PCP 2025/1 3 July 2025

THE TAKEOVER PANEL

DUAL CLASS SHARE STRUCTURES, IPOS AND SHARE BUYBACKS

PUBLIC CONSULTATION BY THE CODE COMMITTEE

OVERVIEW OF PCP 2025/1

Following the FCA's amendments to the Listing Rules in 2024, the PCP proposes:

In relation to companies with a dual class share structure ("DCSS"):

- A **framework for the application of the Takeover Code to a DCSS company**, i.e. a company which has, in addition to voting ordinary shares, a class of shares ("*Class B*" or "*special*" shares) with an enhanced level of voting rights or control as compared to the ordinary shares. The new framework is primarily applicable to a structure (referred to as "*DCSS 1*") where the Class B shares carry multiple votes per Class B share from the point of issue, and are extinguished or converted to ordinary shares on particular trigger events, e.g. a "*time sunset*", retirement or resignation of a Class B shareholder, or transfer of the Class B shares.

- New provisions to **clarify the application of the mandatory offer requirement to a DCSS 1 company where a shareholder's percentage of voting rights is increased as a consequence of a trigger event** (Section 2(d)). Although such an "*Affected Shareholder*" may incur a mandatory offer obligation, the Affected Shareholder may not be required (in practice) to make a mandatory offer. This is because:

    - on a trigger event other than a time sunset, the Panel will normally grant a dispensation if the Affected Shareholder is an "*innocent bystander*", in line with the Code's framework for share buybacks;

    - in the context particularly of a time sunset, the Panel will have the ability to grant a "*Rule 9 dispensation by disclosure*" on an IPO in relation to a specific Affected Shareholder who might otherwise be required to make a mandatory offer following a trigger event (see **IPOs** below); and

    - the Panel will otherwise consider whether it is appropriate to grant a dispensation at the time of the mandatory offer obligation arising, subject to the Affected Shareholder disposing of sufficient interests in shares to take it back below the relevant threshold.

- New provisions to **make an acceptance condition to a contractual offer for a DCSS 1 company subject to two tests**, taking account of the voting rights position (i) immediately before the relevant Class B or special shares convert or are extinguished and (ii) immediately after the relevant Class B or special shares convert or are extinguished (Section 3).

- Minor changes to other Rules, including to require the Panel to be consulted so as to ensure that shareholders in a DCSS company are protected against an offeror offering a special deal with favourable conditions to a Class B or special shareholder (Section 4).

In relation to IPOs:

- New provisions to **require a company to make disclosures in respect of the Code and any controlling shareholders (and their concert parties) on an IPO**, and to consult the Panel for guidance on that disclosure (Section 5(b)).

- The **codification of the ability of the Panel to grant a "*Rule 9 dispensation by disclosure*"** in accordance with the Panel Executive's existing practice (Section 5(c)).

In relation to share buybacks:

- Amendments to **make the rules clearer and more concise**, and amendments to **the provisions relating to "*disqualifying transactions*"** to remove restrictions on a company carrying out a share buyback under an annual shareholder authority (Section 6).

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HOW TO RESPOND

The Code Committee of the Takeover Panel (the "**Code Committee**") invites comments on this Public Consultation Paper ("**PCP**") by Friday, 26 September 2025.

Comments may be sent by email to: supportgroup@thetakeoverpanel.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee
The Takeover Panel
One Angel Court
London EC2R 7HJ

All responses to formal consultation will be published on the Panel's website at www.thetakeoverpanel.org.uk unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

1. Introduction and summary

(a) Introduction

1.1 In this PCP, the Code Committee proposes a framework for the application of the Takeover Code (the "**Code**") to companies with a dual class share structure (a "**DCSS**").

1.2 The PCP also proposes:

(a) the introduction of a requirement for a company, in the context of an initial public offering (an "**IPO**"), to make appropriate disclosure in relation to the application of the Code to the company; and

(b) certain amendments to **Rule 37** in relation to the redemption or purchase by a company of its own securities (a "**share buyback**").

(b) Dual class share structures

(i) Background

1.3 Since 1968, the Code has required separate offers to be made for each class of shares where an offer is made for a company with more than one class of shares. Since 1972, the Code has required a separate and comparable offer to be made for each class of equity share capital, regardless of whether the class carries voting rights (as currently set out in **Rule 14**). Where a company has a class of non-voting equity shares, this Rule ensures that an offeror cannot acquire control of the offeree company by making an offer to holders of the voting shares and making either no offer, or an offer at a price that is not comparable, to the holders of non-voting equity shares.

1.4 A company with a DCSS (see paragraph 1.7) has, in addition to a class of voting ordinary shares, a class of shares (i.e. "Class B" or "special" shares) with an enhanced level of voting rights or control as compared to the ordinary shares.

1.5 Typically, the purpose of a DCSS is to grant a founder or other major shareholder (or a group of such persons) enhanced voting rights and/or protection against a change of control of the company even though they will hold a smaller proportion of the economic rights in the company, rather than to facilitate an enhanced economic return (as compared to the ordinary shares) for any transfer of the Class B or special shares on a change of control. This is different to a company with a class of non-voting equity shares where the shares have economic rights but no voting rights. While **Rule 14** applies to companies with more than one class of equity shares, it is primarily intended to protect the holders of the non-voting equity shares, rather than the holders of the ordinary shares.

1.6 In 2024, the FCA amended the Listing Rules with the aim of encouraging a wider range of companies to choose to list, raise capital, and grow in the UK, while maintaining high standards of market integrity and consumer protection. As a result, companies with a DCSS may now list in the single segment for equity shares of commercial companies (the "**ESCC category**").[1] Following these amendments to the Listing Rules, the Code Committee considers this to be an appropriate time to clarify how the Code applies to companies with a DCSS.

(ii) Forms of DCSS

1.7 A DCSS can take a variety of forms and will typically be established before, or at the time of, an IPO. The principal structures seen to date in the UK market (some of the examples of which have now expired) are as follows:

(a) Class B shares held by one or more shareholders which carry multiple votes per Class B share (i.e. on all resolutions[2]) from the point of issue, and which are extinguished or converted to ordinary shares on particular trigger events (referred to in this PCP as "**DCSS 1**"). Examples of DCSS 1 companies have included Deliveroo plc and Wise PLC;

(b) a single special share which confers effective majority or veto rights on some or all resolutions from the point of issue, and which is extinguished on particular trigger events ("**DCSS 2**"). Examples of DCSS 2 companies have included S4 Capital PLC and Castelnau Group Limited; and

(c) a single special share which confers effective majority or veto rights on some or all resolutions from the point of a third party obtaining control of a majority of the ordinary shares, and which is extinguished on particular trigger events ("**DCSS 3**"). Examples of DCSS 3 companies have included THG PLC and Oxford Nanopore Technologies plc.

1.8 A company may adopt any number of modifications to the features of a DCSS, including in respect of voting ratios, voting restrictions and the list of resolutions to which enhanced voting rights apply. In addition, the types of DCSS used in the UK market are likely to evolve over time. Therefore, while the amendments to the Code proposed in this PCP are informed by the three DCSS categories described in paragraph 1.7, the Code

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[1] Other UK quoted companies that are subject to the Code (e.g. companies quoted on AIM or Aquis) are not subject to the relevant Listing Rules that apply to the ESCC category, but will be subject to separate listing or exchange rules that may legislate for companies with a DCSS.

[2] Subject to, where relevant, applicable listing or exchange rules. In the ESCC category, there are some matters for which enhanced voting is not accepted under the Listing Rules, i.e. any resolution to approve an issue of shares at a discount of over 10%, a delisting, a transfer between listing categories or an employee share scheme.

Committee considers that the proposed new provisions should be principles-based, so as to allow the Panel to apply them flexibly to different types of DCSSs.

1.9 In terms of the framework proposed in this PCP for the application of the Code to DCSSs, the majority of the issues and the proposed amendments to the Code relate to DCSS 1 companies, where the Class B shareholder(s) will, as a result of each Class B share carrying multiple votes, hold a specific and identifiable percentage of the company's voting rights. The application of the Code to DCSS 2 and DCSS 3 companies, where the special shareholder does not hold a specific and identifiable percentage of the company's voting rights, is also explained in this PCP, although the Code Committee considers that it is not necessary to make material amendments to the Code to take account of DCSS 2 and DCSS 3 structures.

1.10 Although DCSS 2 and DCSS 3 structures are different from each other in terms of when the rights of the special share take effect, under the proposals a substantially similar framework will apply to a DCSS 2 company and a DCSS 3 company, as in each case there is a single special share that will normally confer effective majority or veto rights on some or all resolutions. Therefore, each of **Sections 2 to 4** of this PCP explains the relevant framework for DCSS 2 and DCSS 3 companies together, rather than separately.

1.11 The "**trigger events**" which will cause a particular DCSS to be extinguished, or the Class B or special share(s) to convert into ordinary shares, will vary. Common examples of trigger events seen to date in the UK market include:

(a) a "**time sunset**" of a specified number of years after the company's IPO[3];

(b) the transfer of the Class B or special share(s) to any other person;

(c) the retirement or resignation of the holder of the Class B or special share(s), or if they otherwise cease to be a director or employee of the company;

(d) the death of the holder of the Class B or special share(s);

(e) the holder of the Class B or special share(s) ceasing to hold at least a specified percentage of the ordinary shares in the company; and

(f) an offer for the company by a person other than the holder of the Class B or special share(s) itself becoming unconditional (but not in the case of DCSS 3).

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[3] Following the changes to the FCA's Listing Rules in 2024, there is no requirement for a time sunset for a company in the ESCC category for most types of Class B or special shareholder (and, to the extent a time sunset is required by the Listing Rules, it can be up to ten years).

1.12 The Code is primarily concerned with the passing of "control" of a company to which the Code applies (a "**Code company**"), as determined by the level of a person's interests in shares carrying voting rights and defined by reference to the voting rights that are currently exercisable at a general meeting of the company. The establishment of a DCSS will give rise to issues in relation to the level of a person's voting rights, and therefore potentially as to the control of a Code company. This PCP addresses the application of the Code to DCSS companies and does not seek to address situations where a company and its shareholders adopt a structure other than a DCSS to confer on a person some degree of "control" in another sense (e.g. a contractual right under a shareholders' agreement or a relationship agreement for a shareholder to appoint a majority of the company's directors).

(c) Summary of proposals and structure of this PCP

(i) DCSSs

1.13 **Section 2** explains the application of **Rule 9** (the mandatory offer requirement) to a company with a DCSS and proposes certain amendments to reflect this.

1.14 It explains that **Rule 9.1** (and the Code) is unlikely to apply at the time of the establishment of the DCSS since the issue of the Class B or special shares is likely to occur prior to the company becoming a Code company, i.e. prior to the admission to trading of the company's securities.

1.15 If, as a result of the extinguishing or conversion of Class B shares upon a trigger event in a DCSS 1 company, a shareholder's proportional voting rights increase, it is proposed that this should be treated as an "**acquisition**" of interests in shares for the purposes of **Rule 9.1**. A shareholder would therefore incur an obligation to make a mandatory offer under **Rule 9.1** if it, together with persons acting in concert with it, thereby becomes interested in shares carrying 30% or more of the voting rights of a company or increases its aggregate interests in shares in the company carrying voting rights from within the 30%-50% band, i.e. it crosses a "**Rule 9 threshold**".

1.16 However, it is proposed that the Panel will normally grant a dispensation from the resulting mandatory offer obligation unless:

(a) the trigger event is the expiry of a time sunset (albeit that a "**Rule 9 dispensation by disclosure**" may be available as per paragraph 1.18); or

(b) at the time it acquired interests in shares in the company, the shareholder had reason to believe that a trigger event (other than a time sunset) would occur.

1.17 The proposed framework for a DCSS 1 company would be consistent with the "**innocent bystander**" principle in **Rule 37.1** in respect of share buybacks (which is explained in **Section 2**). In reaching the view that the innocent bystander principle should apply to this situation, the Code Committee is mindful that a liability to make a mandatory offer in all circumstances in which a shareholder crosses a Rule 9 threshold as a result of the occurrence of a trigger event might be disproportionate.

1.18 In addition, it is proposed that, at the time of an IPO, the Panel will be able to grant a "**Rule 9 dispensation by disclosure**" to a specific shareholder (or group of shareholders acting in concert) in a DCSS 1 company from the obligation to make a mandatory offer that may otherwise arise upon the occurrence of a time sunset (or other trigger event), provided that:

(a) the IPO admission document sets out appropriate disclosure of the maximum percentage of voting rights that the shareholder would hold following the time sunset (or other trigger event), based on the share capital of the company as at the point of IPO; and

(b) except with the consent of the Panel, there have been no additional acquisitions of interests in shares by the shareholder, or any person acting in concert with it, between the admission to trading of the company's securities and the time sunset (or other trigger event). It is proposed that consent to an acquisition of interests in shares not invalidating a Rule 9 dispensation by disclosure will normally be given where the Panel is satisfied that, if the acquisition were to have occurred following a trigger event, it would not have required the shareholder, or any person acting in concert with it, to make a mandatory offer (e.g. where the acquisition was as a result of a share buyback or of a subscription for new securities that was either pro rata, such as a rights issue, or subject to a separate Rule 9 waiver).

1.19 **Section 3** explains the application of **Rule 10.1** (the acceptance condition in a voluntary offer) and **Rule 9.3** (the acceptance condition in a mandatory offer) to a company with a DCSS. It is proposed that the acceptance condition to a contractual offer for a DCSS 1 company should be subject to two tests, both of which would need to be satisfied in order for the offer to become or be declared unconditional:

(a) first, a "pre-unconditional" test, i.e. whether shares carrying more than 50% of the voting rights immediately before the relevant enhanced voting shares convert or are extinguished have been acquired by the offeror or accepted to the offer ("**Test 1**"); and

(b) secondly, and only if Test 1 is passed, a "post-unconditional" test, i.e. whether shares which would carry more than 50% of the voting rights immediately after the

relevant enhanced voting shares convert or are extinguished have been acquired by the offeror or accepted to the offer ("**Test 2**").

1.20 **Section 4** explains the application of certain other provisions of the Code to an offer for a DCSS company.

1.21 In particular:

(a) the requirement for a comparable offer under **Rule 14** is unlikely to apply in many offers for DCSS companies; and

(b) any offer to acquire or cancel the Class B or special shares is likely to constitute a special deal with favourable conditions in breach of **Rule 16.1** if:

(i) where the Class B shares will convert into ordinary shares upon transfer to the offeror, the price offered is above the amount derived from the applicable conversion ratio; or

(ii) where the enhanced voting rights of the Class B or special shares will be extinguished or cannot transfer to the offeror, the price offered is above the nominal value of the shares.

1.22 It is proposed that the disclosures made under **Rule 2.9** (announcement of numbers of relevant securities in issue) and **Rule 17** (announcement of acceptance levels) in respect of an offer for a DCSS 1 company should explain the voting rights attaching to each class of the company's shares. In the case of **Rule 17**, an offeror should provide disclosure with respect to the percentage of voting rights of the company in addition to the percentage shareholdings.

1.23 In respect of **Rule 21.1** (frustrating action), the Code Committee considers that:

(a) the issue of Class B or special shares will not normally be a restricted action under **Rule 21.1** unless the issue of the shares takes place at a time when the company is a Code company and in a "relevant period" (i.e. in an offer period or subject to a current or recent approach); and

(b) the exercise by a director of rights as a shareholder under the Class B or special shares is unlikely to constitute frustrating action.

(ii) IPOs

1.24 **Section 5** proposes the introduction of:

(a) a requirement for a company, in the context of an IPO that would result in it becoming subject to the Code, to make appropriate disclosure in relation to the Code in its admission document, including in respect of **Rule 9** and of any person, or group of persons acting in concert, that is or may become interested in shares carrying 30% or more of the voting rights of the company; and

(b) an ability for the Panel to grant, at the time of a company's IPO that would result in it becoming subject to the Code, a Rule 9 dispensation by disclosure in certain circumstances, provided that appropriate disclosure is made in the IPO admission document.

(iii) Share buybacks

1.25 **Section 6** proposes amendments to **Rule 37** (redemption or purchase by a company of its own securities) to make the rule clearer, more concise and consistent with the proposed amendments in relation to companies with a DCSS. It is also proposed:

(a) to amend the provisions relating to the "**disqualifying transactions**" which preclude a "**Rule 9 waiver**" in relation to a share buyback, which the Code Committee considers can operate in an overly restrictive manner for companies that would otherwise wish to carry out a share buyback under their normal annual shareholder authority;

(b) to introduce a requirement to disclose the maximum percentage of shares carrying voting rights in which the relevant person, or group of persons acting in concert, might become interested where a company is proposing to carry out a share buyback in which the voting rights of an "innocent bystander" might be increased through a Rule 9 threshold; and

(c) to codify the practice that the Panel may treat as an "offer" a share buyback which could result in all or substantially all of the company's shares being held by one person or a group of persons acting in concert.

(iv) Other

1.26 **Section 7** provides an assessment of the impact of the proposals.

1.27 The proposed amendments to the Code are set out in **Appendix A**. Unless otherwise specified, where amendments are proposed, underlining indicates proposed new text and striking-through indicates text that is proposed to be deleted.

1.28 A list of the questions that are put for consultation is set out in **Appendix B**.

1.29 For ease of reference, the **current Rule 37** is set out in **Appendix C**.

(d) Invitation to comment

1.30 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Friday, 26 September 2025 and should be sent in the manner set out at the beginning of this PCP.

(e) Response Statement and implementation date

1.31 The Code Committee intends to publish a Response Statement setting out the final amendments to the Code by the end of 2025.

