

RS 2022/3 4 April 2023

THE TAKEOVER PANEL

**THE OFFER TIMETABLE
IN A COMPETITIVE SITUATION**

**RESPONSE STATEMENT BY
THE CODE COMMITTEE**



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1. Introduction and summary

(a) Introduction

1.1 On 19 October 2022, the Code Committee of the Takeover Panel (the “**Code Committee**”) published a [Public Consultation Paper](#) (“**PCP 2022/3**” or the “**PCP**”) which proposed amendments to various provisions of the [Takeover Code](#) (the “**Code**”), as summarised below.

(b) Summary of proposals

1.2 Following [PCP 2020/1](#) (*Conditions to offers and the offer timetable*), a number of amendments were made to the Code to accommodate more readily the potentially lengthy timeframes required in order for an offeror to satisfy the conditions relating to official authorisations and regulatory clearances to which many offers are now increasingly subject.

1.3 Since the implementation of those amendments, the Panel has encountered certain competitive situations in which:

- (a) one or both of the offerors has required one or more official authorisations or regulatory clearances in order to acquire the offeree company which could not be obtained in the normal 60 day timetable for contractual offers; and
- (b) one of the offerors was proceeding by way of a contractual offer and the other offeror was proceeding by way of a scheme of arrangement.

1.4 In the light of those cases, the Code Committee proposed in PCP 2022/3 that certain amendments should be made to the Code in order to make clearer the manner in which the offer timetable prescribed by the Code applies in a competitive situation (including in cases where one or more of the offerors is proceeding by way of a scheme of arrangement).

1.5 **Section 2** of the PCP proposed amendments to **Note 2 on Rule 32.5** (which applies where one or more of the competing offerors is proceeding by way of a scheme of arrangement) to clarify:

- (a) that, where the parties do not agree to an earlier date among themselves, the Panel will not introduce an auction procedure under **Rule 32.5** to bring the competitive bidding dynamic to a conclusion until after the last condition relating to a relevant official authorisation or regulatory clearance has been satisfied or waived by each of the offerors (the new **Note 2(b) on Rule 32.5**); and

- (b) in cases where an offer implemented by way of a contractual offer is in competition with an offer implemented by way of a scheme of arrangement, how the Panel will establish a framework for shareholders in the offeree company to decide between the competing transactions once each of the offerors has made its final offer (whether as a result of an auction procedure or otherwise) (the new **Note 2(c) on Rule 32.5**).

(c) Responses to consultation

1.6 The consultation period in relation to PCP 2022/3 ended on 13 January 2023. Responses were received from the four respondents listed in **Appendix A** and their responses have been published on the Panel's [website](#). The Code Committee thanks the respondents for their comments.

1.7 The respondents were broadly supportive of the proposals. Although views were not specifically sought on this issue, certain respondents commented on the statement made in paragraph 2.10 of the PCP regarding the potential application of **Rule 21.1** where an offeree board seeks to sanction a scheme of arrangement in a competitive situation.

1.8 The principal comments and suggestions made by respondents are summarised in:

- (a) **Section 2** below, in relation to the potential application of **Rule 21.1** to an offeree board seeking to sanction a scheme of arrangement in a competitive situation; and
- (b) **Section 3** below, in relation to the offer timetable in a competitive situation where one or more of the offers is being implemented by way of a scheme of arrangement.

(d) The Code Committee's conclusions

1.9 **Section 2** sets out the Code Committee's views on the application of **Rule 21.1** to an offeree board seeking to sanction a scheme of arrangement in a competitive situation.

1.10 **Section 3** sets out the Code Committee's conclusions on the proposed amendments to the Code in relation to the offer timetable in a competitive situation where one or more of the offers is being implemented by way of a scheme of arrangement.

1.11 Having considered the responses to the consultation, the Code Committee has adopted the amendments proposed in the PCP, subject to certain modifications, as described in **Section 3** below.

