required, at the end of the period of 12 months from the date on which the offer period ends (or such other period of time as was specified in the statement), to:

- (a) confirm in writing to the Panel whether it has taken, or not taken, the course of action described in the post-offer intention statement; and
- (b) publish that confirmation via a Regulatory Information Service (a “RIS”).

This would build on the current practice of the Executive, which the Code Committee understands is to seek private confirmation from an offeror or offeree company at the end of the relevant period that it has taken (or not taken) the course of action that it stated in any post-offer intention statement that it intended to take (or not to take).

2.43 The Code Committee therefore proposes to introduce a new Rule 19.6(c), as follows:

**“19.6 POST-OFFER INTENTION STATEMENTS**

...

**(c) A party to an offer which has made a post-offer intention statement must, at the end of the period of 12 months from the date on which the offer period ended, or such other period of time as was specified in the statement:**

- (i) confirm in writing to the Panel whether it has taken, or not taken, the course of action it stated in the post-offer intention statement that it intended to take, or not to take; and**



**(ii) publish that confirmation in accordance with the requirements of Rule 30.1.”**

- Q9** Should an offeror or offeree company which has made a post-offer intention statement be required, at the end of the period of 12 months from the date on which the offer period ends, or such other period of time as was specified in the statement, to confirm in writing to the Panel whether it has taken, or not taken, the course of action described in the post-offer intention statement and publish that confirmation via a RIS?
- Q10** Do you have any comments on the proposed new Rule 19.6(c)?

### **3. Assessment of the impact of the proposals**

- 3.1 The amendments proposed in section 2(b) would require an offeror, when making statements of intention with regard to the business, employees and pension schemes of the offeree company (and, where appropriate, of the offeror itself), to make specific statements of intention with regard to the company's research and development functions, the balance of the skills and the functions of the company's employees and management, and the location of the company's headquarters and headquarters functions. Although this will require an offeror to state its intentions with regard to additional matters when compared with the current requirements, the Code Committee does not consider that this will have significant cost implications. This is on the basis that the Code Committee considers that an offeror is likely to have considered its intentions with regard to the additional matters proposed prior to announcing a firm offer. Furthermore, in the opinion of the Code Committee, requiring an offeror to state its intentions as to the additional matters proposed should improve the quality of disclosures made by the offeror and assist the offeree board in providing meaningful views when it sets out its opinion on the offer as required under Rule 25.2(a). It would also be of benefit to employee representatives, pension scheme trustees and market participants generally. The Code Committee considers that any additional burden on an offeror as a result of having to state its intentions with regard to the additional matters proposed would be outweighed by these benefits and the Code Committee accordingly believes that the proposed amendments are proportionate.
- 3.2 The amendments proposed in section 2(c) would bring forward the requirement for an offeror to state its intentions with regard to the business, employees and pension scheme(s) of the offeree company to the time of the announcement of its firm intention to make an offer. The Code Committee notes that bringing forward statements of intention to the firm offer announcement would mean that an offeror would have to state its intentions with regard to the business, employees and pension schemes of the offeree company at an earlier stage than at present.

However, the Code Committee considers that an offeror should have formed those intentions before it makes its firm offer announcement and therefore considers that any additional burden on an offeror is likely to be limited. In the opinion of the Code Committee, these amendments would not have significant additional costs implications (albeit that they may result in an offeror incurring the costs associated with preparing its intention statements at an earlier stage in the process). The Code Committee also considers that any additional burden on the offeror as a result of having to state its intentions at the time of the firm offer announcement would be outweighed by the benefit to employee representatives, pension scheme trustees and market participants generally of the offeror stating its intentions at the time of the firm offer announcement. Therefore, the Code Committee believes that the proposed amendments are proportionate.