1.32 It is expected that that the amendments would come into effect in the first quarter of 2026.

2. The mandatory offer requirement in relation to a DCSS company

(a) Introduction

2.1 **Section 2** explains the application of **Rule 9** (the mandatory offer requirement) to a company with a DCSS and proposes certain amendments to reflect this.

2.2 As noted in paragraph 1.7, a DCSS can take a variety of forms. This includes:

(a) **DCSS 1**: Class B shares held by one or more shareholders which carry multiple votes per Class B share (i.e. on all resolutions) from the point of issue, and which are extinguished or converted to ordinary shares on particular trigger events;

(b) **DCSS 2**: a single special share which confers effective majority or veto rights on some or all resolutions from the point of issue, and which is extinguished on particular trigger events; and

(c) **DCSS 3**: a single special share which confers effective majority or veto rights on some or all resolutions from the point of a third party obtaining control of a majority of the ordinary shares, and which is extinguished on particular trigger events.

2.3 In respect of the issue of the Class B or special shares that would be needed to establish any of the above structures, the mandatory offer requirement in **Rule 9.1** will not apply if the issue of the shares occurs prior to the company becoming a Code company, i.e. prior to the admission to trading of the company's securities. However, if the company issues Class B or special shares after it has become a Code company, this may result in a mandatory offer obligation unless the issue of the shares is the subject of a Rule 9 waiver (see paragraph 2.11).

2.4 In respect of the extinguishing or conversion of Class B shares upon a trigger event in a DCSS 1 company, if, as a result, a shareholder's proportional voting rights increase, it is proposed that this should be treated as an "**acquisition**" of an interest in shares for the purposes of **Rule 9.1**. A shareholder would therefore incur an obligation to make a mandatory offer under **Rule 9.1** if it, together with persons acting in concert with it, thereby becomes interested in shares carrying 30% or more of the voting rights of a company or increases its aggregate interests in shares in the company carrying voting rights from within the 30%-50% band.

2.5 However, it is proposed that the Panel will normally grant a dispensation from the resulting mandatory offer obligation unless:

(a) the trigger event is the expiry of a time sunset (albeit that a "**Rule 9 dispensation by disclosure**" may be available as per paragraph 2.6); or

(b) at the time it acquired interests in shares in the company, the shareholder had reason to believe that a trigger event (other than a time sunset) would occur.

2.6 In addition, it is proposed that, at the time of an IPO, the Panel will be able to grant a "**Rule 9 dispensation by disclosure**" to a specific shareholder (or group of shareholders acting in concert) in a DCSS 1 company from the obligation to make a mandatory offer that may arise upon the occurrence of a time sunset (or other trigger event), provided that:

(a) the IPO admission document sets out appropriate disclosure of the maximum percentage of voting rights that the shareholder would hold following the time sunset (or other trigger event), based on the share capital of the company as at the point of IPO; and

(b) except with the consent of the Panel, there have been no additional acquisitions of interests in shares by the shareholder, or any person acting in concert with it, between the admission to trading of the company's securities and the time sunset (or other trigger event). It is proposed that consent to an acquisition of interests in shares not invalidating a Rule 9 dispensation by disclosure will normally be given where the Panel is satisfied that, if the acquisition were to have occurred following a trigger event, it would not have required the shareholder, or any person acting in concert with it, to make a mandatory offer (e.g. where the acquisition was as a result of a share buyback or of a subscription for new securities that was either pro rata, such as a rights issue, or subject to a separate Rule 9 waiver - see paragraph 2.11).

(b) Summary of relevant provisions of the Code

(i) Rule 9.1: the mandatory offer requirement

2.7 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)**).

2.8 **Rule 9.1** does not apply to acquisitions of interests in shares where a person (or a group of persons acting in concert) holds shares carrying more than 50% of the voting rights of the company. In these circumstances, the person (or group of persons acting in concert) is said to have "**buying freedom**", subject to **Note 4 on Rule 9.1**.

2.9 **Note 4 on Rule 9.1** relates to an acquisition of interests in shares by members of a group of persons acting in concert. It provides, among other things, that although a group of persons acting in concert which holds shares carrying over 50% of the voting rights in a company normally has buying freedom, the Panel may in certain circumstances regard a single member of that group as incurring a mandatory offer obligation as a result of an acquisition of an interest in shares:

(a) which is sufficient to increase the shares carrying voting rights in which the member of the group is interested to 30% or more; or

(b) if the member of the group is already interested in 30% or more, which increases the percentage of shares carrying voting rights in which the member of the group is interested,

for example, where the leader of the group or the member with the largest individual interest in shares has changed or where the balance between the interests in the group has changed significantly.

2.10 **Note 11 on Rule 9.1** relates to the reduction or dilution of interests in shares and is referred to as the "**bounce back**" provision. It provides that if a person, or group of persons acting in concert, is interested in shares carrying more than 30% of the voting rights of a company and reduces its interest but not to less than 30%, such person or persons may subsequently acquire an interest in shares without incurring a mandatory offer obligation provided that:

(a) the total number of shares acquired in any period of 12 months does not exceed 1% of the voting share capital at the time of the relevant acquisition; and

(b) the percentage of shares in which the relevant person, or group of persons acting in concert, is interested following any relevant acquisition does not exceed the highest percentage of shares in which such person or group of persons was interested in the 12 months prior to that acquisition.

(ii) Note 1 of the Notes on Dispensations from Rule 9: Rule 9 waivers

2.11 **Note 1 of the Notes on Dispensations from Rule 9** provides that when the issue of new securities by a company as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make an offer under **Rule 9**, the Panel will normally waive the obligation if there is an independent vote at a shareholders' meeting. This is referred to as a "**Rule 9 waiver**".

2.12 The procedure to be followed where the Panel is asked to grant a Rule 9 waiver is set out in **Appendix 1** of the Code.

(iii) Rule 37.1: redemption or purchase by a company of its own securities

2.13 As noted above, the proposed framework for a DCSS 1 company would be consistent with the "innocent bystander" principle in **Rule 37.1** in respect of share buybacks.

2.14 **Rule 37.1** provides that when a company redeems or purchases its own voting shares, any resulting increase in the percentage of shares carrying voting rights in which a person or a group of persons acting in concert is interested will be treated as an "**acquisition**" of an interest in shares for the purpose of **Rule 9**. However, the Panel will normally waive any resulting obligation to make a mandatory offer if there is a vote of independent shareholders and a procedure on the lines of that set out in **Appendix 1** of the Code is followed.

2.15 **Note 1 on Rule 37.1** provides that, by way of exception to the potential mandatory offer obligation referred to in **Rule 37.1**, a person who comes to exceed the limits in **Rule 9.1** in consequence of a share buyback will not normally incur an obligation to make a mandatory offer unless that person is a director, or the relationship of the person with any one or more of the directors is such that the person is, or is presumed to be, acting in concert with any of the directors. This is commonly referred to as the person having "**innocent bystander**" status and the dispensation is granted on the basis that, if the shareholder is not a director or related person, it cannot have been responsible for taking the decision that the company should redeem or purchase its own shares, such that the increase in its percentage shareholding carrying voting rights through a Rule 9 threshold did not occur as a result of any action on its part.

2.16 However, **Note 2 on Rule 37.1** provides that the exception in **Note 1 on Rule 37.1** will not apply, and an obligation to make a mandatory offer may therefore be imposed on a person who would otherwise be an innocent bystander, if the person (or any relevant member of a group of persons acting in concert) has acquired an interest in shares at a time when the person had reason to believe that such a share buyback would take place. In these circumstances, the decision by the person to acquire an interest in shares would have been taken when it had reason to believe that it would subsequently increase its percentage shareholding carrying voting rights through a Rule 9 threshold upon occurrence of the share buyback.

(iv) Rule 9.5: consideration to be offered in a mandatory offer

2.17 **Rule 9.5** provides, in summary, that a mandatory offer must be in cash and at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares during the 12 months prior to the announcement of that offer.

(c) Application of Rule 9.1 where a company issues Class B or special shares

(i) Introduction

2.18 Under **section 3(a) of the Introduction** to the Code, the Code will apply to a company only if its securities have been admitted to trading on a **UK regulated market**, a **UK MTF**, or a stock exchange in the Channel Islands or the Isle of Man (i.e. if the company is "**UK quoted**")[4]. Therefore, if a company adopts a DCSS and issues Class B or special shares prior to becoming UK quoted, the Code will not be relevant to the issue of the Class B or special shares (as the company is not likely to be a Code company at that time).

2.19 Notwithstanding that the Code does not apply to the issue of the Class B or special shares, the company would be expected to disclose relevant details of the DCSS in the IPO admission document in order that potential investors can understand the company's capital and voting structure. **Section 5** proposes the introduction of a requirement for a company in the context of its IPO to make appropriate disclosure in relation to the application of the Code in its admission document.

(ii) DCSS 1 companies

2.20 If, after the time at which it becomes a Code company, a company adopts a DCSS 1 structure and issues Class B shares to a person or a group of persons acting in concert which (when taken together with any interests in ordinary shares) carry 30% or more of the company's voting rights, such person(s) would be required to make a mandatory offer under **Rule 9.1(a)**, unless the issue of the shares was the subject of a Rule 9 waiver.

2.21 Under **Rule 9.1(b)**, if, at any time, a Class B shareholder (together with persons acting in concert with it) is interested in shares carrying 30% or more of a company's voting rights, but does not hold shares carrying more than 50% of the voting rights, the Class B shareholder (and persons acting in concert with it) will not be able to increase the percentage of shares carrying voting rights in which it is interested without incurring an obligation to make a mandatory offer.

2.22 However, if, at any time, a Class B shareholder (together with persons acting in concert with it) holds shares carrying more than 50% of a company's voting rights, the Class B shareholder (and persons acting in concert with it) would have buying freedom and would

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[4] Until 2 February 2027, the Code also applies to a "transition company" (as defined in the **Transitional Appendix** of the Code).

therefore be able to acquire further interests in shares carrying voting rights without incurring an obligation to make a mandatory offer (subject to **Note 4 on Rule 9.1**).

(iii) DCSS 2 and DCSS 3 companies

2.23 Although the holder of a special share in a company with a DCSS 2 or DCSS 3 structure will not, as a general matter, hold a specific and identifiable percentage of the company's voting rights, the Code Committee considers that, in view of the special shareholder's right to block and/or secure the passing of certain specified resolutions at a general meeting, either immediately upon issue or following a majority change of control of the ordinary shares (depending on whether it is a DCSS 2 or DCSS 3 company respectively), the issue of a special share after the time at which the company has become a Code company would normally incur an obligation to make a mandatory offer unless the Panel grants a Rule 9 waiver.

2.24 This is on the basis that, at least in respect of certain resolutions, the special shareholder would, in effect, be interested in shares carrying more than 30% of the company's voting rights that are exercisable at a general meeting for the purposes of the Code's definitions of "voting rights" and "control".

2.25 Following the issue of the special share, however, the Code Committee does not consider that the holder of the special share should generally be treated as holding shares carrying either between 30% and 50% or more than 50% of the company's voting rights, since the rights attaching to the special share are often limited to certain resolutions and may or may not confer effective majority control (rather than negative control alone). In the case of a DCSS 3 company, any such rights would also not become "live" until a change of control of a majority of the ordinary shares.

2.26 Therefore, if a company adopts a DCSS 2 or a DCSS 3 structure, the Code Committee considers that **Rule 9.1** will normally operate in the usual way following the issue of the special share. This means that the holder of the special share:

(a) can acquire interests in ordinary shares up to a level that is less than 30% of the ordinary shares carrying voting rights but cannot acquire interests in ordinary shares carrying voting rights which would increase the percentage of voting rights in which it (together with persons acting in concert with it) is interested to 30% or more without incurring an obligation to make a mandatory offer; and

(b) would not be treated as having buying freedom simply by virtue of holding the special share.

(d) Application of Rule 9.1 where Class B shares are extinguished or convert into ordinary shares

(i) Introduction

2.27 As described in **Section 1**, the "**trigger events**" which will cause Class B or special share(s) to be extinguished or convert into ordinary shares will vary depending on the DCSS company's specific circumstances. Common examples of trigger events that have been seen to date in the UK market for the extinguishing or conversion of special shares include:

(a) the expiry of the time limit for the enhanced voting rights attached to the Class B or special shares (known as a "**time sunset**");

(b) the transfer of the Class B or special share(s) to any other person;

(c) the retirement or resignation of the holder of the Class B or special share(s), or their otherwise ceasing to be a director or employee of the company;

(d) the death of the holder of the Class B or special share(s);

(e) the holder of the Class B or special share(s) ceasing to hold at least a specified percentage of the ordinary shares in the company; and

(f) an offer for the company becoming unconditional (but not in the case of DCSS 3).

2.28 If a trigger event occurs in the context of a company with a DCSS 1 structure and either:

(a) some or all of the Class B shares convert into ordinary shares; or

(b) some or all of the Class B shares (or the voting rights attached to them) are extinguished,

the removal of the enhanced voting rights held by the relevant holder(s) of the Class B shares will result in a reduction of both (i) the company's overall voting rights "denominator" and (ii) the percentage of the company's voting rights held by such shareholder(s).

2.29 As a consequence of the occurrence of the trigger event, the percentage of shares carrying voting rights in which a shareholder other than the relevant Class B shareholder(s) (an "**Affected Shareholder**") is interested will increase (even though the number of shares carrying voting rights in which it is interested will not change).

2.30 In particular, the occurrence of the trigger event may result in the percentage of shares carrying voting rights in which an Affected Shareholder is interested increasing either:

(a) from less than 30% to 30% or more (see **Rule 9.1(a)**); or

(b) from within the 30-50% band (see **Rule 9.1(b)**).

2.31 The below sets out a simplified illustrative scenario:

(a) a company has issued 40 ordinary shares, each carrying one vote, and 6 Class B shares, each carrying 10 votes. The 46 shares in issue therefore carry a total of 100 votes;

(b) the ordinary shares and the Class B shares rank pari passu for income and capital (and therefore have the same economic rights);

(c) the founder of the company holds all 6 of the Class B shares, representing 60/100 or 60% of the voting rights and 6/46 or c.13% of the economic rights;

(d) the other shareholders (including an Affected Shareholder) together hold the 40 ordinary shares, representing 40/100 or 40% of the voting rights and 40/46 or c.87% of the economic rights;

(e) the Affected Shareholder holds 15 out of 40 of the ordinary shares, representing 15/100 or 15% of the voting rights and 15/46 or c.33% of the economic rights;

(f) on a trigger event, the Class B shares convert on a one-for-one basis into ordinary shares. Therefore, following the conversion of the 6 Class B shares into ordinary shares, the 6 ordinary shares held by the founder would carry 6/46 or c.13% of the company's voting rights and the 40 ordinary shares held by other shareholders would carry 40/46 or c.87% of the company's voting rights; and

(g) as such, the Affected Shareholder will then hold 15/46 or c.33% of the company's voting rights and therefore, as a result of the trigger event, its percentage of voting rights will have increased from 15% to c.33%.

2.32 This raises the question of whether, when the voting rights of an Affected Shareholder are increased through the thresholds in **Rule 9.1(a) or Rule 9.1(b)** as a result of a trigger event, the Affected Shareholder should be treated as having incurred an obligation to make a mandatory offer under **Rule 9.1**.

(ii) DCSS 1 companies

2.33 Where a company has a DCSS 1 structure, the Code Committee considers that, in the event of an increase in the percentage of shares carrying voting rights in which an Affected Shareholder is interested following a trigger event which results in some or all of the Class B shares being extinguished or converting into ordinary shares, the

treatment under **Rule 9.1** for such an Affected Shareholder should be similar to the treatment under **Rule 37.1** where the voting rights of an innocent bystander are increased through a Rule 9 threshold as a result of a share buyback (see paragraphs 2.13 to 2.16).

2.34 The Code Committee therefore considers that:

(a) any such percentage increase in the shares carrying voting rights in which the Affected Shareholder is interested should be treated as an "**acquisition**" of such interests for the purposes of **Rule 9.1**; but

(b) where the voting rights of an Affected Shareholder are increased through a Rule 9 threshold as a result of the occurrence of an unexpected trigger event, the obligation for the Affected Shareholder to make a mandatory offer to all other shareholders in the company may not be appropriate.

2.35 The Code Committee considers that the Panel should normally grant such an Affected Shareholder a dispensation from the requirement to make a mandatory offer as an innocent bystander unless either:

(a) **the trigger event is the expiry of a time sunset**. This is on the basis that the expiry of a time sunset is a foreseeable circumstance and it is therefore reasonable to expect an Affected Shareholder to manage its interests in the company's shares in anticipation of the time sunset so as to avoid incurring an obligation to make a mandatory offer (albeit that a "**Rule 9 dispensation by disclosure**" may be available as per paragraph 2.44); or

(b) **at the time it acquired interests in shares in the company, the Affected Shareholder had reason to believe that a trigger event (other than a time sunset) would occur**. This would be similar to the existing approach in **Note 2 on Rule 37.1** where the percentage of voting rights in which a person (other than a director or related person) is interested is increased through a Rule 9 threshold as a result of a share buyback, i.e. that the person will benefit from innocent bystander status unless it acquired interests in shares at a time where it had reason to believe that such a share buyback would take place.

2.36 In reaching the view that the innocent bystander principle should apply to this situation, the Code Committee is mindful that a liability to make a mandatory offer in all circumstances in which a shareholder crosses a Rule 9 threshold as a result of the occurrence of a trigger event might be disproportionate.