(e) Code amendments

- 1.12 The amendments to the Code which the Code Committee has adopted as a result of the consultation are set out in **Appendix B**. In **Appendix B**, underlining indicates new text and striking-through indicates deleted text, as compared with the current provisions of the Code.
- 1.13 Unless stated otherwise, where new or amended provisions of the Code are set out in the main body of this Response Statement, they are marked to show changes from the provisions as they were proposed to be amended in the PCP.

(f) Implementation

- 1.14 The amendments to the Code set out in this Response Statement will take effect on Monday, 22 May 2023 (the “**implementation date**”).
- 1.15 The Code, as amended, will be applied from the implementation date to all companies and transactions to which it relates, including those on-going transactions which straddle that date.
- 1.16 Where parties have doubts as to the consequences of the amendments to the Code set out in this Response Statement, in particular the impact on any transaction which is in existence or contemplation, they should consult the Panel prior to the implementation date to obtain a ruling or guidance.

2. Application of Rule 21.1 where an offeree board seeks to sanction a scheme of arrangement in a competitive situation

(a) Introduction

2.1 **Section 2** of the PCP explained how, in a competitive situation, the “faster” offeror (in terms of being the first to obtain its official authorisations and regulatory clearances)¹ could seek to complete its offer prior to the Panel introducing an auction procedure under **Rule 32.5**.

2.2 Paragraph 2.7 of the PCP noted that, if the “faster” offeror was proceeding by way of a contractual offer, it could seek to complete its offer prior to the Panel introducing an auction procedure under **Rule 32.5** by making an “acceleration statement” in accordance with **Rule 31.5**, thereby bringing forward the unconditional date for its offer. Shareholders in the offeree company could then decide whether:

- (a) to accept that contractual offer on or prior to the accelerated unconditional date; or
- (b) not to accept that contractual offer and instead to wait for the outcome of the “slower” offeror’s regulatory clearances.

2.3 Paragraph 2.10 of the PCP noted that if:

- (a) the “faster” offeror was proceeding by way of a scheme of arrangement (which had been approved by shareholders in the offeree company); and
- (b) the board of the offeree company, with the agreement of the “faster” offeror, wished to seek to sanction the scheme prior to the Panel introducing an auction procedure under **Rule 32.5**,

the Panel should be consulted as to whether the action of the offeree board seeking to sanction the scheme would, without an additional shareholder vote, be restricted by **Rule 21.1**.² This was on the basis that the sanction of the scheme would result in the “slower” offeror’s offer being frustrated.

¹ In this Response Statement, references to the “faster” or “slower” offeror are to the first or last offeror, respectively, to obtain its official authorisations and/or regulatory clearances.

² **Rule 21.1(a)** provides, among other matters, that during the course of an offer the board of an offeree company must not, without the approval of shareholders in general meeting, take any action which may result in any offer being frustrated. **Rule 21.1(c)** sets out certain circumstances in which the Panel will normally agree to disapply **Rule 21.1(a)**. In addition, in accordance with **Section 2(c) of the Introduction to the Code**, the Panel may grant a waiver from the application of a rule if the rule would operate in an unnecessarily restrictive or burdensome or otherwise inappropriate manner.