- 3.3 The amendments proposed in section 2(d) would mean that an offeror would be obliged to seek the consent of the board of the offeree company in order to publish an offer document within the 14 days following the announcement of its firm intention to make an offer. In the context of a unilateral offer, this would provide the offeree board with the certainty that it would have at least 28 days from the date of the firm offer announcement until it had to publish its initial circular. The Code Committee does not anticipate that the proposed changes to Rule 24.1(a) would have significant additional cost implications. There may be increased financing costs for an offeror which is in a position to make its offer but is unable to do so until the 14 day period has expired. However, the Code Committee considers that the proposed changes are proportionate and strike a balance between providing the board of an offeree company with more time in which to prepare its initial response to an offer and allowing an offeror to proceed with its offer.
- 3.4 The amendments proposed in section 2(e) would require offerors and offeree companies to publish reports on post-offer undertakings and post-offer intention statements given during the course of an offer. The Code Committee believes that

the proposed changes to Rule 19.5 would not materially increase the burden on an offeror or offeree company, given that, under Rule 19.5(h)(iv), the Panel may already require an offeror or offeree company to publish any such report, in whole or in part. The Code Committee believes that the proposed changes to Rule 19.6 would not materially increase the burdens on offerors and offeree companies given that, as noted in section 2(e), the Code Committee understands that parties to offers are currently giving private confirmations to the Executive. Accordingly, the Code Committee considers that the proposed changes in section 2(e) are proportionate.

## APPENDIX A

### Proposed amendments to the Code

#### DEFINITIONS

##### **Acting in concert**

...

##### ***NOTES ON ACTING IN CONCERT***

...

##### ***11. Indemnity and other dealing arrangements***

...

(b) ...

*Such dealing arrangements must be disclosed as required by Note 2 on Rule 2.4, Rule 2.7(c)(~~viii~~x), Notes 5 and 6 on Rule 8, Rule 24.13 and Rule 25.6.*

*(c) Note 11(b) does not apply to irrevocable commitments or letters of intent, which are subject to Rule 2.7(c)(vii) and Rule 2.10.*

...

##### **Dealings**

...

##### ***NOTES ON DEALINGS***

##### ***1. Indemnity and other dealing arrangements***

*Dealing arrangements of the kind referred to in Note 11 on the definition of acting in concert in relation to relevant securities which are entered into during the offer period by any offeror, the offeree company or a person acting in concert with any offeror or the offeree company must be disclosed as required by Rule 2.7(c)(~~viii~~x), Notes 5 and 6 on Rule 8, Rule 24.13 and Rule 25.6.*

**Rule 2.7****2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER**

...

(c) When a firm intention to make an offer is announced, the announcement must include:

- (i) the terms of the offer;
- (ii) the identity of the offeror;
- (iii) all conditions or pre-conditions to which the offer or the making of an offer is subject;
- (iv) the intentions of the offeror with regard to the business, employees and pension scheme(s) of the offeree company (see Note 1);
- (iv) details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or a condition to its offer and the consequences of its doing so, including details of any break fees payable as a result;
- (vi) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which it has a right to subscribe, in each case specifying the nature of the interests or rights concerned (see Note 5 on Rule 8). Similar details of any short positions (whether conditional or absolute and whether in the money or otherwise), including any short position under a derivative, any agreement to sell, any delivery obligation or right to require another person to purchase or take delivery, must also be stated;
- (vii) details of any irrevocable commitment or letter of intent procured by the offeror or any person acting in concert with it (see Note 3 on Rule 2.10);
- (viii) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold and details of any financial collateral arrangements which the offeror or any person acting in concert with it has entered into (see Note 4 on Rule 4.6);

**(viiiix)** details of any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert to which the offeror or any person acting in concert with it is a party;

**(ix)** a summary of the provisions of Rule 8 (see the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk));

**(xi)** a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2;

**(xii)** a list of the documents published on a website in accordance with Rule 26.2 and the address of the website on which the documents are published; and

**(xiii)** a statement that the offeror will have the right to reduce the offer consideration by the amount of any dividend (or other distribution) which is paid or becomes payable by the offeree company to offeree company shareholders, unless, and to the extent that, the announcement provides that offeree company shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.

...