2.37 Consistent with the approach taken in the application of **Note 2 on Rule 37.1**, the Code Committee considers that an Affected Shareholder would have "*reason to believe that a*

trigger event (other than a time sunset) would occur" if, at the time at which it acquired shares in the company, the Affected Shareholder had either private knowledge or public notice of the relevant trigger event (e.g. the forthcoming resignation of a founder who held Class B shares).

2.38 The Code Committee understands that the Panel Executive (the "**Executive**") will be particularly concerned with the acquisition of interests in existing shares, and may be willing to grant an innocent bystander dispensation where it is satisfied that, if the acquisition were to have occurred following a trigger event, it would not have required the shareholder, or any person acting in concert with it, to make a mandatory offer (e.g. where the acquisition was as a result of a share buyback or a subscription for new securities that was either pro rata, such as a rights issue, or subject to a separate Rule 9 waiver, as further explained in paragraph 2.50 in the context of a Rule 9 dispensation by disclosure on IPO).

2.39 In the circumstances described in paragraphs 2.35(a) or (b) – i.e. where an Affected Shareholder crosses a Rule 9 threshold either upon the expiry of a time sunset or where it had reason to believe that the trigger event would occur at a time it acquired shares – the Affected Shareholder would not be considered to be an innocent bystander. The Affected Shareholder would therefore be required to make a mandatory offer for the company unless the Panel:

(a) had previously granted a "**Rule 9 dispensation by disclosure**" at the time of the company's IPO (explained in **Section 2(e)**); or

(b) granted a specific dispensation under **section 2(c) of the Introduction** to the Code at the time of the mandatory offer obligation arising because the Panel considered that **Rule 9.1** would operate unduly harshly in the particular circumstances. The Code Committee considers that any such dispensation should normally be subject to the Affected Shareholder disposing of sufficient interests in shares to reduce the percentage of shares carrying voting rights in which it is interested to below the relevant Rule 9 threshold.

2.40 The Code Committee considers that, while an Affected Shareholder would normally be likely to be independent of a shareholder whose Class B shares are extinguished or convert into ordinary shares on a trigger event, the test in paragraph 2.35(a) or (b) as to whether an Affected Shareholder is an innocent bystander should apply when any Affected Shareholder's voting rights are increased through a Rule 9 threshold on a trigger event, regardless of whether the Affected Shareholder also holds Class B shares or is a director of the company. As a matter of practice, however, the Code Committee understands that, if the Affected Shareholder was a holder of Class B shares or a director of the company, the Executive would expect to apply particular scrutiny to whether the

Affected Shareholder had, at the time at which it acquired shares in the company, any reason to believe that the trigger event would occur. For example, a co-founder or fellow director might be expected to have advance notice of the intention of the holder of the Class B shares to resign as a director.

2.41 In the light of the above, the Code Committee proposes to introduce a **new Rule 37.2**, as follows:

> "**37.2 DUAL CLASS SHARE STRUCTURES**
>
> **(a) Where a company has a class of shares with enhanced voting rights where each such share carries multiple votes, and an event occurs which causes some or all of those shares (or the voting rights carried by such shares) either to be extinguished or to convert into ordinary shares (a "Trigger Event"), 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 for the purpose of Rule 9.1.**
>
> **(b) The Panel will normally grant a dispensation from any resulting obligation on such a person to make a mandatory offer unless:**
>
> > **(i) the Trigger Event is the expiry of any time limit applicable to the enhanced voting rights; or**
> >
> > **(ii) the person, or a person acting in concert with it, acquired an interest in shares carrying voting rights at a time when that person had reason to believe that a Trigger Event (other than that referred to in paragraph (i)) would occur.**".

Q1 Should the new Rule 37.2(a) be introduced to provide that an increase in the voting rights of an Affected Shareholder as a result of the extinguishing or conversion of Class B shares will be treated as an "acquisition" of an interest in shares for the purposes of Rule 9.1?

Q2 Should the new Rule 37.2(b) be introduced to provide that the Panel will normally grant an "innocent bystander" dispensation from any resulting Rule 9 obligation unless (a) the trigger event is a time sunset or (b) the person acquired an interest in shares at a time when it had reason to believe that a trigger event would occur?

(iii) DCSS 2 and DCSS 3 companies

2.42 Where a company has a DCSS 2 or a DCSS 3 structure, the Code Committee considers that the extinguishing of the special share, or its conversion into an ordinary share, upon the occurrence of a trigger event should not result in any other shareholder in the company being required to make a mandatory offer. This is because, in a DCSS 2 or DCSS 3 structure, the holder of the special share does not hold a specific and identifiable percentage of voting rights. Therefore, the extinguishing or conversion of the special share should not result in any increase in the percentage of shares carrying voting rights in which any other shareholder is interested.

2.43 Accordingly, the proposed **new Rule 37.2(a)** refers to *"[w]here a company has a class of shares with enhanced voting rights where each such share carries multiple votes*" so as to make clear that the **new Rule 37.2** applies only to a DCSS 1 company, and not to a DCSS 2 or DCSS 3 company.

(e) Rule 9 dispensation by disclosure

(i) Introduction

2.44 The Code Committee understands that it is the Executive's practice to grant a "**Rule 9 dispensation by disclosure**" in the context of a company's IPO where the issue of shares or convertible securities, warrants or options may result in a person or a group of persons acting in concert subsequently obtaining or consolidating control of the company and thereby incurring an obligation to make a mandatory offer. As set out in **Section 5**, it is proposed to codify the ability of the Panel to grant such a Rule 9 dispensation by disclosure. It is also proposed that a Rule 9 dispensation by disclosure should be available in the context of a DCSS 1 company's IPO where a person or group of persons acting in concert may incur a mandatory offer obligation upon occurrence of a time sunset (or other trigger event).

(ii) Proposal

2.45 The Code Committee considers that a requirement for an Affected Shareholder either to make a mandatory offer or to sell down its shares could be disproportionate where the Affected Shareholder had become a shareholder either prior to, or in connection with, the DCSS 1 company's IPO and it, or any person acting in concert with it, had not acquired any additional interests in shares between the admission to trading of the company's securities and the trigger event (or had only acquired interests in shares in circumstances in which the Panel agrees that, were the acquisition to have occurred following a trigger event, it would not have required the Affected Shareholder to make a mandatory offer).

2.46 The Code Committee therefore considers that, at the time of a DCSS 1 company's IPO, the Panel should normally grant a Rule 9 dispensation by disclosure to an Affected Shareholder from a potential obligation to make a mandatory offer upon the occurrence of a time sunset (or other trigger event) where the IPO admission document includes disclosure of, among other things:

(a) the identity of the Affected Shareholder and persons acting in concert with it;

(b) the number of shares in which the Affected Shareholder and persons acting in concert with it will be interested immediately following the admission to trading of

the company's securities and the percentage of voting rights carried by those shares; and

(c) based on the share capital of the company as at the point of the IPO, the maximum percentage of voting rights carried by the shares in which the Affected Shareholder and persons acting in concert with it would be interested if a time sunset (or other trigger event) were to occur.

(iii) Invalidation

2.47 However, as indicated above, the Code Committee considers that, except with the consent of the Panel, any such dispensation should be invalidated if the Affected Shareholder, or any person acting in concert with it, were to acquire any additional interests in shares between the admission to trading of the company's securities and the time sunset (or other trigger event). If the Rule 9 dispensation by disclosure is so invalidated, the Affected Shareholder would be required either to make a mandatory offer or, if permitted by the Panel, to sell down its shares when the time sunset (or other trigger event) subsequently occurs.

2.48 This invalidation of the Rule 9 dispensation by disclosure would be on the basis that:

(a) it would be inappropriate to allow a shareholder who has been granted a Rule 9 dispensation by disclosure on the basis of certain facts subsequently to acquire additional interests in shares in such a way as to obtain or consolidate control of the DCSS 1 company on occurrence of the time sunset (or other trigger event) without consequences under **Rule 9**; and

(b) the purchase of shares in the context of a person potentially acquiring or consolidating control of the DCSS 1 company would provide an exit to the selling shareholder(s), but not any other shareholders in the company, and is therefore contrary to the philosophy which underlies the mandatory offer obligation in **Rule 9** (which itself derives from **General Principle 1(2)**), i.e. all shareholders should have the opportunity to share any premium price paid to selling shareholders by the new controller of a company.[5]

2.49 The Code Committee acknowledges that there are numerous ways in which a shareholder may come to increase the number of shares and/or the percentage of shares in which it is interested. The Code Committee considers that the Panel should have the ability to give its consent to an acquisition of interests in shares not invalidating a Rule 9

[5] See, for example, Section 2(b) of PCP 2009/2

dispensation by disclosure and that the Panel should normally give such consent in circumstances in which it is satisfied that, were the acquisition to have occurred following a trigger event (i.e. at a time at which the Affected Shareholder, and persons acting in concert with it, would be interested in shares carrying 30% or more of the voting rights of the company), it would not have required the shareholder, or any person acting in concert with it, to make a mandatory offer. The Code Committee expects that the Panel would determine the circumstances in which a mandatory offer would or would not be required by reference to the existing provisions of the Code.

2.50 By way of example:

(a) **acquisitions of interests in existing shares**: if an Affected Shareholder were to acquire interests in existing shares after the DCSS 1 company's IPO (other than as permitted by the bounce back provision in **Note 11 on Rule 9.1** where the Affected Shareholder's interest in shares has reduced), then the Rule 9 dispensation by disclosure would be invalidated and would not apply at the point of the time sunset (or other trigger event);

(b) **share buyback**: if an Affected Shareholder's percentage of voting rights were to increase after the DCSS 1 company's IPO as a result of a share buyback (i.e. if it did not participate proportionately), then the Panel would not normally invalidate the Rule 9 dispensation by disclosure, which would continue to apply at the point of the time sunset (or other trigger event), assuming that either:

(i) the Affected Shareholder benefitted from "innocent bystander" status at the time of the share buyback; or

(ii) where the Affected Shareholder is a director or related person, a Rule 9 waiver was granted by the Panel in respect of the share buyback under **Rule 37.1**,

and, in either case, there was an updated disclosure of the maximum percentage of voting rights carried by shares in which the Affected Shareholder, and persons acting in concert with it, would be interested if a time sunset (or other trigger event) were to occur (see further **Section 6(e)**);

(c) **pro rata subscription for new shares**: if the number of shares in which an Affected Shareholder is interested were to increase after the DCSS 1 company's IPO as a result of a pro rata subscription for new shares (e.g. in the context of a rights issue, scrip dividend or dividend reinvestment plan), then the Panel would not normally invalidate the Rule 9 dispensation by disclosure, which would continue to apply at the point of the time sunset (or other trigger event). This is on

the basis that the percentage of shares carrying voting rights in which the Affected Shareholder is interested would be unchanged and would remain no higher than the maximum percentage disclosed in the IPO admission document; and

(d) **subscription for new shares that is not pro rata or subscription for convertibles/warrants/options**: if the number and percentage of the shares in which an Affected Shareholder is interested were to increase after the DCSS 1 company's IPO as a result of a subscription for new shares that is not pro-rata (e.g. in the context of a placing or underwriting) or if the Affected Shareholder intends to subscribe for securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares, a Rule 9 waiver could be sought under **Appendix 1** of the Code so as to permit the Affected Shareholder to increase its maximum percentage interests in shares carrying voting rights to a higher level than that when the previous Rule 9 dispensation by disclosure was granted, i.e. to take into account both the increase from the subscription and the future increase from the time sunset (or other trigger event).

2.51 A Rule 9 waiver would also be available where no Rule 9 dispensation by disclosure has previously been granted if, at any time following the DCSS 1 company's IPO, a person proposed to subscribe for new shares or securities in a DCSS 1 company that could subsequently result in its voting rights being increased through a Rule 9 threshold as a result of the expiry of a time sunset (or other trigger event). The Rule 9 waiver circular would need to set out the maximum percentage of voting rights carried by the shares in which the Affected Shareholder and persons acting in concert with it would be interested if a time sunset (or other trigger event) were to occur.

2.52 If no valid Rule 9 dispensation by disclosure or Rule 9 waiver applies at the point of the time sunset (or other trigger event), and the innocent bystander treatment proposed in paragraph 2.35 above is not available, a mandatory offer obligation would arise. However, the Executive may, in its discretion, instead permit the Affected Shareholder, or any person acting in concert with it, to reduce the percentage of voting rights carried by the shares in which it is interested to the percentage shareholding level disclosed in the admission document as an alternative to making a mandatory offer.

(iv) Multiple Class B shareholders

2.53 The proposed Rule 9 dispensation by disclosure framework may also be relevant where a DCSS 1 company has multiple Class B shareholders. In such a case, it may be possible for a specific Class B shareholder to obtain a Rule 9 dispensation by disclosure in relation to the conversion or extinguishing of the voting rights of Class B shares held by other Class B shareholders over time. This dispensation would not apply to (or be necessary for) a time sunset, at which point all Class B shares would convert or be

extinguished, but may be relevant if, for example, other Class B shareholders transfer their Class B shares and thereby engage a trigger event that converts or extinguishes the voting rights of the Class B shares being transferred.

2.54 In that situation, a specific Class B shareholder's voting rights may be increased through a Rule 9 threshold. While that specific Class B shareholder may at the time benefit from the innocent bystander treatment proposed in paragraph 2.35, it should nonetheless be possible for the company and the specific Class B shareholder to obtain a Rule 9 dispensation by disclosure at the time of the IPO admission document if there is full disclosure of that Class B shareholder's identity and the extent to which its voting rights might increase upon the extinguishing or conversion of the voting rights of other Class B shareholders.

(v) Proposed amendments

2.55 As explained in **Section 5**, the Code Committee proposes to introduce a **new Note 6 of the Notes on Dispensations from Rule 9** (as set out in **Appendix A**) in respect of a Rule 9 dispensation by disclosure granted at the time of a company's IPO, which includes the ability to grant a Rule 9 dispensation by disclosure in relation to a DCSS 1 company.

2.56 Therefore, the Code Committee proposes to introduce a **new Note on Rule 37.2**, which will incorporate by reference the **new Note 6 of the Notes on Dispensations from Rule 9** proposed in **Section 5** and which would make clear that the Panel would have the ability to grant a Rule 9 dispensation by disclosure where:

(a) a pre-IPO or IPO investor's voting rights may be increased through a Rule 9 threshold on the expiry of a time sunset (or other trigger event); or

(b) a specific Class B shareholder's voting rights may be increased through a Rule 9 threshold on the occurrence of a trigger event.

2.57 The proposed **new Note 6** would be as follows:

> "***NOTE ON RULE 37.2***
>
> ***Rule 9 dispensation by disclosure***
>
> *See Note 6 of the Notes on Dispensations from Rule 9.*".

(f) Offer price where a mandatory offer is required

2.58 **Rule 9.5** requires the consideration to be offered in a mandatory offer to be in cash and at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares in the 12 months prior to the announcement of the offer (the "**look-back period**").

2.59 Where a mandatory offer is required under the proposed **new Rule 37.2** following the conversion or extinguishing of the voting rights of Class B shares (or under **Rule 37.1** as a result of a share buyback), the requirement to make a mandatory offer will arise on account of a "deemed" acquisition of an interest in shares, rather than an "actual" acquisition (and the offeror may not have made any "actual" acquisitions of interests in shares during the look-back period).

2.60 **Note 2 on Rule 9.5** (calculation of the price) explains how the price paid for an acquisition of an interest in shares is determined in various circumstances but does not address the question of how the offer price should be calculated where the requirement to make a mandatory offer arises as a result of a "deemed" acquisition of an interest in shares. The Code Committee considers that, in such circumstances, the Panel should be consulted as to the consideration to be offered.

2.61 In determining the consideration to be offered, the Code Committee considers that the circumstances which the Panel might take into account would include:

(a) whether there have been any "actual" acquisitions of shares during the look-back period and, if so, the price, size and timing of such acquisitions;

(b) the middle market price of the shares in question at the close of business on the day on which the obligation to make an offer under **Rule 9.1** arises;

(c) where the mandatory offer is required under **Rule 37.1**, the price of the share buyback;

(d) the size of the deemed acquisition under **Rule 37**; and

(e) the attitude of the board of the offeree company.

2.62 In the light of the above, the Code Committee propose to introduce a **new Note 6 on Rule 9.5**, as follows:

> "***6. Share buybacks, dual class share structures and enfranchisement of non-voting shares***
>
> *Where a mandatory offer is required as a result of the application of Rule 37, the Panel must be consulted to determine the price at which the offer must be made.*".

Q3 Should the proposed new Note 6 on Rule 9.5 be introduced to provide that the Panel should be consulted as to the consideration to be offered where a requirement to make a mandatory offer arises as a result of a "deemed" acquisition of shares?

(g) Other minor amendments

2.63 In addition to the amendments proposed above, the Code Committee proposes to make certain minor and consequential amendments to:

(a) **Rule 9.1**;

(b) **Note 11 on Rule 9.1**; and

(c) **paragraph (g) of Note 3 on Rule 9.5**,

as set out in **Appendix A**.

3. The acceptance condition to an offer for a DCSS company

(a) Introduction

3.1 **Section 3** explains the application of **Rule 10.1** (the acceptance condition in a voluntary offer) and **Rule 9.3** (the acceptance condition in a mandatory offer) to a company with a DCSS. It is proposed that the acceptance condition to a contractual offer for a DCSS 1 company should be subject to two tests, both of which would need to be satisfied in order for the offer to become or be declared unconditional:

(a) first, a "pre-unconditional" test, i.e. whether shares carrying more than 50% of the voting rights immediately before the relevant enhanced voting shares convert or are extinguished have been acquired by the offeror or accepted to the offer ("**Test 1**"); and

(b) secondly, and only if Test 1 is passed, a "post-unconditional" test, i.e. whether shares which would carry more than 50% of the voting rights immediately after the relevant enhanced voting shares convert or are extinguished have been acquired by the offeror or accepted to the offer ("**Test 2**").

