THE TAKEOVER PANEL

AMENDMENT OF PRACTICE STATEMENTS NO. 5, NO. 10, NO. 20 AND NO. 24

The Panel Executive has today amended Practice Statements No. 5, No. 10, No. 20 and No. 24. The amendments are not material and do not alter the substance of any of the Practice Statements.

1. Practice Statement No. 5 (Rule 13.4(a) – Invocation of conditions)

Practice Statement No. 5 has been amended to update Rule references. It also now incorporates guidance given in RS 2004/4 on the factors the Executive will take into account in considering whether a particular matter should give rise to the right to invoke a condition. It also makes clear that the practice set out in the Practice Statement also applies to the invocation of pre-conditions permitted under Rule 13.3.

2. Practice Statement No. 10 (Cash offers financed by the issue of offeror securities)

Practice Statement No. 10 has been amended principally to remove references to former General Principle 3 and to include, in its place, references to Rule 2.5(c).

3. Practice Statement No. 20 (Rule 2 – secrecy, possible offer announcements and pre-announcement responsibilities)

Practice Statement No. 20 has been amended to reflect the adoption in RS 2008/2 of a requirement in Note 1 on Rule 2.2 for the Panel to be consulted when more than a very restricted number of people are to be approached in relation to a possible offer.

4. Practice Statement No. 24 (Appropriate offers and proposals under Rule 15)

Practice Statement No. 24 has been amended to reflect the changes to the Code adopted in RS 2008/3 relating to electronic communication.

30 March 2009

THE TAKEOVER PANEL

PRACTICE STATEMENT NO. 5

RULE 13.4(a) – INVOCATION OF CONDITIONS

It is standard market practice in the UK for offers (other than mandatory offers, where the provisions of Rule 9 of the Code apply) to be stated as being conditional upon the satisfaction, or waiver, of a number of conditions. In a typical offer, the conditions can be broken down into four broad categories as follows:

- the acceptance condition – i.e. the minimum level of shareholder acceptance of the offer below which the offeror may decline to proceed with the offer;

- UK or EC competition clearances;

- other, effectively mandatory, conditions designed to give effect to some supervening regulatory requirement - for example, a listing condition on a securities exchange offer; and

- other conditions included for the benefit of the offeror in order to give it the right not to proceed with the offer in the circumstances stipulated. There is a wide range of conditions which fall within this category, although one of those more frequently encountered is the "material adverse change" (or MAC) condition, whereby the offeror can lapse its offer in the event of a material adverse change in the business or prospects of the offeree company in the period after announcement of the offer.

The principal provision of the Code applicable to conditions is Rule 13. Rule 13.1 provides that offer conditions must not normally be in subjective terms. In addition, Rule 13.4(a) provides that, except for the acceptance condition:

> "An offeror should not invoke any condition …… so as to cause the offer not to proceed, to lapse or to be withdrawn unless the circumstances which give rise to the right to invoke the condition …… are of material significance to the offeror in the context of the offer."

Rule 13.2 provides further that neither a UK nor an EC competition condition will be subject to either Rule 13.1 or Rule 13.4(a).

The purpose of Rule 13.4(a) is to establish an overriding standard of materiality that must be satisfied before an offeror can rely on a condition for its benefit. The meaning of then Note 2 on Rule 13 (which became Rule 13.4(a)) was considered by the full Panel on appeal during the offer for Tempus Group plc by WPP Group plc, as reported in Panel Statement 2001/15. In that case, the condition in question which the offeror sought to rely on was a MAC condition. The Panel concluded that the necessary test of "material significance" was not met and in its decision stated that:

> "… meeting this test requires an adverse change of very considerable significance striking at the heart of the purpose of the transaction in question, analogous … to something that would justify frustration of a legal contract."

The Executive is aware that certain practitioners have interpreted Panel Statement 2001/15 to mean that an offeror would need to demonstrate legal frustration in order to be able to invoke a condition to its offer (other than the acceptance condition or any UK or EC competition condition). The Executive does not consider this interpretation to be correct.

In applying Rule 13.4(a) in the light of the Panel's decision set out in Panel Statement 2001/15, the Executive's practice is as follows:

- as set out in Rule 13.4(a), the appropriate test for the invocation of a condition is whether the relevant circumstances upon which the offeror is seeking to rely are of material significance to it in the context of the offer – which must be judged by reference to the facts of each case at the time the relevant circumstances arise;

- in the case of a MAC, or similar, condition, whether the above test is satisfied will depend on the offeror demonstrating that the relevant circumstances are of very considerable significance striking at the heart of the purpose of the transaction; and

- whilst the standard required to invoke such a condition is therefore a high one, the test does not require the offeror to demonstrate frustration in the legal sense.

Following the issue of RS 2004/4 (paragraph 4.2.10), in considering whether a particular matter should give rise to the right to invoke a condition, it is the Executive's practice to take into account all relevant factors, including whether:

- the condition was the subject of negotiation with the offeree company;

- the condition was expressly drawn to offereee company shareholders' attention in the offer document or announcement, with a clear explanation of the circumstances which might give rise to the right to invoke it; and

- the condition was included to take account of the particular circumstances of the offeree company.

This Practice Statement applies in the same way to the invocation of pre-conditions permitted under Rule 13.3.

The Executive should be consulted in cases of doubt.