(b) Respondents' comments

- 2.4 Although views were not specifically sought on this issue, certain respondents commented on the application of **Rule 21.1** where an offeree board seeks to sanction a scheme of arrangement in a competitive situation.
- 2.5 Two respondents sought guidance as to the factors which the Panel would take into account in deciding whether to require a further shareholder vote under **Rule 21.1** in these circumstances.
- 2.6 One respondent did not consider that the sanction of a scheme in a competitive situation constituted frustrating action by the offeree board. This was on the basis that the shareholders in the offeree company will have approved the scheme and authorised the board to take such action as it considers appropriate to implement it. The respondent argued that, if shareholder approval was given in the knowledge of the final terms of the competing offer, it is clear that the sanctioning of the scheme should not be regarded as frustrating action. The respondent contended that the position should not be any different where the shareholder approval was given before the final terms of the competing offer were known.
- 2.7 The respondent also noted that there are a number of protections which apply in relation to the sanction of a scheme and argued that, as a result, there is no need for the restrictions in **Rule 21.1(a)** to apply in these circumstances. These protections include that:
- (a) in deciding whether to seek to sanction a scheme, the directors of the offeree company are subject to fiduciary duties to act in the best interests of the company and its shareholders;
 - (b) any shareholders in the offeree company who do not support the board's decision to seek to sanction the scheme can attend the sanction hearing and make representations to the court as to why the court should not sanction the scheme; and
 - (c) most importantly, the court has the discretion to decide whether to sanction the scheme at the hearing. In considering this matter, the court will have regard to any new facts or developments since the date of the shareholder meetings (including the emergence of a new competing offer or the revision of an existing competing offer). Furthermore, at the sanction hearing, counsel for the offeree company is under a duty to draw to the attention of the court any such new facts or developments.

2.8 Two respondents contended that treating the action of an offeree board seeking to sanction a scheme which has been approved by shareholders as being subject to **Rule 21.1** would be inconsistent with the Panel's ability to disapply the restrictions in **Rule 21.1(a)** under **Rule 21.1(c)(v)(A)** where a decision to take a proposed action is taken by the offeree board and partly implemented before the period when **Rule 21.1** starts to apply.

(c) The Code Committee's conclusions

(i) Introduction

2.9 In making the statement in paragraph 2.10 of the PCP, the Code Committee wished to draw attention to the fact that the Panel should be consulted about the possibility that a further shareholder vote may be required under **Rule 21.1** in the event that the board of an offeree company should seek to sanction a scheme of arrangement in a competitive situation. This is because, as noted above, the sanction of the scheme would inevitably result in the failure of the competing offer, and the action of an offeree board seeking the sanction of the scheme could therefore constitute frustrating action in respect of the competing offer. Although the Code Committee agrees with the respondent referred to in paragraph 2.6 above that, where the scheme is approved by shareholders in the knowledge of the final terms of the competing offer, this approval will satisfy the requirements of **Rule 21.1**, the Code Committee recognises that the position may not be considered to be the same where shareholder approval is given before the final terms for the competing offer are known. For example, if the competing offeror materially increases the terms of its offer, it may be argued that the approval given by shareholders for the purposes of **Rule 21.1** is superseded by this revision.

2.10 In practice, the Executive has only rarely received representations that the restrictions in **Rule 21.1(a)** should be applied to such an action by the board of an offeree company. This is principally because a party which is considering making an offer (whether by way of a contractual offer or by way of a scheme) in competition with a previously announced scheme has normally approached the offeree company, and has become publicly identified, prior to the shareholder meetings. The shareholder meetings may then be adjourned in order for the potential competing offeror to have sufficient time in advance of the shareholder meetings to clarify its position by way of either a firm offer announcement (made under **Rule 2.7**) or a "no intention to bid" statement (made under **Rule 2.8**). The Code Committee believes that this sequence of events will normally result in the most satisfactory outcome for the parties involved in a takeover as, among other matters, it enables shareholders in the offeree company to decide whether to approve the offer being implemented by way of a scheme in the knowledge of the competing offer. However, as noted above, the competing offer could be revised thereafter (unless the

competitive bidding process has concluded as a result of an auction procedure held prior to the shareholder meetings with the agreement of the parties).

2.11 The Code Committee understands that, in one previous case, a potential competing offeror made representations to the Executive that the offeree board should be restricted under **Rule 21.1(a)** from seeking to sanction the existing scheme on the timetable that the offeree board proposed without obtaining the approval of shareholders in general meeting. In that case, with the agreement of all the parties, the Executive agreed to disapply the restrictions in **Rule 21.1(a)** provided certain safeguards were applied (including as to the period of notice which the offeree board was required to give before proceeding to the court sanction hearing).