3.2 In the case of a voluntary or mandatory contractual offer for a company with an effective majority or veto right type structure (i.e. a DCSS 2 or DCSS 3 company), the Code Committee considers that the special share should not be taken into account under **Rule 10.1** or **Rule 9.3** (as applicable) for the purposes of the acceptance condition, although in practice a person would be unlikely to make an offer for a DCSS 2 or DCSS 3 company unless it could be certain either of acquiring the special share or that the special share would be cancelled or extinguished.

3.3 In the case of an offer being implemented by way of a scheme of arrangement, **Rule 10.1** will not apply and the Code Committee understands that the scheme will normally require separate class approvals of both (a) the ordinary shares and (b) the Class B or special shares.

(b) Relevant provisions of the Code

3.4 **Rule 10.1** applies only to a voluntary contractual offer and provides as follows:

> "**10.1 REQUIREMENT FOR 50% ACCEPTANCE CONDITION**
>
> **Any offer for voting equity share capital or for other transferable securities carrying voting rights which, if accepted in full, would result in the offeror holding shares carrying over 50% of the voting rights of the offeree company must include an acceptance condition that is not capable of being satisfied unless the offeror has acquired or agreed to acquire (either pursuant to the offer or otherwise) shares carrying over 50% of the voting rights.**".

3.5 The "**clear result**" objective of the "50% + 1" acceptance condition threshold in **Rule 10.1** is that a general offer made to all of a company's shareholders should be allowed to complete only in circumstances where it is clear that the result of the offer will be that "statutory control" of the company, i.e. the ability to pass ordinary resolutions, will pass to the offeror.

3.6 In a voluntary offer to which **Rule 10.1** applies, an offeror may specify an acceptance condition that is over 50% + 1 (e.g. 75% of the voting rights or 90% of the shares to which the offer relates), in which case it will typically retain the ability to "waive down" the acceptance condition to the minimum 50% + 1 threshold.

3.7 **Rule 10.1** therefore ensures that shareholders can accept an offer knowing that the outcome of the acceptance condition is binary, i.e. either:

(a) the offeror will receive sufficient acceptances to satisfy its acceptance condition (and therefore to enable it to secure statutory control of the offeree company), in which case the offer can become or be declared unconditional and accepting shareholders will exit their investment; or

(b) the offeror will not receive sufficient acceptances to satisfy its acceptance condition, in which case the offer will lapse and the offeror will not secure statutory control of the offeree company.

3.8 **Rule 9.3** stipulates the acceptance condition required for a mandatory offer and is designed to achieve the same "clear result" as **Rule 10.1** provides for a voluntary offer. However, unlike **Rule 10.1**, **Rule 9.3**:

(a) mandates an acceptance condition threshold of 50% + 1 (i.e. an offeror cannot specify a higher threshold); and

(b) requires shares held by persons acting in concert with the offeror also to be counted towards the satisfaction of the acceptance condition (in addition to shares held by the offeror and shares accepted to the offer).

(c) DCSS 1

3.9 For a DCSS 1 company, the holders of the Class B shares will, as a result of each Class B share carrying multiple votes per share, hold a specific and identifiable percentage of the company's voting rights as a general matter both prior to and at the time of an offer for the company. However, upon the transfer of the Class B shares to the offeror, including upon an offer becoming unconditional, the Class B shares will normally either convert into ordinary shares or be extinguished.

3.10 The Code Committee considers that, in order to ensure that the clear result objective of **Rule 10.1** is upheld, in the case of a voluntary offer for a DCSS 1 company, the acceptance condition required by **Rule 10.1** should be formulated to ensure that the acceptance condition is subject to two tests, both of which would need to be satisfied in order for the offer to become or be declared unconditional:

(a) first, a "pre-unconditional" test, i.e. whether shares carrying more than 50% of the voting rights immediately before the relevant enhanced voting shares convert or are extinguished have been acquired by the offeror or accepted to the offer. This is to ensure that the offer can become unconditional only if shareholders carrying a majority of the company's voting rights under the existing DCSS 1 structure are in favour of the offer; and

(b) secondly, and only if Test 1 is passed, a "post-unconditional" test, i.e. whether shares which would carry more than 50% of the voting rights immediately after the relevant enhanced voting shares convert or are extinguished have been acquired by the offeror or accepted to the offer. This is to ensure that the offer can only become unconditional if shareholders carrying a majority of the company's voting rights as modified following the occurrence of the (imminent) trigger event are in favour of the offer, meaning that the clear result objective is satisfied.

3.11 If an offeror (who is not the sole Class B shareholder) makes an offer for a DCSS 1 company in which the Class B shares convert into ordinary shares upon transfer, the Code Committee expects that the offeror would normally offer for both the ordinary shares and the Class B shares, and that the acceptance condition calculations for Test 1 and Test 2 under **Rule 10.1** should take account of the aggregate voting rights of the company across the classes. The potential structure of the offer(s) for different classes of shares of a DCSS company is discussed further in respect of **Rule 14** and **Rule 16** in **Section 4**.

3.12 In relation to certain DCSS 1 companies, however, it may not be possible to make an offer for the Class B shares (e.g. if the Class B shares are extinguished rather than convert upon the occurrence of a trigger event). While an offer for the Class B shares may not be possible in that scenario, if there is a contractual offer for the ordinary shares of such a DCSS 1 company then the acceptance condition calculations for:

(a) Test 1 should take account of the enhanced voting rights of the Class B shares; and

(b) Test 2 should take account of the fact that the enhanced voting rights of the Class B shares would be extinguished.

3.13 The application of the proposed provisions relating to the acceptance condition to an offer for a DCSS 1 company is illustrated by the following simplified scenario:

(a) the offeree company has issued 40 ordinary shares, each carrying one vote, and 6 Class B shares, each carrying 10 votes. The 46 shares in issue therefore carry a total of 100 votes;

(b) the ordinary shares and the Class B shares rank pari passu for income and capital (and therefore have the same economic rights);

(c) the founder of the company holds all 6 of the Class B shares, representing 6/46 or c.13% of the economic rights, and 60/100 or 60% of the voting rights;

(d) the other shareholders hold the 40 ordinary shares, representing 40/46 or c.87% of the economic rights, and 40/100 or 40% of the voting rights; and

(e) on a trigger event, the Class B shares convert on a one-for-one basis into ordinary shares. Therefore, following the conversion of the 6 Class B shares into ordinary shares, the 6 ordinary shares held by the founder would carry 6/46 or c.13% of the company's voting rights and the 40 ordinary shares held by other shareholders would carry 40/46 or c.87% of the company's voting rights.

3.14 If a "third party" offeror made a contractual offer for the company with a 50% + 1 acceptance condition applying to both Test 1 and Test 2, and if (i) all 6 of the Class B shares held by the founder were accepted to the offer and (ii) 10 of the 40 ordinary shares held by other shareholders were accepted to the offer, then:

(a) Test 1 would be satisfied, as shares representing 70% of the company's existing voting rights would have been accepted to the offer (i.e. the 60/100 or 60% of the voting rights carried by the founder's 6 Class B shares plus the 10/100 or 10% of the voting rights carried by the 10 ordinary shares accepted to the offer); but

(b) Test 2 would not be satisfied, as shares representing only c.35% of the company's voting rights post the conversion of the 6 Class B shares into ordinary shares would have been accepted to the offer (i.e. the 6/46 or c.13% of the voting rights carried by the founder's 6 ordinary shares plus the 10/46 or c.22% of the voting rights carried by the 10 ordinary shares accepted to the offer),

and therefore the acceptance condition would not be satisfied and the offer would lapse.

3.15 If, in that scenario, 18 of the 40 ordinary shares (rather than 10 ordinary shares) held by shareholders other than the founder were accepted to the offer, then:

(a) Test 1 would be satisfied, as shares representing 78% of the company's existing voting rights would have been accepted to the offer (i.e. the 60/100 or 60% of the voting rights carried by the founder's 6 Class B shares plus the 18/100 or 18% of the voting rights carried by the 18 ordinary shares accepted to the offer); and

(b) Test 2 would be satisfied, as shares representing c.52% of the company's voting rights post the conversion of the 6 Class B shares into ordinary shares would have been accepted to the offer (i.e. the 6/46 or c.13% of the voting rights carried by the founder's 6 ordinary shares plus the 18/46 or c.39% of the voting rights carried by the 18 ordinary shares accepted to the offer),

and therefore the acceptance condition would be satisfied and the offer would become unconditional.

3.16 The Code Committee considers that it should be permissible for an offeror for a DCSS 1 company to specify different percentage thresholds (of at least 50% + 1) for each of Test 1 and Test 2. For example, the offeror could specify that Test 1 would be satisfied on the basis of a majority of the company's existing voting rights but that Test 2 would be satisfied on the basis of 90% of the company's voting rights after the relevant Class B shares had either converted or been extinguished. Beyond the minimum 50% + 1 requirement in **Rule 10.1**, the Code does not prescribe the acceptance condition to a voluntary offer and an offeror may have legitimate reasons for wishing to specify different thresholds for each of Test 1 and Test 2.

3.17 Where the offeror is itself a Class B shareholder, the calculation of the voting rights numerator and denominator for Test 2 will depend on the structure of the DCSS 1 company and the nature of the trigger events. For example, where the offeror is the sole Class B shareholder, it would not need to accept its own offer or to transfer its Class B shares to a third party, such that a trigger event relating to the transfer of its Class B shares would not be relevant. In such a case, the voting rights numerator and denominator for Test 2 would be the same as those for Test 1.

3.18 In the light of the above, the Code Committee proposes to introduce a **new Note 9 on Rule 10.1**, as follows:

> "***9. Dual class share structures***
>
> *(a) In the circumstances described in Note 9(b), the acceptance condition required by Rule 10.1 must not be capable of being satisfied unless the offeror has acquired or agreed to acquire (either pursuant to the offer or otherwise) both:*
>
> > *(i) shares carrying, in aggregate, over 50% of the voting rights immediately before the offer becomes unconditional; and*

(ii) shares which would carry, in aggregate, over 50% of the voting rights immediately after any conversion or extinguishing of the shares with enhanced voting rights (or of the voting rights carried by such shares).

(b) Note 9(a) applies where an offer is made for an offeree company with a class of shares with enhanced voting rights where each such share carries multiple votes and, upon transfer of those shares or upon the offer becoming unconditional, either:

(i) the shares would convert into ordinary shares; or

(ii) the shares (or the voting rights carried by such shares) would be extinguished.".

3.19 In addition, in order to ensure that the proposed two test framework also applies to the acceptance condition to a mandatory offer in a way that is consistent with the additional requirements of **Rule 9.3**, the Code Committee proposes to introduce a **new Note 3 on Rule 9.3**, as follows:

"***3. Dual class share structures***

(a) In the circumstances described in Note 3(b), an offer made under Rule 9 must be conditional only upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with the offeror holding both:

(i) shares carrying, in aggregate, over 50% of the voting rights immediately before the offer becomes unconditional; and

(ii) shares which would carry, in aggregate, over 50% of the voting rights immediately after any conversion or extinguishing of the shares with enhanced voting rights (or of the voting rights carried by such shares).

(b) Note 3(a) applies where an offer is made for an offeree company with a class of shares with enhanced voting rights where each such share carries multiple votes and, upon transfer of those shares or upon the offer becoming unconditional, either:

(i) the shares would convert into ordinary shares; or

(ii) the shares (or the voting rights carried by such shares) would be extinguished.".

Q4 Should (a) the new Note 9 on Rule 10.1 (for a voluntary contractual offer) and (b) the new Note 3 on Rule 9.3 (for a mandatory offer) be introduced in respect of the acceptance condition for an offer for a DCSS 1 company?

(d) DCSS 2 and DCSS 3

3.20 The Code Committee considers that, for a company with an effective majority or veto right type DCSS (i.e. DCSS 2 and DCSS 3), the special share should not be taken into account for the purposes of the acceptance condition to a contractual offer. This is because the holder of the special share does not hold a specific and identifiable

percentage of voting rights which can be counted towards the satisfaction of the acceptance condition. In addition, in the case of a DCSS 3 company, the rights attached to the special share will become "live" only following a person other than the holder of the special share obtaining control of a majority of the ordinary shares.

3.21 Accordingly, the proposed **new Note 9(b) on Rule 10.1** and **new Note 3(b) on Rule 9.3** refer to *"an offeree company with a class of shares with enhanced voting rights where each such share carries multiple votes*" so as to make clear that these provisions apply only to a DCSS 1 company, and not to a DCSS 2 or DCSS 3 company.

3.22 In practice, a person would be unlikely to make an offer for a DCSS 2 or DCSS 3 company unless it could be certain either of acquiring the special share or of the special share being cancelled or extinguished.[6] Otherwise, even if the offer were to succeed, the holder of the special share (and not the offeror) would be able to control the blocking and/or passing of the relevant shareholder resolutions thereafter.

(e) Schemes of arrangement

3.23 **Rule 10.1** applies to a contractual offer but does not apply to an offer which is implemented by way of a scheme of arrangement.

3.24 Under Part 26 of the Companies Act 2006, a scheme of arrangement requires approval by a majority in number representing 75% in value of shareholders (or any relevant class or classes of shareholder) present and voting either in person or by proxy. The Code Committee understands that while, under the Companies Act 2006, the test of class of member is different from the test of class of share, where a scheme of arrangement relates to more than one class of shares in a company, in practice the approval of each class of share is normally required in order for a scheme to be sanctioned by the court.

3.25 Therefore, where an offer for a company with a DCSS is implemented by way of a scheme of arrangement, the Code Committee understands that the scheme will normally require separate class approvals of both (a) the ordinary shares and (b) the Class B or special shares.

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[6] See **Section 4(c)** in relation to the application of **Rule 16.1** to any arrangements for the transfer or cancellation of the special share.

4. Other issues relevant to an offer for a DCSS company

(a) Introduction

4.1 **Section 4** explains the application of certain other provisions of the Code to an offer for a DCSS company.

4.2 In particular:

(a) the requirement for a comparable offer under **Rule 14** is unlikely to apply in many offers for DCSS companies; and

(b) any offer to acquire or cancel the Class B or special shares is likely to constitute a special deal with favourable conditions in breach of **Rule 16.1** if:

(i) where the Class B shares will convert into ordinary shares upon transfer to the offeror, the price offered is above the amount derived from the applicable conversion ratio; or

(ii) where the enhanced voting rights of the Class B or special shares will be extinguished or cannot transfer to the offeror, the price offered is above the nominal value of the shares.

4.3 It is proposed that the disclosures made under **Rule 2.9** (announcement of numbers of relevant securities in issue) and **Rule 17** (announcement of acceptance levels) in respect of an offer for a DCSS 1 company should explain the voting rights attaching to each class of the company's shares. In the case of **Rule 17**, an offeror should provide disclosure of each of the matters set out in **Rule 17.2** with respect to the percentage of voting rights of the company (since this is likely to be different to the percentage shareholdings).

4.4 In respect of **Rule 21.1** (frustrating action), the Code Committee considers that:

(a) the issue of Class B or special shares will not normally be a restricted action under **Rule 21.1** unless the issue of the shares takes place at a time when the company is a Code company and in a "relevant period" (i.e. in an offer period or subject to a current or recent approach); and

(b) the exercise by a director of rights as a shareholder under the Class B or special shares is unlikely to constitute frustrating action.

(b) Comparable offers and separate offers for each class

(i) Introduction

4.5 **Rule 14.1** provides that, where a company has more than one class of equity share capital, a "comparable offer" must be made for each class.

4.6 **Note 1 on Rule 14.1** provides, among other things, that where only the ordinary shares are admitted to trading (as will normally be the case for a DCSS 1 company), the ratio of the offer values must be justified to the Panel.

4.7 **Rule 14.2** provides that, where an offer is made for more than one class of share, separate offers must be made for each class.

4.8 "*Equity share capital*" is defined in section 548 of the Companies Act 2006 as a company's "*issued share capital excluding any part of that capital that, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution*".

(ii) Comparable offers

4.9 The Code Committee considers that **Rule 14.1** is unlikely to apply in the context of an offer for a DCSS 2 or DCSS 3 company (and certain DCSS 1 companies). This is because **Rule 14.1** would not apply where the Class B shares or the special share(s):

(a) do not carry any rights to dividends or capital beyond a specified amount in a distribution (which will normally be the case in relation to a DCSS 2 or DCSS 3 company), since the shares will then not be equity share capital; or

(b) are incapable of transfer with any voting rights attached to them, such that it will not be possible to acquire the shares with any voting rights pursuant to an offer (as will normally be the case in relation to a DCSS 2 or DCSS 3 company, and may be the case in relation to a DCSS 1 company if the Class B shares or the voting rights attached to them are extinguished on transfer).

4.10 If the parties consider that **Rule 14.1** may be applicable to an offer (e.g. where the Class B shares in a DCSS 1 company are equity share capital that convert into ordinary shares upon transfer), they should consult the Panel as to whether a comparable offer is required and, if so, what the comparable offer price should be under **Note 1 on Rule 14.1**. As further explained in respect of **Rule 16.1** below, a comparable offer price derived solely from any applicable ratio pursuant to which Class B shares convert into ordinary shares upon transfer to an offeror is likely to be acceptable.

