

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2013/4

Profit forecasts, quantified financial benefits statements and material changes in information

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, Articles 2, 3 and 4 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 and sections 340A, 340B and 340C of the Companies (Guernsey) Law, 2008, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 30 September 2013, in accordance with the Appendix to this instrument.

In the Appendix, except as otherwise stated, underlining indicates new text and striking-through indicates deleted text.

Lindsay Tomlinson
Chairman of the Code Committee
for and on behalf of the Code Committee

24 July 2013

APPENDIX

DEFINITIONS

Cash offeror

An offeror (or potential offeror) which has announced, or in respect of which the offeree company has announced, that its offer is, or is likely to be, solely in cash. A non-convertible debt instrument will normally be treated as cash.

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Dealings

...

NOTES ON DEALINGS

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2. Securities borrowing and lending

Securities borrowing and lending transactions are not regarded as dealings. However, under Rule 4.6, if an offeror, the offeree company or any person acting in concert with an offeror or the offeree company enters into, or takes action to unwind, a securities borrowing or lending transaction (including any financial collateral arrangement of the kind referred to in Note 4 on Rule 4.6) in respect of relevant securities of ~~an~~ a securities exchange offeror (~~other than a cash offeror~~) or, with the Panel's consent, the offeree company, the transaction must be disclosed as if it were a dealing in relevant securities (see Note 5(l) on Rule 8).

...

Ordinary course profit forecast

A profit forecast published by the offeree company or a securities exchange offeror in accordance with its established practice and as part of the ordinary course of its communications with its shareholders and the market.

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Profit estimate

A profit forecast for a financial period which has expired and for which audited results have not yet been published.

Profit forecast

A form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word “profit” is not used.

Quantified financial benefits statement

A quantified financial benefits statement is either:

(a) a statement by a securities exchange offeror or the offeree company quantifying any financial benefits expected to accrue to the enlarged group if the offer is successful; or

(b) a statement by the offeree company quantifying any financial benefits expected to accrue to the offeree company from cost saving or other measures and/or a transaction proposed to be implemented by the offeree company if the offer is withdrawn or lapses.

...

Securities exchange offeror

An offeror (or potential offeror) other than a cash offeror.

Rule 2.9**2.9 ANNOUNCEMENT OF AN OFFER OR POSSIBLE OFFER TO BE PUBLISHED VIA A RIS**

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(b) If the announcement is published outside normal business hours, it must be submitted as required, for release as soon as the relevant service RIS re-opens; it must also be distributed to not less than two national newspapers and two newswire services in the UK.

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NOTES ON RULE 2.9

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2. *Other Rules*

Announcements made under Rules 2.11, 6.2(b), 7.1, 8 (Notes 6 and 12(a)), 9.1 (Note 9), 11.1 (Note 6), 12.2(b)(ii)(A), 17.1, 24.1, 25.1, 27.1(a), 31.2, 31.6(a) (Note 1(b)), 31.6(c), 31.7 (Note 2), 31.8 (Note), 31.9, 32.1(a), 32.6(a), Appendix 1.6, Appendix 5.5, Appendix 7.3, Appendix 7.6 and Appendix 7.8 must also be published in accordance with the requirements of ~~this Rule~~ 2.9.

Rule 4.6

4.6 SECURITIES BORROWING AND LENDING TRANSACTIONS BY OFFERORS, THE OFFEREE COMPANY AND THEIR CONCERT PARTIES

...

(b) During an offer period, where a person subject to Rule 4.6(a) enters into or takes action to unwind a securities borrowing or lending transaction in respect of relevant securities of an a securities exchange offeror (~~other than a cash offeror~~) or, with the consent of the Panel, the offeree company, the transaction must be disclosed as if it were a dealing in those relevant securities (see Note 5(l) on Rule 8).

NOTES ON RULE 4.6

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2. *Notice in lieu of disclosure*

Where a person subject to Rule 4.6 wishes to enter into or take action to unwind more than one lending transaction in respect of relevant securities of an a securities exchange offeror (~~other than a cash offeror~~) or, with the consent of the Panel, the offeree company, the Panel may instead require that person to give public notice that he might do so.

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4. *Financial collateral arrangements*

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If, during an offer period, a person subject to Rule 4.6 grants a right of use, or enters into or takes action to unwind a title transfer collateral arrangement in respect of relevant securities of an a securities exchange offeror (~~other than a cash offeror~~) or, with the consent of the Panel, the offeree company, the transaction must be disclosed as if it were a dealing in relevant securities (see Note 5(l) on Rule 8).

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

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8.1 DISCLOSURE BY AN OFFEROR

- (a) An offeror must make a public Opening Position Disclosure:
- (i) after the announcement that first identifies it as an offeror;
and
 - (ii) after the announcement that first identifies a competing securities exchange offeror ~~(other than a cash offeror)~~.
- (b) An offeror must also make a public Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period for its own account or for the account of discretionary investment clients.

(See also Note 12 below.)

