

# THE TAKEOVER PANEL

## CODE COMMITTEE

### **Instrument 2011/2**

#### **Amendments following the Code Committee's review of the regulation of takeover bids**

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, the Panel and, in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee, hereby make this instrument containing rules.

In accordance with section 4(b) of the Introduction to the Takeover Code, the Code Committee hereby makes the amendments to the Takeover Code set out in the Appendix to this instrument, save for the amendments to section 2(a) of the Introduction, which amendments are hereby made by the Panel.

In the Appendix, underlining indicates new text and striking-through indicates deleted text.

The Takeover Code is hereby amended with effect from 19 September 2011.

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

**Sir Gordon Langley**  
**Chairman of the Panel**  
**for and on behalf of the Panel**

**21 July 2011**

## APPENDIX

### INTRODUCTION

#### 2 THE CODE

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##### (a) Nature and purpose of the Code

The Code is designed principally to ensure that shareholders in an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders in the offeree company of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the offeree company and its shareholders. In addition, it is not the purpose of the Code either to facilitate or to impede takeovers. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies.

The Code has been developed since 1968 to reflect the collective opinion of those professionally involved in the field of takeovers as to appropriate business standards and as to how fairness to offeree company shareholders and an orderly framework for takeovers can be achieved. ...

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#### 10 ENFORCING THE CODE

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##### (e) Bid documentation rules

For the purposes of section 953 of the Act, the “offer document rules” and the “response document rules” are those parts of Rules 24 and 25 respectively which are set out in Appendix 6 and, in each case, Rule 27 to the extent that it requires the inclusion of material changes to, or the updating of, the information in those parts of Rules 24 or 25, as the case may be, in relation to ~~the offer documents and offeree board circulars referred to in Rules 30.1 and 30.2 respectively~~ and the revised offer documents and subsequent offeree board circulars referred to in Rules 32.1 and 32.6(a) respectively.

## DEFINITIONS

### Acting in concert

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#### NOTES ON ACTING IN CONCERT

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#### 11. Indemnity and other dealing arrangements

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(b) ...

*Such dealing arrangements must be disclosed as required by Note 29 on Rule 2.4, Rule ~~2.5(b)~~2.7(c)(v), Notes 5 and 6 on Rule 8, Rule 24.1213 and Rule 25.56.*

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### Dealings

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#### NOTES ON DEALINGS

#### 1. Indemnity and other dealing arrangements

*Dealing arrangements of the kind referred to in Note 11 on the definition of acting in concert in relation to relevant securities which are entered into during the offer period by any offeror, the offeree company or a person acting in concert with any offeror or the offeree company must be disclosed as required by Rule 2.7(c)(v), Notes 5 and 6 on Rule 8, Rule 24.1213 and Rule 25.56.*

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### Employee representative

An employee representative is:

(a) a representative of an independent trade union, where that trade union has been recognised by the offeror or the offeree company in respect of some or all of its employees; and

(b) any other person who has been elected or appointed by employees to represent employees for the purposes of information and consultation.

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### **Offer period**

The offeree companies that are in an offer period at any particular time, and any offerors or publicly identified potential offerors, are set out in the Disclosure Table on the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).

An offer period means the period from the time will commence when an the first announcement is made of an proposed offer or possible offer for a company, or when certain other announcements are made, such as an announcement that a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of the company or that the board of the company is seeking potential offerors. (with or without terms) until the first closing date or, if this is later, the date when the

An offer period will end when an announcement is made that an offer has becomes or is has been declared unconditional as to acceptances, that a scheme of arrangement has become effective, that all announced offers have been withdrawn or have lapsed or following certain other announcements having been made (such as all publicly identified potential offerors having made a statement to which Rule 2.8 applies). or lapses. An announcement that an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company is for sale or that the board of a company is seeking potential offerors will be treated as the announcement of a possible offer. (See also Rule 12.2 regarding competition reference periods.)

In the case of a scheme of arrangement, the offer period will continue until it is announced in accordance with Section 5(c) of Appendix 7 that the scheme has become effective or that the scheme has lapsed or been withdrawn.

#### 1. Schemes of arrangement

In the case of a scheme of arrangement, pProvisions of the Code that apply during the course of the offer, or before the offer closes for acceptance, will apply until it is announced that the scheme has become effective or that it has lapsed or been withdrawnthe same time.

#### 2. Competition reference periods

See Rule 12.2.

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### **PLUS**

The PLUS primary markets operated by PLUS Markets plc. ~~References to PLUS have been included in some Rules for clarity but, in cases of doubt, the Panel should be consulted.~~

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### **Regulated market**

Regulated market has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).

~~In relation to an EEA State that has not implemented Directive 2004/39/EC, regulated market has the same meaning as it has in Council Directive 93/22/EEC on investment services in the securities field (see Article 1(13)).~~

~~A list of regulated markets within the EEA is maintained on the website of the EU Commission: [europa.eu.int/comm/index\\_en.htm](http://europa.eu.int/comm/index_en.htm). UK regulated markets are listed on the Panel's website: [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk).~~

...

### **Reverse takeover**

A transaction will be a reverse takeover if an offeror might as a result need to increase its existing issued voting equity share capital by more than 100%.

#### NOTE ON REVERSE TAKEOVER

The definition is of relevance only in circumstances where the offeror is a company that falls within section 3(a)(i) or (ii) of the Introduction.

## **Rule 1**

### **RULE 1. THE APPROACH**

(a) **An offeror (or its advisers) must notify a firm intention to make an offer** ~~The offer must be put forward in the first instance to the board of the offeree company (or to its advisers).~~

(b) **If the offer, or an approach with regard to a possible offer with a view to an offer being made, is not made by the ultimate offeror or potential offeror, the identity of that person must be disclosed to the board of the offeree company at the outset.**

(c) ~~A board so approached is entitled to be satisfied that the offeror is, or will be, in a position to implement the offer in full.~~

## Rule 2

**RULE 2. SECRECY BEFORE ANNOUNCEMENTS; THE TIMING  
AND CONTENTS OF ANNOUNCEMENTS**

**2.1 SECRECY**

~~(a) The vital importance of absolute secrecy before an announcement must be emphasised. of an offer or possible offer, a~~ Prior to the announcement ~~must be emphasised. of an offer or possible offer, a~~ All persons privy to confidential information, and particularly price-sensitive information, concerning an the offer or contemplated possible offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the chances of any accidental leak of information.

*NOTES ON RULE 2.1*

*1. — Warning clients*

~~(b) It should be an invariable routine for Financial advisers~~ Financial advisers must at the very beginning of discussions to warn clients of the importance of secrecy and security. Attention should be drawn to the Code, in particular to this Rule 2.1 and to restrictions on dealings.

*2. — Proof printing*

*Proof printing documents before a public announcement has been made carries a particular risk of leaks of price sensitive information; in cases where it is regarded as appropriate to undertake such printing, every possible precaution must be taken to ensure confidentiality.*

**2.2 WHEN AN ANNOUNCEMENT IS REQUIRED**

**An announcement is required:**

(a) when a firm intention to make an offer ~~(the making of which is not, or has ceased to be, subject to any pre-condition)~~ is notified to the board of the offeree company from a serious source by or on behalf of an offeror, irrespective of the attitude of the board to the offer;

(b) immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Rule 9.1. ... ;

(c) when, following an approach by or on behalf of a potential offeror to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price;

**(d) when, after a potential offeror first actively considers an offer but before an approach has been made to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation;**

...

#### NOTES ON RULE 2.2

##### 1. *Panel to be consulted*

(a) Whether ... announcement.

(b) In the case of Rule 2.2(c), ... circumstances.

(c) Similarly, in the case of Rules 2.2(d) and (f)(i), the Panel should be consulted at the latest when the potential offeree company becomes the subject of any rumour and speculation or where there is a material or abrupt movement in its share price after the time when, in the case of Rule 2.2(d), an offer is first actively considered by a potential offeror or, in the case of Rule 2.2(f)(i), either the potential seller or the board starts to seek one or more potential purchasers or offerors.

(d) In the case of Rule 2.2(e), the Panel should be consulted if the potential offeror and/or the offeree company wish to approach a wider group than the very restricted number of people referred to in the Rule without making an announcement.

(e) In the case of Rule 2.2(f)(ii), ... sought.

...

##### 3. Rumour and speculation during an offer period

Where, during an offer period, rumour and speculation specifically identifies a potential offeror which has not previously been identified in any announcement, the Panel will normally require an announcement to be made by the offeree company or the potential offeror (as appropriate), identifying that potential offeror.

##### 4. When a dispensation may be granted

The Panel may grant a dispensation from the requirement for an announcement to be made under Rule 2.2(c) or Rule 2.2(d) where it is satisfied that the potential offeror has ceased actively to consider making an offer for the offeree company. After such a dispensation has been granted, the potential offeror may not actively consider making an offer for the offeree company for a period of six months and will be treated as having made a

statement to which Rule 2.8 applies. The Panel may consent to these restrictions being set aside in the circumstances set out in paragraphs (b) to (d) of Note 2 on Rule 2.8. The Panel may also, at the request of the offeree company, consent to the potential offeror recommending active consideration of an offer but such consent will not normally be given within three months of the dispensation having been granted.

(b) Where a potential offeror to which a dispensation has been granted under paragraph (a) has ceased actively to consider making an offer, the Panel may nonetheless require an announcement to be made where:

(i) any rumour and speculation continues or is repeated; and/or

(ii) it considers that this is otherwise necessary in order to prevent the creation of a false market.

Any such announcement made by the offeree company will not normally be required to identify the former potential offeror, unless it has been specifically identified in rumour and speculation.

### **2.3 RESPONSIBILITIES OF OFFERORS AND THE OFFEREE COMPANY**

(a) Before a potential offeror approaches the board of the offeree company is approached, the potential offeror is responsible the responsibility for making any announcement required under Rule 2.2 and lie only with the offeror. The offeror should, therefore, keep a close watch on the offeree company's share price for any signs of untoward movement.

(b) The offeror is also responsible for making an announcement. When once an Rule 9 obligation to make a mandatory offer under Rule 9.1 is has been incurred, the offeror is responsible for making the announcement required under Rule 2.2(b). See also Rule 7.1.

(c) Following an approach to the board of the offeree company which may or may not lead to an offer, the offeree company is responsible primary responsibility for making any announcement required under Rule 2.2, except for an announcement required under Rule 2.2(b) or, where a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of a company without the involvement of the board of the offeree company, Rule 2.2(f) (in which case responsibility will rest with the potential seller of the interest) will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price.

(d) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement relating to a possible offer, or publicly identifying the potential offeror, at any time the board thinks considers appropriate.

## 2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

~~(a) — Except in the case of a mandatory offer under Rule 9, until a firm intention to make an offer has been notified, a brief announcement that talks are taking place (there is no requirement to name the potential offeror in such an announcement) or that a potential offeror is considering making an offer will normally satisfy the obligations under this Rule. Except with the consent of the Panel, such an announcement should also include a summary of the provisions of Rule 8 (see the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)).~~

~~(b) — At any time during an offer period following the announcement of a possible offer (provided the potential offeror has been publicly named), and before the notification of a firm intention to make an offer, the offeree company may request that the Panel impose a time limit for the potential offeror to clarify its intentions with regard to the offeree company. If a time limit for clarification is imposed by the Panel, the potential offeror must, before the expiry of the time limit, announce either a firm intention to make an offer for the offeree company in accordance with Rule 2.5 or that it does not intend to make an offer for the offeree company, in which case the announcement will be treated as a statement to which Rule 2.8 applies.~~

(a) An announcement by the offeree company which commences an offer period must identify any potential offeror with which the offeree company is in talks or from which an approach has been received (and not unequivocally rejected).