(iii) Structure of offer for separate classes of shares in a DCSS 1 company

4.11 As noted in paragraph 3.11, if an offeror makes an offer for a DCSS 1 company in which the Class B shares convert into ordinary shares upon transfer, the Code Committee expects that the offeror would normally wish to offer for both the ordinary shares and the Class B shares.

4.12 An offeror may wish to combine the offers for the two classes into a single offer. However, **Rule 14.2** stipulates that separate offers should be made for each class of share. This Rule was adopted primarily to ensure that, where an offer is made for different classes of equity share capital, an offeror would not be able to implement compulsory acquisition procedures provided by statute across both classes without having acquired 90% or more of each class.

4.13 The Code Committee notes that the statutory compulsory acquisition rules in the UK set out in section 979 of the Companies Act 2006 stipulate that an offeror may only implement compulsory acquisition on a class-by-class basis, rather than across different classes. Therefore, the primary concern behind the adoption of **Rule 14.2** is now addressed by statute, and the Code Committee considers that the Panel should have the ability to consent to an offeror making a single offer for both classes if the Panel is satisfied that holders of each class of shares in the offeree company are being treated fairly.

4.14 Accordingly, the Code Committee proposes to amend **Rule 14.2**, as follows:

> "**14.2 SEPARATE OFFERS FOR EACH CLASS**
>
> **Except with the consent of the Panel, w~~W~~here an offer is made for more than one class of share, separate offers must be made for each class.**".

Q5 Should Rule 14.2 be amended to provide the Panel with the ability to consent to a single combined offer for more than one class of shares?

(c) Special deals with favourable conditions

(i) Introduction

4.15 **Rule 16.1** provides that, except with consent of the Panel, an offeror must not make any arrangements with offeree company shareholders, or enter into arrangements which involve acceptance of an offer, either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

4.16 **Rule 16.1** derives from **General Principle 1(1)**, which requires that all holders of the securities of an offeree company of the same class must be afforded equivalent

treatment. In addition, **General Principle 1(2)** provides that if a person acquires control of a company the other holders of securities must be protected.

(ii) DCSS 1

4.17 Where an offer is made, or offers are made, for the ordinary shares and the Class B shares of a company with a DCSS 1 structure, it will be necessary to ensure that the offer for the Class B shares does not breach **Rule 16.1**.

4.18 The Code Committee expects that the convertibility of the Class B shares upon their transfer to an offeror would be established at the time of their issue and explained in the IPO admission document so that the position is understood from the outset by the company, its shareholders and any potential offeror (see **Section 5**).

4.19 If the offer price for each Class B share is derived solely from the applicable conversion ratio, the Code Committee considers that the offer would not breach **Rule 16.1**. Therefore, if each Class B share will convert into one ordinary share, the Code Committee would expect the offer price for the Class B shares to be the same as that for the ordinary shares. This is consistent with the purpose of a typical DCSS, as the Code Committee understands it (and as noted in paragraph 1.5), being to grant to the holder(s) of Class B shares enhanced voting control and/or protection against a change of control of the company, rather than to facilitate an enhanced economic return for the transfer of the Class B shares on such a change of control.

4.20 If, on the other hand, an offeror were permitted to offer a higher price for the Class B shares than that implied by the applicable conversion ratio, the holder(s) of the Class B shares would in effect obtain a premium for the Class B shares. The Code Committee considers that this would be a "favourable condition" prohibited by **Rule 16.1** and that it would also be contrary to the philosophy which underlies the mandatory offer obligation in **Rule 9** (which itself derives from **General Principle 1(2)**), i.e. that all shareholders should have the opportunity to share any premium price paid to selling shareholders by the new controller of a company.[7]

4.21 In relation to a DCSS 1 company where, upon the occurrence of a trigger event, the Class B shares (or the voting rights attached to those shares) are extinguished rather than convert into ordinary shares, an offeror would not be able to acquire any voting rights attached to the Class B shares, but it may nonetheless seek to arrange for the cancellation of the Class B shares. In such a situation, the Code Committee considers that the application of **Rule 16.1** would mean that no more than the nominal value of the

[7] See, for example, Section 2(b) of PCP 2009/2

shares should pass from the offeror to a Class B shareholder in return for the cancellation of its Class B shares.

4.22 If a company wished to establish a DCSS 1 structure at the time of its IPO under which a founder or other shareholder would be entitled to be paid a premium in connection with an offer for the company, the company could seek to adopt a modified DCSS 1 structure which provides for enhanced (i.e. greater than one-for-one) economic rights for the Class B shares and/or for the Class B shares to convert into ordinary shares on a designated enhanced ratio when transferred to an offeror. This would allow for a specific premium to be paid to the Class B shareholder(s) in return for the Class B shares under the offer, determined by reference to the enhanced conversion ratio. Any such arrangements would also need to be disclosed in the IPO admission document (see **Section 5**).

(iii) DCSS 2 and DCSS 3

4.23 In the case of a company with a DCSS 2 or DCSS 3 structure, the special share would normally not be subject to an offer in the same way as the Class B shares may be where an offer is made for a DCSS 1 company. This is because, in a typical DCSS 2 or DCSS 3 company, the special share has no rights to income or capital and its enhanced voting rights are not transferable (i.e. the offeror would not acquire any economic value or voting rights upon acquiring the special share). However, as noted above, the Code Committee believes that an offeror would, in practice, be reluctant to leave the special share outstanding and held by another person, and may therefore seek to acquire the special share or have it cancelled.

4.24 The Code Committee considers that **Rule 16.1** would prohibit an offeror from paying the holder of the special share any premium over the nominal value of the special share for its acquisition or cancellation and that the IPO admission document should make this position clear so that it is understood from the outset by the company, its shareholders and any potential offeror.

4.25 The Code Committee considers that an arrangement for the special share to be acquired by the offeror, or cancelled, in return for the nominal value of the special share would not be prohibited by **Rule 16.1**, but that any such arrangement should be disclosed in the firm offer announcement and offer document to ensure that shareholders understand that the holder of the special share will cease to be able to exercise the rights attaching to the share if the offer succeeds.

4.26 If a company wished to establish a DCSS at the time of its IPO under which a founder or other shareholder would be entitled to be paid a premium in connection with an offer for the company, the company could seek to adopt either:

(a) as indicated above, a DCSS 1 structure which provides for economic rights for the Class B shares and/or for the Class B shares to convert into ordinary shares on a designated ratio when transferred to an offeror; or

(b) a modified DCSS 2 or DCSS 3 structure which provides for specified economic rights for the holder of the special share in the event of an offer for the company,

and any such arrangements would need to be disclosed in the IPO admission document (see **Section 5**).

(iv) Proposed amendment to the Code

4.27 Given the issues that may arise under **Rule 16.1**, the Code Committee considers that the Code should require the Panel to be consulted where an offer is made for a company with a DCSS and proposes to introduce a **new Note 4 on Rule 16.1**, as follows:

> *"**4. Dual class share structures***
>
> *The Panel should be consulted in relation to the application of Rule 16.1 where an offer is made for a company with a dual class share structure.*".

Q6 Should the proposed new Note 4 on Rule 16.1 be introduced to require the Panel to be consulted where an offer is made for a company with a DCSS?

(d) Announcements of number of relevant securities and acceptance levels

4.28 **Rule 2.9** provides that the offeree company (and a securities exchange offeror) must announce as soon as possible after an offer period begins, and in any case by no later than 7.15am on the next business day:

(a) details of all classes of relevant securities issued by the company; and

(b) the numbers of such securities in issue.

4.29 Where an offer is implemented as a contractual offer, **Rule 17.1** provides that the offeror must make announcements in relation to acceptances at certain points in the offer timetable. **Rule 17.2(a)** provides that these announcements must state, in summary:

(a) the number of shares for which acceptances of the offer have been received;

(b) details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest;

(c) details of any relevant securities of the offeree company in respect of which the offeror or any person acting in concert with it has an outstanding irrevocable commitment or letter of intent; and

(d) details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold,

in each case specifying the percentage of each class of relevant securities represented by these figures. **Rule 17.2(b)** provides that any announcement of acceptance levels must include a prominent statement of the total numbers of shares which the offeror may count towards the satisfaction of its acceptance condition and must specify the percentages of each class of relevant securities represented by these figures.

4.30 The Code Committee considers that, where the offeree company is a DCSS 1 company, the disclosures made under **Rule 2.9** and **Rule 17** should explain the voting rights attaching to each class of the company's shares and that the same position should apply under **Rule 2.9** if a securities exchange offeror is a DCSS 1 company. In the case of **Rule 17**, an offeror should also provide disclosure of each of the matters set out in **Rule 17.2** with respect to the percentage of voting rights of the company (since this is likely to be different to the percentage shareholdings).

4.31 In the case of a disclosure made under **Rule 17.2**, a requirement to explain the voting rights position would enable market participants to calculate the offeror's progress towards each of the two limbs of the acceptance condition to its offer, as required under the **new Note 9 on Rule 10.1** and the **new Note 3 on Rule 9.3** (as proposed in **Section 3**).

4.32 In the case of a disclosure made under **Rule 2.9**, a requirement to explain the voting rights position would enable market participants not only to understand the number of shares of each class issued by the offeree company (or, if relevant, the securities exchange offeror) but also to calculate both the total number of voting rights attached to the shares issued by the offeree company (or, if relevant, the securities exchange offeror) and the number of voting rights held by a shareholder which has made a disclosure under **Rule 8** (disclosures of dealings and positions) of its interests in the securities of the offeree company (or, if relevant, the securities exchange offeror).

4.33 The Code Committee considers that the proposals in respect of **Rule 2.9** should provide sufficient disclosure to the market in relation to these matters and does not propose to amend **Rule 8** or to make any changes to the disclosures required by shareholders and other persons under **Rule 8**.

4.34 The parties to an offer will in any case be expected to disclose relevant details of the DCSS in the announcement of a firm intention to make an offer and the offer document (see, for example, **Rule 24.3(d)(iv)**).

4.35 Where the offeree company (or, if relevant, a securities exchange offeror) is a DCSS 2 or DCSS 3 company, the Code Committee considers that there is no need for disclosures made under **Rule 2.9** or **Rule 17.2** to include an explanation as to the voting rights carried by the shares as, in a DCSS 2 or DCSS 3 structure, the holder of the special share does not hold a specific and identifiable percentage of voting rights.

4.36 In the light of the above, the Code Committee proposes to introduce:

(a) a **new Note 3 on Rule 2.9**, as follows:

"***3. Dual class share structures***

Where the offeree company or a securities exchange offeror has a class of shares with enhanced voting rights where each such share carries multiple votes, any announcement made under Rule 2.9 must explain the voting rights carried by each class of shares. The Panel must be consulted on the form of the announcement."; and

(b) a **new Note 4 on Rule 17**, as follows:

"***4. Dual class share structures***

Where the offeree company has a class of shares with enhanced voting rights where each such share carries multiple votes, any announcement made under Rule 17.1 must, for the purposes of each requirement in Rule 17.2, specify the voting rights carried by the shares and relevant securities with reference to the requirements of each of paragraphs (i) and (ii) of Note 3(a) on Rule 9.3 or Note 9(a) on Rule 10.1 (as applicable). The Panel must be consulted on the form of the announcement.".

Q7 Should the proposed new Note 3 on Rule 2.9 be introduced to provide that any announcement of the number of securities in issue made under Rule 2.9 by a DCSS 1 company must explain the voting rights carried by each class of shares and that the Panel must be consulted on the form of the announcement?

Q8 Should the proposed new Note 4 on Rule 17 be introduced to provide that any announcement of acceptance levels made by an offeror under Rule 17.2 in the context of an offer for DCSS 1 company must specify the voting rights carried by the shares and relevant securities in the offeree company and that the Panel must be consulted on the form of the announcement?

(e) Restrictions on frustrating action

(i) Introduction

4.37 **General Principle 3** provides that:

"**The board of directors of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the takeover bid.**".

4.38 **Rule 21.1(a)**, which derives from **General Principle 3**, provides that, except with the approval of shareholders in a general meeting or the consent of the Panel, during the "**relevant period**" the board of the offeree company must not take or agree to take any "**restricted action**" or any other action which may result in the frustration of an offer or bona fide possible offer.

4.39 The relevant period is defined in **Rule 21.1(b)** as the period from the earlier of an approach and the beginning of an offer period until the end of the offer period or, where no offer period has begun, 5.00pm on the seventh day following the date on which the latest approach is unequivocally rejected.

4.40 Under **Rule 21.1(c)(i)**, a restricted action includes issuing shares in the offeree company (to the extent that it is not in the ordinary course of the offeree company's business).

(ii) Issue of Class B or special shares

4.41 The Code Committee expects that the issue by a DCSS company of Class B or special share(s) would not be restricted under **Rule 21.1** or **General Principle 3**. This is because such shares will normally be issued prior to the company's securities being admitted to trading and therefore prior the company becoming a Code company.

4.42 If, however, a company proposes to issue Class B or special share(s) at a time when it is both (a) a Code company and (b) in a relevant period, the Code Committee considers that issuing Class B or special share(s) would be a restricted action, and would therefore need to be approved by the company's shareholders under **Rule 21.1(a)** (unless the Panel had consented to the issue).

(iii) Exercise of rights carried by Class B or special shares

4.43 Given that **Rule 21.1(a)** applies to an action taken by the board of the offeree company, and given that the holder of the Class B or special share(s) in a DCSS company may be a member of the board, the Code Committee has considered whether, where a DCSS company is in a relevant period, the exercise of the rights carried by Class B or special share(s) (for example, voting against a scheme of arrangement) would constitute a "frustrating action" by the offeree board under **Rule 21.1(a)(ii)**.

4.44 The Code Committee considers that, where the Class B or special share(s) have been issued to a shareholder in their personal capacity, the exercise of the voting rights carried by the shares would not constitute a frustrating action, irrespective of whether the shareholder is also member of the offeree board, provided that no further action would need to be taken by the offeree board to activate the rights carried by the Class B shares or special share(s).

4.45 This is on the understanding that, if the Class B or special share(s) were issued to the shareholder in their personal capacity, the director/shareholder would not be constrained by any fiduciary duty in deciding whether and, if so, how to exercise the rights carried by shares held in a personal capacity.

5. Initial public offerings

(a) Introduction

5.1 **Section 5** proposes the introduction of:

(a) a requirement for a company, in the context of an IPO that would result in it becoming subject to the Code, to make appropriate disclosure in relation to the Code in its admission document, including in respect of **Rule 9** and of any person, or group of persons acting in concert, that is or may become interested in shares carrying 30% or more of the voting rights of the company; and

(b) an ability for the Panel to grant, at the time of a company's IPO that would result in it becoming subject to the Code, a dispensation from a potential obligation in the future for a person or group of persons acting in concert to make a mandatory offer under **Rule 9.1** in certain circumstances, provided that appropriate disclosure is made in the IPO admission document.

(b) Disclosure in admission document of information on Rule 9 and concert parties

5.2 Where a company is considering an initial admission of its securities to trading on a UK regulated market, a UK MTF, or a stock exchange in the Channel Islands or the Isle of Man and, as a result of such admission to trading, the company will become a Code company, the company's advisers will normally consult the Executive and include disclosure in the admission document in relation to:

(a) the application of **Rule 9**; and

(b) details of any person, or group of persons acting in concert, that on completion of the IPO will be, or is expected to become, interested in shares carrying 30% or more of the voting rights of the company.

5.3 The Code Committee notes that the Executive has published on the Panel's website a *Note to advisers in relation to the disclosure of information on Rule 9 of the Takeover Code in Rule 9 waiver and IPO documents* in order to assist advisers in the drafting of such disclosures, which are in addition to the disclosures an issuer is required to make under, for example, the UK Prospectus Regulation, the AIM Rules or the Aquis Rules (as appropriate) in order to identify any takeover regulation that applies to it.

5.4 **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 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*).

5.5 As noted in **Section 2**, in the case of a company with a DCSS, the Code Committee considers that the company should disclose relevant details of the DCSS in the IPO admission document in order that potential investors can understand the company's capital and voting structure and, in the case of a DCSS 1 company, whether any person, or group of persons acting in concert, is expected to become interested in shares carrying 30% or more of the voting rights of the company on a time sunset (or other trigger event). In such a case, it will be particularly important for the company and its advisers to consult the Executive as to the appropriate disclosure to be made.

5.6 The Code Committee considers that the practice of making appropriate disclosure in admission documents should be codified and therefore proposes:

(a) to introduce a **new section 3(e)(i) of the Introduction** to the Code, as follows:

"*(i) Initial public offering or admission to trading*

Where a company is considering an initial public offering 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) above, 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."; and

(b) to make a minor consequential amendment to the introductory paragraph to **section 3 of the Introduction**, to amend the heading to **section 3(e) of the Introduction** and to introduce a new sub-heading to the **current section 3(e) of the Introduction**, as set out in **Appendix A**.

Q9 Should the proposed new section 3(e)(i) of the Introduction to the Code be introduced to provide that appropriate disclosure must be made in an IPO admission document, including in relation to the application of Rule 9 and details of any relevant person or concert party, and that the Panel must be consulted for guidance on that disclosure?

(c) Rule 9 dispensation by disclosure

5.7 The **Notes on Dispensations from Rule 9** describe various circumstances in which the Panel will consider waiving an obligation to make a mandatory offer. For example, under **Note 1 of the Notes on Dispensations from Rule 9** (and the related **Appendix 1** of the Code) when the issue of new securities as consideration for an acquisition or a cash

subscription would otherwise result in an obligation to make a mandatory offer, the Panel will normally waive the obligation if there is an independent vote at a shareholders' meeting.