Practice Statements are issued by the Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

28 April 2004
Amended 30 March 2009

THE TAKEOVER PANEL

PRACTICE STATEMENT NO. 10

CASH OFFERS FINANCED BY THE ISSUE OF OFFEROR SECURITIES

Under Rule 2.5(a) of the Code, an offeror should announce an offer only when it has every reason to believe that it can and will continue to be able to implement the offer. Under Rules 2.5(c) and 24.7, when an offer is made in cash or includes an element of cash, the offer document must include confirmation by an appropriate third party (usually the offeror's financial adviser) that resources are available to the offeror sufficient to satisfy full acceptance of the offer (a "cash confirmation").

From time to time, the Executive is consulted, in the context of these provisions, about:

- the conditions to which a cash offer, or an offer which includes an element of cash, may be subject when it is to be financed, or partially financed, by the issue of offeror securities; and

- the form of the cash confirmation required in such circumstances, and whether the cash confirmation can be expressed as being conditional on the success of the issue of the offeror's securities.

Conditions

The Note on Rule 13.3 provides that, where an offeror proposes to finance a cash offer (or a cash alternative to a securities exchange offer) by an issue of new securities, the offer must be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such securities or to have them listed or admitted

to trading. Conditions which will normally be considered to be necessary for such purposes include:

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

- where the new securities are to be admitted to listing or to trading on any investment exchange or market, any necessary listing or admission to trading condition.

It will not, however, be appropriate for the offer to be conditional upon any placing, underwriting or underpinning agreement in relation to the issue of the new securities becoming unconditional and/or not being terminated. A condition of this nature is not necessary as a matter of law or regulatory requirement in order to issue the new securities or, therefore, to implement the offer.

Cash confirmation

In order to satisfy Rule 2.5(a) and Rules 2.5(c) and 24.7, it is the responsibility of the party giving the cash confirmation and the offeror (and, if it is not the cash confirmer, the offeror's financial adviser) to take all reasonable steps, before announcement of the offer, to satisfy themselves that the issue of the new securities will be successful, and that the offeror will have the necessary cash available to finance full acceptance of the offer.

If an offer, which was to be financed by the issue of offeror securities, lapses or is withdrawn owing to a failure to fulfil a condition relating to the issue, the Executive will wish to be satisfied that Rule 2.5(a) was complied with (so that, on announcement, the offeror and its financial adviser had every reason to believe that the offer could and would be implemented) and also that Rule 13.4(b) had been complied with (i.e. that the offeror had used all reasonable efforts to ensure the satisfaction of the condition).

The Executive should be consulted at the earliest opportunity in cases of doubt on either issue.

Practice Statements are issued by the Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

25 April 2005
Amended 30 March 2009

THE TAKEOVER PANEL

PRACTICE STATEMENT NO. 20

RULE 2 - SECRECY, POSSIBLE OFFER ANNOUNCEMENTS AND PRE-ANNOUNCEMENT RESPONSIBILITIES

1. Introduction

1.1 This Practice Statement describes the way in which the Executive normally interprets and applies certain provisions of Rules 2.1 to 2.4(a) of the Takeover Code (the "Code") that relate to the need for secrecy before, and the timing and contents of, possible offer announcements, including the steps which the Executive expects the parties to a possible offer and their advisers to take in order to ensure that their responsibilities in relation to those provisions are complied with. Rules 2.1 to 2.4(a) have particular relevance to the Code's objective of promoting the integrity of the financial markets and, in applying those Rules, the Executive's overriding objective is to prevent false markets by ensuring the timely release of announcements relating to a possible offer for a company.

1.2 Consultation with the Executive is of crucial importance in the application of the Code and the importance of the requirement to consult the Executive in relation to the application of Rules 2.1 to 2.4(a) cannot be over-emphasised. As a practical matter, if the reason for consulting the Executive relates to whether an announcement is required in particular circumstances, the person concerned should explain that the call is urgent so that it can be dealt with by the Executive as a matter of priority.

1.3 It is common for a potential offeror, or a company in receipt of an approach, to notify its financial adviser or corporate broker of the possible offer or

approach at an early stage. The Executive encourages this practice since such advisers will normally have better systems and more resources than their clients to fulfil the task of monitoring compliance with Rules 2.1 to 2.4(a). As explained in paragraph 3(f) of the Introduction to the Code, financial advisers "have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them and that the Panel is consulted whenever appropriate". Where a corporate broker alone has been notified of the possible offer or approach, the Executive may regard the corporate broker as fulfilling the role of a financial adviser.

1.4 If a potential offeror, or a company which is in receipt of an approach or seeking purchasers or offerors, chooses not to notify its financial adviser, compliance with Rules 2.1 to 2.4(a) will be its responsibility and it must immediately put in place appropriate procedures to ensure that the requirements of those Rules are observed.

1.5 In addition, the Executive notes that section 3(f) of the Introduction to the Code provides that the Code applies to "all advisers in so far as they advise on takeovers or other matters to which the Code applies". Where no financial adviser has been appointed, the Executive considers that such advisers as have been appointed will have a particular responsibility to emphasise to their client the need for appropriate procedures to be put in place to ensure that the requirements of Rules 2.1 to 2.4(a) are observed.

2. Secrecy

2.1 As set out in Rule 2.1, the starting point under the Code is that absolute secrecy before an announcement of an offer or possible offer is of vital importance. If secrecy is maintained, it should be possible for offer preparations to be conducted in private, without an announcement being required. Accordingly, all persons who are privy to confidential information concerning an offer or possible offer must conduct themselves so as to minimise the chances of a leak of the information. For example, confidential

information should only be passed to another person if it is necessary to do so and if that person is made aware of the need for secrecy.