(b) Any subsequent announcement by the offeree company which refers to the existence of a new potential offeror must identify that potential offeror, except where the announcement is made after an offeror has announced a firm intention to make an offer for the offeree company (see Rule 2.6(e)).

(c) Any announcement which commences an offer period and any subsequent announcement which first identifies a potential offeror must:

(i) specify the date on which any deadline thereby set in accordance with Rule 2.6(a) will expire; and

(ii) include a summary of the provisions of Rule 8 (see the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)).

### NOTES ON RULE 2.4

#### 1. Consequences of subsequent acquisitions of interests in shares

The acquisition of an interest in offeree company shares by a potential offeror whose existence has been announced (whether publicly identified or not) or

*any person acting in concert with it may require immediate announcement by the potential offeror under the Note on Rule 7.1. See also Note 12 on Rule 8.*

## 2. Indemnity and other dealing arrangements

*Where the offeree company, an offeror or any person acting in concert with the offeree company or an offeror enters into any dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert before the start of the offer period or the announcement that first identifies the offeror, details of the arrangement must be included in the relevant announcement as required by Notes 6(b) and (c) on Rule 8.*

*Where a dealing arrangement of the kind referred to above is entered into during the offer period, see Note 6(a) on Rule 8.*

## 3. Formal sale process

*See Note 2 on Rule 2.6.*

## 2.5 TERMS AND PRE-CONDITIONS IN POSSIBLE OFFER ANNOUNCEMENTS

**(ae) ~~Until a firm intention to make an offer has been notified, the~~ Panel must be consulted in advance if, prior to the announcement of a firm intention to make an offer, any person proposes to make a statement in relation to the terms on which an offer might be made for the offeree company. ~~Except with the consent of the Panel, if~~ any such statement is ~~included in an announcement by a potential offeror or is made by or on behalf of a potential offeror, its directors, officials or advisers and not immediately withdrawn if incorrect, the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made and only in wholly exceptional circumstances will the offeror be allowed subsequently not to be so bound, unless it specifically reserved the right not to be so bound at the time the statement was made (see Note 1). In particular:~~**

**(i) where the statement concerned relates to the price of a possible offer (or a particular exchange ratio in the case of a ~~proposed possible~~ securities exchange offer), any offer made by the potential offeror for the offeree company will be required to be made on the same or better terms. Where all or part of the consideration is expressed in terms of a monetary value, the offer or that element of the offer must be made at the same or a higher monetary value. Where all or part of the consideration has been expressed in terms of a securities exchange ratio, the offer or that element of the offer must be made on the same (or an improved) securities exchange ratio; and**

**(ii) where the statement concerned includes reference to the fact that the terms of the possible offer “will not be increased” or**

are “final” or uses a similar expression, the potential offeror will not be allowed subsequently to make an offer on better terms.

~~See also Note 5.~~

~~(bd)~~ ~~Except with the consent of the Panel, t~~The consequences of a statement to which Rule ~~2.4(e)~~ ~~2.5(a)~~ applies will normally apply also to any person acting in concert with the potential offeror and to any person who is subsequently acting in concert with the potential offeror or such person.

#### ~~NOTES ON RULE 2.4~~

##### ~~1. — Pre-conditions~~

~~(c)~~ The Panel must be consulted in advance if, prior to announcing a firm intention to make an offer, a potential offeror a person proposes to include in an announcement any pre-conditions to the making of an offer. Any such pre-conditional possible offer announcement must:

~~(ai)~~ clearly state whether or not the pre-conditions must be satisfied before an offer can be made or whether they are waivable; and

~~(bii)~~ include a prominent warning to the effect that the announcement does not amount to a firm intention to make an offer and that, accordingly, there can be no certainty that any offer will be made even if the pre-conditions are satisfied or waived.

##### ~~2. — Announcement of a potential competing offer~~

~~The provisions of Rule 2.4(b) will not apply where an offer has already been announced by a third party and the potential offeror makes a statement that it is considering making a competing offer.~~

~~See Note 1 on Rule 19.3.~~

##### ~~3. — Period for clarification~~

~~The precise time limit imposed in any particular case under Rule 2.4(b) will be determined by reference to all the circumstances of the case and the Panel will endeavour to balance the potential damage to the business of the offeree company arising from the uncertainty caused by the potential offeror’s interest against the disadvantage to its shareholders of losing the prospect of an offer.~~

##### ~~4. — Extension of time limit~~

~~A time limit for a potential offeror to clarify its intentions imposed under Rule 2.4(b) may be extended only with the consent of the Panel. The Panel’s~~

~~consent will normally be granted if the board of the offeree company consents to the extension.~~

#### NOTES ON RULE 2.5

##### 15. Reservation of right to set statements aside

*The first announcement in which a statement subject to Rule ~~2.4(e)~~ 2.5(a) is made must ~~also~~ contain prominent reference to any reservation (precise details of which must ~~also~~ be included ~~in the announcement~~). Any subsequent mention by the potential offeror of the statement must be accompanied by a reference to the reservation.*

~~Except with the consent of the Panel, w~~*Where a potential offeror has referred in a statement subject to Rule ~~2.4(e)~~ 2.5(a) to the level of consideration to be paid if an offer is made, that potential offeror will not be allowed subsequently to make an offer for the offeree company at a lower level of consideration other than in wholly exceptional circumstances, or if unless there has occurred an event which the potential offeror specified in the statement as an event which would enable it to set aside the level of consideration referred to.*

*Where a potential offeror has reserved the right to vary the form and/or mix of the consideration referred to in a statement subject to Rule ~~2.4(e)~~ 2.5(a) (but remains bound to a specified minimum level of consideration) and exercises that right, the value of any offer that is made subsequently must be the same as or better than the value of the consideration referred to in that statement, calculated as at the time of the announcement of the firm intention to make an offer. If, during the period ending when the market closes on the first business day after the announcement of the firm intention to make an offer, the value is not maintained, the Panel will be concerned to ensure that the offeror acted with all reasonable care in determining the consideration. If there is a restricted market in the securities offered, or if the amount of securities to be issued of a class already admitted to trading is large in relation to the amount already issued, the Panel may require justification of prices used to determine the value of the offer.*

*Where a potential offeror has made a statement of the kind referred to in Rule ~~2.4(e)(ii)~~ 2.5(a)(ii), it will not be permitted to make an offer at a higher level of consideration unless there has occurred an event which the potential offeror specified in the ~~possible offer~~ statement as an event that would enable it to do so.*

*Once it has announced a firm intention to make an offer, an offeror will not be permitted to exercise any right it had previously reserved either to set aside a statement in relation to the level of consideration that it might offer or to vary the form and/or mix of the consideration.*

26.     *Duration of restriction*

*The restrictions imposed by Rule ~~2.4(e)~~2.5(a) will normally apply throughout the period during which the offeree company is in an offer period and for a further three months thereafter.*

*However, where a potential offeror has made a statement to which Rule 2.8 applies but the offeree company remains in an offer period, the restrictions imposed by Rule ~~2.4(e)~~2.5(a) will normally apply for three months following the making of the statement to which Rule 2.8 applies.*

37.     *Statements by the offeree company*

*Any statement made by the offeree company in relation to the terms on which an offer might be made must ~~also~~ make clear whether or not it is being made with the agreement or approval of the potential offeror. Where the statement is made with the agreement or approval of the potential offeror, the statement will be treated as one to which Rule ~~2.4(e)~~2.5(a) applies in the same way as if it had been made by the potential offeror itself. Where it is not so made, the statement must also include a prominent warning to the effect that there can be no certainty that an offer will be made nor as to the terms on which any offer might be made.*

*[Notes 8 and 9 on the current Rule 2.4 to be deleted: see the new Notes 1 and 2 on Rule 2.4]*

**2.6     TIMING FOLLOWING A POSSIBLE OFFER  
ANNOUNCEMENT**

**(a)     Subject to Rule 2.6(b), by not later than 5.00 pm on the 28th day following the date of the announcement in which it is first identified, or by not later than any extended deadline, a potential offeror must either:**

**(i)     announce a firm intention to make an offer in accordance with Rule 2.7; or**

**(ii)    announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies,**

**unless the Panel has consented to an extension of the deadline.**

**(b)     Rule 2.6(a) will not apply, or will cease to apply, to a potential offeror if another offeror has already announced, or subsequently announces (prior to the relevant deadline), a firm intention to make an offer for the offeree company. In such circumstances, the potential offeror will be required to clarify its intentions in accordance with Rule 2.6(d) below.**

**(c) The Panel will normally consent to an extension of a deadline set in accordance with Rule 2.6(a), or any previously extended deadline, at the request of the board of the offeree company and after taking into account all relevant factors, including:**

- (i) the status of negotiations between the offeree company and the potential offeror; and**
- (ii) the anticipated timetable for their completion.**

**Where the Panel consents to an extension of a deadline, the offeree company must promptly make an announcement setting out the new deadline and commenting on the matters referred to in paragraphs (i) and (ii) above.**

**(d) When an offeror has announced a firm intention to make an offer and it has been announced that a publicly identified potential offeror might make a competing offer (whether that announcement was made prior to or following the announcement of the first offer), the potential offeror must, by a date in the later stages of the offer period to be announced by the Panel, either:**

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or**
- (ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies.**

**(e) When an offeror has announced a firm intention to make an offer and the offeree company subsequently refers to the existence of a potential competing offeror which has not been identified, the potential competing offeror so referred to must, by a date in the later stages of the offer period to be announced by the Panel, either:**

- (i) announce a firm intention to make an offer in accordance with Rule 2.7; or**
- (ii) confirm to the offeree company that it does not intend to make an offer, in which case the offeree company must promptly announce that fact and the potential competing offeror will then be treated as if it had made a statement to which Rule 2.8 applies.**

#### NOTES ON RULE 2.6

##### 1. Deadline extensions

*When a request to extend a deadline set under Rule 2.6(a) is made by the board of the offeree company, the Panel will normally give its decision shortly before the time at which the deadline is due to expire. The board of the offeree*

company may request different deadline extensions for different potential offerors or may request a deadline extension in relation to one potential offeror but not others.

## 2. Formal sale process

Where, prior to an offeror having announced a firm intention to make an offer, the board of the offeree company announces that it is seeking one or more potential offerors for the offeree company by means of a formal sale process, the Panel will normally grant a dispensation from the requirements of Rules 2.4(a) and (b) and Rule 2.6(a), such that any potential offeror which agrees with the offeree company to participate in that process would not be required to be publicly identified under Rule 2.4(a) or (b) and would not be subject to the 28 day deadline referred to in Rule 2.6(a), for so long as it is participating in that process. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.

## 3. Date by which announcement required

Where the first offeror is proceeding by means of a contractual offer, the date by which an announcement will be required to be made by or in respect of a potential competing offeror under Rule 2.6(d) or (e) will normally be a date which is on or around 10 days prior to the final day on which the first offeror's offer is capable of becoming or being declared unconditional as to acceptances.

Where the first offeror is proceeding by means of a scheme of arrangement, see Section 4 of Appendix 7.