2.12 The Code Committee also acknowledges the point made in paragraph 2.8 above regarding the ability for the Panel to disapply the restrictions in **Rule 21.1(a)** under the “part implementation” provisions in **Rule 21.1(c)(v)(A)**. However, the Code Committee notes that this analysis could be relevant only where a competing offeror does not approach the offeree company until after the scheme has been approved by shareholders. This is on the basis that, in these circumstances, it may be argued that the decision by the offeree board to seek the sanction of the scheme would have been partly implemented by the approval of the scheme at the shareholder meetings, which approval would have been given before the approach from the competing offeror and therefore before **Rule 21.1** applied in relation to the competing offeror.

(ii) Next steps

2.13 The Code Committee acknowledges the argument made by the respondent referred to in paragraph 2.7 above and intends to give further consideration to the extent to which the restrictions in **Rule 21.1(a)** should be applied to the action of an offeree board seeking to sanction a scheme in a competitive situation. The Code Committee proposes to consult further on this subject as part of a general review of **Rule 21** to be carried out later this year. This consultation is likely to propose that, in such circumstances, either:

- (a) the restrictions in **Rule 21.1(a)** should not apply at all to this action; or
- (b) the restrictions in **Rule 21.1(a)** should continue to apply to this action but that the Panel should withhold its consent to the taking of this action only in exceptional circumstances.

2.14 In the meantime, the Code Committee understands that the Executive intends to continue its practice to date of generally agreeing to disapply the restrictions in **Rule 21.1(a)** where an offeree board seeks to sanction a scheme in a competitive situation.

3. The offer timetable in a competitive situation

Q1 Should Note 2 on Rule 32.5 be amended as proposed?

Q2 Should:

- (a) Note 1 on Rule 31.3;
- (b) the Note on Rule 31.4; and
- (c) the definition of “Day 46” in Appendix 8,

be amended as proposed and the new Note on Section 7 of Appendix 7 be introduced as proposed?

(a) *Summary of proposals*

3.1 **Section 2** of the PCP proposed amendments to **Note 2 on Rule 32.5** (which applies where one or more of the competing offerors is proceeding by way of a scheme of arrangement) to clarify:

- (a) that, where the parties do not agree to an earlier date among themselves, the Panel will not introduce an auction procedure under **Rule 32.5** to bring the competitive bidding dynamic to a conclusion until after the last condition relating to a relevant official authorisation or regulatory clearance has been satisfied or waived by each of the offerors (the new **Note 2(b) on Rule 32.5**); and
- (b) in cases where an offer implemented by way of a contractual offer is in competition with an offer implemented by way of a scheme of arrangement, how the Panel will establish a framework for shareholders in the offeree company to decide between the competing transactions once each of the offerors has made its final offer (whether as a result of an auction procedure or otherwise) (the new **Note 2(c) on Rule 32.5**).

3.2 In addition, in order to clarify further the application of the Code to competitive situations, **Section 2** of the PCP proposed to:

- (a) amend **Note 1 on Rule 31.3**, which explains how the offer timetable will be established in the case of competing contractual offers, to make clear that where an offer implemented by way of a contractual offer is in competition with an offer implemented by way of a scheme of arrangement, the amended **Note 2 on Rule 32.5** should apply instead of **Note 1 on Rule 31.3**;
- (b) make a minor clarificatory amendment to the **Note on Rule 31.4**, which explains the effect of a suspension of the offer timetable in the case of competing offers;

- (c) introduce a new **Note on Section 7 of Appendix 7** to make clear that, in the case of a competitive situation where one or more of the offerors is proceeding by way of a scheme of arrangement, the parties should refer to the amended **Note 2 on Rule 32.5** (in addition to the normal requirements regarding the revision of an offer being implemented by way of a scheme in **Section 7 of Appendix 7**); and
- (d) replace the existing definition of “**Day 46**” in **Appendix 8** with a new definition of “**Day 46**” to clarify the latest day on which a revised offer may be announced in a competitive situation prior to the commencement of an auction procedure, depending on whether the competing offers are each contractual offers or whether one or more of the offerors is proceeding by way of a scheme of arrangement, as set out in paragraph 2.18 of the PCP.

