



NOTE TO ADVISERS IN RELATION TO INITIAL PUBLIC OFFERINGS OR ADMISSIONS TO TRADING

1. Code requirements

- 1.1 Paragraph (i) of [**section 3\(a\) of the Introduction**](#) to the Takeover Code (the “**Code**”) provides that the Code applies to any company which has its registered office in the UK, the Channel Islands or the Isle of Man if any of its [**securities**](#) are admitted to trading on a [**UK regulated market**](#)¹, a [**UK MTF**](#)², or a stock exchange in the Channel Islands or the Isle of Man³.
- 1.2 As set out in paragraph (i) of [**section 3\(e\) of the Introduction**](#), where a company is considering an initial public offering (an “**IPO**”) or admission to trading of its securities as a result of which the Code would then apply to the company under paragraph (i) of [**section 3\(a\) of the Introduction**](#), it must make appropriate disclosure in respect of the Code in the admission document, including an explanation of the application of [**Rule 9**](#) and disclosure of details of any person, or group of persons acting in concert, that will be, or is expected to become, interested in shares carrying 30% or more of the voting rights of the company. The Panel must be consulted so that guidance can be given on the appropriate disclosure.
- 1.3 In summary, [**Rule 9.1**](#) requires a person to make a mandatory offer for a company if the person acquires an interest in shares which (when taken together with shares in which the person, or any person acting in concert with it, is already interested) either:
 - (a) carries 30% or more of the voting rights of the company ([**Rule 9.1\(a\)**](#)); or
 - (b) increases their aggregate interests in shares in the company carrying voting rights from within the 30% to 50% band ([**Rule 9.1\(b\)**](#)).
- 1.4 [**Presumption \(10\) of the definition of “acting in concert”**](#) provides that “*shareholders in a private company or members of a partnership ... who, in connection with an initial public offering or otherwise, become shareholders in a company to which the Code applies*” are presumed to be acting in concert with each other. The circumstances in which the Panel Executive (the “**Executive**”) may or may not be likely to agree to the rebuttal of [**presumption \(10\) of the definition of “acting in concert”**](#) were summarised in Section 5(c) of [**RS 2022/2**](#) (Presumptions of the definition of “acting in concert” and related matters).

¹ The relevant UK regulated markets are the Main Markets operated by the London Stock Exchange and Aquis Stock Exchange

² The relevant UK MTFs are the London Stock Exchange’s AIM market and the Aquis Growth Market

³ The relevant stock exchange in the Channel Islands is The International Stock Exchange

1.5 Paragraph (a) of [**Note 6 of the Notes on Dispensations from Rule 9**](#) (“**Note 6**”) provides that, where a company is considering an IPO or admission to trading of its securities and the company either:

- (a) has issued, or will issue prior to becoming subject to the Code, shares or securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares, the issue, conversion or exercise of which might otherwise result in an obligation for a person to make an offer under **Rule 9.1**; or
- (b) has, or will have prior to becoming subject to the Code, a class of shares with enhanced voting rights where each such share carries multiple votes, and a specific person might otherwise incur an obligation to make an offer under **Rule 9.1** upon the occurrence of a Trigger Event (as defined in [**Rule 37.2**](#)), whether such Trigger Event is the expiry of a time limit for the enhanced voting rights or otherwise,

the Panel will normally grant a dispensation from the potential obligation to make an offer under **Rule 9.1** (a “**Rule 9 dispensation by disclosure**”) in the circumstances described, provided that appropriate disclosure is made in the admission document.

2. Procedure to be followed

2.1 Where a company is considering an IPO or admission to trading as referred to in paragraph (i) of **section 3(e) of the Introduction**, the advisers to the company should:

- (a) contact the Executive to inform it of the proposed IPO or admission to trading;
- (b) consider the application of **presumption (10) of the definition of “acting in concert”** (and the **definition of “acting in concert”**, including the other presumptions, more generally) and make a submission to the Executive in relation to the conclusions of the advisers and the board of directors;
- (c) if relevant, make a submission to the Executive in relation to any request for a Rule 9 dispensation by disclosure under **Note 6**; and
- (d) amend the pro forma drafting in the **Annex** to take account of the particular facts of the situation and send the relevant draft section(s) of the admission document to the Executive for approval.