2.2 In this regard, the Executive notes the FSA's thematic review of controls over inside information relating to public takeovers,[1] and the development of a set of Principles of Good Practice for the Handling of Inside Information (the "Principles of Good Practice")[2]. The Executive is supportive of the FSA's objective of minimising leakage of inside information in relation to public takeovers and welcomes the Principles of Good Practice.

2.3 If it appears that there may have been a leak of information, the Executive will, in assessing whether an announcement is required under Rule 2.2, amongst other things, wish to learn immediately from the relevant party or its financial adviser what controls have been put in place in order to keep information secure.

3. The approach

3.1 A key issue in applying Rule 2.2(c), Rule 2.2(d) and Rule 2.3 is whether an offeror has made an "approach" to the offeree company regarding a possible offer. This will affect, in particular, whether the responsibility for making an announcement lies with the potential offeror or with the offeree company.

3.2 For these purposes, the Executive interprets the term "approach" broadly. Each case will turn on its own facts, but the Executive normally considers an approach to have been received when a director or representative of, or an adviser to, an offeree company is informed by, or on behalf of, a potential offeror that it is considering the possibility of making an offer for the company. This may be at a very preliminary stage in the offeror's preparations and the manner of the approach may be informal and no more than broadly indicative. For example, there is no requirement for an approach

[1] See Market Watch, Issue No. 21, July 2007
[2] See Market Watch, Issue No. 27, June 2008

to be made in writing, or for an indicative offer price (or any terms or conditions) to be specified, and it could be made as part of a conversation on unrelated matters.

3.3 Rule 2.3 provides that the responsibility for making an announcement before the board of the offeree company has been approached will lie with the offeror, whereas the primary responsibility for making an announcement following an approach will normally rest with the offeree company board. However, if the offeree company board rejects an approach it will not necessarily know whether the offeror intends to pursue its interest in the possible offer. Therefore, following an unequivocal rejection of an approach, the Executive's practice is to treat the responsibility for making an announcement as reverting to the offeror.

3.4 In order to avoid confusion, the parties should agree which of the offeror and the offeree company has responsibility for making an announcement at any particular time following the initial approach. If the parties are unable to reach agreement as to where the responsibility rests, or if there is any doubt as to whether there has been an unequivocal rejection of an approach, the Executive should be consulted.

4. When an announcement is required before an approach

(a) Rule 2.2(d)

4.1 Before an offeror has made an approach to the offeree company, the requirement for the offeror to make an announcement under Rule 2.2(d) will be triggered if:

(a) the offeree company is the subject of rumour and speculation; or

(b) there is an untoward movement in its share price,

and, in either case, there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation.

(b) The requirement to consult the Executive

4.2 The Executive must be consulted by a potential offeror, or its financial adviser, at an appropriate stage in order for it to be able to determine whether an announcement is required under Rule 2.2(d). Consultation will not necessarily lead to a requirement to make an announcement; this will depend on all the relevant circumstances.

(i) Rumour and speculation

4.3 Note 1 on Rule 2.2 requires that the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time when an offer is first actively considered. The requirement for consultation is interpreted strictly and the Executive should therefore be consulted by the potential offeror, or its financial adviser, if there is any rumour and speculation relating to a possible offer for the offeree company and regardless of:

(a) whether the rumour and speculation is specific to the possible transaction under consideration – for example, whether or not the potential offeror is named; or

(b) the manner in which, or the medium by which, the rumour and speculation has been disseminated.

4.4 Although the Executive may, on occasion, make enquiries of financial advisers in relation to, for example, rumour and speculation relating to their clients, the Code requires that the Executive should be consulted whenever any such rumour and speculation appears. Therefore, financial advisers

should in no circumstances rely on their being contacted by the Executive about rumour and speculation relating to their clients.

(ii) Share price movements

4.5 Note 1 on Rule 2.2 requires that the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time when an offer is first actively considered by the potential offeror. For these purposes:

(a) a movement of 10% or more above the lowest share price since that time is regarded as a material movement; and

(b) a movement may be abrupt even if there has not been a material movement: for example, a price rise of 5% in the course of a single day is normally regarded as being abrupt. When calculating share price movements in the course of a single day, the opening price should normally be taken to be the previous day's closing price, in order to ensure that overnight movements are taken into account.

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

(iii) When an offer is first actively considered

4.6 In interpreting the phrase "the time when an offer is first actively considered", the Executive recognises that many potential offerors will, as a matter of course, continually assess the performance of potential acquisition targets and may run internal valuation models as part of this assessment. However, the Executive interprets the phrase "first actively considered" as drawing a distinction between, on the one hand, such routine assessment of a company's performance and, on the other, an increase in the intensity of the potential offeror's assessment of the potential acquisition to a level where it is being given more serious consideration.

4.7 The time when an offer is first actively considered will therefore depend on the facts of a particular case. All relevant factors will be taken into account in determining this, including the extent to which, for example:

(a) the possible offer has been considered by the board, investment committee or senior management of the offeror;

(b) work is being undertaken by external advisers; and

(c) external parties, such as potential providers of finance (whether equity or debt), shareholders in the offeror or the offeree company, potential management team candidates or potential purchasers of assets, have been approached.