(b) Summary of respondents’ comments

- 3.3 Two respondents supported the proposed amendments to **Note 2 on Rule 32.5**.
- 3.4 Two respondents did not support the proposed amendments to **Note 2 on Rule 32.5** in full, as explained in **Sections 3(c)** and **3(d)** below.
- 3.5 All of the respondents supported, or did not object to, the proposals to:
 - (a) amend to **Note 1 on Rule 31.3** and the **Note on Rule 31.4**;
 - (b) adopt the new **Note on Section 7 of Appendix 7**; and
 - (c) replace the existing definition of “**Day 46**” in **Appendix 8** with a new definition of “**Day 46**”.

(c) Timing of auction procedure where one or more of the offerors is proceeding by way of a scheme of arrangement

- (i) *Respondents’ comments*
 - 3.6 One respondent contended that the Code Committee should consider further whether the proposed **Note 2(b) on Rule 32.5** should apply where each of the offerors was proceeding by way of a scheme of arrangement.
 - 3.7 The respondent argued that, where each of the offerors was proceeding by way of a scheme, the decision by the board of the offeree company to recommend each offer at the relevant time would have included:
 - (a) an assessment by both parties of the regulatory and anti-trust risks facing the combination; and

- (b) a negotiation between both parties as to the action to be taken in order to secure regulatory clearance.
- 3.8 The respondent contended that, in such cases, an argument that an offeror would need to know the outcome of the regulatory and anti-trust process before being in a position to determine its final offer price was likely to be less valid.
- 3.9 The respondent also noted that, in recent cases where each of the competing offerors was proceeding by way of a scheme, an “early” auction had taken place with the agreement of all parties, prior to the date of the shareholder meetings to approve either scheme, and that this had worked satisfactorily. The respondent was concerned that, following the publication of the PCP, it would be more difficult for the offeree board to secure the agreement of all offerors to an auction procedure prior to the shareholder meetings in the light of what the respondent considered might be regarded as the “Panel-endorsed market practice” regarding the timing of an auction.
- 3.10 The respondent considered that there were disadvantages with an auction procedure being held “late” in the offer timetable, including that:
 - (a) if an offeror required the approval of its own shareholders to complete the offer, the general meeting to seek this approval would be more likely to be set for a date towards the end of the offer timetable (because it is customary for the general meetings for an offeror and the offeree company to be held on the same date). This could affect the deliverability of the transaction (as the offeror board could change its recommendation to its shareholders shortly prior to the offeror’s general meeting if it no longer considered the transaction to be in the company’s best interests, such that the transaction would probably not be approved and would therefore lapse); and
 - (b) the delay in resolving the competitive bidding process would cause uncertainty for the offeree company and its employees and customers.
- 3.11 In the light of the above, the respondent proposed that, in cases where each of the offerors was proceeding by way of a scheme, the Panel should support the offeree board in reaching an agreement on the date for an auction procedure by reference to the timetable set by the offeree board. In support of this position, the respondent argued that a “slower” offeror which did not agree with the position taken by an offeree board as to the timing of an auction could switch to a contractual offer (in which event the respondent acknowledged that the auction would only take place once the last condition to the “slower” offeror’s offer relating to a relevant official authorisation or regulatory clearance had been satisfied or waived).