8.2 DISCLOSURE BY THE OFFEREE COMPANY

- (a) An offeree company must make a public Opening Position Disclosure:
- (i) after the commencement of the offer period; and
 - (ii) if later, after the announcement that first identifies any securities exchange offeror ~~(other than a cash offeror)~~.
- (b) An offeree company must also make a public Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period for its own account or for the account of discretionary investment clients.

8.3 DISCLOSURE BY PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE

- (a) Any person who at the relevant time (see Note 7(a) below) is interested (directly or indirectly) in 1% or more of any class of relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror must make a public Opening Position Disclosure:

- (i) after the commencement of an offer period; and
- (ii) if later, after the announcement that first identifies any securities exchange offeror ~~(other than a cash offeror)~~.

(b) Any person who is (or as a result of any dealing becomes) interested (directly or indirectly) in 1% or more of any class of relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror must make a public Dealing Disclosure if he deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period.

...

8.4 DISCLOSURE BY CONCERT PARTIES

A person acting in concert with any party to an offer must make a public Dealing Disclosure if he deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period for his own account or for the account of discretionary investment clients. (See also Note 12 below.)

8.5 DISCLOSURE BY EXEMPT PRINCIPAL TRADERS

(a) An exempt principal trader connected with an offeror which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in, or right to subscribe for, any relevant securities of ~~any party to the offer other than a cash offeror~~ the offeree company or any securities exchange offeror in a proprietary capacity must make a public Opening Position Disclosure:

- (i) after the announcement that first identifies the offeror with which it is connected as an offeror; and
- (ii) after the announcement that first identifies a competing securities exchange offeror ~~(other than a cash offeror)~~.

(b) An exempt principal trader connected with the offeree company which does not have recognised intermediary status or which does have recognised intermediary status but which holds any interest or short position in, or right to subscribe for, any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror in a proprietary capacity must make a public Opening Position Disclosure:

- (i) after the commencement of the offer period; and

(ii) if later, after the announcement that first identifies any securities exchange offeror ~~(other than a cash offeror)~~.

(c) An exempt principal trader connected with a party to the offer must make a public Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period, stating the following details:

...

8.6 DISCLOSURE BY EXEMPT FUND MANAGERS WITH NOINTERESTS IN SECURITIES OF ANY PARTY TO THEOFFER REPRESENTING 1% OR MORE DEALING FORDISCRETIONARY CLIENTS

(a) An exempt fund manager connected with a party to the offer must make a private Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror for the benefit of discretionary investment clients during an offer period.

...

8.7 DISCLOSURE OF NON-DISCRETIONARY DEALINGS BYPARTIES AND CONCERT PARTIES

A party to the offer and any person acting in concert with it must make a private Dealing Disclosure if it deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror during an offer period for the account of non-discretionary investment clients (other than a non-discretionary client that is a party to the offer or any person acting in concert with it).

NOTES ON RULE 8

1. *Cash offerors*

Shares or other securities of a cash offeror will not be treated as “relevant securities” for the purposes of Rule 8.

Following an announcement by a cash offeror that its offer is being revised to become (or that its possible offer may be) a securities exchange offer, Opening Position Disclosures and Dealing Disclosures will be required in the same way as if the announcement had been the first to identify the offeror as ~~an~~ a securities exchange offeror ~~which was not a cash offeror~~.

2. Timing of disclosure

(a) Disclosures by the parties to the offer

(i) Subject to ...

...

If a party to the offer deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror before midnight on the day before the relevant deadline in the paragraphs above, ...

...

(b) Disclosures by persons with interests in securities representing 1% or more

(i) Subject to ...

However, if a person required to make an Opening Position Disclosure under Rule 8.3(a) deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror before midnight on the day before the deadline in the previous paragraph, he must instead make a Dealing Disclosure under Rule 8.3(b) by no later than 3.30 pm on the business day following the date of the dealing. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.3(a).

...

(d) Disclosures by exempt principal traders

(i) Subject to ...

However, if an exempt principal trader required to make an Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b) deals in any relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror before midnight on the day before the deadline in the previous paragraph, it must instead make a Dealing Disclosure under Rule 8.5(c) by no later than 12 noon on the next business day. In such a case, it will not also be necessary to make a separate Opening Position Disclosure under Rule 8.5(a) or Rule 8.5(b).

...

4. *Disclosure in relation to more than one party*

(a) *Opening Position Disclosures*

Subject to paragraphs (i) to (iii) below, when an Opening Position Disclosure is made, the details in Note 5 below must be disclosed in relation to the relevant securities of ~~each party to the offer (other than a cash offeror)~~ the offeree company and any securities exchange offeror at the same time.

However:

...

(ii) (except where the disclosure is an Opening Position Disclosure by an offeror or the offeree company) no disclosure is required in respect of positions in the relevant securities of a party to the offer if full details of positions in each class of that party's relevant securities have previously been publicly disclosed under Rule 8 (and have not changed). An Opening Position Disclosure by an offeror or the offeree company, though, must include the details in Note 5 in relation to the relevant securities of the offeree company and any securities exchange offeror ~~each party to the offer (other than a cash offeror)~~, even if certain details have previously been disclosed by the offeror or offeree company or persons acting in concert with the offeror or the offeree company (as the case may be), in accordance with Rule 8; and

...