(c) The requirement for an announcement

4.8 The Executive considers that rumour and speculation relating to the offeree company which refers to the potential offeror in the context of the possible transaction under consideration will normally, of itself, give the Executive reasonable grounds for concluding that it is the potential offeror's actions which have led to the situation, and for determining that the requirement to make an announcement has been triggered. The Executive does not consider that it is required to establish whether the rumour and speculation in question can be definitively linked to the potential offeror – for example, by establishing that conversations were held by a representative of the offeror with the journalist concerned. In addition, the Executive's determination will not normally be affected by some inaccuracy in the rumour and speculation (for example, as to the level of any indicative offer price).

4.9 Furthermore, if the rumour and speculation relates to a company which is often the subject of rumour and speculation, this will be taken into account by the Executive but will not necessarily mean that an announcement is not required.

4.10 Whether or not a movement in the share price of the offeree company is untoward for the purposes of Rule 2.2(d) is a matter for the Executive to determine. This determination will be made in the light of all relevant facts and not solely by reference to the absolute percentage movement in the share price. As referred to in the first paragraph of Note 1 on Rule 2.2, facts which may be considered to be relevant in determining whether a price movement is untoward include general market and sector movements, publicly available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred.

(d) No announcement required if no truth

4.11 There is no requirement under Rule 2.2(d) for an announcement to be made confirming that there is no truth to rumour and speculation that an offer might be made for a company. However, if a possible offer for a potential offeree company was being actively considered at the time of the rumour and speculation or the untoward movement in its share price, but such consideration thereafter ceases, the Executive should be consulted. In such circumstances, the Executive may require a clarificatory announcement to be made in order to prevent a false market.

5. When an announcement is required following an approach or where a purchaser or potential offeror is being sought

(a) Rules 2.2(c) and (f)(i)

5.1 Following an approach by an offeror to the offeree company, the requirement for the offeree company to make an announcement under Rule 2.2(c) will be triggered if:

(a) the offeree company is the subject of rumour and speculation; or

(b) there is an untoward movement in its share price.

5.2 Similarly, when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, or when the board of a company is seeking one or more potential offerors, the requirement to make an announcement under Rule 2.2(f)(i) will be triggered if the company is the subject of rumour and speculation or there is an untoward movement in its share price. Where a purchaser is being sought by a seller of such an interest, or interests, without the involvement of the board of the company, the responsibility for consulting the Executive and making an announcement will rest with that seller.

(b) The requirement to consult the Executive

5.3 The Executive must be consulted by the offeree company or seller of the interest, or its financial adviser, at an appropriate stage in order for it to be able to determine whether an announcement is required under Rule 2.2(c) or Rule 2.2(f)(i). Consultation will not necessarily lead to a requirement to make an announcement; this will depend on all the relevant circumstances.

(i) Rumour and speculation

5.4 In the case of Rule 2.2(c), Note 1 on Rule 2.2 requires that, unless an immediate announcement is to be made, the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time when the approach has been received. The requirement for consultation is interpreted strictly and the Executive should therefore be consulted by the potential offeree company, or its financial adviser, if there is <u>any</u> rumour and speculation relating to a possible offer for the offeree company, regardless of:

(a) whether the rumour and speculation is specific to the possible transaction under consideration; or

(b) the manner in which, or the medium by which, the rumour and speculation has been disseminated.

5.5 Similarly, in the case of Rule 2.2(f)(i), the Executive should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation after the time that one or more purchasers or offerors are first sought.

5.6 Although the Executive may, on occasion, make enquiries of financial advisers in relation to, for example, rumour and speculation relating to their clients, the Code requires that the Executive should be consulted whenever any such rumour and speculation appears. Therefore, financial advisers should in no circumstances rely on their being contacted by the Executive about rumour and speculation relating to their clients.

(ii) Share price movements

5.7 In the case of Rule 2.2(c), Note 1 on Rule 2.2 requires that, unless an immediate announcement is to be made, the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time of the approach. For these purposes:

(a) a movement of 10% or more above the lowest share price since that time is regarded as a material movement; and

(b) a movement may be abrupt even if there has not been a material movement: for example, a price rise of 5% in the course of a single day is normally regarded as being abrupt. When calculating share price movements in the course of a single day, the opening price should normally be taken to be the previous day's closing price, in order to ensure that overnight movements are taken into account.

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

5.8 Similarly, in the case of Rule 2.2(f)(i), the Executive should be consulted at the latest whenever there is a material or abrupt movement in the share price of the potential offeree company after the time when one or more purchasers or offerors are first sought.

(c) The requirement for an announcement

5.9 There is no equivalent in Rule 2.2(c) or Rule 2.2(f)(i) to the requirement in Rule 2.2(d) for there to be reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation. Therefore, an announcement might be required under Rule 2.2(c) or Rule 2.2(f)(i) in circumstances where an announcement would not have been required under Rule 2.2(d) (had the offeree company not been approached) and even if, for example, the potential offeror is not named. The Executive's determination as to whether the requirement to make an announcement has been triggered will not normally be affected by some inaccuracy in the rumour and speculation (for example, as to the level of any indicative offer price).

5.10 Furthermore, if the rumour and speculation relates to a company which is often the subject of rumour and speculation, this will be taken into account by the Executive but will not necessarily mean that an announcement is not required.

5.11 Whether or not a movement in the share price of the offeree company is untoward for the purposes of Rule 2.2(c) or Rule 2.2(f)(i) is a matter for the Executive to determine. This determination will be made in the light of all relevant facts and not solely by reference to the absolute percentage movement in the share price. As referred to in the first paragraph of Note 1 on Rule 2.2, facts which may be considered to be relevant in determining whether a price movement is untoward include general market and sector movements, publicly

available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred.