(ii) *The Code Committee's conclusions*

- 3.12 The Code Committee confirms that, in proposing the framework set out in the PCP, it was not seeking to change market practice for the conduct of offers implemented by way of a scheme of arrangement or to “endorse” a practice of auction procedures taking place at a late stage in the offer period.
- 3.13 Therefore, the Code Committee is supportive of the parties to an offer seeking to reach agreement among themselves on the timing of an auction and acknowledges that it may often be in the interests of all the parties for an auction to be held at an early stage in order to remove any uncertainty attributable to the unresolved competitive bidding process.
- 3.14 However, the Code Committee also considers that it is necessary for there to be a framework that can be applied in the event that the parties are unable to reach agreement on the timing of an auction. The Code Committee considers that, in such cases, including where each of the offerors is proceeding by way of a scheme, an auction procedure imposed by the Panel under **Rule 32.5** should not normally be introduced until after the last condition relating to a relevant official authorisation or regulatory clearance has been satisfied or waived by each of the offerors. This is on the basis that:
- (a) as explained in the PCP, knowing the outcome of a regulatory review may be important information for an offeror in establishing its final offer price; and
 - (b) following the consultation in PCP 2020/1, this is the position where each of the offerors is proceeding by way of a contractual offer (including as a result of a switch from a scheme) and, in the opinion of the Code Committee, the same fallback position should apply where each of the offerors is proceeding by way of a scheme, or where one offeror is proceeding by way of a contractual offer and the other offeror is proceeding by way of a scheme.
- 3.15 In coming to this conclusion, the Code Committee has also taken into account its initial view, as set out in **Section 2** above, that the restrictions in **Rule 21.1(a)** should either not apply at all to the action of an offeree board seeking to sanction a scheme of arrangement in a competitive situation or, if the restrictions in **Rule 21.1(a)** continue to apply to this action, that the Panel should withhold its consent to the taking of this action only in exceptional circumstances.
- 3.16 The Code Committee has, however, made a minor drafting amendment to **Note 2(b) on Rule 32.5** to make clearer that the approach set out in **Note 2(b)** will not apply if the parties to the offer agree otherwise, as set out in paragraph 3.20 below.

(d) Requirement for parallel regulatory reviews

(i) Respondents' comments

3.17 One respondent noted that the framework proposed in the PCP could lead to parallel regulatory reviews in respect of two or more offerors being required to be undertaken in relation to the same offeree company before an auction procedure was introduced. The respondent noted that this could have the following drawbacks:

- (a) it could impose an additional time and cost burden on the offeree company; and
- (b) it may be difficult for clearance for more than one offer to be pursued simultaneously given that, in some jurisdictions, regulators may not be able, or willing, to undertake parallel regulatory reviews.

3.18 Accordingly, the respondent suggested that the Panel should retain the flexibility to require that an auction procedure is held at an earlier stage than that proposed in the PCP in situations such as those specified above.

(ii) The Code Committee's conclusions

3.19 The Code Committee agrees that the Panel should have the discretion to require an auction to be held prior to the date specified in **Note 2(b) on Rule 32.5**, but only in exceptional circumstances. For example, this may be necessary to avoid an impasse if a relevant regulatory authority has informed the offeror that it is not able or willing to undertake parallel regulatory reviews of the same transaction. Therefore, the Code Committee has added the word "normally" into the new **Note 2(b) on Rule 32.5**.

(e) Code amendments

3.20 In the light of the above, the Code Committee has:

- (a) amended **Note 2 on Rule 32.5** as proposed in paragraph 2.17 of the PCP, but with the additional amendments referred to above, as follows:

"2. Schemes of arrangement

(a) Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable, including:

- (i) the latest date on which either competing offeror may announce a revised offer and, if necessary, the date on which the Panel will introduce an auction procedure; and*
- (ii) the offer timetable thereafter, including, if relevant, Day 60.*

(b) ~~Unless the parties to the offer agree otherwise agreed with the Panel, an auction procedure will not normally be introduced under Rule 32.5 until after the last condition relating to a relevant official authorisation or regulatory clearance has been satisfied or waived by each of the offerors.~~

(c) *Where relevant:*

(i) *Day 39 will normally be the seventh day prior to the last date on which final offers may be announced prior to the commencement of the auction procedure; and*

(ii) *Day 60 will normally be set for a date after the shareholder meetings and before the court sanction hearing in relation to the scheme. In setting such a date, the Panel will wish to ensure that shareholders will have sufficient time to make their acceptance decisions in relation to the contractual offer in the knowledge of the outcome of the shareholder meetings.”;*

(b) amended **Note 1 on Rule 31.3** and the **Note on Rule 31.4**, as proposed in paragraph 2.18 of the PCP;

(c) adopted the new **Note on Section 7 of Appendix 7**, as proposed in paragraph 2.18 of the PCP; and

(d) replaced the existing definition of “**Day 46**” in **Appendix 8** with a new definition of “**Day 46**”, as proposed in paragraph 2.18 of the PCP,

as set out in **Appendix B**.