(b) *Dealing Disclosures*

Subject to the following sentence, when a Dealing Disclosure is made the details in Note 5 below must be disclosed in relation to the relevant securities of ~~each party to the offer (other than a cash offeror)~~ the offeree company and any securities exchange offeror at the same time. ...

...

5. *Details to be included in the disclosure*

...

(l) *Securities borrowing and lending*

An Opening Position Disclosure by a party to the offer must include details of any relevant securities of the offeree company and any securities exchange offeror ~~(other than a cash offeror)~~ which the party making the disclosure 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. In addition, a Dealing Disclosure by a party to the offer or any person acting in concert with a party to the offer must include details of any relevant securities

of the offeree company and any securities exchange offeror (~~other than a cash offeror~~) which the person making the disclosure has borrowed or lent, save for any borrowed relevant securities which have been either on-lent or sold.

...

7. Time for calculating a person's interests etc.

(a) Under Rule 8.3(a), an Opening Position Disclosure is required if the person is interested in 1% or more of any class of relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror at the time of the announcement that commences the offer period or the time of the announcement that first identifies an offeror (as the case may be).

(b) Under Rule 8.3(b), a Dealing Disclosure is required if the person dealing is interested in 1% or more of any class of relevant securities of ~~any party to the offer (other than a cash offeror)~~ the offeree company or any securities exchange offeror at midnight on the date of the dealing or was so interested at midnight on the previous business day.

...

12. Potential offerors

...

(c) After the announcement that first identifies a potential offeror as such, it will be required to make an Opening Position Disclosure in accordance with Rule 8.1(a)(i). Such disclosure must include details in relation to the relevant securities of the offeree company or any securities exchange offeror ~~each party to the offer (other than a cash offeror)~~, even if certain details have previously been disclosed by the potential offeror or persons acting in concert with it in accordance with Rule 8.3.

Rule 19.1

19.1 STANDARDS OF CARE

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NOTES ON RULE 19.1

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5. *Quotations*

A quotation (eg ~~for example,~~ from a newspaper or a broker's circular) must not be used by a party to the offer out of context and details of the origin must be included.

Since the use of a quotations will necessarily carry the implication that the ~~comments quoted are~~ quotation is endorsed by the party to the offer using it the board, such ~~comments~~ quotations must not be ~~quoted~~ used unless the ~~board~~ party is prepared, where appropriate, to corroborate or substantiate them and they are covered by the directors' responsibility statement ~~is included~~. See also Note 6 on Rule 28.1 with regard to investment analyst and other third party forecasts.

...

~~9. Merger benefits statements~~

[the current Note 9 on Rule 19.1 is not shown and is to be deleted in its entirety]

Rule 20.1

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

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NOTES ON RULE 20.1

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2. *Media interviews*

Parties to an offer must take particular care not to disclose new material in interviews or discussions with the media. If, notwithstanding this Note, any new information is published as a result of such an interview or discussion, ~~a circular must be sent to shareholders and persons with information rights and, where appropriate, paid newspaper space taken as required by Note 3 below~~ an announcement giving all relevant details must be made as soon as possible thereafter (see also Note 1 on Rule 19.1). Where appropriate, the Panel may, in addition, require a document to be sent to shareholders and persons with information rights and made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s).

3. Meetings

...

If, notwithstanding the above, any material new information or significant new opinion does emerge at the meeting, an announcement giving all relevant details must be made as soon as possible thereafter. Where appropriate, the Panel may, in addition, require a document to ~~a circular giving details must be sent to shareholders and persons with information rights and made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s) as soon as possible thereafter: in the final stages of an offer it may be necessary to make use of paid newspaper space as well as a circular. The circular or advertisement must include the directors' responsibility statement.~~ If such new information or opinion is not capable of being substantiated as required by the Code (eg for example, a profit forecast), this must be made clear and it must be formally withdrawn in the circular or advertisement.

...

Rule 23

23.1 SUFFICIENT INFORMATION

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NOTES ON RULE 23.1

~~1. — Material changes~~

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

~~2. — Offers conditional on shareholder action~~

...

23.3 FINANCIAL ADVISERS' CONSENT TO INCLUSION OF ADVICE, OPINIONS AND REPORTS

If any document or announcement published in connection with an offer includes:

(a) a recommendation or an opinion the substance of the advice given to the board of the offeree company or to an offeror by of a the

independent financial adviser for or against acceptance of the offer, appointed under Rule 3.1 or Rule 3.2;

(b) reports on a profit forecast or a quantified financial benefits statement given by reporting accountants and any financial adviser in accordance with Rule 28; or

(c) an opinion on value given by an independent valuer in accordance with Rule 29,

the document or announcement must, ~~unless published by the financial adviser in question,~~ include a statement that each of the financial adviser(s), the reporting accountants and/or the independent valuer (as appropriate) has given and not withdrawn its consent to the inclusion of its advice, report or opinion (as the case may be) in the relevant document ~~publication of the document with the inclusion of its recommendation or opinion~~ in the form and context in which it is included.