(d) No announcement required if no truth

5.12 There is no requirement under Rule 2.2(c) for an announcement to be made confirming that there is no truth to rumour and speculation that an offer might be made for a company. However, if the potential offeree company was in receipt of an approach at the time of the rumour and speculation or the untoward movement in its share price, but such approach is thereafter rejected or withdrawn, the Executive should be consulted. In such circumstances, the Executive may require a clarificatory announcement to be made in order to prevent a false market.

(e) Strategic review announcements

5.13 In the case of a "strategic review announcement", Practice Statement No. 6 may also be relevant.

6. Where a potential offeror is identified following the commencement of the offer period

6.1 In applying the provisions of Rule 2.2, the Executive is concerned to ensure that shareholders and other market participants are informed that a potential offeree company may be the subject of a possible offer. Following this, the Executive considers that it will be understood that additional potential offerors for the offeree company may emerge. Therefore, if, after the commencement of an offer period, rumour and speculation correctly identifies a potential offeror other than the potential offeror to whom the original announcement related (or by whom it was made), the Executive will generally be less likely to require an announcement to be made naming that second potential offeror.

6.2 Similarly, if an offer period commences following an announcement made under Rule 2.2(c) or (f)(i) which does not name a potential offeror, and rumour and speculation then correctly identifies the potential offeror, the Executive will generally be less likely to require an announcement naming the potential offeror.

6.3 However, in certain circumstances, the Executive may require an announcement naming a potential offeror to be made after the commencement of an offer period in order to ensure that offeree shareholders and other market participants are properly informed and/or to prevent a false market. Parties and their financial advisers should therefore put appropriate procedures in place to ensure that any announcement that is so required can be released promptly (see paragraphs 9.3 and 9.4 below).

7. Extending negotiations or discussions

7.1 Rule 2.2(e) provides that an announcement is required when negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers). Similarly, Rule 2.2(f)(ii) provides that an announcement is required when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company, or when the board of a company is seeking one or more potential offerors, and, in either case, the number of potential purchasers or offerors approached is about to be increased to include more than a very restricted number of people.

7.2 As regards Rule 2.2(e), the Executive should be consulted prior to more than a total of six parties being approached about an offer or possible offer including, for example: potential providers of finance (whether equity or debt); shareholders in the offeror or the offeree company; the offeree company's pension fund trustees; potential management candidates; significant customers of, or suppliers to, the offeree company; or potential purchasers of assets.

7.3 In considering whether to grant its consent to more than six parties being approached, the Executive will need to be satisfied that secrecy will be maintained. Other than as described in paragraph 7.4 below, the Executive is likely to consent to more than six parties being approached only in limited circumstances.

7.4 Where a party has been approached about the possibility of its providing finance (whether equity or debt) to an offeror and has declined the opportunity to do so, the Executive may be prepared to treat that party as no longer counting towards the six parties approached, provided that the party is not interested in securities of the offeror or the offeree company and does not have any other ongoing interest in the offeree company. A similar approach may be taken in relation to, for example, potential management candidates or potential purchasers of assets. Where, for example, one department of a multi-service financial organisation has declined an opportunity to provide finance and a separate department is interested in securities of the offeror or the offeree company, the Executive will not normally treat the organisation as counting towards the six parties that may be approached by virtue of its having been approached to provide finance, provided that the department which is interested in securities of the offeror or the offeree company is not aware of the approach to the department invited to provide finance.

7.5 Where a consortium bid is in contemplation, the party which makes the first approach to another potential member of the consortium will be treated for these purposes as the potential offeror. That party, as the potential offeror, may therefore approach up to six parties in total, inclusive of other potential consortium members approached (provided that those approached do not themselves contact any third parties).

7.6 As regards Rule 2.2(f)(ii), the Executive should be consulted prior to more than one purchaser or potential offeror being sought, as referred to in the final paragraph of Note 1 on Rule 2.2. This requirement reflects a concern that the risk of leaks may be greater when purchasers for a controlling interest in a company, or potential offerors, are being sought. This is because each party

approached may wish to discuss the matter with other parties, thereby quickly increasing the number of parties who would be aware of the possible transaction.

8. Content and timing of announcements

(a) Content

8.1 An announcement made pursuant to Rule 2.4(a) may be brief and straightforward, as follows:

(a) in the case of an announcement made by the offeree company, the announcement need only state that the offeree company has received an approach that may or may not lead to an offer being made for the company. Such an announcement need not name the potential offeror; and

(b) in the case of an announcement made by a potential offeror, the announcement need only state that the potential offeror is considering making an offer for the offeree company. The potential offeror must itself be named in such an announcement and it will not be sufficient, for example, for its financial adviser to announce that it is acting for an unnamed party which is considering the possibility of making an offer for the offeree company.

8.2 In each case, further information may be included in the announcement (such as the indicative offer terms), in which case additional provisions of the Code may be relevant (for example, Rule 2.4(c)).

(b) Timing

8.3 On occasion, it is argued that to require an announcement referring to the possibility of an offer when the offer preparations are at a preliminary stage might, of itself, lead to the creation of a false market in the offeree company's

securities. The Executive does not find this argument persuasive. In the Executive's opinion, if it appears that the possible offer may have leaked, leading to rumour and speculation or an untoward movement in the offeree company's share price, the overriding requirement is that an announcement should be made immediately and the fact that the offer preparations are at a preliminary stage may be made clear in the announcement.