5.8 In addition, the Code Committee understands that, as a matter of practice, a dispensation from **Rule 9** may be sought from the Executive at the time of the initial admission of a company's securities to trading on a UK regulated market, a UK MTF, or a stock exchange in the Channel Islands or the Isle of Man without the need for a vote of independent shareholders under **Note 1 of the Notes on Dispensations from Rule 9**, provided that the arrangements are appropriately disclosed in the IPO admission document. For example, where members of a concert party who are interested in shares carrying more than 30% of a company's voting rights are granted options that may result in the issue of new shares in the future which would otherwise trigger an obligation for a member of that concert party to make a mandatory offer, the Executive will normally be prepared to grant such a request for a "**Rule 9 dispensation by disclosure**". This is on the basis that, provided that there is appropriate disclosure of the relevant arrangements in the admission document, persons considering whether to become shareholders in the company will be aware that control of the company might be acquired or be consolidated in the circumstances described.

5.9 A Rule 9 dispensation by disclosure relates to an issue of new shares or securities in the context of a specific future event that is expected to occur, such as the exercise of share options, and is not intended as a general means of permitting a shareholder to acquire additional interests in shares in the future without incurring consequences under **Rule 9**.**1**. This is consistent with the approach taken in relation to Rule 9 waivers under **Note 1 of the Notes on Dispensations from Rule 9**.

5.10 The Code Committee considers that the practice of granting a Rule 9 dispensation by disclosure in the above circumstances should be codified. The Executive has informed the Code Committee that the disclosures which it would expect to be made in order for such a dispensation to be granted would include:

(a) an explanation of the application of **Rule 9** and the identity of the person, or group of persons acting in concert, who might otherwise incur the obligation;

(b) the number and percentage of voting rights which the person, or group of persons acting in concert, will hold at the time of the IPO;

(c) the maximum percentage of voting rights which the person, or group of persons acting in concert, might come to hold upon the relevant specified event (and where this is pursuant to securities convertible into, warrants in respect of, or options or other rights to subscribe for, new shares, these details should be indicated on the

assumption that only the person, or group of persons acting in concert, will convert or exercise the rights under such securities, and will do so in full and at the earliest opportunity, the date of which should also be given);

(d) where the maximum potential voting rights will exceed 50% of the voting rights of the company as a result of a specified event referred to in paragraph (c), specific and prominent reference to this possibility and to the fact that the person, or group of persons acting in concert, may then acquire further interests in shares without incurring any further obligation to make an offer under **Rule 9.1**; and

(e) a statement that the Panel has agreed to grant a dispensation from the potential obligation to make an offer under **Rule 9.1** which might otherwise arise upon the occurrence of the relevant specified event.

5.11 The Executive has informed the Code Committee that, if the **new Note 6 of the Notes on Dispensations from Rule 9** proposed below is introduced, it intends to set these matters out in a revised version of the *Note to advisers in relation to the disclosure of information on Rule 9 of the Takeover Code in Rule 9 waiver and IPO documents*.

5.12 As explained in **Section 2**, a Rule 9 dispensation by disclosure may also be relevant in certain scenarios relating to an IPO of a DCSS company, and the proposed new provisions also provide a framework for such a case (see **new Note 6(a)(ii), 6(b) and 6(c)**).

5.13 In the light of the above, the Code Committee proposes to introduce a **new Note 6 of the Notes on Dispensations from Rule 9**, as follows:

"***6. Rule 9 dispensation by disclosure on an IPO***

(a) Where a company is considering an initial public offering or admission to trading of its securities and the company either:

(i) 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

(ii) 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 in the circumstances described, provided that appropriate disclosure is made in the admission document.

(b) Except with the consent of the Panel, any dispensation granted in respect of a company referred to in paragraph (a)(ii) above will be invalidated if the relevant person, or any person acting in concert with it, acquires any interests in shares between the admission to trading of the company's securities and the Trigger Event.

(c) The Panel will normally give its consent under paragraph (b) where it is satisfied that, if the acquisition were to have taken place following a Trigger Event, it would not have required the relevant person, or any person acting in concert with it, to make a mandatory offer as a result of the acquisition of interests in shares.".

5.14 The Code Committee also proposes to include a reference to the **new Note 6 of the Notes on Dispensations from Rule 9** at the end of the **new section 3(e)(i) of the Introduction**, as set out in **Appendix A**.

5.15 The proposed **new Note 6 of the Notes on Dispensations from Rule 9** would replace the **current Note 6** in respect of the enfranchisement of non-voting shares, the substance of which is proposed to be moved to the proposed **new Rule 37.3** (see **Section 6**).

Q10 Should the proposed new Note 6 of the Notes on Dispensations from Rule 9 be introduced to provide that the Panel may grant a "Rule 9 dispensation by disclosure" in the context of an IPO?

6. Share buybacks and enfranchisement of non-voting shares

(a) Introduction

6.1 **Section 6** proposes amendments to **Rule 37** (redemption or purchase by a company of its own securities) to make the rule clearer, more concise and consistent with the proposed amendments in relation to companies with a DCSS. It is also proposed:

(a) to amend the provisions relating to the "**disqualifying transactions**" which preclude a Rule 9 waiver in relation to a share buyback, which the Code Committee considers can operate in an overly restrictive manner for companies that would otherwise wish to carry out a share buyback under their normal annual shareholder authority;

(b) to introduce a requirement to disclose the maximum percentage of shares carrying voting rights in which the relevant person, or group of persons acting in concert, might become interested where a company is proposing to carry out a share buyback in which the voting rights of an "innocent bystander" might be increased through a Rule 9 threshold; and

(c) to codify the practice that the Panel may treat as an "offer" a share buyback which could result in all or substantially all of the company's shares being held by one person or a group of persons acting in concert.

(b) Share buybacks

6.2 **Rule 37.1**, the key aspects of which are summarised in **Section 2**, relates to the possible requirement for a person to make a mandatory offer when the percentage of shares carrying voting rights in which it, together with persons acting in concert with it, is interested increases as a result of the redemption or purchase by the company of its own securities. For ease of reference, the **current Rule 37.1** is set out in **Appendix C**.

6.3 The Code Committee has reviewed **Rule 37.1** in the light of the proposed amendments to the Code in relation to companies with a DCSS 1 structure, including the proposed incorporation from **Rule 37.1** into the **new Rule 37.2** of the concepts of:

(a) a person being deemed to have acquired an interest in shares for the purposes of **Rule 9** if, as a result of the share buyback, the percentage of shares carrying voting rights in which it is interested increases; and

(b) certain persons being treated as "innocent bystanders" who will not normally be required to make a mandatory offer where the percentage of shares voting rights

in which they are interested increases through a Rule 9 threshold as a result of a deemed acquisition of shares.

6.4 The Code Committee has concluded that, while the Rule generally operates satisfactorily in practice, amendments should be made to **Rule 37.1** in order to make it clearer in certain respects and to make it consistent with the proposed **new Rule 37.2**.

(c) Deemed acquisitions; directors and related persons; innocent bystanders

(i) New Rule 37.1

6.5 As explained in **Section 2**, the effects of the **current Rule 37.1** and of the **current Notes 1 and 2 on Rule 37.1** are, in summary, that:

(a) 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 a group of persons acting in concert, is interested will be **treated as an acquisition** of interests in shares for the purpose of **Rule 9.1**;

(b) where a person who would be required to make a mandatory offer as a result of such an increase is, or is acting in concert with, a **director** of the company, the Panel will normally grant a Rule 9 waiver, conditional on the approval of independent shareholders (subject to the "disqualifying transactions" regime explained further below); and

(c) where a person who would be required to make a mandatory offer as a result of such an increase is an "**innocent bystander**", the Panel will normally grant a dispensation from **Rule 9.1** (without requiring the approval of independent shareholders), unless the person, or any person acting in concert with it, has acquired an interest in shares carrying voting rights at a time when the person had reason to believe that such a share buyback would take place.

6.6 The Code Committee proposes that the **current Rule 37.1** and **Notes 1 and 2** thereon should be restated so as to draw a more explicit distinction between "**innocent bystanders**" and "**directors or related persons**" and to explain more clearly what the mandatory offer consequences and the process for obtaining a waiver or dispensation from **Rule 9** would be in each case. The proposed **new Rule 37.1** and **Notes 1(a) and 2(a)** thereon are as follows:

"**37.1 REDEMPTION OR PURCHASE BY A COMPANY OF ITS OWN SHARES**

(a) 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.

(b) Subject to prior consultation by the company, the Panel will normally waive an obligation on a person referred to in Note 1(a) to make a mandatory offer on the condition that, prior to the redemption or purchase by the company of its own shares, a procedure substantially similar to that set out in Appendix 1 is followed, including the approval of independent shareholders (see also Note 1).

(c) Subject to prior consultation by the company, the Panel will normally grant a dispensation from an obligation on a person other than a person referred to in Note 1(a) to make a mandatory offer, unless the person, or any person acting in concert with it, has acquired an interest in shares carrying voting rights at a time when the person had reason to believe that such redemption or purchase of its own shares by the company would take place (see also Note 2).

NOTES ON RULE 37.1

1. Directors and related persons

(a) Rule 37.1(b) applies to a person who is a director of the company or who is, or is presumed to be, acting in concert with any of the directors. A person who has appointed a representative to the board of the company, or an investment manager or investment adviser to the company, will be treated for these purposes as a director.

…

2. Other persons

(a) The fact that a person to whom Rule 37.1(c) applies was aware at the time that it, or any person acting in concert with it, acquired an interest in shares carrying voting rights that the company had obtained or intended to obtain a general shareholders' authority to redeem or purchase its own shares will not normally prevent a dispensation from being granted under Rule 37.1(c), provided that the person did not have any reason to believe that a specific redemption or purchase would take place.".

(ii) Restriction on board triggering a mandatory offer by a director or related person

6.7 The first sentence of the **current Note 3 on Rule 37.1** provides that, where a company's directors are aware that a share buyback would otherwise give rise to an obligation for a person to make a mandatory offer, the directors should ensure that a Rule 9 waiver resolution is put to independent shareholders prior to the implementation of the relevant redemption or purchase and as a pre-condition to its implementation. In other words, the effect of the **current Note 3 on Rule 37.1** is that a company should not implement a share buyback if the board is aware that it would result in an obligation for a director or related person to make a mandatory offer unless a Rule 9 waiver has been obtained.

6.8 The Code Committee proposes that this should be restated in a **new Note 1(e) on Rule 37.1**, as follows:

> "*(e) The company must not implement a redemption or purchase of its own shares that would result in a person referred to in Note 1(a) incurring an obligation to make a mandatory offer unless a waiver under Rule 37.1(b) has been granted.*".

(iii) Rule 9 waiver not available where a person who would otherwise be an "innocent bystander" has made acquisitions in the knowledge of the share buyback

6.9 As indicated above, the **current Note 2 on Rule 37.1** provides that, where a person other than a director or related person has acquired an interest in shares at a time when the person had reason to believe that a share buyback would take place, the person will not be treated as an "innocent bystander" and may therefore be required to make a mandatory offer if the share buyback proceeds. In such circumstances, the company will not be able to seek a Rule 9 waiver (although the Panel may in certain circumstances grant a specific dispensation from the requirement to make a mandatory offer, subject to the person selling down its shares to below the relevant threshold).

6.10 The Code Committee proposes that this should be restated in a **new Note 2(b) on Rule 37.1**, as follows:

> "*(b) If a person to whom Rule 37.1(c) applies incurs an obligation to make a mandatory offer under Rule 9.1(a) as a result of a redemption or purchase of its own shares by the company and the Panel does not grant a dispensation from Rule 9 under Rule 37.1(c), it is not permissible for the company to seek a Rule 9 waiver under Rule 37.1(b).*".

Q11 Should the current Rule 37.1 be deleted and replaced with the proposed new Rule 37.1, including the new Notes 1(a), 1(e), 2(a) and 2(b), so as to draw a more explicit distinction between "innocent bystanders" and "directors or related persons" and to explain more clearly what the mandatory offer consequences and the process for obtaining a waiver or dispensation from Rule 9 would be in each case?

(d) Disqualifying transactions

6.11 The **current Note 5 on Rule 37.1** provides, in respect of directors and related persons, that:

(a) the Panel will not normally agree to grant a Rule 9 waiver if such a person has acquired an interest in shares in the knowledge that the company intended to seek permission from its shareholders to redeem or purchase its own shares (**Note 5(a) on Rule 37.1**); and

(b) a Rule 9 waiver will be "invalidated" if any such acquisitions are made by such a person in the period between the proposed publication date of the circular and the shareholders' meeting (**Note 5(b) on Rule 37.1**).

Such acquisitions are referred to as "**disqualifying transactions**".

6.12 Disqualifying transactions under the **current Note 5 on Rule 37.1** may therefore occur during the period prior to the shareholders' meeting to approve the Rule 9 waiver. Any subsequent acquisition of an interest in shares by the relevant person (or any person acting in concert with it) would neither be a disqualifying transaction nor invalidate the Rule 9 waiver. However, any such acquisition would limit the extent to which a company could implement a specific share buyback (depending on whether and the extent to which the relevant person participates in the share buyback), given that, among other matters, the Rule 9 waiver circular would have set out the maximum percentage of shares carrying voting rights in which the relevant person (together with any person acting in concert with it) might become interested. While this position is not explicit in the **current Rule 37.1**, it is the effect of **Section 4(b) and Section 7(a) of Appendix 1** of the Code that apply to a Rule 9 waiver sought under **Rule 37.1**, since:

(a) **Section 7(a) of Appendix 1** provides that the potential controller will be free to acquire further interests in shares of the company immediately following approval of the proposals at the shareholders' meeting (subject to **Rule 5** and **Rule 9**); and

(b) **Section 4(b) of Appendix 1** provides that the Rule 9 waiver circular must contain full details of the number and percentage of shares in which the potential controller (and persons acting in concert with it) might become interested, thereby prescribing the limits of the Rule 9 waiver.

6.13 The **current Note 5(a) on Rule 37.1** relates to acquisitions made by a director or related person in the knowledge that the company intends to seek shareholder authority for a share buyback (which many companies now do every year), rather than in the knowledge that the company intends to implement a specific share buyback.

6.14 The Code Committee understands that the application of the **current Note 5(a) on Rule 37.1** can result in the Panel being unable to grant a Rule 9 waiver, and can therefore prevent a share buyback from taking place, owing to acquisitions made by a director or related person in the knowledge that the company would be seeking its (normal) annual shareholder authority for share buybacks but prior to the company formulating an intention to implement a specific share buyback or buyback programme. This can lead to a disproportionate outcome for a company and its independent shareholders.

6.15 The Code Committee considers that it would be more appropriate to determine whether an acquisition prior to the shareholders' meeting to approve a Rule 9 waiver is a disqualifying transaction by reference to whether a director or related person had reason to believe at that time that a specific share buyback would take place. This would be consistent with the position for determining whether a person who is not a director or related person may benefit from "innocent bystander" status (as set out in the **current Note 2 on Rule 37.1** and the proposed **new Rule 37.1(c)**).

6.16 In many cases, a director or related person will not have reason to believe that a specific share buyback will take place prior to the Rule 9 waiver being granted, since the Rule 9 waiver may be sought via a (normal) annual shareholder authority for a share buyback but prior to the company formulating an intention to implement a specific share buyback or buyback programme. If, on the other hand, the company has formulated an intention to implement a specific "one-off" share buyback (e.g. following completion of an asset disposal) and is proposing to seek shareholder authority for the share buyback, any acquisitions by a director or related person are more likely to constitute disqualifying transactions.

6.17 In relation to the **current Note 5(b) on Rule 37.1**, the Code Committee considers that an acquisition of an interest in shares by a director or related person in the period between the publication of the Rule 9 waiver circular and the shareholders' meeting should not be a disqualifying transaction which would preclude the grant of the Rule 9 waiver unless, at the time of the acquisition, the person had reason to believe that a specific share buyback would take place. This is because it would, again, be a disproportionate outcome for a company and its independent shareholders if acquisitions by a director or related person prior to the company formulating any intention to implement a specific share buyback prevented a future share buyback from taking place.

6.18 If a director or related person acquires an interest in shares either:

(a) in the period between the publication of the Rule 9 waiver circular and the shareholders' meeting (where at the time of the acquisition they had no reason to believe that a specific share buyback would take place); or

(b) following the shareholders' meeting (regardless of whether at the time of the acquisition the person had reason to believe that a specific share buyback would take place),

the Code Committee considers that, consistent with the situation described in paragraph 6.12, the company should be permitted to implement a subsequent share buyback or buyback programme, but only to the extent that the interests in shares

carrying voting rights of the relevant person (and any persons acting in concert with it) do not increase beyond the maximum percentage disclosed in the Rule 9 waiver circular.

6.19 In the light of the above, the Code Committee proposes to replace the **current Note 5 on Rule 37.1** with **new Notes 1(b), (c) and (d) on Rule 37.1**, as follows:

> "*(b) Notwithstanding that the redemption or purchase of shares is made conditional upon the prior approval of independent shareholders, the Panel will not normally grant a waiver under Rule 37.1(b) if the relevant person, or any person acting in concert with it, has acquired an interest in shares carrying voting rights prior to the shareholders' meeting to approve the Rule 9 waiver and at a time when the person had reason to believe that a specific redemption or purchase of its own shares by the company would take place.*
>
> *(c) The fact that the relevant person referred to in Note 1(a) was aware at the time that it, or any person acting in concert with it, acquired an interest in shares carrying voting rights that the company intended to obtain a general shareholders' authority to redeem or purchase its own shares will not normally prevent a waiver from being granted under Rule 37.1(b), provided that the person did not have any reason to believe that a specific redemption or purchase would take place.*
>
> *(d) If the relevant person referred to in Note 1(a), or any person acting in concert with it, acquired an interest in shares carrying voting rights either:*
>
> > *(i) in the period between the publication date of the Rule 9 waiver circular and the shareholders' meeting but at a time when the person did not have any reason to believe that a specific redemption or purchase would take place; or*
> >
> > *(ii) following the approval of the Rule 9 waiver by shareholders,*
>
> *the company will be permitted to redeem or purchase its own shares only to the extent that the relevant person, or group of persons acting in concert, does not become interested in shares carrying more than the maximum percentage of voting rights disclosed in the Rule 9 waiver circular.*".