Rule 24

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

Except with the consent of the Panel:

(a) where the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to trading on a UK regulated market or on AIM or the ISDX Growth Market, the offer document must contain:

...

(iv) details of the website address where any ~~interim statement and/or preliminary announcement made~~ statement of annual results, half-yearly financial report or interim financial information published since the date of its last published audited accounts have been published and a statement that any such ~~statement, or announcement~~ report or information has been incorporated into the offer document by reference to that website in accordance with Rule 24.15;

(v) in the case of a securities exchange offer, a description of any known significant change in its financial or trading position which has occurred since the end of the last financial period for which ~~either audited~~ accounts, a preliminary statement of annual results, a half-yearly financial report ~~financial information or interim financial information~~ has been published, or provide an appropriate negative statement;

...

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

...

(xv) ...; ~~and~~

(xvi) ...; and

(xvii) any profit forecast or quantified financial benefits statement, and any related reports or confirmations, required by Rule 28;

...

24.4 INTERESTS AND DEALINGS

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NOTES ON RULE 24.4

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4. *Competing offerors*

Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 24.4(a)(iii) and (iv), 24.4(b) and 24.4(c) must be included in relation to the relevant securities of each securities exchange offeror or potential offeror ~~(other than any cash offeror)~~.

Rule 25

25.3 FINANCIAL AND OTHER INFORMATION

The offeree board circular must contain a description of any known significant change in the financial or trading position of the offeree company which has occurred since the end of the last financial period for which ~~either audited accounts, a preliminary statement of annual results, a half-yearly financial report~~ financial information or interim financial information has been published, or provide an appropriate negative statement.

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25.4 INTERESTS AND DEALINGS

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NOTES ON RULE 25.4

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2. Competing offerors

Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 25.4(a)(i), (iii) and (iv) must be included in relation to the relevant securities of each securities exchange offeror or potential offeror ~~(other than any cash offeror)~~. Similarly, where more than one offeror has announced an offer in accordance with Rule 2.7, the details required by Rule 25.4(a)(v) must be included in respect of each offer.

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~~25.7 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT, AND DOCUMENTS PUBLISHED ON A WEBSITE~~ OTHER INFORMATION

The offeree board circular must contain:

...

(b) ... ; **and**

(c) ... ; **and**

(d) any profit forecast or quantified financial benefits statement and any related reports or confirmations required by Rule 28.

Rule 26.2

26.2 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE MAKING OF AN OFFER

Except with the consent of the Panel, copies of the following documents must be published on a website from the time the offer document or offeree board circular, as appropriate, is published (or, if later, the date of the relevant document) until the end of the offer (including any related competition reference period):

...

(c) **any written consents of the—an independent financial advisers to the inclusion of its advice in the relevant document in the form and context in which it is included (Rule 23.3(a));**

...

(e) where a profit forecast or quantified financial benefits statement has been published made:

(i) the reports of the ~~auditors or consultant reporting~~ accountants and of the financial advisers (Rules ~~28.3~~ 28.1(a) and (b)); and

(ii) ~~the letters giving the written consents of the auditors or consultant reporting accountants and of the financial advisers to the publication of the relevant document with the inclusion of their reports in the relevant document in the form and context in which it is they are included (Rule 23.3(b)) and, if appropriate, to the continued use of the report in a subsequent document~~ the confirmations that their reports continue to apply (Rules 28.4 and 28.5 Rule 27.2(d));

(f) where an asset valuation has been published made:

(i) the valuation certificate and associated report or schedule containing details of the aggregate valuation (Rule 29.5(c)); and

(ii) ~~a letter stating that the valuer has given and not withdrawn his consent to the publication of his name in the relevant document (Rule 29.5(b))~~ the written consent of the independent valuer to the inclusion of its opinion on value in the relevant document in the form and context in which it is included (Rule 23.3(c)) and, if appropriate, the confirmation that its report continues to apply (Rule 27.2(d));

...

Rule 27

[the current Rule 27 is not shown and is to be deleted in its entirety; the new Rule 27 set out below is not shown in underlined text]

RULE 27. MATERIAL CHANGES AND SUBSEQUENT DOCUMENTS

27.1 MATERIAL CHANGES

(a) Except with the consent of the Panel, following the publication of the initial offer document or offeree board circular (as appropriate) and until the end of the offer period, the offeror or the offeree company (as appropriate) must promptly announce:

(i) any changes in information disclosed in any document or announcement published by it in connection with the offer which are material in the context of that document or announcement; and

(ii) any material new information which would have been required to have been disclosed in any previous document or announcement published during the offer period, had it been known at the time.

(b) Where an announcement is required to be made under Rule 27.1(a), the Panel may, in addition, require a document setting out the relevant information to be:

(i) sent to shareholders in the offeree company and persons with information rights; and

(ii) made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s).