8.4 Once the requirement to make an announcement under Rule 2.2 has been triggered, the Executive expects parties and their financial advisers to do their utmost to ensure that the announcement is made immediately, i.e. within a matter of minutes. In particular, the announcement should not be delayed whilst, for example, minor drafting changes are considered. If there is any doubt as to the precise form of wording to be included in the announcement, a brief announcement containing simply the substantive information required by Rule 2.4(a) should be released forthwith. A further announcement may then be made later, setting out more detailed information on the offer discussions or preparations.

8.5 Furthermore, the announcement should not be delayed in order for the information referred to in Rule 2.10 (details of the offeree company's and, if appropriate, the offeror's relevant securities in issue) to be included as part of the announcement. The information required to be announced under Rule 2.10 can be announced at any time up until 9.00 am on the business day following the date of the announcement.

8.6 Likewise, the Executive's approach is that an announcement should not be delayed in order for the summary of the provisions of Rule 8 (disclosure of dealings) to be included, notwithstanding the requirements of Rule 2.4(a). If, contrary to the guidance in paragraph 9.3 below, the draft announcement does not include this summary, and it cannot be included without delay, it will normally be acceptable for a separate announcement, which includes the summary, to be released as soon as possible thereafter.

9. Pre-announcement responsibilities

(a) Financial advisers have particular responsibility for ensuring compliance with Rule 2

9.1 Where a potential offeror, or a company in receipt of an approach, has notified its financial adviser of the possible offer or approach, the Executive considers that, for the reasons set out in paragraph 1.3 above, the financial adviser has a particular responsibility for:

(a) monitoring for movements in the offeree company's share price and for rumour and speculation; and

(b) consulting the Executive,

even if these tasks have not explicitly been delegated to it. The Executive considers that financial advisers should be mindful of their responsibilities from an early stage. In particular, the Executive would not regard the signing of an engagement letter, of itself, to be determinative of when an advisory relationship between a financial adviser and its client commences.

9.2 It is vital that, at an early stage, a financial adviser clearly explains to its client the requirements of Rule 2 and ensures that the client understands those requirements. In the Executive's opinion, this is unlikely to be satisfactorily achieved through the financial adviser simply providing the client with a standard form memorandum on the provisions of Rule 2 or the Code generally.

(b) Preparation of announcements and release procedure

9.3 In order that an offeror or offeree company may release an announcement immediately, if required, an appropriate draft announcement should be prepared and approved at an early stage. A financial adviser may wish to obtain its client's approval of a variety of draft announcements to be released

depending on the circumstances at the relevant time. All such draft announcements should be complete in all respects (for example, including the information referred to in Rule 2.10 and the summary of Rule 8) and should be kept up to date. However, as indicated in paragraphs 8.5 and 8.6 above, the announcement should not be delayed in order for this information to be included.

9.4 In addition, procedures should be put in place to ensure the prompt release of the announcement when required, including an agreement as to who is to be responsible for making the announcement (for example, the financial adviser or the client) and having appropriate arrangements in place to make the announcement (including access to a Regulatory Information Service). The person responsible should be authorised to release the announcement immediately upon this being required by the Panel. If the approval of a particular person, or group of persons, is required before the announcement is released, the nominated persons must be contactable at all times and an appropriate contingency plan should be put in place in the event that the nominated persons are not contactable. The making of an announcement by the potential offeree company should not be delayed by consultation with the potential offeror.

(c) Monitoring procedures

9.5 With regard to monitoring movements in the offeree company's share price, the Executive believes that a system is unlikely to be effective unless it:

(a) is operative at all times during market hours (including, if the offeree company's securities, or depositary receipts relating to those securities, are traded on an overseas exchange, during that overseas exchange's market hours);

(b) is able to monitor share price movements on a real time basis; and

(c) incorporates a mechanism which rebases the monitoring system so as to ensure that price rises are compared against the lowest share price since the time when the offer was first actively considered, the approach was received or one or more purchasers or offerors were first sought (as appropriate).

The Executive should be consulted in the case of any doubt as to how share price movements should be monitored and calculated.

9.6 With regard to monitoring for rumour and speculation, the principal sources of information relating to offers (including newswires and newspapers) and such other sources of information as are reasonable in the context of the transaction (including overseas publications, trade publications and internet bulletin boards) should be monitored for any rumour and speculation about the possibility of an offer for the offeree company.

Practice Statements are issued by the Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

7 March 2008
Last amended 30 March 2009

THE TAKEOVER PANEL

PRACTICE STATEMENT NO. 24

APPROPRIATE OFFERS AND PROPOSALS UNDER RULE 15

1. Introduction

1.1 Rule 15 of the Takeover Code (the "Code") requires that, when an offer is made for voting equity share capital or for other transferable securities carrying voting rights (a "voting equity offer") and the offeree company has any outstanding securities which are convertible into, or which comprise options or other rights to subscribe for, securities to which the voting equity offer relates ("Rule 15 securities"), the offeror must make an appropriate offer or proposal to the holders of those Rule 15 securities. The purpose of Rule 15 is to safeguard the interests of holders of Rule 15 securities in their capacity as potential holders of the securities to which the voting equity offer relates. An offer or proposal is therefore required for Rule 15 securities whether or not they are currently convertible or exercisable.