Q12 Should the "disqualifying transactions" regime under the current Note 5 on Rule 37.1 be replaced with the proposed new Notes 1(b), 1(c) and 1(d) on Rule 37.1?

(e) Disclosure of maximum percentage interests of relevant persons

6.20 If a share buyback might otherwise result in an obligation on a person to make a mandatory offer but either:

(a) the Panel has granted a Rule 9 waiver under the **new Rule 37.1(b)**; or

(b) the Panel has granted an innocent bystander dispensation from **Rule 9** under the **new Rule 37.1(c)**,

the Code Committee considers that appropriate disclosure should be made to shareholders of the maximum percentage of shares carrying voting rights in which the relevant person, or group of persons acting in concert, might become interested.

6.21 While this disclosure requirement would be covered by the requirement in **Section 4(b) of Appendix 1** in respect of a Rule 9 waiver obtained under the **new Rule 37.1(b)**, the Code Committee considers that a similar disclosure requirement should be introduced in connection with a share buyback where the Panel grants an innocent bystander dispensation under the **new Rule 37.1(c)**.

6.22 Accordingly, the Code Committee proposes to introduce a **new Note 2(c) on Rule 37.1**, as follows:

> *"(c) Where the Panel has granted a dispensation from Rule 9 under Rule 37.1(c), the company must at the time it announces the commencement of a specific redemption or purchase of its own shares disclose the maximum percentage of voting rights in which the relevant person, or group of persons acting in concert, might become interested as a result of the implementation of the redemption or purchase.*".

Q13 Should the new Note 2(c) on Rule 37.1 be introduced to provide that, where the Panel has granted an innocent bystander dispensation on a share buyback, the company must disclose the maximum percentage of voting rights in which the relevant person, or group of persons acting in concert, might become interested?

(f) Renewals

6.23 The **current** Note 6 on Rule 37.1 provides that any Rule 9 waiver will expire at the same time as the relevant shareholders' authority under Chapter 4 of Part 18 of the Companies Act 2006 expires and, accordingly, that Rule 9 waivers will normally need to be renewed at the same time as the relevant shareholders' authority is renewed. The Code Committee considers that this remains the appropriate position and that the rule should be applied as written, i.e. a Rule 9 waiver should be capable of applying for the duration of the shareholders' authority and only need be renewed upon the expiry of such an authority.

6.24 In order to take account of the fact that the relevant authority may have been provided under the relevant law in the Channel Islands or the Isle of Man, the Code Committee proposes to delete the reference in the **current Note 6 on Rule 37.1** to Chapter 4 of Part 18 of the Companies Act 2006.

6.25 The amended form of the **current Note 6 on Rule 37.1** is proposed to be introduced as the **new Note 3 on Rule 37.1**, as follows:

> "***3. Renewals***
>
> *Any Rule 9 waiver will expire at the same time as the relevant shareholders' authority for the redemption or purchase by the company of its own shares (whether or not shares carrying voting rights have in fact been redeemed or purchased). Accordingly, Rule 9 waivers will normally need to be renewed at the same time as the relevant shareholders' authority is renewed.*".

Q14 Should the current Note 6 on Rule 37.1 in respect of renewals be replaced by the new Note 3 on Rule 37.1 and the reference to Chapter 4 of Part 18 of the Companies Act 2006 be removed?

(g) Offer by way of redemption or purchase of own shares

6.26 The Code Committee understands that, from time to time, the Executive is consulted in relation to a proposed purchase by a company of its own shares which could result in all or substantially all of the company's shares being held by one person or a group of persons acting in concert. In those cases, that person or concert party is likely already to have "control" (as defined in the Definitions Section of the Code) of the company and may hold shares carrying more than 50% of the voting rights (in which latter case, the purchase by the company of its own shares will fall outside of **Rule 37.1** and **Rule 9.1** as the person or concert party will have "buying freedom").

6.27 The Code Committee understands that the Executive's practice is to treat such a share buyback as if it were an "offer" for the company by the person or concert party which could come to hold all or substantially all of the company's shares and not as a transaction to which **Rule 37.1** applies.

6.28 The Code Committee agrees with the Executive's practice in respect of offers by way of a share buyback and proposes to introduce a **new Note 4 on Rule 37.1**, as follows:

> "***4. Offer by way of redemption or purchase by a company of its own shares***
>
> *The Panel must be consulted at an early stage where a proposed redemption or purchase by a company of its own shares could result in all or substantially all of the company's shares carrying voting rights being held by one person or a group of persons acting in concert. The Panel will normally treat such a transaction as an offer for the company by such person or persons.*".

Q15 Should the new Note 4 on Rule 37.1 be introduced to provide that the Panel should be consulted on a share buyback which could result in all or substantially all of the company's shares being held by one person or concert party and that the Panel will normally treat such a transaction as an offer?

(h) Proposed deletions of certain provisions of Rule 37

6.29 Consistent with its policy of removing provisions from the Code if they are no longer required, the Code Committee proposes to delete the following:

(a) the final sentence of the **current Note 1 on Rule 37.1** (persons who will not be required to make a mandatory offer), on the basis that it is well understood that there is no presumption that all the directors (or any two or more directors) are acting in concert solely by reason of a proposed share buyback, or the decision to seek shareholders' authority for any such share buyback;

(b) the **current Note 4 on Rule 37.1** (prior consultation), on the basis that companies and their advisers will in practice consult the Panel on any matter relating to a share buyback where **Rule 9** might be relevant, and that the effect of the **new Rule 37.1** and the **new Notes 1 and 2 on Rule 37.1** should ensure that this is the case;

(c) the **current** Note 7 (responsibility for making an offer) and Note 8 (inadvertent mistake) on **Rule 37.1**, on the basis that they do not add anything to the provisions of, respectively, **Rule 9.2** (obligations of other persons) and **Note 4 of the Notes on Dispensations from Rule 9** (inadvertent mistake); and

(d) the **current** Rule 37.2 (limitation on subsequent acquisitions), on the basis that it does not add anything to the provisions of **Rule 9.1**.

6.30 In addition, the Code Committee proposes to make certain minor and consequential amendments to:

(a) **Section 3 of Appendix 1** (disqualifying transactions); and

(b) paragraph (c) of **Section 7 of Appendix 1** (subsequent acquisitions by potential controllers),

as set out in **Appendix A**.

Q16 Should the final sentence of the current Note 1 on Rule 37.1, the current Notes 4, 7 and 8 on Rule 37.1 and the current Rule 37.2 be deleted?

(i) Enfranchisement of non-voting shares

6.31 The **current** Note 6 of the Notes on Dispensations from Rule 9 provides that there is no requirement to make an offer under **Rule 9** if a person interested in non-voting shares becomes, upon enfranchisement of those shares, interested in shares carrying 30% or more of the voting rights of a company, except where shares or interests in shares have been acquired at a time when the person had reason to believe that enfranchisement would take place.

6.32 The **current Note 6 of the Notes on Dispensations from Rule 9** is, in substance, similar to the innocent bystander regime in respect of share buybacks (see the proposed **new Rule 37.1**) and the new DCSS provisions (see the proposed **new Rule 37.2**). The Code Committee considers that the content of the **current Note 6 of the Notes on Dispensations from Rule 9** should be amended to be consistent with those rules and that it should be moved to become a **new Rule 37.3**, as follows:

"**37.3 ENFRANCHISEMENT OF NON-VOTING SHARES**

(a) When non-voting shares are enfranchised, 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.

(b) Subject to prior consultation, the Panel will normally grant a dispensation from any resulting obligation on such a person to make a mandatory offer, unless the person, or any person acting in concert with it, acquired an interest in shares at a time when the person had reason to believe that such enfranchisement of non-voting shares would take place.".

Q17 Should the new Rule 37.3 be introduced in place of the current Note 6 of the Notes on Dispensations from Rule 9 in relation to the enfranchisement of non-voting shares?

7. Assessment of the impact of the proposals

(a) DCSSs

7.1 The proposals in respect of DCSSs would establish a general framework for the application of the Code to a company with a DCSS. This will provide clarity following the FCA's amendments to the Listing Rules relating to DCSSs.

7.2 The **new Rule 37.2** will provide clarity as to how **Rule 9.1** normally applies to a DCSS 1 company where a shareholder's voting rights are increased through a Rule 9 threshold as a result of the extinguishing or conversion of Class B shares. Although such a person may incur a mandatory offer obligation, the Panel will normally grant a dispensation from that obligation unless the relevant trigger event is a time sunset or the person, or a person acting in concert with it, acquired an interest in shares carrying voting rights at a time when it had reason to believe that a trigger event would occur. In addition, the Panel will have the ability to grant a Rule 9 dispensation by disclosure in the context of an IPO in relation to a specific shareholder who might otherwise be required to make a mandatory offer following a time sunset (or other trigger event), provided that certain conditions are met.

7.3 Accordingly, it is unlikely that a person will be required to make a mandatory offer upon the occurrence of a trigger event (and it would often be disproportionate for the person to be required to do so). That said, it is important for other shareholders to be protected if a person obtains or consolidates control of a company in circumstances where the Panel has not granted any such dispensation.

7.4 The **new Note 9 on Rule 10.1** (and the **new Note 3 on Rule 9.3** in the case of a mandatory offer) will provide clarity on the application of the acceptance condition to a contractual offer for a DCSS 1 company. Making the acceptance condition subject to two tests takes due account of (i) the enhanced voting rights of the Class B shares prior to the offer being unconditional and (ii) the need for a "clear result", i.e. the offer will become unconditional only where the offeror will obtain statutory control of the company.

7.5 The proposed amendment to **Rule 14.2** will give the Panel the ability to consent to there being a single offer for two classes of shares. This provides flexibility for an offeror to structure its offer for a DCSS company in different ways, but subject to Panel consent if it proposes to make a single offer for two classes of shares.

7.6 The **new Note 4 on Rule 16.1** will make clear that the Panel should be consulted in respect of the application of **Rule 16.1** to an offer for a DCSS company, given the potential issues that may arise in respect of special deals with favourable conditions. This is important to protect other shareholders from a possible outcome of an offeror

offering a special deal with favourable conditions to a shareholder holding Class B or special shares. The restriction on any special deal with favourable conditions should not have a disproportionate impact on a shareholder holding Class B or special shares on the basis that the purpose of a typical DCSS is to grant to the holder(s) of the Class B or special shares enhanced voting control and/or protection against a change of control of the company, rather than to facilitate an enhanced economic return for the transfer of the Class B or special shares on such a change of control.

7.7 The **new Notes on Rule 2.9** and **Rule 17** will provide enhanced disclosure to shareholders on the voting rights in a DCSS 1 company in the context of an offer. While this may increase slightly the requirements on the parties to an offer, the Code Committee believes that this will be of material benefit to shareholders in the course of an offer involving a DCSS 1 company and is therefore justified in those circumstances.

7.8 In summary, the Code Committee believes that the proposals in respect of DCSSs will be beneficial to shareholders and the market and will not place any significant new time or cost burden on the parties to an offer.

(b) IPOs

7.9 The proposals in respect of IPOs will introduce a requirement under the **new section 3(e)(i) of the Introduction** to the Code to make appropriate disclosure in respect of the Code to shareholders on an IPO, and to consult the Panel for guidance on that disclosure. While the company and its advisers will normally do this already, it will be helpful for this to be a requirement of the Code to reduce the likelihood that insufficient disclosure is made in the admission document.

7.10 The **new Note 6 of the Notes on Dispensations from Rule 9** will codify the ability of the Panel to grant a Rule 9 dispensation by disclosure. While the Executive will, as a matter of practice, grant such a dispensation in certain circumstances already, it will be helpful for the ability to do so to be codified.

7.11 The **new Note 6** will provide clarity to companies and shareholders as to the potential availability of a Rule 9 dispensation in the context of an IPO and should ensure that there is sufficient information for investors at the point of IPO about the fact that a specific person (or persons acting in concert) may obtain or consolidate control of the company without being required to make a mandatory offer.

7.12 In summary, the Code Committee believes that the amendments proposed in respect of IPOs will be beneficial to shareholders and the market and will not place any significant new time or cost burden on a company considering an IPO, since consultation with the Panel, the provision of appropriate disclosure and (where relevant) the granting of a

Rule 9 dispensation by disclosure already usually occur as a matter of practice in the context of an IPO.

(c) Share buybacks

7.13 The amendments to **Rule 37.1** in respect of share buybacks will have the benefit of making the rule clearer and more concise.

7.14 The amendments to the provisions relating to "disqualifying transactions", as set out in the **new Notes 1(b), (c) and (d) on Rule 37.1**, will remove restrictions on a company carrying out a share buyback under its annual shareholder authority, which should be to the benefit of a company and its independent shareholders.

7.15 The proposed amendments to **Rule 37.1** should not have any material additional cost implications.

APPENDIX A

Proposed amendments to the Code

INTRODUCTION

3 COMPANIES, TRANSACTIONS AND PERSONS SUBJECT TO THE CODE

This section (except for sections 3(d) and (e)(ii)) sets out the rules as to the companies, transactions and persons to which the Code applies.

…

(e) Admission to trading and c~~C~~ancellation of admission to trading

(i) Initial public offering or admission to trading

Where a company is considering an initial public offering 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) above, 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.

See also Note 6 of the Notes on Dispensations from Rule 9.

(ii) Cancellation of admission to trading

A company referred to in paragraph (i) of section 3(a) above may decide that it wishes to cancel the admission of its securities to trading on a UK regulated market, a UK MTF, or a stock exchange in the Channel Islands or the Isle of Man. In such circumstances, early consultation with the Panel is advised so that guidance can be given on the appropriate disclosure to be made to shareholders about the fact that, as a result of the cancellation of the admission of its securities to trading, the company will fall within paragraph (ii) of section 3(a) above for a period of two years, following which the Code will cease to apply.

Rule 2.9

2.9 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

…

NOTES ON RULE 2.9

…

3. Dual class share structures

Where the offeree company or a securities exchange offeror has a class of shares with enhanced voting rights where each such share carries multiple votes, any announcement made under Rule 2.9 must explain the voting rights carried by each class of shares. The Panel must be consulted on the form of the announcement.

Rule 9

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

…

(See the Notes on Dispensations from Rule 9 and, in respect of share buybacks, dual class share structures and enfranchisement of non-voting shares, Rule 37.)

…

NOTES ON RULE 9.1

…

11. The reduction or dilution of interests in shares

…

(See also Rule 37.1.)

…

9.3 RESTRICTION ON CONDITIONS

…

NOTES ON RULE 9.3

…

3. Dual class share structures

(a) In the circumstances described in Note 3(b), an offer made under Rule 9 must be conditional only upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with the offeror holding both:

(i) shares carrying, in aggregate, over 50% of the voting rights immediately before the offer becomes unconditional; and

(ii) shares which would carry, in aggregate, over 50% of the voting rights immediately after any conversion or extinguishing of the shares with enhanced voting rights (or of the voting rights carried by such shares).

(b) Note 3(a) applies where an offer is made for an offeree company with a class of shares with enhanced voting rights where each such share carries multiple votes and, upon transfer of those shares or upon the offer becoming unconditional, either:

(i) the shares would convert into ordinary shares; or

(ii) the shares (or the voting rights carried by such shares) would be extinguished.

…

9.5 CONSIDERATION TO BE OFFERED

…

NOTES ON RULE 9.5

…

3. Adjustment of highest price

Circumstances which the Panel might take into account when considering an adjustment of the highest price include:

…

(g) if an offer is required in the circumstances set out in Rule 37~~.1~~.

…

6. Share buybacks, dual class share structures and enfranchisement of non-voting shares

Where a mandatory offer is required as a result of the application of Rule 37, the Panel must be consulted to determine the price at which the offer must be made.

…

NOTES ON DISPENSATIONS FROM RULE 9

…

~~***6. Enfranchisement of non-voting shares***~~

~~*There is no requirement to make an offer under Rule 9 if a person interested in non-voting shares becomes upon enfranchisement of those shares interested in shares carrying 30% or more of the voting rights of a company, except where shares or interests in shares have been acquired at a time when the person had reason to believe that enfranchisement would take place.*~~

6. Rule 9 dispensation by disclosure on an IPO

(a) Where a company is considering an initial public offering or admission to trading of its securities and the company either:

(i) 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

(ii) 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 in the circumstances described, provided that appropriate disclosure is made in the admission document.

(b) Except with the consent of the Panel, any dispensation granted in respect of a company referred to in paragraph (a)(ii) above will be invalidated if the relevant person, or any person acting in concert with it, acquires any interests in shares between the admission to trading of the company's securities and the Trigger Event.

(c) The Panel will normally give its consent under paragraph (b) where it is satisfied that, if the acquisition were to have taken place following a Trigger Event, it would not have required the relevant person, or any person acting in concert with it, to make a mandatory offer as a result of the acquisition of interests in shares.