27.2 SUBSEQUENT DOCUMENTS

(a) If, following the publication of the initial offer document or offeree board circular (as appropriate) and before the end of the offer period, an offeror or the offeree company publishes any subsequent document in connection with the offer, that document must include:

(i) any changes in information disclosed in any previous document published by it in connection with the offer which are material in the context of that document (or a statement that there have been no such material changes); and

(ii) details of any material changes to the matters listed in Rule 27.2(b) (in the case of an offeror) or in Rule 27.2(c) (in the case of the offeree company) which have occurred since the publication of any previous document published by it in connection with the offer (or a statement that there have been no such material changes).

(b) In the case of an offeror, the matters referred to in Rule 27.2(a)(ii) are as follows:

(i) its intentions with regard to the matters referred to in Rule 24.2;

(ii) any known significant change in its or the offeree company's financial or trading position (to the extent required under Rule 24.3(a)(v));

- (iii) material contracts (Rule 24.3(a)(vii));**
 - (iv) ratings and outlooks (Rule 24.3(c));**
 - (v) the terms of the offer (Rule 24.3(d)(v));**
 - (vi) any agreements or arrangements which relate to the invocation of the conditions to its offer (Rule 24.3(d)(ix));**
 - (vii) irrevocable commitments and letters of intent (Rule 24.3(d)(x));**
 - (viii) any offer-related arrangements etc. permitted under, or excluded from, Rule 21.2 (Rule 24.3(d)(xv));**
 - (ix) profit forecasts and quantified financial benefits statements (Rule 24.3(d)(xvii));**
 - (x) financing arrangements (Rule 24.3(f));**
 - (xi) interests and dealings in relevant securities (Rule 24.4);**
 - (xii) the effect of the offer on the emoluments of the offeror's directors (Rule 24.5);**
 - (xiii) any special arrangements, including management incentivisation arrangements (Rule 16.2 and Rule 24.6);**
 - (xiv) the ultimate owner of any securities acquired (Rule 24.9);**
 - (xv) any arrangements of the kind referred to in Note 11 on the definition of acting in concert (Rule 24.13); and**
 - (xvi) fees and expenses (to the extent required under Rule 24.16).**
- (c) In the case of the offeree company, the matters referred to in Rule 27.2(a)(ii) are as follows:**
- (i) its opinion on the offer and the other matters referred to in Rule 25.2(a);**
 - (ii) the substance of the independent financial adviser's advice (Rule 25.2(b));**
 - (iii) any known significant changes in its financial or trading position (Rule 25.3);**
 - (iv) interests and dealings in relevant securities (Rule 25.4);**

- (v) the service contracts of the offeree company's directors (Rule 25.5);
 - (vi) any arrangements of the kind referred to in Note 11 on the definition of acting in concert (Rule 25.6);
 - (vii) material contracts (Rule 25.7(a));
 - (viii) irrevocable commitments and letters of intent (Rule 25.7(b));
 - (ix) profit forecasts and quantified financial benefits statements (Rule 25.7(d)); and
 - (x) fees and expenses (to the extent required under Rule 25.8).
- (d) If any document or announcement published by the offeror or the offeree company included a profit forecast, a quantified financial benefits statement or an asset valuation, any document subsequently published by that party in connection with the offer must, unless superseded by information included in the new document, include a statement by the directors of that party confirming:
- (i) that the profit forecast, quantified financial benefits statement or asset valuation (as appropriate) remains valid;
 - (ii) where reports were obtained on a profit forecast or quantified financial benefits statement, that the reporting accountants and financial adviser(s) have confirmed that their reports continue to apply; and
 - (iii) where an opinion on value was obtained on an asset valuation, that the independent valuer has confirmed that its opinion continues to apply.

Rule 28

[the current Rule 28 is not shown and is to be deleted in its entirety; the new Rule 28 set out below is not shown in underlined text]

SECTION K. PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS

RULE 28

NB The requirements of Rule 28 do not apply to a profit forecast or a quantified financial benefits statement published by a cash offeror.

28.1 REQUIREMENTS FOR PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS

(a) Except with the consent of the Panel, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes a profit forecast or a quantified financial benefits statement, the document or announcement in which the forecast or statement is first published must include:

(i) a report from its reporting accountants stating that, in their opinion, the forecast or statement has been properly compiled on the basis stated and (in the case of a profit forecast only) that the basis of accounting used is consistent with the company's accounting policies; and

(ii) a report from its financial adviser(s) stating that, in its (or their) opinion, the forecast or statement has been prepared with due care and consideration.

(b) Except with the consent of the Panel, if the offeree company or a securities exchange offeror published a profit forecast before the offer period commenced but after it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must repeat the profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(c) Except with the consent of the Panel, and subject to Note 3 (management buy-outs and offers by controllers), if the offeree company or a securities exchange offeror published a profit forecast before it received or made an approach with regard to a possible offer, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must:

(i) repeat the profit forecast and include a statement by the directors that it remains valid and confirmations by the directors that the profit forecast has been properly compiled on the basis of the assumptions stated and that the basis of accounting used is consistent with the company's accounting policies (the "directors' confirmations"); or

(ii) include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case; or

(iii) include a new profit forecast for the relevant period and the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

(d) See also Rule 28.2(b).