## **2.57 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER**

**(a) An offeror should ~~only~~ announce a firm intention to make an offer only after the most careful and responsible consideration. ~~Such an announcement should be made only and~~ when an the offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.**

**(b) Following an announcement of a firm intention to make an offer, the offeror must proceed to make the offer unless, in accordance with the provisions of Rule 13, it is permitted to invoke a pre-condition to the making of the offer or would be permitted to invoke a condition to the offer if the offer were made. However, with the consent of the Panel, an offeror need not make the offer if a competing offeror subsequently announces a firm intention to make a higher offer.**

**(c) When a firm intention to make an offer is announced, the announcement must state:—**

- (i) ... ;
- (ii) ... ;
- (iii) ~~all conditions (including normal conditions relating to acceptances, admission to listing, admission to trading and increase of capital) or pre-conditions~~ to which the offer or the making of an offer is subject;
- (iv) ... ;
- (v) ... ;
- (vi) ... ;
- (vii) ~~details a summary of any offer-related arrangement or other agreement, arrangement or commitment for the payment of an inducement fee or similar arrangement referred to in permitted under, or excluded from, Rule 21.2; and~~
- (viii) ... ; and
- (ix) a list of the documents published on a website in accordance with Rule 26.1 and the address of the website on which the documents are published.

**(de)** ...

*NOTES ON RULE 2.52.7*

1. *Unambiguous language*

...

2. *Conditions and pre-conditions*

*The Panel must be consulted in advance if a person proposes to include in an announcement:*

*(a) any pre-condition to which the making of an offer will be subject (see Rule 13.3);*

*(b) a condition or pre-condition relating to financing (see Rule 13.4); or*

*(c) any conditions which are not entirely objective (see Rule 13.1).*

2. *Subjective conditions*

~~Companies and their advisers should consult the Panel prior to the publication of any announcement containing conditions which are not entirely objective (see Rule 13).~~

~~3. — New conditions for increased or improved offers~~

~~See Rule 32.4.~~

~~4. — Pre conditions~~

~~The Panel must be consulted in advance if a person proposes to include in an announcement any pre-condition to which the making of an offer will be subject. (See also Rule 13.)~~

~~5. — Financing conditions and pre-conditions~~

~~See the Note on Rules 13.1 and 13.3.~~

~~[current Rule 2.6 and the Notes thereon to be deleted: see the new Rule 2.12 and the Notes thereon]~~

## ~~2.7 — CONSEQUENCES OF A “FIRM ANNOUNCEMENT”~~

~~When there has been an announcement of a firm intention to make an offer, the offeror must normally make an offer unless, in accordance with the provisions of Rule 13, the offeror is permitted to invoke a precondition to the making of an offer or would be permitted to invoke a condition to the offer if the offer were made.~~

### ~~NOTE ON RULE 2.7~~

~~When there is no need to make an offer~~

~~With the consent of the Panel, an announced offeror need not make an offer if a competitor has already announced a firm intention to make a higher offer.~~

## 2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

A person making a statement that he does not intend to make an offer for a company should make the statement as clear and unambiguous as possible. Except in the circumstances described in Note 2, with the consent of the Panel, unless there is a material change of circumstances or there has occurred an event which the person specified in his statement as an event which would enable it to be set aside, neither the person making the statement, nor any person who acted in concert with that person ~~him~~, nor any person who is subsequently acting in concert with either of them, may within six months from the date of the statement:

...

## NOTES ON RULE 2.8

...

### 2. When a statement may be set aside~~Rules 2.4(b) and 12.2(b)~~

Except with the consent of the Panel, a statement to which Rule 2.8 applies may be set aside only if:~~Where a statement to which Rule 2.8 applies is made following a time limit being imposed under Rule 2.4(b) or pursuant to Rule 12.2(b)(ii)(A), the only matters that a person will normally be permitted to specify in the statement as matters which would enable it to be set aside are:~~

(a) the agreement or recommendation of the board of the offeree company agrees to the statement being set aside. Where the statement was made at any time following the announcement by a third party of a firm intention to make an offer, the statement may not normally be set aside with the agreement of the board of the offeree company unless that offer has been withdrawn or has lapsed;

(b) the announcement of an offer by a third party announces a firm intention to make an offer for the offeree company; and

(c) the announcement by the offeree company of a “whitewash” proposal (see Note 1 of the Notes on Dispensations from Rule 9) or of a reverse takeover (see Note 2 on Rule 3.2);

(d) the Panel determines that there has been a material change of circumstances; or

(e) the statement was made outside an offer period and an event has occurred which was specified in the statement as being an event which would enable the statement to be set aside (see Note 1).

The Panel will normally regard a switch by a third party offeror from a scheme of arrangement to a contractual offer in accordance with Section 8 of Appendix 7, or an announcement of its firm intention to do so, as a material change of circumstances under paragraph (d). However, a switch from a contractual offer to a scheme of arrangement will not normally be regarded as a material change of circumstances.

### 3. Concert parties

...

The restrictions imposed by Rule 2.8 will, however, normally apply to any person acting in concert with the person making the statement to which the Rule applies if the statement is made during an offer period following a time limit being imposed under Rule 2.4(b).

#### 4. *Media reports*

*When considering the application of ~~this~~ Rule 2.8, the Panel will take into account not only the statement itself but the manner of any subsequent public reporting of it.*

...

#### **2.9 ~~PUBLICATION OF AN ANNOUNCEMENT ABOUT OF AN OFFER OR POSSIBLE OFFER~~ TO BE PUBLISHED VIA A RIS**

...

##### *NOTES ON RULE 2.9*

#### 1. *Distribution of announcements*

*See Rule ~~19.10~~30.3.*

#### 2. *Rules ~~2.11, 6, 7, 8, 9, 11, 12, 17, 30, 31, 32, Appendix 1.6, Appendix 5 and Appendix 7~~ Other Rules*

*Announcements made under Rules 2.11, 6.2(b), 7.1, 8 (Notes 6 and 12(a)), 9.1 (Note 9), 11.1 (Note 6), 12.2(b)(ii)(A), 17.1, 24.1, 25.1, 30.1(a), 30.2(a), 31.2, 31.6(a) (Note 1(b)), 31.6(c), 31.7 (Note 2), 31.8 (Note), 31.9, 32.1(a), 32.6(a), Appendix 1.6, Appendix 5.5, Appendix 7.3, Appendix 7.6 and Appendix 7.8* must also be published in accordance with the requirements of this Rule.

#### **2.10 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE**

**When an offer period begins, the offeree company must announce, as soon as possible and in any case by 9.00 am on the next business day, details of all classes of relevant securities issued by the company, together with the numbers of such securities in issue. An offeror or publicly identified potential ~~named~~ offeror must also announce the same details relating to its relevant securities by 9.00 am on the business day following any announcement identifying it as an offeror or potential offeror, unless it has stated that its offer is likely to be solely in cash.**

...

#### **2.11 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT**

...

##### *NOTES ON RULE 2.11*

1. *Timing of disclosure*

...

*No separate disclosure by an offeror is required under Rule 2.11(a) where the relevant information is included in an announcement made under Rule ~~2.5-2.7~~ which is published no later than 12 noon on the business day following the date on which the irrevocable commitment or letter of intent is procured.*

2. *Method of disclosure*

*Disclosure under this Rule 2.11 should be made in accordance with the requirements of Rule 2.9. See also Rule 26 (documents to be on display).*

3. *Contents of disclosure*

...

*(d) in the case of an irrevocable commitment or a letter of intent procured prior to the announcement of a firm intention to make an offer ~~under Rule 2.5~~, the value (and any other material terms) of the possible offer in respect of which the commitment or letter has been procured. (See Rule ~~2.5(a)2.4(e)~~.)*

...

**2.12 OBLIGATION TO SEND ANNOUNCEMENTS TO SHAREHOLDERS AND MAKE THEM AVAILABLE TO EMPLOYEE REPRESENTATIVES OR EMPLOYEES**

**(a) Promptly after the commencement of an offer period (except where an offer period begins with an announcement under Rule 2.7), a copy of the relevant announcement must be sent by the offeree company to its shareholders, persons with information rights and the Panel, and must be made readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.**

**(b) Promptly after the publication of an announcement made under Rule 2.7:**

**(i) the offeree company must send a copy of that announcement, or a circular summarising the terms and conditions of the offer, to its shareholders, persons with information rights and the Panel; and**

**(ii) both the offeror and the offeree company must make that announcement, or a circular summarising the terms and conditions of the offer, readily available to their employee representatives or, where there are no employee representatives, to the employees themselves.**

**(c) Where necessary, the offeror or the offeree company, as the case may be, should explain the implications of the announcement and, in the case of the offeree company, the fact that addresses, electronic addresses and certain other information provided by offeree company shareholders, persons with information rights and other relevant persons for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4. Any circular published under this Rule should also include a summary of the provisions of Rule 8 (see the Panel's website at [www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)).**

**(d) When, under (a) or (b)(ii) above, the offeree company makes a copy of an announcement or a circular summarising the terms and conditions of the offer available to its employee representatives or employees, it must at the same time inform them of the right of employee representatives under Rule 25.9 to have a separate opinion appended to the offeree board's circular, when published in accordance with Rule 25.1, and of the offeree company's responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion.**

NOTES ON RULE 2.12

1. Where a circular summarising an announcement made under Rule 2.7 is sent

Where, following an announcement made under Rule 2.7, a circular summarising the terms and conditions of the offer is sent or made readily available to shareholders, persons with information rights, employees or employee representatives, the full text of the announcement must be made readily and promptly available to them. In addition, the circular must give details of the website on which a copy of the announcement will be published in accordance with Rule 30.4(a).

2. Shareholders, persons with information rights, employees and employee representatives outside the EEA

See the Note on Rule 23.2.

3. Holders of convertible securities, options or subscription rights

Copies of announcements sent to offeree company shareholders and persons with information rights under Rule 2.12 must also, where practicable, be sent simultaneously to the holders of securities convertible into, rights to subscribe for and options over, shares of the same class as those to which the offer relates. An explanation must also be provided that addresses, electronic addresses and certain other information provided for the receipt of communications from the offeree company may be provided to an offeror during the offer period as required under Section 4 of Appendix 4.

**Rule 3****3.1 BOARD OF THE OFFEREE COMPANY**

...

*NOTES ON RULE 3.1*

...

3. ~~When no recommendation is given or there is a divergence of views~~

~~When it is considered the independent adviser considers it impossible to express a view on the merits of an offer, or to give a firm recommendation in its advice to the board of the offeree company, or when there is a divergence of views amongst board members or between the board and the independent adviser as to either the merits of an offer or the recommendation being made, this must be stated and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors.~~

~~The Panel should be consulted in such cases advance about the explanation which is to be given.~~

**3.2 BOARD OF AN OFFEROR COMPANY**

...

*NOTES ON RULE 3.2*

...

~~2. Reverse takeovers~~

~~A transaction will be a reverse takeover if an offeror might as a result need to increase its existing issued voting equity share capital by more than 100%.~~

~~3. Conflicts of interest~~

...

**Rule 5.2****5.2 EXCEPTIONS TO RESTRICTIONS**

...

(e) **if the acquisition is permitted by Note 11 on Rule 9.1 or Note 5 ~~on~~ of the Notes on Dispensations from Rule 9.**

**Rule 6****6.1 ACQUISITIONS BEFORE A ~~RULE 2.5~~ FIRM OFFER ANNOUNCEMENT**

...