Rule 10.1

10.1 REQUIREMENT FOR 50% ACCEPTANCE CONDITION

…

NOTES ON RULE 10.1

…

9. Dual class share structures

(a) In the circumstances described in Note 9(b), the acceptance condition required by Rule 10.1 must not be capable of being satisfied unless the offeror has acquired or agreed to acquire (either pursuant to the offer or otherwise) both:

(i) shares carrying, in aggregate, over 50% of the voting rights immediately before the offer becomes unconditional; and

(ii) shares which would carry, in aggregate, over 50% of the voting rights immediately after any conversion or extinguishing of the shares with enhanced voting rights (or of the voting rights carried by such shares).

(b) Note 9(a) applies where an offer is made for an offeree company with a class of shares with enhanced voting rights where each such share carries multiple votes and, upon transfer of those shares or upon the offer becoming unconditional, either:

(i) the shares would convert into ordinary shares; or

(ii) the shares (or the voting rights carried by such shares) would be extinguished.

Rule 14.2

14.2 SEPARATE OFFERS FOR EACH CLASS

Except with the consent of the Panel, w~~W~~here an offer is made for more than one class of share, separate offers must be made for each class.

Rule 16.1

16.1 SPECIAL DEALS WITH FAVOURABLE CONDITIONS

…

NOTES ON RULE 16.1

…

4. Dual class share structures

The Panel should be consulted in relation to the application of Rule 16.1 where an offer is made for a company with a dual class share structure.

Rule 17

RULE 17. ANNOUNCEMENT OF ACCEPTANCE LEVELS

…

NOTES ON RULE 17

…

4. Dual class share structures

Where the offeree company has a class of shares with enhanced voting rights where each such share carries multiple votes, any announcement made under Rule 17.1 must, for the purposes of each requirement in Rule 17.2, specify the voting rights carried by the shares and relevant securities with reference to the requirements of each of paragraphs (i) and (ii) of Note 3(a) on Rule 9.3 or Note 9(a) on Rule 10.1 (as applicable). The Panel must be consulted on the form of the announcement.

Rule 37[8]

RULE 37. SHARE BUYBACKS, DUAL CLASS SHARE STRUCTURES AND ENFRANCHISEMENT OF NON-VOTING SHARES

37.1 REDEMPTION OR PURCHASE BY A COMPANY OF ITS OWN SHARES

(a) 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.

(b) Subject to prior consultation by the company, the Panel will normally waive an obligation on a person referred to in Note 1(a) to make a mandatory offer on the condition that, prior to the redemption or purchase by the company of its own

[8] As it is proposed to delete the **current Rule 37** in its entirety, and to replace it with a **new Rule 37** as set out in this **Appendix A**, the provisions of the proposed **new Rule 37** are not "marked up" against the **current Rule 37**. For ease of reference, the **current Rule 37** is set out in **Appendix C**.

shares, a procedure substantially similar to that set out in Appendix 1 is followed, including the approval of independent shareholders (see also Note 1).

(c) Subject to prior consultation by the company, the Panel will normally grant a dispensation from an obligation on a person other than a person referred to in Note 1(a) to make a mandatory offer, unless the person, or any person acting in concert with it, has acquired an interest in shares carrying voting rights at a time when the person had reason to believe that such redemption or purchase of its own shares by the company would take place (see also Note 2).

NOTES ON RULE 37.1

1. Directors and related persons

(a) Rule 37.1(b) applies to a person who is a director of the company or who is, or is presumed to be, acting in concert with any of the directors. A person who has appointed a representative to the board of the company, or an investment manager or investment adviser to the company, will be treated for these purposes as a director.

(b) Notwithstanding that the redemption or purchase of shares is made conditional upon the prior approval of independent shareholders, the Panel will not normally grant a waiver under Rule 37.1(b) if the relevant person, or any person acting in concert with it, has acquired an interest in shares carrying voting rights prior to the shareholders' meeting to approve the Rule 9 waiver and at a time when the person had reason to believe that a specific redemption or purchase of its own shares by the company would take place.

(c) The fact that the relevant person referred to in Note 1(a) was aware at the time that it, or any person acting in concert with it, acquired an interest in shares carrying voting rights that the company intended to obtain a general shareholders' authority to redeem or purchase its own shares will not normally prevent a waiver from being granted under Rule 37.1(b), provided that the person did not have any reason to believe that a specific redemption or purchase would take place.

(d) If the relevant person referred to in Note 1(a), or any person acting in concert with it, acquired an interest in shares carrying voting rights either:

> *(i) in the period between the publication date of the Rule 9 waiver circular and the shareholders' meeting but at a time when the person did not have any reason to believe that a specific redemption or purchase would take place; or*
>
> *(ii) following the approval of the Rule 9 waiver by shareholders,*

the company will be permitted to redeem or purchase its own shares only to the extent that the relevant person, or group of persons acting in concert, does not become interested in shares carrying more than the maximum percentage of voting rights disclosed in the Rule 9 waiver circular.

(e) The company must not implement a redemption or purchase of its own shares that would result in a person referred to in Note 1(a) incurring an obligation to make a mandatory offer unless a waiver under Rule 37.1(b) has been granted.

2. Other persons

(a) The fact that a person to whom Rule 37.1(c) applies was aware at the time that it, or any person acting in concert with it, acquired an interest in shares carrying voting rights that the company had obtained or intended to obtain a general shareholders' authority to redeem or purchase its own shares will not normally prevent a dispensation from being granted under Rule 37.1(c), provided that the person did not have any reason to believe that a specific redemption or purchase would take place.

(b) If a person to whom Rule 37.1(c) applies incurs an obligation to make a mandatory offer under Rule 9.1(a) as a result of a redemption or purchase of its own shares by the company and the Panel does not grant a dispensation from Rule 9 under Rule 37.1(c), it is not permissible for the company to seek a Rule 9 waiver under Rule 37.1(b).

(c) Where the Panel has granted a dispensation from Rule 9 under Rule 37.1(c), the company must at the time it announces the commencement of a specific redemption or purchase of its own shares disclose the maximum percentage of voting rights in which the relevant person, or group of persons acting in concert, might become interested as a result of the implementation of the redemption or purchase.

3. Renewals

Any Rule 9 waiver will expire at the same time as the relevant shareholders' authority for the redemption or purchase by the company of its own shares (whether or not shares carrying voting rights have in fact been redeemed or purchased). Accordingly, Rule 9 waivers will normally need to be renewed at the same time as the relevant shareholders' authority is renewed.

4. Offer by way of redemption or purchase by a company of its own shares

The Panel must be consulted at an early stage where a proposed redemption or purchase by a company of its own shares could result in all or substantially all of the company's shares carrying voting rights being held by one person or a group of persons acting in concert. The Panel will normally treat such a transaction as an offer for the company by such person or persons.

37.2 DUAL CLASS SHARE STRUCTURES

(a) Where a company has a class of shares with enhanced voting rights where each such share carries multiple votes, and an event occurs which causes some or all of those shares (or the voting rights carried by such shares) either to be extinguished or to convert into ordinary shares (a "Trigger Event"), 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 for the purpose of Rule 9.1.

(b) The Panel will normally grant a dispensation from any resulting obligation on such a person to make a mandatory offer unless:

> **(i) the Trigger Event is the expiry of any time limit applicable to the enhanced voting rights; or**
>
> **(ii) the person, or a person acting in concert with it, acquired an interest in shares carrying voting rights at a time when that person had reason to believe that a Trigger Event (other than that referred to in paragraph (i)) would occur.**

NOTE ON RULE 37.2

Rule 9 dispensation by disclosure

See Note 6 of the Notes on Dispensations from Rule 9.

37.3 ENFRANCHISEMENT OF NON-VOTING SHARES

(a) When non-voting shares are enfranchised, 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.

(b) Subject to prior consultation, the Panel will normally grant a dispensation from any resulting obligation on such a person to make a mandatory offer, unless the person, or any person acting in concert with it, acquired an interest in shares at a time when the person had reason to believe that such enfranchisement of non-voting shares would take place.

Appendix 1

APPENDIX 1

RULE 9 WAIVERS

…

3 DISQUALIFYING TRANSACTIONS

Notwithstanding that the issue of new securities is made conditional upon the prior approval of independent shareholders:

(a) the Panel will not normally agree to grant a Rule 9 waiver if the potential controller, or any person acting in concert with it, has acquired any interest in shares in the company carrying voting rights in the 12 months prior to the proposed publication date of the circular but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to the proposed issue of new securities; and

(b) a Rule 9 waiver will not be granted, or will be invalidated, if any acquisitions of interests the potential controller, or any person acting in concert with it, acquires an interest in shares are made carrying voting rights in the period between the publication of the circular and the shareholders' meeting.

…

7 SUBSEQUENT ACQUISITIONS BY POTENTIAL CONTROLLERS

…

(c) See also Note 4 on Rule 9.1 and Rule 37.1.

APPENDIX B

List of questions

Q1 **Should the new Rule 37.2(a) be introduced to provide that an increase in the voting rights of an Affected Shareholder as a result of the extinguishing or conversion of Class B shares will be treated as an "acquisition" of an interest in shares for the purposes of Rule 9.1?**

Q2 **Should the new Rule 37.2(b) be introduced to provide that the Panel will normally grant an "innocent bystander" dispensation from any resulting Rule 9 obligation unless (a) the trigger event is a time sunset or (b) the person acquired an interest in shares at a time when it had reason to believe that a trigger event would occur?**

Q3 **Should the proposed new Note 6 on Rule 9.5 be introduced to provide that the Panel should be consulted as to the consideration to be offered where a requirement to make a mandatory offer arises as a result of a "deemed" acquisition of shares?**

Q4 **Should (a) the new Note 9 on Rule 10.1 (for a voluntary contractual offer) and (b) the new Note 3 on Rule 9.3 (for a mandatory offer) be introduced in respect of the acceptance condition for an offer for a DCSS 1 company?**

Q5 **Should Rule 14.2 be amended to provide the Panel with the ability to consent to a single combined offer for more than one class of shares?**

Q6 **Should the proposed new Note 4 on Rule 16.1 be introduced to require the Panel to be consulted where an offer is made for a company with a DCSS?**

Q7 **Should the proposed new Note 3 on Rule 2.9 be introduced to provide that any announcement of the number of securities in issue made under Rule 2.9 by a DCSS 1 company must explain the voting rights carried by each class of shares and that the Panel must be consulted on the form of the announcement?**

Q8 **Should the proposed new Note 4 on Rule 17 be introduced to provide that any announcement of acceptance levels made by an offeror under Rule 17.2 in the context of an offer for DCSS 1 company must specify the voting rights carried by the shares and relevant securities in the offeree company and that the Panel must be consulted on the form of the announcement?**

Q9 **Should the proposed new section 3(e)(i) of the Introduction to the Code be introduced to provide that appropriate disclosure must be made in an IPO admission document, including in relation to the application of Rule 9 and details of any relevant person or concert party, and that the Panel must be consulted for guidance on that disclosure?**

Q10 **Should the proposed new Note 6 of the Notes on Dispensations from Rule 9 be introduced to provide that the Panel may grant a "Rule 9 dispensation by disclosure" in the context of an IPO?**

Q11 **Should the current Rule 37.1 be deleted and replaced with the proposed new Rule 37.1, including the new Notes 1(a), 1(e), 2(a) and 2(b), so as to draw a more explicit distinction between "innocent bystanders" and "directors or related persons" and to explain more clearly what the mandatory offer consequences and the process for obtaining a waiver or dispensation from Rule 9 would be in each case?**

Q12 **Should the "disqualifying transactions" regime under the current Note 5 on Rule 37.1 be replaced with the proposed new Notes 1(b), 1(c) and 1(d) on Rule 37.1?**

Q13 Should the new Note 2(c) on Rule 37.1 be introduced to provide that, where the Panel has granted an innocent bystander dispensation on a share buyback, the company must disclose the maximum percentage of voting rights in which the relevant person, or group of persons acting in concert, might become interested?

Q14 Should the current Note 6 on Rule 37.1 in respect of renewals be replaced by the new Note 3 on Rule 37.1 and the reference to Chapter 4 of Part 18 of the Companies Act 2006 be removed?

Q15 Should the new Note 4 on Rule 37.1 be introduced to provide that the Panel should be consulted on a share buyback which could result in all or substantially all of the company's shares being held by one person or concert party and that the Panel will normally treat such a transaction as an offer?

Q16 Should the final sentence of the current Note 1 on Rule 37.1, the current Notes 4, 7 and 8 on Rule 37.1 and the current Rule 37.2 be deleted?

Q17 Should the new Rule 37.3 be introduced in place of the current Note 6 of the Notes on Dispensations from Rule 9 in relation to the enfranchisement of non-voting shares?

APPENDIX C

Current Rule 37

RULE 37. REDEMPTION OR PURCHASE BY A COMPANY OF ITS OWN SECURITIES

37.1 POSSIBLE REQUIREMENT TO MAKE A MANDATORY OFFER

When a company redeems or purchases its own voting shares, any resulting increase in the percentage of shares carrying voting rights in which a person or group of persons acting in concert is interested will be treated as an acquisition for the purpose of Rule 9. Subject to prior consultation, the Panel will normally waive any resulting obligation to make an offer under Rule 9 if there is a vote of independent shareholders and a procedure on the lines of that set out in Appendix 1 is followed.

NOTES ON RULE 37.1

1. Persons who will not be required to make a mandatory offer

A person who comes to exceed the limits in Rule 9.1 in consequence of a company's redemption or purchase of its own shares will not normally incur an obligation to make a mandatory offer unless that person is a director, or the relationship of the person with any one or more of the directors is such that the person is, or is presumed to be, acting in concert with any of the directors. A person who has appointed a representative to the board of the company, and investment managers of investment trusts, will be treated for these purposes as a director. However, there is no presumption that all the directors (or any two or more directors) are acting in concert solely by reason of a proposed redemption or purchase by the company of its own shares, or the decision to seek shareholders' authority for any such redemption or purchase.

2. Acquisitions of interests in shares preceding a redemption or purchase

The exception in Note 1 will not apply, and an obligation to make a mandatory offer may therefore be imposed, if a person (or any relevant member of a group of persons acting in concert) has acquired an interest in shares at a time when the person had reason to believe that such a redemption or purchase of its own shares by the company would take place. This Note will not normally be relevant unless the relevant person has knowledge that a redemption or purchase for which requisite shareholder authority exists is being, or is likely to be, implemented (whether in whole or in part).

3. Situations where a mandatory obligation may arise

Where the directors are aware that a company's redemption or purchase of its own shares would otherwise give rise to an obligation for a person (or group of persons acting in concert) to make a mandatory offer, the board of directors should ensure that an appropriate resolution to approve a Rule 9 waiver is put to independent shareholders prior to implementation of the relevant redemption or purchase and as a pre-condition to its implementation. Additionally, each individual director should draw the attention of the board at the time any redemption or purchase of the company's own shares is proposed, and whenever shareholders' authority for any such redemption or purchase is to be sought, to interests in shares of parties acting in concert, or presumed to be acting in concert, with that director.

4. Prior consultation

The Panel must be consulted in advance in any case where Rule 9 might be relevant. This will include any case where a person or group of persons acting in concert is interested in shares carrying 30% or more but does not hold shares carrying more than 50% of the voting rights of a company, or may become interested in 30% or more on full implementation of the proposed redemption or purchase of own shares. In addition, the Panel should always be consulted if the aggregate interests in shares of the directors and any other persons acting in concert, or

presumed to be acting in concert, with any of the directors amount to 30% or more, or may be increased to 30% or more on full implementation of the proposed redemption or purchase of own shares.

5. Disqualifying transactions

Notwithstanding that the redemption or purchase of voting shares is made conditional upon the prior approval of independent shareholders:

(a) the Panel will not normally agree to grant a Rule 9 waiver if the relevant person, or any member of the relevant group of persons acting in concert, has acquired an interest in shares in the knowledge that the company intended to seek permission from its shareholders to redeem or purchase its own shares; and

(b) a Rule 9 waiver will be invalidated if any acquisitions are made by the relevant person, or by any member of the relevant group of persons acting in concert, in the period between the proposed publication date of the circular and the shareholders' meeting.

6. Renewals

Any Rule 9 waiver will expire at the same time as the relevant shareholders' authority under Chapter 4 of Part 18 of the Companies Act 2006 (whether or not voting shares have in fact been redeemed or purchased). Accordingly, Rule 9 waivers will normally need to be renewed at the same time as the relevant shareholders' authority is renewed.

7. Responsibility for making an offer

If an obligation arises under Rule 37 for an offer to be made and a Rule 9 waiver is not granted, the prime responsibility for making an offer will normally attach to the person who obtains or consolidates control as a result of the redemption or purchase of its own shares by the company. Where control is obtained or consolidated by a group of persons acting in concert, the prime responsibility will normally attach to the principal member or members of the group acting in concert. In exceptional cases, responsibility for making an offer may attach to one or more directors if, in the view of the Panel, there has been a failure by the board as a whole, or by any one or more individual directors, to address satisfactorily the implications of a redemption or purchase by the company of its own shares in relation to interests in shares of directors or parties acting in concert with one or more of the directors.

8. Inadvertent mistake

Note 4 of the Notes on Dispensations from Rule 9 may be relevant in appropriate circumstances.

37.2 LIMITATION ON SUBSEQUENT ACQUISITIONS

Subsequent to the redemption or purchase by a company of its own voting shares, all persons will be subject, in acquiring further interests in shares in the company, to the provisions of Rule 9.1.

NOTE ON RULE 37.2

Calculation of percentage thresholds

The percentage thresholds referred to in Rule 9.1 will be calculated by reference to the outstanding voting capital subsequent to the redemption or purchase by the company of its own shares.