NOTES ON RULE 28.1

1. Targets etc.

A statement described as a “target”, “budget” or similar will normally be treated as a profit forecast, even if it is stated that it is not an indication of the likely level of profits, unless it is clear that the statement is no more than aspirational.

2. Ordinary course profit forecasts

(a) Subject to Note 3, if the offeree company or a securities exchange offeror published an ordinary course profit forecast at any stage before the offer period commenced, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to, must satisfy the requirements of Rule 28.1(c)(i), (ii) or (iii) (as appropriate).

(b) Subject to Note 3, if, during an offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror publishes an ordinary course profit forecast, the document or announcement in which the ordinary course profit forecast is first published must normally include the reports from its reporting accountants and financial adviser(s) required by Rule 28.1(a)(i) and (ii). However, with the agreement of each of the other parties to the offer, the Panel will normally consent to the disapplication of the requirement for reports, in which case the document or announcement must include the directors’ confirmations required by Rule 28.1(c)(i).

(c) The Panel must be consulted if the offeree company or a securities exchange offeror considers that a profit forecast should be treated as an ordinary course profit forecast.

3. Management buy-outs and offers by controllers

Where the offer is a management buy-out or similar transaction or is being made by the existing controller or group of controllers:

(a) the Panel will not normally grant a dispensation from the requirements of Rule 28.1(a) or (b) (as appropriate) with regard to any profit forecast (including an ordinary course profit forecast) by the offeree company for a financial period ending 15 months or less from the date on which the profit forecast is, or was, first published; and

(b) where the profit forecast was published by the offeree company before it received an approach with regard to a possible offer, the offer document, or any earlier document or announcement published during the offer period in which the profit forecast is referred to, will normally be required to repeat the

profit forecast and include the reports from its reporting accountants and financial adviser(s) specified in Rule 28.1(a)(i) and (ii).

4. *Where the application of Rule 28 would be disproportionate or otherwise inappropriate*

(a) The Panel may grant a dispensation from the requirements of Rule 28 if it considers that the application of the Rule to the profit forecast would be disproportionate or otherwise inappropriate, for example:

(i) where the profit forecast states only a maximum figure for the likely level of profits for a particular financial period; or

(ii) in the case of an offeror, where the consideration securities will not represent a material proportion of its enlarged share capital or, alternatively, a material proportion of the value of the offer.

(b) Factors which the Panel might take into account when considering whether to grant a dispensation under paragraph (a) above include:

(i) the reason for the publication of the profit forecast, including whether it was (or would be) an ordinary course profit forecast (see Note 2);

(ii) whether the terms of the profit forecast are general or specific;

(iii) whether the offer has been recommended by the board of the offeree company and (in the case of an offeror) whether a competing offer or possible offer has been announced; and

(iv) in the case of paragraph (a)(i) (i.e. a profit “ceiling”), whether the offer is a management buy-out or similar transaction or is being made by an existing controller or group of controllers of the offeree company.

5. *Profit forecast for part of a business*

Except with the consent of the Panel, Rule 28 applies in the same way to a profit forecast which relates to any part of the business of the offeree company or a securities exchange offeror as to a profit forecast which relates to the group as a whole.

6. *Investment analyst and other third party forecasts*

Except as provided in Rules 28.7 and 28.8, if in any document or announcement the offeree company or a securities exchange offeror refers to or quotes from a profit forecast relating to it published by an investment analyst or other third party, including a consensus forecast, it will be treated as having endorsed and published that profit forecast. The requirements of Rule 28.1 will then apply.

28.2 PROFIT FORECASTS FOR FUTURE FINANCIAL PERIODS

(a) The Panel will normally grant a dispensation from the requirement to include reports from reporting accountants and the financial adviser(s) in the case of a profit forecast for a financial period ending more than 15 months from the date on which it is, or was, first published. Where such a dispensation is granted, the offer document or offeree board circular (as appropriate), or any earlier document or announcement published during the offer period in which the profit forecast is referred to or first published, must include the directors' confirmations referred to in Rule 28.1(c)(i). Alternatively, in the case of a profit forecast which was published before the offer period commenced, the document or announcement may include a statement by the directors that the profit forecast is no longer valid and an explanation of why that is the case.

(b) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), the offeree company or a securities exchange offeror either publishes for the first time or repeats a profit forecast for a future financial year, the document or announcement must include a corresponding profit forecast for the current financial year and for each intervening financial year. The requirements of Rule 28.1(a), (b) or (c)(i) (as appropriate) will apply to each such forecast for a financial year ending 15 months or less from the date on which it is, or was, first published and the requirements of Rule 28.2(a) will normally apply to each such forecast for a financial year ending more than 15 months from the date on which it is, or was, first published.

NOTE ON RULE 28.2

Other financial periods

The requirements of Rule 28.2(b) will also apply where the offeree company or a securities exchange offeror publishes a profit forecast for a financial period other than a financial year.

28.3 COMPILATION OF PROFIT FORECASTS AND QUANTIFIED FINANCIAL BENEFITS STATEMENTS

(a) Any profit forecast or quantified financial benefits statement must be properly compiled and must be prepared with due care and consideration. The profit forecast or quantified financial benefits statement, and the assumptions on which it is based, are the responsibility of the relevant party to the offer and its directors.