(b) during the period, if any, between the commencement of the offer period and an announcement made by the offeror in accordance with Rule 2.57; or

...

**6.2 ACQUISITIONS AFTER A ~~RULE 2.5~~ FIRM OFFER ANNOUNCEMENT**

(a) If, after an announcement made in accordance with Rule 2.57 ...

...

*NOTES ON RULE 6*

...

4. *Highest price paid*

*Where a person acquired an interest in shares more than three months prior to the commencement of the offer period as a result of any option, derivative or agreement to purchase and, within the three month period prior to the commencement of the offer period or after the announcement made in accordance with Rule 2.57 ...*

**Rule 7****7.1 IMMEDIATE ANNOUNCEMENT REQUIRED IF THE OFFER HAS TO BE AMENDED**

...

*NOTE ON RULE 7.1**Potential offerors*

*The requirement of this Rule to make an immediate announcement applies to any ~~publicly announced~~ potential offeror whose existence has been referred to in any announcement (whether ~~named~~ publicly identified or not) either where a public ~~indication~~ statement of the level of its ~~probable~~ possible offer has*

*been made and the potential offeror or any person acting in concert with it acquires an interest in shares above that level or where ~~there already exists an offer from a third party~~ has announced a firm intention to make an offer and the potential offeror or any person acting in concert with it acquires an interest in shares at above the level of that offer. A Dealing Disclosure will also be required in accordance with Rule 8.1(b).*

## **7.2 DEALINGS BY CONNECTED DISCRETIONARY FUND MANAGERS AND PRINCIPAL TRADERS**

...

### *NOTES ON RULE 7.2*

...

#### *3. Dealings by principal traders*

*After a principal trader ... The Panel will not normally require such dealings to be disclosed under Rules 4.6, 8.4, 24.34 or 25.34. Any such dealings must take place within a time period agreed in advance by the Panel.*

...

#### *6. Disclosure of dealings in offer documentation*

*Interests in relevant securities and dealings (whether before or after the presumptions in Rules 7.2(a) and (b) apply) by connected discretionary fund managers and principal traders (unless exempt) must be disclosed in any offer document in accordance with Rule 24.34 and in any offeree board circular in accordance with Rule 25.34, as the case may be. This will not apply in respect of a dealing that has been permitted by Note 3 above and has not been required to be disclosed.*

## **Rule 8**

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

...

### *NOTES ON RULE 8*

...

#### *12. Potential offerors*

*(a) If a potential offeror has been referred to in an announcement by the offeree company ~~the subject of an announcement that talks are taking place~~ but has not been publicly identified as such ~~named~~, the potential offeror and*

*persons acting in concert with it must disclose any dealings in relevant securities of the offeree company after the time of that announcement in accordance with Rule 8.1(b) or Rule 8.4 respectively.*

## **Rule 9**

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

...

#### *NOTES ON RULE 9.1*

5. *Employee ~~B~~benefit ~~T~~rusts*

...

9. *Triggering Rule 9 during an offer period\**

...

*An offer ... Rules 31.4 and 33.1.*

*Notes 3 and 4 on Rule 32.1 set out certain restrictions on the incurring of an obligation under this Rule during the offer period.*

...

### **9.3 CONDITIONS AND CONSENTS**

...

**(a) offers made under ~~this~~ Rule 9 must ...**

...

#### *NOTES ON RULE 9.3*

...

2. *Acceptance condition*

*Notes 2-7 on Rule 10 also apply to offers under ~~this~~ Rule 9.*

...

3. *When dispensations may be granted*

*The Panel will not normally consider a request for a dispensation under this*

*Rule other than in exceptional circumstances, such as:—*

*(a) when the necessary cash is to be provided, wholly or in part, by an issue of new securities. The Panel will normally require that both the announcement of the offer and the offer document include statements that if the acceptance condition is satisfied but the other conditions required by ~~the Note on Rules 13.1 and 13.3~~ Rule 13.4(b) are not satisfied within the time required by Rule 31.7, and as a result the offer lapses, the offeror will immediately announce a firm intention to make a new cash offer in compliance with this Rule at the price required by Rule 9.5 (or, if greater, at the cash price offered under the lapsed offer); and*

...

## **9.5 CONSIDERATION TO BE OFFERED**

...

**(d) The cash offer or the cash alternative must remain open after the offer has become ~~or been declared unconditional~~ as to acceptances for not less than 14 days after the date on which it would otherwise have expired (see Rule 31.4).**

...

## **9.6 OBLIGATIONS OF DIRECTORS**

**When directors (and their close relatives and related trusts) sell shares to a person (or enter into options, derivatives or other transactions) as a result of which that person is required to make an offer under this Rule, the directors must ensure that as a condition of the sale (or other relevant transaction) the person undertakes to fulfil his obligations under the Rule. In addition, except with the consent of the Panel, such directors should not resign from the board until the first closing date of the offer or the date when the offer becomes ~~or is declared~~ wholly unconditional, whichever is the later.**

## **9.7 VOTING RESTRICTIONS AND DISPOSAL OF INTERESTS**

*NOTE ON RULE 9.7*

...

*Where a disposal of interests in shares is permitted as an alternative to making an offer, the interests in shares required to be disposed of must be sufficient to take the total number of shares carrying voting rights in which the offeror and persons acting in concert with it are interested either, if Rule 9.1(a) applies, to below 30% or, if Rule 9.1(b) applies, to the percentage in which they were interested prior to the triggering acquisition being made.*

**Rule 12.2****12.2 COMPETITION REFERENCE PERIODS**

...

**(b)** ...**(ii)** ...

**(A)** any cleared offeror or potential offeror must, normally within 21 days of the offer's being allowed to proceed, clarify its intentions with regard to the offeree company by making an announcement either of a firm intention to make an offer for the offeree company in accordance with Rule 2.57 ...

**Rule 13****13.2 THE COMPETITION COMMISSION AND THE EUROPEAN COMMISSION**

Neither a condition included pursuant to Rule 12.1(c) nor a pre-condition included pursuant to Rule 13.3(a) or (b) will be subject to the provisions of Rules 13.1 or 13.45(a).

**13.3 ACCEPTABILITY OF PRE-CONDITIONS**

...

(See Note 42 on Rule 2.57.)

*NOTE ON RULES 13.1 and 13.3*

**13.4 FINANCING CONDITIONS AND PRE-CONDITIONS**

**(a)** Subject to Rules 13.4(b) and (c), an offer must not normally be made subject to a condition or pre-condition relating to financing. However:

**(ba)** Where the offer is for cash, or includes an element of cash, and the offeror proposes to finance the cash consideration by an issue of new securities, the offer must be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such securities or to have them listed or admitted to trading. Conditions which will normally be considered necessary for such purposes include:

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

(ii) where the new securities are to be admitted to listing or to trading on any investment exchange or market, any necessary listing or admission to trading condition (see also Rule 24.910).

Such conditions must not be waivable and the Panel must be consulted in advance, ~~and~~

~~(c)~~ (b) ~~In exceptional cases, the Panel may be prepared to accept a pre-condition relating to financing either in addition to another pre-condition permitted by this Rule 13.3 or otherwise, for example where, due to the likely period required to obtain any necessary material official authorisation or regulatory clearance, it is not reasonable for the offeror to maintain committed financing throughout the offer period, in which. In such a case:~~

(i) the financing pre-condition must be satisfied (or waived), or the offer must be withdrawn, within 21 days after the satisfaction (or waiver) of any other pre-condition or pre-conditions permitted by ~~this Rule 13.3~~; and

(ii) the offeror and its financial adviser must confirm in writing to the Panel before announcement of the offer that they are not aware of any reason why the offeror would be unable to satisfy the financing pre-condition within that 21 day period.

(d) If, at any time, the offeror or its financial adviser becomes aware, or considers it likely, that the offeror would be unable to satisfy a financing pre-condition, it must promptly notify the Panel.

#### 13.45 INVOKING CONDITIONS AND PRE-CONDITIONS

...

#### 13.56 INVOKING OFFEREE PROTECTION CONDITIONS

...

#### *NOTES ON RULE 13.56*

...

**Rule 18****RULE 18. THE USE OF PROXIES AND OTHER AUTHORITIES IN  
RELATION TO ACCEPTANCES\***

...

(a) the proxy may not vote, the rights may not be exercised and no other action may be taken unless the offer is wholly unconditional or, in the case of voting by the proxy, the resolution in question concerns the last remaining condition of the offer (other than any condition covered by Rule 24.910) and the offer will become wholly unconditional (save, where relevant, for the satisfaction of any condition covered by Rule 24.910) or lapse depending upon the outcome of that resolution;

...

**Rule 19****19.1 STANDARDS OF CARE**

...

*NOTES ON RULE 19.1*

...

3. Statements of intention

If a party to an offer makes a statement in any document, announcement or other information published in relation to an offer relating to any particular course of action it intends to take, or not take, after the end of the offer period, that party will be regarded as being committed to that course of action for a period of 12 months from the date on which the offer period ends, or such other period of time as is specified in the statement, unless there has been a material change of circumstances.

34. Sources

...

45. Quotations

...

56. Diagrams etc.

...

~~67. Use of other media television, videos, audio tapes etc.~~

~~If any of these other media are to be used, even when they do not constitute advertisements (see Rule 19.4), the Panel must be consulted in advance.~~

~~78. Financial Services and Markets Act 2000~~

...

~~89. Merger benefits statements~~

...

## 19.2 RESPONSIBILITY

(a) ... This Rule does not apply to:

~~(i) \_\_\_\_\_ advertisements falling within ... Rule 19.4; and~~

~~(ii) \_\_\_\_\_ advertisements ... required by this Rule; and~~

~~(iii) any separate opinion of the employee representatives of the offeree company on the effects of the offer on employment, as referred to in Rule 25.9 or Rule 32.6.~~

...

## 19.3 UNACCEPTABLE STATEMENTS

...

### NOTES ON RULE 19.3

~~1. — Holding statements~~

~~While an offeror may need to consider its position in the light of new developments, and may make a statement to that effect, and while a potential competing offeror may make a statement that it is considering making an offer, it is not acceptable for such statements to remain unclarified for more than a limited time in the later stages of the offer period. Before any statements of this kind are made, the Panel must be consulted as to the period allowable for clarification. This does not detract in any way from the obligation to make timely announcements under Rule 2.~~

~~In the case of a scheme of arrangement, see Section 4 of Appendix 7.~~

~~2. — Statements of support~~

~~... The Panel will not require separate verification by an offeror where the information required by Note 3 on Rule 2.11 is included in an announcement~~

*made under Rule 2.57 which is published no later than 12 noon on the business day following the date on which the letter of intent is procured.*

#### **19.4 ADVERTISEMENTS**

...

##### *NOTES ON RULE 19.4*

...

#### 4. *Use of ~~alternative~~ other media*

...

*[Rules 19.8 to 19.11 to be deleted: see new Rules 30.1 to 30.4]*

### **Rule 20**

#### **20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS**

...

##### *NOTES ON RULE 20.1*

...

#### 3. *Meetings*

...

*In the case of any meeting held prior to the offer period, the representative should confirm that no material new information was forthcoming and no significant new opinions were expressed at the meeting which will not be included in the announcement of the offer to be made under Rule 2.57, if and when such announcement is made.*

...

*The above provisions apply to all such meetings held prior to or during an offer period wherever they take place and even if with only one person or firm, unless the meetings take place by chance. ~~Meetings with employees in their capacity as such (rather than in their capacity as shareholders) are not normally covered by this Note, although the Panel should be consulted if any employees are interested in a significant number of shares.~~*

...