1.2 The Executive's interpretation and application of certain of the provisions of Rule 15 are set out below.

2. "Appropriate" offer or proposal

(a) "See through" value

2.1 In order to be "appropriate" in the terms of Rule 15(a), the Executive considers that an offer or proposal will normally need to be for no less than "see through" value, i.e. the value of the Rule 15 securities by reference to the value of the voting equity offer.

2.2 The see through value of options, warrants and other rights to subscribe should be calculated net of any exercise price. This is illustrated by the following Example 1:

Example 1

Offeror A offers 100p for each ordinary share in offeree company B. Each offeree company B warrant entitles the holder to subscribe for one ordinary share in offeree company B at an exercise price of 10p. The see through value of each offeree company B warrant by reference to the value of the offer for the ordinary shares is therefore 90p.

2.3 Where the see through value of Rule 15 securities is positive, as in Example 1 above, an offer or proposal at no less than that value will normally be regarded by the Executive to be appropriate.

2.4 Where the see through value of Rule 15 securities is zero or negative, no Rule 15 offer or proposal will normally be required. This is illustrated by the following Example 2:

Example 2

Offeror C offers 10p for each ordinary share in offeree company D. Each offeree company D option entitles the holder to subscribe for one ordinary share in offeree company D at an exercise price of 30p. The see through value of each offeree company D option by reference to the value of the offer for the ordinary shares is therefore minus 20p. No Rule 15 offer or proposal in respect of such options would normally be required.

(b) Convertible securities and other Rule 15 securities which are admitted to trading

2.5 Since convertible securities do not have an exercise price, their see through value will always be positive and an offer or proposal at no less than see

through value will be required, even if that offer or proposal would be below the market price of the convertible securities.

2.6 Where the market price (if any) of any Rule 15 securities is higher than their see through value, for example where a convertible security is trading as a fixed income security, the Executive does not require a Rule 15 offer or proposal to be at market price or above. This is because, as indicated above, the purpose of Rule 15 is to safeguard the interests of holders of Rule 15 securities in their capacity as potential holders of the securities to which the voting equity offer relates. These points are illustrated by the following Example 3:

Example 3

Offeror E offers 200p for each ordinary share in offeree company F. Each offeree company F convertible bond entitles the holder to convert that bond into one ordinary share in offeree company F. The current market price of offeree company F convertible bonds is 220p. The see-through value of each offeree company F convertible bond by reference to the value of the offer for the ordinary shares is therefore 200p and a Rule 15 offer or proposal at no less than this value will normally be required. However, there is no requirement for the Rule 15 offer or proposal in respect of the convertible bonds to be at no less than the current market price of 220p.

(c) No requirement to offer same specie as voting equity offer

2.7 The Executive will regard a Rule 15 offer or proposal to be appropriate if made at no less than see through value. However, the Executive does not require any particular form of consideration to be offered to holders of Rule 15 securities. In particular, there is no requirement for holders of Rule 15 securities to be offered the same form of consideration as offered under the voting equity offer.

(d) Securities exchange offers

2.8 Where the voting equity offer is a securities exchange offer but offeror securities are not being offered to the holders of Rule 15 securities, the see through value of the Rule 15 securities should normally be calculated by reference to the value of the voting equity offer on the latest practicable date prior to the despatch of the Rule 15 offer or proposal.

2.9 Where the voting equity offer is a securities exchange offer and offeror securities are also being offered to the holders of Rule 15 securities, the Executive will require the exchange ratio offered to holders of Rule 15 securities to be no less favourable than that offered under the voting equity offer. This is illustrated in the following Example 4:

Example 4

Offeror G offers two new offeror G shares for each ordinary share in offeree company H. Each offeree company H convertible preference share entitles the holder to convert that share into one ordinary share in offeree company H. If offeror G wishes to offer new offeror G shares to holders of offeree company H convertible preference shares, the Executive will require the exchange ratio of the Rule 15 offer or proposal to be no worse than the "two for one" ratio offered to holders of offeree company H ordinary shares.

(e) "Time value" and adjustment mechanisms

2.10 Rule 15 does not require an "appropriate" offer or proposal to reflect the ability of holders of Rule 15 securities to exercise a conversion, option or subscription right over a period time.

2.11 However, where the rights attached to Rule 15 securities include an adjustment mechanism which affects the exercise terms of the securities in the event of an offer for the offeree company, an "appropriate" offer or proposal should normally take the adjusted exercise terms into account. If the adjusted

exercise terms are not capable of immediate determination, the Executive should be consulted.

(f) Alternative offers

2.12 Where alternative voting equity offers are made, the see through value of any Rule 15 securities should normally be calculated by reference to the voting equity offer with the highest value as at the latest practicable date prior to the despatch of the Rule 15 offer or proposal, even if that offer has ceased to be open for acceptance by existing offeree company shareholders by that time.

(g) Equality of treatment

2.13 The final sentence of Rule 15(a) states that "Equality of treatment is required." The equality of treatment required is as between holders of the same class of Rule 15 security and not as between (i) holders of different classes of Rule 15 securities, or (ii) holders of Rule 15 securities and shareholders in the offeree company.

3. Independent advice and views of the offeree company board

3.1 Under Rule 15(b), the board of the offeree company must obtain competent independent advice on a Rule 15 offer or proposal and the substance of such advice must be made known to the holders of Rule 15 securities, together with the board's views on the offer or proposal. In certain circumstances, however, as indicated in Section 4 below, it may not be practicable for a Rule 15 offer or proposal to be despatched until after the voting equity offer becomes or is declared wholly unconditional, by which time the board of the offeree company will be under the control of the offeror.