(b) A profit forecast (and the assumptions stated) or a quantified financial benefits statement (and the details included in accordance with Rule 28.6) must be:

- (i) **understandable: it must not be so complex or include such extensive disclosure that it cannot be readily understood;**
 - (ii) **reliable: it must be supported by a thorough analysis of the offeree company's and/or the offeror's business and must represent factual and not hypothetical strategies, plans and risk analysis; and**
 - (iii) **comparable (in the case of a profit forecast only): it should be capable of justification by comparison with outcomes in the form of historical financial information.**
- (c) **A forecast of profit before tax should disclose separately any non-recurrent items and tax charges if they are expected to be abnormally high or low.**

28.4 ASSUMPTIONS AND BASES OF BELIEF

- (a) **When a profit forecast is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement must include the principal assumptions on which the profit forecast is based.**
- (b) **The assumptions included for a profit forecast or bases of belief included for a quantified financial benefits statement should provide useful information as to its reasonableness and reliability. They must:**
- (i) **be readily understandable;**
 - (ii) **be specific and precise; and**
 - (iii) **not relate to the general accuracy of the estimates underlying the profit forecast or the quantified financial benefits statement.**
- (c) **There must be a clear distinction between assumptions or bases of belief about factors which the directors (or other members of the company's management) can influence and those which they cannot influence.**

28.5 PROFIT ESTIMATES

Rule 28.1 does not apply to a profit estimate included in:

- (a) **a preliminary statement of annual results which complies with the relevant provisions of the UKLA Rules;**

(b) a half-yearly financial report which complies with the relevant provisions of the UKLA Rules, the AIM Rules for Companies or the ISDX Growth Market Rules for Issuers; or

(c) an interim management statement, or other interim financial information, which is published by virtue of a regulatory requirement and which has been prepared in accordance with the reporting framework set out in International Accounting Standard 34.

NOTES ON RULE 28.5

1. Preliminary statements of annual results

Where an unaudited preliminary statement of annual results is published by an offeree company or a securities exchange offeror whose securities are admitted to trading on a recognised investment exchange but to which the relevant provisions of the UKLA Rules do not apply, the Panel may nonetheless treat the exemption from the requirements of Rule 28.1 as applying if it is satisfied that the statement complies with the substance of those provisions.

2. Other circumstances in which a dispensation may be granted

Where an offeree company or a securities exchange offeror publishes, or has published, a profit estimate in accordance with a regulatory requirement which does not qualify for an exemption under Rule 28.5, the Panel may, in appropriate circumstances, grant a dispensation from the requirements of Rule 28.1 (for example, where an overseas company prepares a half-yearly financial report under a framework equivalent to that in IAS 34 and consistent with that which it adopts for its statement of annual results). The Panel should be consulted in such cases.

28.6 DISCLOSURE REQUIREMENTS FOR QUANTIFIED FINANCIAL BENEFITS STATEMENTS

When a quantified financial benefits statement is included in any document or announcement published during an offer period (or in an announcement which commences an offer period), the document or announcement must include:

(a) the bases of belief supporting the statement (identifying the principal assumptions and sources of information);

(b) an analysis, explanation and quantification of the constituent elements sufficient to enable the context and relative importance of those elements to be understood;

(c) a base figure where any comparison is made with historical financial performance or with existing cost bases and structures;

- (d) details of any disbenefits expected to arise;
- (e) in the case of a statement falling under paragraph (a) of the definition of a “quantified financial benefits statement”, a statement that the expected financial benefits will accrue as a direct result of the success of the offer and could not be achieved independently of the offer;
- (f) an indication of when the financial benefits are expected to be realised;
- (g) an indication of whether the expected financial benefits will be recurring, clearly identifying any non-recurring benefit(s); and
- (h) the recurring and non-recurring costs of realising the expected financial benefits.

NOTES ON RULE 28.6

1. Cost saving measures announced before the offer period

(a) *Cost saving measures published by the offeree company prior to the offer period are not subject to Rule 28, even if they are repeated by the offeree company during the offer period. However, if, during the offer period, the offeree company revises any cost saving measures published prior to the offer period, the revised cost saving measures will be treated as a quantified financial benefits statement, such that Rule 28.1(a) will then apply.*

(b) *The Panel should be consulted if an offeree company proposes to publish a statement with regard to new cost saving measures after it has received an approach but prior to the commencement of an offer period. If the Panel considers that the new cost saving measures are being published as a result of the approach, it may determine that the statement should be treated as if it were a quantified financial benefits statement published during the offer period, save that compliance with the requirements of Rule 28.1(a) may be deferred until the publication of the offeree board circular.*

2. Statements by the offeree company

The Panel will not normally permit an offeree company to publish a statement quantifying the financial benefits expected to accrue from an offer by a particular offeror unless the statement is published with the consent of that offeror, in which case the requirements of Rule 28.1 will apply. However, the offeree company will be permitted to publish its views on any quantified financial benefits statement published by an offeror.