5. *Shareholders and persons with information rights outside the EEA*

*See the Note on Rule ~~30.323.2~~.*

6. *Sharing information with employee representatives or employees*

*Subject to the requirements of Rule 2.1, the Code does not prevent the passing of information in confidence by:*

*(a) an offeror or the offeree company to their employee representatives or employees; or*

*(b) an offeror to the employee representatives or employees of the offeree company,*

*where the employee representatives or employees are acting in their capacity as such (rather than in their capacity as shareholders).*

*Meetings with employee representatives or employees acting in their capacity as such, both prior to and during the offer period, are not normally covered by Note 3 on Rule 20.1, although the Panel should be consulted if any employees are interested in a significant number of shares.*

## 20.2 EQUALITY OF INFORMATION TO COMPETING OFFERORS

**Any information given to one offeror or potential offeror, whether publicly identified or notnamed ~~or unnamed~~, must, on request, be given equally and promptly to another offeror or bona fide potential offeror even if that other offeror is less welcome. This requirement will usually only apply when there has been a public announcement of the existence of the offeror or potential offeror to which information has been given or, if there has been no public announcement, when the offeror or bona fide potential offeror requesting information under this Rule has been informed authoritatively of the existence of another potential offeror.**

### NOTES ON RULE 20.2

...

4. *Mergers and reverse takeovers*

*~~Where an offer or possible offer is a reverse takeover might result in an offeror needing to increase its existing issued voting equity share capital by 100% or more, an offeror or potential offeror for either party to such an offer or possible offer will be entitled to receive information which has been given by such party to the other party.~~*

**Rule 21.2**

*[Rule 21.2 and the Notes on Rule 21.2 to be deleted]*

**21.2 INDUCEMENT FEES AND OTHER OFFER-RELATED ARRANGEMENTS**

**(a) Except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into any offer-related arrangement with either the offeror or any person acting in concert with it during an offer period or when an offer is reasonably in contemplation.**

**(b) An offer-related arrangement means any agreement, arrangement or commitment in connection with an offer, including any inducement fee arrangement or other arrangement having a similar or comparable financial or economic effect, but excluding:**

**(i) a commitment to maintain the confidentiality of information provided that it does not include any other provisions prohibited by Rules 21.2(a) or 2.3(d) or otherwise under the Code;**

**(ii) a commitment not to solicit employees, customers or suppliers;**

**(iii) a commitment to provide information or assistance for the purposes of obtaining any official authorisation or regulatory clearance;**

**(iv) irrevocable commitments and letters of intent;**

**(v) any agreement, arrangement or commitment which imposes obligations only on an offeror or any person acting in concert with it, other than in the context of a reverse takeover; and**

**(vi) any agreement relating to any existing employee incentive arrangement.**

**(c) If there is any doubt as to whether any proposed agreement, arrangement or commitment is subject to this Rule, the Panel should be consulted at the earliest opportunity.**

**NOTES ON RULE 21.2****1. Competing offerors**

*Where an offeror has announced a firm intention to make an offer which was not recommended by the board of the offeree company at the time of that announcement and remains not recommended, the Panel will normally consent to the offeree company entering into an inducement fee arrangement*

with a competing offeror at the time of the announcement of its firm intention to make a competing offer, provided that:

(a) the aggregate value of the inducement fee or fees that may be payable by the offeree company is de minimis, i.e. normally no more than 1% of the value of the offeree company calculated by reference to the price of the competing offer (or, if there are two or more competing offerors, the first competing offer) at the time of the announcement made under Rule 2.7; and

(b) any inducement fee is capable of becoming payable only if an offer becomes or is declared wholly unconditional.

## 2. Formal sale process

Where, prior to an offeror having announced a firm intention to make an offer, the board of the offeree company announces that it is seeking one or more potential offerors by means of a formal sale process, the Panel will normally grant a dispensation from the prohibition in Rule 21.2, such that the offeree company would be permitted, subject to the same provisos as set out in Note 1(a) and (b) above, to enter into an inducement fee arrangement with one offeror (who had participated in that process) at the time of the announcement of its firm intention to make an offer. In exceptional circumstances, the Panel may also be prepared to consent to the offeree company entering into other offer-related arrangements with that offeror. The Panel should be consulted at the earliest opportunity in all cases where such a dispensation is sought.

## 3. “Whitewash” transactions

Rule 21.2 also applies in the context of a “whitewash” transaction. The Panel should be consulted at an early stage where a “whitewash” transaction is proposed.

## 4. Disclosure and display

An announcement of a firm intention to make an offer, offer document or whitewash circular, as the case may be, must include a summary of any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2 and a copy of the agreement, arrangement or commitment must be put on display in accordance with Rule 26.1.

## **Rule 22**

### **RULE 22. RESPONSIBILITIES OF THE OFFEREE COMPANY AND AN OFFEROR REGARDING REGISTRATION PROCEDURES AND PERSONS WITH INTERESTS IN SECURITIES REPRESENTING 1% OR MORE**

...

NOTES ON RULE 22

...

2. Rule 2.612

*Where, following the commencement of an offer period, the offeree company has sent a person a copy of an announcement or a circular in accordance with the provisions of Rule 2.612, ...*

**Rule 23**

**RULE 23. ~~THE~~ GENERAL OBLIGATIONS AS TO INFORMATION**

**23.1 SUFFICIENT INFORMATION**

Shareholders must be given ...

...

*NOTES ON RULE 23.1*

...

~~3. — Shareholders and persons with information rights outside the EEA~~

~~See the Note on Rule 30.3.~~

**23.2 MAKING DOCUMENTS, ANNOUNCEMENTS AND INFORMATION AVAILABLE TO SHAREHOLDERS, PERSONS WITH INFORMATION RIGHTS AND EMPLOYEE REPRESENTATIVES OR EMPLOYEES**

**If a document, an announcement or any information is required to be sent, published or made available to:**

**(a) shareholders in the offeree company;**

**(b) persons with information rights; or**

**(c) employee representatives or employees of the offeror or the offeree company,**

**pursuant to Rule 2.12, 20.1, 23.1, 24.1, 24.15, 25.1, 30.2, 30.4, 32.1 or 32.6(a), it must be sent, published or made available (as the case may be) to all such persons, including those who are located outside the EEA, unless there is sufficient objective justification for not doing so.**

NOTE ON RULE 23.2Shareholders, persons with information rights, employees and employee representatives outside the EEA

Where local laws or regulations of a particular non-EEA jurisdiction may result in a significant risk of civil, regulatory or, particularly, criminal exposure for the offeror or the offeree company if the information or documentation is sent, published or made available to shareholders in that jurisdiction without any amendment, and unless they can avoid such exposure by making minor amendments to the information being provided or documents being sent, published or made available either:

(a) the offeror or the offeree company need not provide such information or send, publish or make such information or documents available to registered shareholders of the offeree company or persons with information rights who are located in that jurisdiction if less than 3% of the shares of the offeree company are held by registered shareholders located there at the date on which the information is to be provided or the information or documents are to be sent, published or made available (and there is no need to consult the Panel in these circumstances); or

(b) in all other cases, the Panel may grant a dispensation where it would be proportionate in the circumstances to do so having regard to the cost involved, any resulting delay to the transaction timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company.

Similar dispensations will apply in respect of information or documents which are sent, published, provided or required to be made available to employee representatives or employees of the offeror or the offeree company.

The Panel will not normally grant any dispensation in relation to shareholders, persons with information rights, employee representatives or employees of the offeree company who are located within the EEA.

**23.3 FINANCIAL ADVISERS' OPINIONS**

**If any document published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn its consent to the publication of the document with the inclusion of its recommendation or opinion in the form and context in which it is included.**

**Rule 24****24.1 THE OFFER DOCUMENT**

(a) The offeror must, normally within 28 days of the announcement of a firm intention to make an offer, send an offer document to shareholders of the offeree company and persons with information rights, in accordance with Rule 30.1. At the same time, both the offeror and the offeree company must make the offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves. The Panel must be consulted if the offer document is not to be published within this period.

(b) On the day of publication, the offeror must:

(i) publish the offer document on a website in accordance with Rule 30.4; and

(ii) announce via a RIS that the offer document has been so published.

#### **24.12 INTENTIONS REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND THEIR EMPLOYEES**

(a) An offeror will be required to cover the following points in the offer document, the offeror must state its intentions with regard to the future business of the offeree company and explain the long-term commercial justification for the offer. In addition, it must state:—

~~(a) its intentions regarding the future business of the offeree company;~~

(i) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment;

~~(bii) its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business;~~

~~(eiii) its intentions regarding with regard to any redeployment of the fixed assets of the offeree company; and~~

(iv) its intentions with regard to the maintenance of any existing trading facilities for the relevant securities of the offeree company.

~~(d) the long-term commercial justification for the proposed offer; and~~

~~(e) its intentions with regard to the continued employment of the employees and management of the offeree company and of its~~

~~subsidiaries, including any material change in the conditions of employment.~~

(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(i) to (iii) above, or if it considers that its strategic plans for the offeree company will have no repercussions on employment or the location of the offeree company's places of business, it must make a statement to that effect.

(c) Where the offeror is a company, and insofar as it is affected by the offer, the offeror must also ~~cover~~ state its intentions with regard to its future business and comply with (a)(i), ~~(b)~~ and (eii) with regard to itself.

#### **24.32 FINANCIAL AND OTHER INFORMATION ON THE OFFEROR, THE OFFEREE COMPANY AND THE OFFER**

Except with the consent of the Panel:—

(a) where ~~the consideration includes securities and~~ the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to trading on a UK regulated market the Official List or to trading or on AIM or PLUS, the offer document must contain:

(i) the names of its directors;

(ii) the nature of its business and its financial and trading prospects;

(iii) details of the website address where its audited consolidated accounts for the last two financial years have been published and a statement that the accounts have been incorporated into the offer document by reference to that website in accordance with Rule 24.15;

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

~~(i) for the last 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, minority interests, the amount absorbed by dividends and earnings and dividends per share;~~

~~(ii) a statement of the assets and liabilities shown in the last published audited accounts;~~

~~(iii) — a cash flow statement if provided in the last published audited accounts;~~

~~(vii) in the case of a securities exchange offer, all a description of any known material changes significant change in the its financial or trading position which has occurred since the end of the last financial period for which either audited financial information or interim financial information has been published, or provide an appropriate negative statement of the company subsequent to the last published audited accounts or a statement that there are no known material changes;~~

~~(v) — details relating to items referred to in (i) above in respect of any interim statement or preliminary announcement made since the last published audited accounts;~~

~~(vi) — inflation-adjusted information if any of the above has been published in that form;~~

~~(vii) — significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures, including those relating to inflation-adjusted information;~~

~~(viii) — where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated;~~

~~(ix) — the names of the offeror's directors;~~

~~(x) — the nature of its business and its financial and trading prospects; and~~

~~(vi) a statement of the effect of full acceptance of the offer upon its earnings and assets and liabilities; and~~

~~(vixi) a summary of the principal contents of each material contract ... ;~~

~~(b) — where the consideration is cash only and the offeror is a company incorporated under the Companies Act 2006 (or its predecessors) and its shares are admitted to the Official List or to trading on AIM, the offer document must contain:~~

~~(i) — for the last two financial years for which information has been published, turnover and profit or loss before taxation;~~

~~(ii) a statement of the net assets of the company shown in the last published audited accounts;~~

~~(iii) the names of the company's directors; and~~

~~(iv) the nature of the business and its financial and trading prospects;~~

**(be) if the offeror is other than a company referred to in (a) and (b) above, whether the consideration is securities or cash, the offer document must contain:**

**(i) in respect of the offeror, the information described in (a) above (so far as appropriate) and such further information as the Panel may require in the particular circumstances (see Note 2);**

...