2.2 Advisers should provide the Executive with a copy of the final admission document and confirm to the Executive when the admission to trading occurs.

ANNEX

Initial public offering or admission to trading of the securities of a company which will fall within paragraph (i) of section 3(a) of the Introduction

The Takeover Code (the “**Code**”) will apply to [company name] (the “**Company**”) from [admission]. Under Rule 9 of the Code, any person who acquires an interest in shares which, taken together with shares in which that person or any person acting in concert with that person is interested, carry 30% or more of the voting rights of a company which is subject to the Code is normally required to make an offer to all the remaining shareholders to acquire their shares.

Similarly, when any person, together with persons acting in concert with that person, is interested in shares which in the aggregate carry not less than 30% of the voting rights of such a company but does not hold shares carrying more than 50% of the voting rights of the company, an offer will normally be required if such person or any person acting in concert with that person acquires a further interest in shares which increases the percentage of shares carrying voting rights in which that person is interested.

Further, under Rule 37.1 of the Code, when a company redeems or purchases its own shares, any resulting increase in the percentage of voting rights carried by the shares in which a person, or group of persons acting in concert, is interested will be treated as an acquisition of interests in shares carrying voting rights for the purpose of Rule 9.1.

An offer under Rule 9 must be made in cash at the highest price paid by the person required to make the offer, or any person acting in concert with such person, for any interest in shares of the company during the 12 months prior to the announcement of the offer.

[The following wording should be included where there is a concert party which will be, or is expected to become, interested in shares carrying 30% or more of the voting rights of the Company:]

The Company has agreed with the Panel that the following persons are acting in concert with each other in relation to the Company:

[provide details of the members of the concert party and the nature of the relationship between them].

Following [admission], the members of the concert party will be interested in [] shares, representing []% of the voting rights of the Company. [Assuming exercise in full by the members of the concert party of *[insert details of any convertible securities, warrants, options or subscription rights]* (and assuming that no other person converts any convertible securities or exercises any options or any other right to subscribe for shares in the Company), the members of the concert party would be interested in []

shares, representing []% of the enlarged voting rights of the Company.⁴ A table showing the respective individual interests in shares of the members of the concert party on [admission] [and following the exercise of the *[convertible securities, warrants, options or subscription rights]*] is set out below.

[The following wording should be included where the concert party will hold shares carrying more than 50% of the voting rights of the Company:]

Following [admission], the members of the concert party will hold shares carrying more than 50% of the voting rights of the Company and (for so long as they continue to be acting in concert) no obligation to make an offer under Rule 9 will normally arise from acquisitions of interests in shares carrying voting rights by any member of the concert party.

[Alternatively, the following wording should be included where the concert party will be interested in shares carrying 30% or more of the voting rights of the Company, but will not hold shares carrying more than 50% of the voting rights of the Company:]

Following [admission], the members of the concert party will be interested in shares carrying 30% or more of the voting rights of the Company but will not hold shares carrying more than 50% of the voting rights of the Company. For so long as they continue to be acting in concert, any increase in their aggregate interests in shares will be subject to the provisions of Rule 9.

*[The exercise by the members of the concert party of the *[convertible securities, warrants, options or subscription rights]* described above would normally trigger an obligation for an offer to be made under Rule 9. However, the Panel has agreed to waive this obligation such that there will be no requirement for an offer to be made in respect of the exercise of such *[convertible securities, warrants, options or subscription rights]*.]*

⁴ This drafting assumes that a Rule 9 dispensation by disclosure on IPO is being sought under paragraph (a)(i) of Note 6 of the Notes on Dispensations from Rule 9. In the event that a dispensation is sought under paragraph (a)(ii) of Note 6 (because the Company will have a dual class share structure and a specific person might otherwise incur an obligation to make an offer under Rule 9.1 upon the occurrence of a Trigger Event), advisers should provide bespoke drafting for review by the Executive.