## **NOTES ON RULE 2.7**

### ***1. Unambiguous language***

*The language used in announcements should clearly and concisely reflect the position being described. In particular, the word "agreement" should be used with the greatest care. Statements should be avoided which may give the impression that persons have committed themselves to certain courses of action (eg accepting in respect of their own shares) when they have not in fact done so.*

### **1. Intentions of the offeror with regard to the business, employees and pension scheme(s)**

**(a) For the purpose of Rule 2.7(c)(iv), the offeror must explain the long-term commercial justification for the offer and must state:**

**(i) its intentions with regard to the future business of the offeree company including, in particular, its intentions for the offeree company's research and development functions;**

(ii) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment or in the balance of the skills and functions of the employees and management;

(iii) its strategic plans for the offeree company, and their likely repercussions on employment and on the locations of the offeree company's places of business (including on the location of the offeree company's headquarters and headquarters functions);

(iv) its intentions with regard to employer contributions into the offeree company's pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;

(v) its intentions with regard to any redeployment of the fixed assets of the offeree company; and

(vi) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.

(b) If the offeror has no intention to make any changes in relation to the matters described under (a) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business, it must make a statement to that effect.

(c) Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also state its intentions with regard to its future business and comply with (a)(ii) and (iii) with regard to itself.

## **Rule 2.10**

### **2.10 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT**

...

#### **NOTES ON RULE 2.10**

##### **1. Disclosure in firm offer announcement**

*Where the details required to be announced under Note 3 on Rule 2.10 are, pursuant to Rule 2.7(c)(vii), included in an announcement of a firm intention to make an offer which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured, no separate announcement is required under Rule 2.10(a) or (b).*



**Rule 8****RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS**

...

**NOTES ON RULE 8**

...

**14. Irrevocable commitments and letters of intent***See Rule 2.7(c)(vii) and Rule 2.10.***Rule 19.5****19.5 POST-OFFER UNDERTAKINGS**

...

**(h) A party to an offer which has made a post-offer undertaking must submit written reports to the Panel after the end of the offer period at such intervals (of not more than 12 months) and in such form as the Panel may require. Such reports must, as appropriate:**

**(i) indicate whether any course of action that the party has committed to take has been implemented or completed within the specified period of time and, if not, the progress made to date and the steps being taken to implement or complete the course of action and the expected timetable for completion;**

**(ii) confirm that any course of action that the party has committed not to take has not been taken;**

**(iii) include such other documents or information as the Panel may require; and**

**(iv) ~~if so required by the Panel,~~ be published, in whole or in part (as required by the Panel), in accordance with the requirements of Rule 30.1.**

## Rule 19.6

### 19.6 POST-OFFER INTENTION STATEMENTS

...

**(c) A party to an offer which has made a post-offer intention statement must, at the end of the period of 12 months from the date on which the offer period ended, or such other period of time as was specified in the statement:**

**(i) confirm in writing to the Panel whether it has taken, or not taken, the course of action it stated in the post-offer intention statement that it intended to take, or not to take; and**

**(ii) publish that confirmation in accordance with the requirements of Rule 30.1.**

## Rule 24.1

### 24.1 THE OFFER DOCUMENT

**(a) Except with the consent of the Panel, ~~The offeror must, normally~~ within 28 days of the announcement of a firm intention to make an offer, send an offer document to shareholders in the offeree company and persons with information rights, in accordance with Rule 30.2 ~~and must make the document readily available to the trustees of the offeree company's pension scheme(s). However, the offeror may only publish an offer document within the 14 days following the announcement of its firm intention to make an offer with the consent of the board of the offeree company.~~**

**(b) At the same time as the offer document is published,;**

**(i) both the offeror and the offeree company must make the offer document readily available to their employee representatives (or, where there are no employee representatives, to the employees themselves); ~~and, The Panel must be consulted if the offer document is not to be published within this period.~~**

**(ii) the offeror must make the offer document readily available to the trustees of the offeree company's pension scheme(s).**

**(b) Promptly following its publication, the offeror must:**

**(i) publish the offer document on a website; and**

- (ii) announce that the offer document has been so published.

## **Rule 24.2**

### **24.2 INTENTIONS OF THE OFFEROR WITH REGARD TO THE BUSINESS, EMPLOYEES AND PENSION SCHEME(S)**

- (a) In the offer document, the offeror must explain the long-term commercial justification for the offer and must state:

- (i) its intentions with regard to the future business of the offeree company including, in particular, its intentions for the offeree company's research and development functions;

- (ii) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment or in the balance of the skills and functions of the employees and management;

- (iii) its strategic plans for the offeree company, and their likely repercussions on employment and on the locations of the offeree company's places of business (including on the location of the offeree company's headquarters and headquarters functions);

- (iv) its intentions with regard to employer contributions into the offeree company's pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members;

- (v) its intentions with regard to any redeployment of the fixed assets of the offeree company; and

- (vi) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.