**(c) the offer document must contain summary details of any current ratings and outlooks publicly accorded to the offeror and the offeree company by ratings agencies prior to the commencement of the offer period, any changes made to previous ratings or outlooks during the offer period, and a summary of the reasons given, if any, for any such changes;**

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

**(i) ... ;**

**(ii) the date when the document is published, the name and address of the offeror (including, where the offeror is a company, the type of company and the address of its registered office) ~~and, if appropriate, of the person making the offer on behalf of the offeror;~~**

**(iii) ... (See Note 34);**

**(iv) ... ;**

**(v) the terms of the offer, including the consideration offered for each class of security, the total consideration offered and particulars of the way in which the consideration is to be paid in accordance with Rule 31.8 or, in the case of a scheme of arrangement, Section 10 of Appendix 7;**

**(vi) all conditions ~~(including normal conditions relating to acceptances, admission to listing, admission to trading and increase of capital)~~ to which the offer is subject;**

(vii) particulars of all documents required, and procedures to be followed, for acceptance of the offer or, in the case of a scheme of arrangement, for voting;

(viii) the middle market quotations for the securities to be acquired, and (in the case of a securities exchange offer) securities offered, for the first business day in each of the six months immediately before the date of the offer document, for the last business day before the commencement of the offer period and for the latest available date before the publication of the offer document, together with the source (~~quotations stated in respect of securities admitted either to the Official List or to trading on AIM should be taken from the Stock Exchange Daily Official List and, (or, if any of the securities are not so-admitted to trading, any information available as to the number and price of transactions which have taken place during the preceding six months should be stated, together with the source, or an appropriate negative statement);~~

(ix) ... ;

(x) ... ;

(xi) ... ;

~~(xii) in the case of a securities exchange offer, the effect of full acceptance of the offer upon the offeror's assets, profits and business which may be significant for a proper appraisal of the offer;~~

(xiii) a summary ... ;

(xiii~~v~~) the national law ... ;

(xiv) the compensation ... ; ~~and~~

~~(xv) details a summary of any offer-related arrangement or other agreement, arrangement or commitment for the payment of an inducement fee or similar arrangement as referred to in permitted under, or excluded from, Rule 21.2; and~~

(xvi) a list of the documents which the offeror has published on a website in accordance with Rules 26.1 and 26.2 and the address of the website on which the documents are published.

(e) the offer document must contain information on the offeree company on the same basis as set out in (a)(i) to ~~(vix)~~ above;

~~(f) all offer documents must contain a description of how the offer is to be financed and the source of the finance. The principal lenders or~~

~~arrangers of such finance must be named. Where the offeror intends that the payment of interest on, repayment of or security for any liability (contingent or otherwise) will depend to any significant extent on the business of the offeree company, a description of the arrangements contemplated will be required. Where this is not the case, a negative statement to this effect must be made;~~

**(f) the offer document must contain a description of how the offer is to be financed and the source(s) of the finance. Details must be provided of the debt facilities or other instruments entered into in order to finance the offer and to refinance the existing debt or working capital facilities of the offeree company and, in particular:**

**(i) the amount of each facility or instrument;**

**(ii) the repayment terms;**

**(iii) interest rates, including any “step up” or other variation provided for;**

**(iv) any security provided;**

**(v) a summary of the key covenants;**

**(vi) the names of the principal financing banks; and**

**(vii) if applicable, details of the time by which the offeror will be required to refinance the acquisition facilities and of the consequences of its not doing so by that time; and**

**(g) ... ; and.**

~~(h) if any document published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn his consent to the publication of the document with the inclusion of his recommendation or opinion in the form and context in which it is included.~~

#### NOTES ON RULE 24.23

...

#### 2. *Further information requirements*

(a) *For the purposes of paragraphs (ii) and (iii) of Rule 24.23(b), the expression “person” will normally include the ultimate owner(s), and persons having control (as defined), of the offeror if not already included under paragraphs (ii) or (iii). Whilst the precise nature of the further information*

*which may be required to be disclosed under paragraphs (i), (ii) or (iii) of Rule 24.23(b) in any particular case will depend on the circumstances of that case, the Panel would normally expect it to include a general description of the business interests of the offeror and/or other person(s) concerned and details of those assets which the Panel considers may be relevant to the business of the offeree company.*

*(b) The Panel must be consulted in advance in any case to which Rule 24.23(b) applies, or may apply regarding the application of its provisions to that particular case. Where information is incorporated into the offer document by reference to another source, the Panel will normally require that information to be available in the English language.*

~~3. — Partial offers~~

~~Where the offer is a partial offer, the offer document must contain the information required under Rule 24.2(a), whether the consideration is securities or cash.~~

~~34. Persons acting in concert with the offeror~~

~~For the purposes of Rule 24.23(d)(iii), ...~~

~~45. Offers made under Rule 9~~

~~When an offer is made under Rule 9, the information required under Rule 24.23(d)(v) must include the method employed under Rule 9.5 in calculating the consideration offered.~~

~~6. — Certain offers where the consideration is solely in cash~~

~~The Panel will normally consent to the provisions of Rules 24.2(b), (e)(i) (to the extent that it refers to Rule 24.2(a)) and (f) being disapplied in relation to offers where the consideration is solely in cash provided that the offer (including all related offers and proposals) is structured so that no person will remain or become a minority shareholder in the offeree company, or the risk of anyone doing so is negligible. In such circumstances, the offer document or scheme circular must nonetheless contain the names of the offeror's directors.~~

~~If an offer to which this Note applies is subsequently restructured with the effect that:~~

~~(a) — the consideration is no longer solely in cash; or~~

~~(b) — the transaction structure switches to a contractual offer where the risk of a person remaining or becoming a minority shareholder in the offeree company is not negligible;~~

~~the provisions of Rules 24.2(b), (c)(i) and (f) will apply in full and the information required by those provisions must be included in the supplementary scheme circular or offer document (as appropriate).~~

~~Where Rule 24.2(c)(i) applies, compliance with the “further information” requirements of that rule will still be required (see Note 2 on Rule 24.2).~~

~~The Panel should be consulted in advance where consent to the disapplication of any of the requirements of Rule 24.2(b), (c)(i) or (f) is sought.~~

...

## **24.34 INTERESTS AND DEALINGS**

...

**(b) If, in the case of any of the persons referred to in Rule 24.34(a), ...**

**(c) If any person referred to in Rule 24.34(a) ...**

...

### *NOTES ON RULE 24.34*

...

#### *2. Aggregation*

...

*Acquisitions and disposals ... should be put on display in accordance with Rule 26.2.*

#### *3. Discretionary fund managers and principal traders*

*Interests in relevant securities and short positions of non-exempt discretionary fund managers and principal traders which are connected with the offeror and their dealings since the date 12 months prior to the offer period will need to be disclosed under Rules 24.34(a)(ii)(b) and 24.34(c) respectively.*

#### *4. Competing offerors*

*Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 24.34(a)(iii) and (iv), 24.34(b) and 24.34(c) must be included in relation to the relevant securities of each offeror or potential offeror (other than any cash offeror).*

## **24.45 DIRECTORS' EMOLUMENTS**

...

*NOTE ON RULE 24.45*

...

**24.56 SPECIAL ARRANGEMENTS**

...

**24.67 INCORPORATION OF OBLIGATIONS AND RIGHTS\***

The offer document must state the time allowed for acceptance of the offer and any alternative offer and must incorporate language which appropriately reflects Notes 4–8 on Rule 10 and those parts of Rules 13.45(a), 13.56 (if applicable), 17 and 31–34 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.

*NOTES ON RULE 24.67*

...

2. *Rule 31.6(c)**Rule 24.67 does not apply ...***24.78 CASH CONFIRMATION**

...

**24.89 ULTIMATE OWNER OF SECURITIES ACQUIRED**

...

**24.910 ADMISSION TO LISTING AND ADMISSION TO TRADING  
CONDITIONS\***

...

*\*This Rule is disapplied in a scheme. See Section 15 of Appendix 7.***24.101 ESTIMATED VALUE OF UNQUOTED PAPER  
CONSIDERATION**

...

**24.112 NO SET-OFF OF CONSIDERATION**

...

**24.123 ARRANGEMENTS IN RELATION TO DEALINGS**

...

**24.134 CASH UNDERWRITTEN ALTERNATIVES WHICH MAY BE SHUT OFF\***

...

**24.145 INCORPORATION OF INFORMATION BY REFERENCE**

~~(a) — The information required to be included in documents under the following Rules may be incorporated into the relevant documents by reference to another source:~~

~~(i) — Rules 24.2(a)(i) to (iii) and (v) to (viii);~~

~~(ii) — Rules 24.2(b)(i) and (ii); and~~

~~(iii) — Rules 24.2(c) and (e), in so far as they refer to Rules 24.2(a)(i) to (iii) and (v) to (viii).~~

**(a) In addition to the requirements under Rules 24.3(a)(iii) and (iv) (and, insofar as they refer to Rules 24.3(a)(iii) and (iv), Rules 24.3(b) and (e) for certain information to be incorporated into an offer document by reference to a website, information that is required to be included in a document under other Rules may be incorporated by reference to another source with the Panel's consent.**

...

*NOTE ON RULE 24.145*

...

**24.16 FEES AND EXPENSES**

**(a) The offer document must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeror in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to:**

**(i) financing arrangements;**

**(ii) financial and corporate broking advice;**

**(iii) legal advice;**

**(iv) accounting advice;**

(v) public relations advice;

(vi) other professional services (including, for example, management consultants, actuaries and specialist valuers); and

(vii) other costs and expenses.

(b) Where any fee is variable between defined limits, a range must be given in respect of the aggregate fees and expenses and of the fees and expenses of each relevant category, setting out the expected maximum and minimum amounts payable. See Note 2.

(c) Where the fees and expenses payable within a particular category are likely to exceed the estimated maximum previously disclosed by 10% or more, the offeror must promptly disclose to the Panel revised estimates of the aggregate fees and expenses expected to be incurred in relation to the offer and of the fees and expenses expected to be incurred within that category. The Panel may require the public disclosure of such revised estimates where it considers this to be appropriate.

(d) Where the final fees and expenses actually paid within a particular category exceed the amount publicly disclosed as the estimated maximum payable by 10% or more, the offeror must promptly disclose to the Panel the final amount paid in respect of that category. The Panel may require the public disclosure of such final amount where it considers this to be appropriate.

#### NOTES ON RULE 24.16

##### 1. Financing fees and expenses

Full details should be given of any fees and expenses payable, or estimated to be payable in relation to:

(a) entering into any financing commitment; and

(b) drawing down any financing.

Any commitment fees should normally be disclosed by means of describing the principal amounts of the financing facilities and the annual percentage rate applicable for the period of time between commitment and drawdown. A cross-reference to the description of how the offer is to be financed, as required under Rule 24.3(f), will normally be sufficient.