28.7 PUBLICATION OF INVESTMENT ANALYSTS’ FORECASTS ON WEBSITES

- (a) **Where, during the offer period, the offeree company or a securities exchange offeror publishes on its website profit forecasts relating to it that**

are derived from investment analysts' forecasts, the forecasts on the website must be based on all forecasts provided by investment analysts who have published such forecasts, excluding:

- (i) any forecasts which pre-date the publication of the company's latest preliminary statement of annual results or half-yearly financial report (as appropriate); and
 - (ii) any forecasts by investment analysts whose employer is controlled by, controls or is under the same control as any party to the offer or a connected adviser to any party to the offer.
- (b) In addition to the exclusions in paragraph (a), an investment analyst's forecast may exceptionally be excluded from the forecasts on the company's website if it is wholly anomalous or has been prepared on a wholly different basis from that of the other investment analysts.
- (c) Except with the consent of the Panel, the following requirements must be complied with (failing which, all investment analysts' forecasts must be removed from the website upon the commencement of the offer period):
- (i) for each line in respect of which forecasts are published on the website, the highest and lowest figures forecast by any investment analyst must be stated, together with the arithmetic mean of all investment analysts' forecasts (a "*consensus forecast*");
 - (ii) the name of each organisation whose forecasts have been included in the calculation of the consensus forecast, and the dates of the forecasts, must be stated;
 - (iii) if any analyst's forecast has been excluded from the calculation of the consensus forecast, the name of the organisation, the date of the forecast and the reason for its exclusion, must be stated;
 - (iv) during the offer period, the relevant section of the website must be kept up-to-date by including any new forecasts promptly after their publication and promptly excluding any forecasts which pre-date the publication of the latest preliminary statement of annual results or half-yearly financial report; and
 - (v) it must be prominently stated that the investment analysts' forecasts are not endorsed by the company and that they have not been reviewed or reported on in accordance with the requirements of Rule 28.1(a).
- (d) Subject to Rule 28.8, any reference to or quotation from a consensus or other third party forecast, other than publishing investment

analysts' forecasts on a website in accordance with the requirements of this Rule 28.7, will be subject to Note 6 on Rule 28.1.

NOTE ON RULE 28.7

Source data

Where party B has published consensus forecasts on its website in accordance with Rule 28.7, and party A wishes to refer to those consensus forecasts in accordance with Rule 28.8, the source data used by party B to compile the consensus forecasts must, on request, promptly be made available to party A.

28.8 REFERENCES TO CONSENSUS FORECASTS RELATING TO ANOTHER PARTY TO THE OFFER

(a) Except with the consent of the Panel, if, during the offer period (or in an announcement which commences an offer period), a party to the offer ("party A") wishes to refer to investment analysts' forecasts relating to any other party to the offer ("party B"), party A must refer to either:

(i) a consensus forecast (see Rule 28.7(c)) published on party B's website in accordance with the requirements of Rule 28.7; or

(ii) if no such consensus forecast has been published on party B's website, a consensus forecast compiled by party A in accordance with the requirements of Rule 28.7.

(b) Where party A has referred to a consensus forecast relating to party B, any subsequent reference to that consensus forecast by party B will not be subject to Rule 28.1(a), provided that party B does not endorse the consensus forecast.

(c) Any document or announcement which includes a reference by party A to a consensus forecast relating to party B must make clear whether or not the reference is being made with the agreement or approval of party B. Where the consensus forecast is referred to in any document or announcement which is published by party A with the agreement or approval of party B, or at a time when the offer is a recommended offer, the consensus forecast will be treated as having been endorsed and published by party B and Rule 28.1(a) will therefore apply.

Rule 31.9

31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39

The board of the offeree company should not, except with the consent of the Panel (which should be consulted in good time), announce any material new information, (including trading results, profit forecasts (including ordinary course profit forecasts), or dividend forecasts, asset valuations,

quantified financial benefits statements and proposals for dividend payments or for any material acquisition or disposal, after the 39th day following the publication of the initial offer document. ...

Rule 32.1

32.1 PUBLICATION OF REVISED OFFER DOCUMENT

...

NOTES ON RULE 32.1

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

Where an offer involves an exchange of equity or potential equity, the announcement by an offeror of any material new information, (including trading results, profit forecasts (including ordinary course profit forecasts), or dividend forecasts, asset valuations, ~~merger-quantified financial benefits statements and proposals for dividend payments or for any material acquisition or disposal,~~) may have the effect of increasing the value of the offer. An offeror will not, therefore, normally be permitted to make such announcements after it is precluded from revising its offer. If an announcement of a kind referred to in this Note might fall to be made during the offer period, the Panel must be consulted at the earliest opportunity and an offeror will not be permitted to make a no increase statement as defined in Rule 32.2 prior to the publication of the announcement.

Appendix 1

4 WHITEWASH CIRCULAR

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

...

(m) Rule 25.7 (other information~~material contracts, irrevocable commitments and letters of intent, and list of documents published on a website~~);

...

(o) Rules 28 and 29 (profit forecasts, quantified financial benefits statements and asset valuations relating to the offeree company or relating to assets being acquired by the offeree company).