(f) *Mini-long-stop dates*

(i) Introduction

3.21 One respondent enquired whether the approach proposed in the PCP to the date on which the Panel would introduce an auction procedure under **Note 2 on Rule 32.5** would lead to the Panel amending its approach to the circumstances in which an offeror proceeding by way of a scheme of arrangement would be permitted to extend the “mini-long-stop dates” to its scheme. In particular, the respondent suggested that an offeror should be permitted to extend a mini-long-stop date in a competitive situation, even if the extension was not agreed with the offeree company.

(ii) Background

3.22 Under **Section 3(b) of Appendix 7**, the parties to an offer being implemented by way of a scheme are permitted to include within the conditions to the scheme:

(a) a specific date by which the shareholder meetings must be held (unless extended with the agreement of the parties to the offer), provided that the date specified

must be more than 21 days after the expected date of the shareholder meetings to be set out in the scheme circular (**Section 3(b)(ii) of Appendix 7**); and

- (b) a specific date by which the court sanction hearing must be held (unless extended with the agreement of the parties to the offer), provided that the date specified must be more than 21 days after the expected date of the court sanction hearing to be set out in the scheme circular (**Section 3(b)(iii) of Appendix 7**).

3.23 The rationale for allowing a scheme to be subject to such “mini-long-stop dates” is to give the offeror the ability to lapse its offer in the event that the offeree board adjourns the shareholder meetings or the court sanction hearing for 22 days or more beyond the date specified in the scheme circular. Without the “mini-long-stop dates”, the offeror might not be able to lapse its offer in these circumstances until the long-stop date for the offer.

3.24 The Code Committee understands that common reasons for the board of an offeree company adjourning the shareholder meetings or a court sanction hearing would be in order to allow more time for either:

- (a) a potential competing offeror to clarify its position by announcing a firm offer under **Rule 2.7**; or
- (b) a firm offeror to increase its offer (in an auction procedure introduced under **Rule 32.5** or otherwise).

(iii) *The respondent’s arguments*

3.25 The respondent referred to in paragraph 3.21 submitted that where:

- (a) an offeror (“**Offeror 1**”) announces an offer to be implemented by way of a scheme; and
- (b) following the publication of the scheme circular, a third party (“**Offeror 2**”) announces a competing offer and, as a result, the offeree board:
 - (i) withdraws its recommendation of Offeror 1’s offer in favour of Offeror 2’s offer;
 - (ii) adjourns the shareholder meetings in relation to Offeror 1’s offer; and
 - (iii) does not agree to extend the mini-long-stop date by which the shareholder meetings to approve Offeror 1’s offer must be held,

Offeror 1 should not be required, on the relevant mini-long-stop date, to make a binary decision either to:

- (c) invoke the relevant condition to the scheme and lapse its offer; or
- (d) waive the relevant condition to the scheme, with the result that it might not be able to lapse its offer until the long-stop date.

3.26 The respondent submitted that, instead, Offeror 1 should be permitted to extend the mini-long-stop date to a date which reflects the new offer timetable – for example, the date of the mini-long-stop date specified for the shareholder meetings to approve Offeror 2's offer (if Offeror 2 is also proceeding by way of a scheme).

3.27 The respondent raised a similar issue in relation to the adjournment by the offeree board of the court sanction hearing to a date which is later than the relevant mini-long-stop date.

(iv) The Code Committee's conclusions

3.28 The Code Committee acknowledges the points made by the respondent. However, given that **Sections 3(b)(ii) and (iii) of Appendix 7** each state that a mini-long-stop date may only be extended “with the agreement of the parties to the offer”, the Code Committee considers that the Code requires amendment in order to implement such a practice.