##### 2. Variable and uncapped fee arrangements

Where a fee is variable or is not subject to a maximum amount, this should be stated and an indication of the nature of the arrangement given (for example, whether the amount of the fee is discretionary, relates to the outcome or final value of the offer or will be calculated on a “time cost” or other basis).

Where a particular category of fees and expenses includes a variable or uncapped element, the figure or range given should reflect a reasonable estimate of the fees likely to be paid on the basis of the terms of the then current offer.

Where a fee arrangement provides for circumstances in which the fee will or may increase, for example where the offer is revised or a competitive situation arises, the higher amount will not be required to be disclosed unless and until such circumstances arise.

## Rule 25

### **25.1 THE OFFEREE BOARD CIRCULAR**

**(a) The board of the offeree company must, normally within 14 days of the publication of the offer document, send a circular to the offeree company's shareholders and persons with information rights, in accordance with Rule 30.1 and must, at the same time, make it readily available to its employee representatives or, where there are no employee representatives, to the employees themselves.**

**(b) On the day of publication, the offeree company must:**

**(i) publish the circular on a website in accordance with Rule 30.4; and**

**(ii) announce via a RIS that it has been so published.**

#### NOTE ON RULE 25.1

Where there is no separate offeree board circular

Where the offeree board's circular is combined with the offer document, Rule 25.1 will not apply. However, Rules 25.2 to 25.9 will apply to the combined document.

### **25.12 VIEWS OF THE OFFEREE BOARD ON THE OFFER, INCLUDING THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES**

~~**(a) The board of the offeree company must send its opinion on the offer (including any alternative offers) to the offeree company's shareholders and persons with information rights. It must, at the same time, make known to its shareholders the substance of the advice given to it by the independent advisers appointed pursuant to Rule 3.1.**~~

**(a) The opinion referred to in (a) above offeree board circular must include set out the opinion of the board on the offer (including any**

**alternative offers) and the board's reasons for forming its opinion and must include the its views of the board of the offeree company on:**

- (i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and
- (ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business, as set out in the offer document pursuant to Rule 24.12.

~~and must state the board's reasons for forming its opinion.~~

**(b) In addition, the circular must include the substance of the advice given to the board of the offeree company by the independent adviser appointed under Rule 3.1.**

~~(e) — If any document published in connection with an offer includes a recommendation or an opinion of a financial adviser for or against acceptance of the offer, the document must, unless published by the financial adviser in question, include a statement that the financial adviser has given and not withdrawn its consent to the publication of the document with the inclusion of its recommendation or opinion in the form and context in which it is included.~~

#### NOTES ON RULE 25.12

*1. — When a board has effective control*

*A board whose shareholdings confer control over a company which is the subject of an offer must carefully examine the reasons behind the advice it gives to shareholders and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.*

*1. Factors which may be taken into account*

*The provisions of the Code do not limit the factors that the board of the offeree company may take into account in giving its opinion on the offer in accordance with Rule 25.2(a). In particular, when giving its opinion, the board of the offeree company is not required by the Code to consider the offer price as the determining factor and is not precluded by the Code from taking into account any other factors which it considers relevant.*

*2. Split boards — Where there is no clear opinion or there is a divergence of views*

*If the board of the offeree company is split in its views does not reach a clear opinion on an offer, or if there is a divergence of views among its members, or*

between the board and the independent adviser appointed under Rule 3.1, this must be stated and an explanation given, including the arguments for acceptance or rejection, emphasising the important factors. The Panel should be consulted in advance about the explanation which is to be given.

The views of any directors who are in a minority should also be included in the circular. publish their views. The Panel will normally require the offeree company to send those views to the offeree company's shareholders and persons with information rights.

### 3. When a board has effective control

A board whose shareholdings confer control over an offeree company must carefully examine the reasons behind its opinion on the offer and must be prepared to explain its decisions publicly. Shareholders in companies which are effectively controlled by the directors must accept that in respect of any offer the attitude of their board will be decisive.

### 34. Conflicts of interest

...

### 45. Management buy-outs

...

## **25.23 FINANCIAL AND OTHER INFORMATION**

**The first major offeree board circular published by the offeree board in connection with an offer (whether recommending acceptance or rejection of the offer) must contain all a description of any known material changes significant change in the financial or trading position of the offeree company which has occurred since the end of the last financial period for which either audited financial information or interim financial information has been published, or provide an appropriate negative statements subsequent to the last published audited accounts or a statement that there are no known material changes.**

### NOTES ON RULE 25.23

#### *1. Offeree board circular combined with offer document*

*Where the first major offeree board circular published by the offeree board is combined with the offer document, it will be the responsibility of the offeree board to include the information required by ~~this~~ Rule 25.3. Accordingly, the offeror will not be required to comply with Rule 24.23(e) insofar as it applies to Rule 24.23(a)(v).*

#### *2. Offeree board circular published after offer document*

*Where the offeror has included in the offer document information on the offeree company as required by Rule 24.23(e) insofar as it applies to Rules 24.23(a)(iv) and (v), such information does not need to be repeated in the ~~first major-offeree board circular published by the offeree board~~ provided that the statement made in accordance with ~~this~~ Rule 25.3 makes specific reference to the relevant information disclosed by the offeror in the offer document.*

## **25.34 INTERESTS AND DEALINGS**

**(a) The ~~first major-offeree board circular published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer)~~ must state:—**

...

**(b) If, in the case of any of the persons referred to in Rule 25.34(a), ...**

**(c) If any person referred to in Rule 25.34(a)(i) has dealt in any relevant securities of the offeree company or the offeror between the start of the offer period and the latest practicable date prior to the publication of the circular, the details, including dates, must be stated (see Note 5 on Rule 8). If any person referred to in Rule 25.34(a)(ii)(b) to (c) has dealt in relevant securities of the offeree company (or, in the case of a securities exchange offer only, the offeror) during the same period, similar details must be stated. In all cases, if no such dealings have taken place this fact should be stated.**

...

### *NOTES ON RULE 25.34*

*(See also Notes on Rule 24.34 which apply equally to this Rule.)*

...

#### **2. Competing offerors**

*Where more than one offeror has announced an offer or possible offer for the offeree company, the details required by Rules 25.34(a)(i), (iii) and (iv) must be included in relation to the relevant securities of each offeror or potential offeror (other than any cash offeror). Similarly, where more than one offeror has announced an offer in accordance with Rule 2.57, the details required by Rule 25.34(a)(v) must be included in respect of each offer.*

## **25.45 DIRECTORS' SERVICE CONTRACTS**

**(a) The ~~first major-offeree board circular published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer)~~ must contain ...**

...

#### NOTES ON RULE 25.45

##### 1. *Particulars to be disclosed*

*Particulars in respect of existing service contracts and, where appropriate under Rule 25.45(b), earlier contracts or an appropriate negative statement must be provided as follows:—*

...

#### **25.56 ARRANGEMENTS IN RELATION TO DEALINGS**

~~The first major offeree board circular published by the offeree board in connection with the offer (whether recommending acceptance or rejection of the offer) must disclose ...~~

...

#### **25.67 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT, AND DOCUMENTS ON DISPLAY**

~~The first major offeree board circular published by the offeree board in connection with an offer must contain:—~~

(a) ... ; ~~and~~

(b) ... ; and

(c) a list of the documents which the offeree company has published on a website in accordance with Rules 26.1 and 26.2 and the address of the website on which the documents are published.

...

#### **25.8 FEES AND EXPENSES**

The offeree board circular must contain an estimate of the aggregate fees and expenses expected to be incurred by the offeree company in connection with the offer and, in addition, separate estimates of the fees and expenses expected to be incurred in relation to the matters specified in paragraphs (ii) to (vii) of Rule 24.16(a). The other provisions of Rule 24.16 and Note 2 on Rule 24.16 also apply as if references to the offeror were references to the offeree company.

#### **25.9 THE EMPLOYEE REPRESENTATIVES' OPINION**

The board of the offeree company must append to its circular a separate opinion from its employee representatives on the effects of the offer on

**employment, provided such opinion is received in good time before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must promptly publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received no later than 14 days after the date on which the offer becomes or is declared wholly unconditional.**

*NOTES ON RULE 25.9*

*1. Offeree company's responsibility for costs*

*The offeree company must pay for the publication of the employee representatives' opinion and for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion in order to comply with the standards of Rule 19.1. (See also Rule 32.6(b).)*

*2. Notification of the rights of employee representatives under Rule 25.9*

*See Rule 2.12(d).*

**Rule 26**

**RULE 26. DOCUMENTS TO BE ON DISPLAY**

**26.1 DOCUMENTS TO BE ON DISPLAY FOLLOWING THE ANNOUNCEMENT OF AN OFFER**

**Except with the consent of the Panel, copies of the following documents must be published on a website as soon as possible and in any event by no later than 12 noon on the business day following the announcement of a firm intention to make an offer (or, if later, the date of the relevant document) until the end of the offer (including any related competition reference period):**

**(a) any irrevocable commitment or letter of intent procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;**

**(b) any documents relating to the financing of the offer (Rule 24.3(f));**

**(c) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert; and**

**(d) any offer-related arrangement or other agreement, arrangement or commitment permitted under, or excluded from, Rule 21.2.**

**26.2 DOCUMENTS TO BE ON DISPLAY FOLLOWING THE MAKING OF AN OFFER**

Except with the consent of the Panel, copies of the following documents must be ~~made available for inspection and~~ published on a website from the time the offer document or offeree board circular, as appropriate, is published until the end of the offer (and including any related competition reference period). ~~The offer document or offeree board circular must state which documents are so available, the place (being a place in the City of London or such other place as the Panel may agree) where inspection can be made and the address of the website on which the documents are published:~~

- (a) ... ;
- ~~(b) audited consolidated accounts of the offeror or the offeree company for the last two financial years for which these have been published;~~
- (be) ... ;
- ~~(cd)~~ written consents of the financial advisers (Rules ~~24.2(h)~~ and ~~25.1(e)~~23.3);
- (de) any material contract entered into by an offeror or the offeree company, or any of their respective subsidiaries, in connection with the offer that is described in the offer document or offeree board circular (as appropriate) in compliance with Rule ~~24.23~~23(a), Rule ~~24.23~~23(be) or Rule ~~25.67~~67(a);
- (ef) where a profit forecast has been made:
  - (i) the reports of the auditors or consultant accountants and of the financial advisers (Rule 28.3); and
  - (ii) ... ;
- (fg) where an asset valuation has been made:
  - (i) the valuation certificate and associated report or schedule containing details of the aggregate valuation (Rule 29.5(c)); and
  - (ii) a letter stating that the valuer has given and not withdrawn his consent to the publication of his name in the relevant document (Rule 29.5(b));
- ~~(h) any document evidencing an irrevocable commitment or a letter of intent which has been procured by the offeror or offeree company (as appropriate) or any person acting in concert with it;~~

**(gi)** where the Panel has given consent to aggregation of dealings, a full list of all dealings (Note 2 on Rule 24.34);

~~(j) documents relating to the financing arrangements for the offer where such arrangements are described in the offer document in compliance with the third sentence of Rule 24.2(f);~~

**(hk)** all derivative contracts which in whole or in part have been disclosed under Rules 24.34(a) and (c) and 25.34(a) and (c) or in accordance with Rules 8.1, 8.2 or 8.4. Documents in respect of the last mentioned must be ~~made available for inspection~~ published from the time the offer document or the offeree board circular is published or from the time of disclosure, whichever is the later; and

~~(l) documents relating to the payment of an inducement fee or similar arrangement (Rule 21.2);~~

**(im)** any agreements or arrangements, or, if not reduced to writing, a memorandum of all the terms of such agreements or arrangements, which relate to the circumstances in which the offeror may or may not invoke or seek to invoke a condition to its offer ~~disclosed in the offer document pursuant to (Rule 24.23(d)(ix));~~

~~(n) any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert;~~

~~(o) in the case of an offeror, the offer document and any revised offer document (Rules 30.1(a) and 32.1(a)); and~~

~~(p) in the case of the offeree company, the offeree board circular and any offeree board opinion on any revised offer document (Rules 30.2(a) and 32.6(a)).~~

#### NOTES ON RULE 26

...