- (b) If the offeror has no intention to make any changes in relation to the matters described under (a)~~(ii) to (v)~~ above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business, it must make a statement to that effect.

## Rule 25.1

### 25.1 THE OFFEREE BOARD CIRCULAR

(a) Except with the consent of the Panel, ~~t~~The board of the offeree company must, ~~normally~~ within 14 days of the publication of the offer document, send a circular to shareholders in the offeree company and persons with information rights, in accordance with Rule 30.2 ~~and must make the document readily available to the trustees of its pension scheme(s).~~

(b) At the same time as the offeree board circular is published, the offeree company must make the circular readily available to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).

(~~b~~c) Promptly following its publication, the offeree company must:

- (i) publish the offeree board circular on a website; and
- (ii) announce that the offeree board circular has been so published.

## Rule 25.9

### 25.9 ~~THE EMPLOYEE REPRESENTATIVES' OPINION AND THE PENSION SCHEME TRUSTEES' OPINION~~

(a) Where the board of the offeree company receives in good time before publication of its circular on the offer:

- (~~a~~i) an opinion from employee representatives on the effects of the offer on employment; or
- (~~b~~ii) an opinion from the trustees of any of its pension scheme(s) on the effects of the offer on the pension scheme(s),

any such opinion must be appended to the circular.

(b) Where any such opinion is received but not in good time before publication of the offeree board circular, the offeree company must promptly publish the opinion on a website and announce via a RIS that it has been so published, provided that it is received no later than 14 days after the date on which the offer becomes or is declared wholly unconditional.

**Rule 26.2****26.2 DOCUMENTS TO BE PUBLISHED ON A WEBSITE  
FOLLOWING THE ANNOUNCEMENT OF A FIRM OFFER**

**The following documents must be published on a website promptly following the publication of the announcement of a firm intention to make an offer (or, if later, the date of the relevant document) and in any event by no later than 12 noon on the following business day:**

...

**(e) any agreements or arrangements, or, if not reduced to writing, a memorandum of all the terms of such agreements or arrangements, which relate to the circumstances in which the offeror may or may not invoke or seek to invoke a pre-condition or a condition to its offer (Rule 2.7(c)(iv)).**

**APPENDIX B****List of questions**

- Q1** Should Rule 24.2(a) be amended so as to require an offeror to make specific statements of intention with regard to the offeree company's research and development functions, the balance of the skills and functions of the offeree company's employees and management, and the location of the offeree company's headquarters and headquarters functions?
- Q2** Do you have any comments on the proposed amendments to Rules 24.2(a) and (b)?
- Q3** Should Rule 2.7 be amended so as to bring forward to the firm offer announcement the requirement for an offeror to state its intentions with regard to the business, employees and pension scheme(s) of the offeree company and, where appropriate, the offeror?
- Q4** Do you have any comments on the proposed amendments to Rule 2.7 and Rule 25.9?
- Q5** Should an offeror be obliged to seek the consent of the board of the offeree company in order to publish an offer document within the 14 days following its firm offer announcement?
- Q6** Do you have any comments on the proposed amendments to Rule 24.1 and Rule 25.1?
- Q7** Should an offeror or offeree company which has made a post-offer undertaking always be required to publish, in whole or in part, any report submitted to the Panel under Rule 19.5(h)?
- Q8** Do you have any comments on the proposed amendments to Rule 19.5(h)?
- Q9** Should an offeror or offeree company which has made a post-offer intention statement be required, at the end of the period of 12 months from the date on which the offer period ends, or such other period of time as was specified in the statement, to confirm in writing to the Panel whether it has taken, or not taken, the course of action described in the post-offer intention statement and publish that confirmation via a RIS?
- Q10** Do you have any comments on the proposed new Rule 19.6(c)?