3.2 The Executive expects the board of the offeree company to take appropriate steps at the outset of the voting equity offer to ensure that Rule 15(b) will be complied with at the time when any Rule 15 offer or proposal is made, for example, by ensuring that the mandate of the adviser retained pursuant to

Rule 3 will extend to advising on any Rule 15 offer or proposal. In the event that there are no independent directors on the board of the offeree company at the time when the Rule 15 offer or proposal is made, the board of the offeree company must nevertheless obtain independent advice on the offer or proposal and make the substance of such advice known to the holders of Rule 15 securities.

4. Despatch of a Rule 15 offer or proposal

4.1 Under Rule 15(c), whenever practicable, the offer or proposal should be sent to holders of Rule 15 securities at the same time as the offer document is published. If this is impracticable, the Executive should be consulted and the Rule 15 offer or proposal sent as soon as possible thereafter.

4.2 The Executive will take all relevant factors into account in considering when it is practicable for a Rule 15 offer or proposal to be sent to holders of Rule 15 securities. If the Rule 15 offer or proposal is not sent to holders of Rule 15 securities at the same time as the offer document in relation to the voting equity offer, the Executive will normally expect it to be sent, at the latest, as soon as possible after the voting equity offer becomes or is declared wholly unconditional.

5. "Exercise and accept" proposals

5.1 Note 1 on Rule 15 provides that:

(i) all relevant documents, announcements and other information sent to offeree shareholders and persons with information rights in connection with the voting equity offer must also, where practicable, be sent simultaneously to holders of Rule 15 securities; and

(ii) if holders of Rule 15 securities are able to exercise their rights during the course of the voting equity offer, and to accept the voting equity

offer in respect of the resulting shares, their attention should be drawn to this in the relevant documents.

5.2 Where holders of Rule 15 securities are able to exercise their conversion, option or subscription rights prior to or upon the voting equity offer becoming or being declared wholly unconditional, the Executive will normally regard a proposal that such holders exercise their rights and accept the voting equity offer (an "exercise and accept" proposal) as being appropriate for the purposes of Rule 15(a).

5.3 However, where alternative voting equity offers are made, an exercise and accept proposal may not satisfy an offeror's obligations under Rule 15 if the alternative offer with the highest value (see paragraph 2.12 above) ceases to be open for acceptance at any time earlier than the end of the 21 day period referred to in paragraph 6.2 below, even if the holders of the Rule 15 securities in question had been able to exercise their conversion, option or subscription rights when that higher alternative offer was open for acceptance. This is because such holders should not be required to exercise their conversion, option or subscription rights in advance of knowing whether or not the offer for the voting equity will be successful. The Executive should be consulted in such circumstances.

5.4 Where an offeror's obligations under Rule 15 are to be satisfied by way of an "exercise and accept" proposal, this fact should be stated clearly in the relevant documents issued to holders of the Rule 15 securities pursuant to Note 1 on Rule 15. In addition, the Executive regards Rule 15(b) as requiring the board of the offeree company to obtain separate independent advice on the "exercise and accept" proposal and to make such advice known to the holders of Rule 15 securities, together with the board's views on the proposal.

6. Rule 15 offer or proposal to be open for at least 21 days

6.1 The Executive's practice is normally to require a Rule 15 offer or proposal to be open for at least 21 days following the date on which the relevant documentation is sent to holders of Rule 15 securities.

6.2 The Executive notes that Rule 31.4 provides, broadly, that after the voting equity offer has become or is declared unconditional as to acceptances, it must remain open for acceptance for not less than 14 days after the date on which it would otherwise have expired. Notwithstanding this, if the only "appropriate" Rule 15 offer or proposal made by an offeror is an "exercise and accept" proposal, the Executive's practice is normally to require the voting equity offer to remain open for not less than 21 days after the later of:

(i) the date on which the documentation setting out the "exercise and accept" proposal is sent to the holders of the Rule 15 securities ; and

(ii) the date on which the voting equity offer becomes or is declared wholly unconditional.

7. Rule 16

7.1 See through value is the minimum value at which a Rule 15 offer or proposal must be made in order for it to be appropriate and it is therefore normally permissible for a Rule 15 offer or proposal to be made at above that minimum value.

7.2 Rule 16 provides that, except with the consent of the Panel, an offeror may not make arrangements with offeree company shareholders if there are favourable conditions attached which are not being extended to all shareholders. Therefore, where:

(i) certain persons are both holders of Rule 15 securities and also offeree company shareholders; and

(ii) a Rule 15 offer or proposal is made at a value which is higher than see through value,

the Executive will be concerned to ensure that the Rule 15 offer or proposal does not have the effect of affording such persons favourable treatment (when compared to other shareholders) as prohibited by Rule 16.

The Executive should be consulted in the case of any doubt in relation to any of the above points.

Practice Statements are issued by the Executive to provide informal guidance to companies involved in takeovers and practitioners as to how the Executive normally interprets and applies relevant provisions of the Code in certain circumstances. Practice Statements do not form part of the Code. Accordingly, they are not binding on the Executive or the Panel and are not a substitute for consulting the Executive to establish how the Code applies in a particular case. All Practice Statements issued by the Executive are available on the Panel's website at www.thetakeoverpanel.org.uk.

10 July 2008
Amended 30 March 2009