3.29 On the basis that this was not a matter which was subject to the consultation in PCP 2022/3, the Code Committee intends to consider the matter further in due course.

APPENDIX A**Respondents to PCP 2022/3**

1. Institute of Chartered Accountants in England and Wales
2. Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales
3. Quoted Companies Alliance
4. UK Finance

APPENDIX B

Amendments to the Code

Rule 31

31.3 EXTENSIONS TO DAY 60

...

NOTES ON RULE 31.3

1. *Timetable for competing firm offers*

(a) *If a competing firm offer has been announced, Day 60 for both offerors will normally set by reference to the publication of the later offer document. In addition, the Panel may extend Day 60 to allow for any auction procedure under Rule 32.5.*

(b) *If the offer timetable is suspended under Rule 31.4, Day 60 will be reset when the timetable is resumed in accordance with ~~see also~~ the Note on Rule 31.4.*

(c) *If an offeror proceeding by way of a contractual offer is in competition with an offeror proceeding by way of a scheme of arrangement, see Note 2 on Rule 32.5.*

...

31.4 SUSPENSION OF OFFER TIMETABLE IF AN OFFICIAL AUTHORISATION OR REGULATORY CLEARANCE REMAINS OUTSTANDING

...

NOTE ON RULE 31.4

Competing offers

(a) *If there are two or more competing offers and the offer timetable is suspended under Rule 31.4(a), the offer timetable will normally be suspended for all the offerors and will normally only resume when it is resumed by the last offeror in accordance with Rule 31.4(b) or (c).*

Alternatively, ~~a~~(b) An offeror may bring forward the unconditional date of its offer by making an acceleration statement (see Rule 31.5).

Rule 32

32.5 COMPETITIVE SITUATIONS

...

NOTES ON RULE 32.5

...

2. *Schemes of arrangement*

(a) Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable, including:

(i) the latest date on which either competing offeror may announce a revised offer and, if necessary, the date on which the Panel will introduce an auction procedure; and

(ii) the offer timetable thereafter, including, if relevant, Day 60.

(b) Unless the parties to the offer agree otherwise, an auction procedure will not normally be introduced under Rule 32.5 until after the last condition relating to a relevant official authorisation or regulatory clearance has been satisfied or waived by each of the offerors.

(c) Where relevant:

(i) Day 39 will normally be the seventh day prior to the last date on which final offers may be announced prior to the commencement of the auction procedure; and

(ii) Day 60 will normally be set for a date after the shareholder meetings and before the court sanction hearing in relation to the scheme. In setting such a date, the Panel will wish to ensure that shareholders will have sufficient time to make their acceptance decisions in relation to the contractual offer in the knowledge of the outcome of the shareholder meetings.

Appendix 7

APPENDIX 7

SCHEMES OF ARRANGEMENT

...

7 REVISION

...

NOTE ON SECTION 7

Competitive situations

In the case of a competitive situation where one or more of the offerors is proceeding by way of a scheme of arrangement, see Note 2 on Rule 32.5.

Appendix 8

APPENDIX 8

AUCTION PROCEDURE FOR THE RESOLUTION OF COMPETITIVE SITUATIONS

DEFINITIONS AND INTERPRETATION

...

Day 46

~~Day 46 (as defined in the Definitions Section of the Code) of the second competing offeror's offer or, if the second competing offeror is proceeding by means of a scheme of arrangement, such date as the Panel shall determine.~~

Day 46 means:

(a) in the case of two competing contractual offers, the 14th day prior to Day 60 as determined in accordance with Note 1 on Rule 31.3 and, if relevant, the Note on Rule 31.4; or

(b) if one or more of the offerors is proceeding by way of a scheme of arrangement, such date as the Panel shall determine under Note 2 on Rule 32.5 as being the latest date on which a competing offeror may announce a revised offer prior to the commencement of the auction procedure.