4. *Shareholders, persons with information rights and other persons in non-EEA jurisdictions*

~~See Note 3 on Rule 19.11 and the Note on Rule 30.323.2 and Note 3 on Rule 30.4.~~

5. *Amendment, variation, ~~or~~ updating or replacement of documents on display*

*If a document on display is amended, varied, ~~or~~ updated or replaced during the period in which it is required to be on display under Rule 26, then the*

*amended, varied or updated document, or the replacement document, should also be put on display and a statement that this has been done should be included on the website.*

## Rule 27

### 27.1 MATERIAL CHANGES

Documents subsequently sent to shareholders of the offeree company and persons with information rights by a party to the offer must contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period; if there have been no such changes, this must be stated. In particular, the following matters must be updated:—

- (a) changes or additions to, or the replacement of, material contracts, irrevocable commitments or letters of intent or financing arrangements (Rules ~~24.23~~(a), ~~(be)~~, ~~and~~-(d)(x) and (f) and ~~25.67~~(a) and (b));
- (b) any known ~~material~~-significant changes in the financial or trading position (Rules ~~24.23~~(a)(i-v) and ~~25.23~~);
- (c) interests and dealings (Rules ~~24.34~~ and ~~25.34~~);
- (d) directors' emoluments (Rule ~~24.45~~);
- (e) special arrangements (Rule ~~24.56~~);
- (f) ultimate owner of securities acquired under the offer (Rule ~~24.89~~);
- (g) arrangements in relation to dealings (Rules ~~24.123~~ and ~~25.56~~); and
- (h) changes to directors' service contracts (Rule ~~25.45~~).

...

## Rule 28.6

### 28.6 STATEMENTS WHICH WILL BE TREATED AS PROFIT FORECASTS

...

- (g) Earnings enhancement and merger benefits statements

...

See also Note ~~89~~ on Rule 19.1.

**Rule 29****29.5 OPINION AND CONSENT LETTERS**

...

- (c) **Valuation certificate to be on display**

**Where a valuation of assets is given in any document published in connection with an offer, the valuation report must be put on display in accordance with Rule 26.2, ...**

...

**Rule 30**

~~SECTION M: TIMING AND REVISION~~  
**SECTION M: DISTRIBUTION OF DOCUMENTATION DURING AN OFFER**

~~RULE 30. PUBLISHING THE OFFER DOCUMENT AND THE OFFEREE BOARD CIRCULAR~~

*[current Rules 30.1 to 30.3 to be deleted]*

**30.1 PUBLICATION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION**

**If a document, an announcement or any information is required to be sent to any person, it will be treated as having been sent if it is:**

- (a) **sent to the relevant person in hard copy form;**
- (b) **sent to the relevant person in electronic form; or**
- (c) **published on a website provided that the relevant person is sent a website notification no later than the date on which it is published on the website.**

*NOTE ON RULE 30.1*

*Forms*

*Acceptance forms, withdrawal forms, proxy cards and any other form connected with an offer must be published in hard copy form only.*

**30.2 RIGHT TO RECEIVE COPIES OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION IN HARD COPY FORM**

**(a) If a document, an announcement or any information is required to be sent to any person and it is:**

**(i) sent to a person in electronic form; or**

**(ii) published on a website and the person entitled to receive it is sent a website notification,**

**that person may request a copy in hard copy form from the party which publishes it. Any such request must be made in accordance with the procedure specified in the document, announcement or information for the making of such requests and must provide an address to which the hard copy document, announcement or other information may be sent.**

**(b) A person entitled to receive a document, an announcement or any information may request that all future documents, announcements and information sent to that person in relation to an offer should be sent by the party which publishes it in hard copy form.**

**(c) If an offeror receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form, it must notify the offeree company as soon as possible and provide details of the address to which hard copy documents, announcements and information should be sent. If the offeree company receives a request for copies of future documents, announcements and information sent to a person in connection with the offer to be sent in hard copy form (either from the person concerned or from an offeror), it must provide the other parties to the offer with details of such requests at the same time as it provides them with updates to the company's register.**

**(d) If a request is made under (a) above for a hard copy of a document, an announcement or any information, the party which published it must ensure that it is sent to the relevant person as soon as possible and in any event within two business days of the request being received by that party.**

**(e) Any document, announcement or information that is sent to a person in electronic form or by means of being published on a website, and any related website notification, must contain a statement that the person to whom it is sent may request a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form and may also request that all future documents, announcements and information sent to that person in relation to the offer should be in hard copy form. Attention should be drawn to the fact that a hard copy of the document,**

announcement or information will not be sent to that person unless so requested and details must be provided of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests may be submitted).

(f) If a shareholder, person with information rights or other person is entitled to be sent a document, an announcement or any information and has elected in accordance with any applicable legal or regulatory provisions to receive communications from the offeree company in hard copy form (and such election has been made in respect of information generally and not only in respect of certain specific types of information), that election must be treated by each party to an offer as also applying to the form in which any document, announcement or information must be sent to that person in relation to the offer (see also Section 4 of Appendix 4). If a request is made under (b) above for copies of future documents, announcements and information to be sent in hard copy form, that request must be treated by each party to an offer as an election made in accordance with applicable legal or regulatory provisions to receive communications from the offeree company in hard copy form.

### 30.3 DISTRIBUTION OF DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO THE PANEL AND OTHER PARTIES TO AN OFFER

(a) Before an offer document is published, a copy of the document in hard copy form and electronic form must be sent to the Panel. At the time of publication, a copy must also be sent in hard copy form and electronic form to the advisers to all other parties to the offer.

(b) Copies of all other documents, announcements and information published in connection with an offer by, or on behalf of, an offeror or the offeree company, including advertisements and any material released to the media (including any notes to editors), must at the time of publication or release be sent in electronic form to:

(i) the Panel; and

(ii) the advisers to all other parties to the offer.

Documents must also be sent in hard copy form to the Panel and the advisers to all other parties to the offer at the time of publication. Such documents, announcements or information must not be released to the media under an embargo (see also Note 1 on Rule 26).

(c) If a party to an offer publishes a document, an announcement or any information outside normal business hours, that party must inform the advisers to all other parties to the offer of its publication immediately (if necessary by telephone). In such circumstances, special arrangements may need to be made to ensure that a copy of the document, announcement or information is sent directly to the relevant advisers and

**to the Panel. No party to an offer should be put at a disadvantage through a delay in the release of new information to it.**

*NOTE ON RULE 30.3*

*Information incorporated by reference*

*Where information is incorporated into a document by reference to another source of information, a copy of the information so incorporated should be sent to the Panel and the advisers to all other parties to an offer in electronic form at the same time as the document sent in accordance with this Rule.*

**30.4 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION REQUIRED TO BE PUBLISHED ON A WEBSITE**

**(a) If an offeror or offeree company, or any person on its behalf:**

**(i) sends a document or information in relation to an offer to shareholders, persons with information rights or other relevant persons in accordance with Rule 30.1; or**

**(ii) publishes an announcement (whether related to the offer or not) by sending it to a RIS,**

**the offeror or offeree company as relevant must, as soon as possible and in any event by no later than 12 noon on the following business day, ensure that a copy is published on a website. Copies of announcements referred to in Note 5 below do not need to be published on a website.**

**(b) A copy of each document, announcement or information required to be published on a website under (a) above must continue to be made available on a website free of charge during the course of the offer (and any related competition reference period). Documents, announcements and information published following the end of the offer period which do not relate directly to the offer will not be required to be published on the website.**

**(c) Any document, announcement or information published in relation to an offer by an offeror or the offeree company in the manner described in (a)(i) or (ii) above (other than the announcements referred to in Note 5 below) must contain a statement providing details of the website on which a copy will be published.**

*NOTES ON RULE 30.4*

*1. Website to be used*

*A party to an offer should normally use its own website for publishing copies of documents, announcements and information. If a party to an offer does not*

have its own website, or proposes to use a website maintained by a third party for this purpose, the Panel should be consulted.

2. “Read-only” format

Any document, announcement or information published on a website must be published in a “read-only” format so that it may not be amended or altered in any way.

3. Shareholders, persons with information rights and other persons outside the EEA

Offer-related documents, announcements and information published on a website should be capable of being accessed by shareholders, persons with information rights and other relevant persons in all jurisdictions unless there is a sufficient objective justification for restricting access from certain non-EEA jurisdictions on the basis described in the Note on Rule 23.2.

4. Equality of information to shareholders

Save as expressly permitted by Rule 30.1, the publication of offer-related documents, announcements and information on a website will not satisfy the obligation under Rule 20.1 to make information about companies involved in an offer equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.

5. Announcements not required to be published on a website

Copies of the following announcements do not need to be published on a website:

(a) announcements in relation to notifications made pursuant to the rules of other regulatory regimes in respect of:

(i) transactions by directors or other persons discharging managerial responsibilities in respect of a company;

(ii) the acquisition or disposal of major shareholdings; and

(iii) disclosures in respect of increases or decreases in the total number of voting rights and capital in respect of each class of shares (including treasury shares); and

(b) announcements of the number of relevant securities in issue under Rule 2.10.

**Rule 31****SECTION N: OFFER TIMETABLE AND REVISION****RULE 31. TIMING OF THE OFFER\***

...

**31.5 NO EXTENSION STATEMENTS**

...

*NOTES ON RULE 31.5*

...

3. *Competitive situations*

...

*(For the purpose of this Note a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether ~~named~~ publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)*

...

**31.6 FINAL DAY RULE (FULFILMENT OF ACCEPTANCE CONDITION, TIMING AND ANNOUNCEMENT)**

(a) ...

(v) **when withdrawal rights are introduced under Rule 13.56.**

...

*NOTES ON RULE 31.6*

...

2. *Rule 31.6(c) announcement*

*Under Rule 31.6(c), an announcement as to whether the offer is unconditional as to acceptances or has lapsed should normally be made by 5.00 pm on the final closing date. This requirement should not be reflected in the terms of the offer pursuant to Rule 24.67, ...*

3. *The Competition Commission and the European Commission*

*If there is a significant delay in the decision on whether or not there is to be a reference or initiation of proceedings, the Panel will normally extend “Day 39” (see Rule 31.9) to the second day following the announcement of such decision with consequent changes to “Day 46” (see Rule 32.1(b̄c)) and “Day 60”.*

...

### **31.9 OFFEREE COMPANY ANNOUNCEMENTS AFTER DAY 39**

... If an announcement of the kind referred to in this Rule is made after the 39th day, the Panel will normally be prepared to grant an extension to “Day 46” (see Rule 32.1(b̄c)) and/or “Day 60” (see Rule 31.6) as appropriate.

...

## **Rule 32**

### **32.1 OFFER OPEN FOR 14 DAYS AFTER PUBLICATION OF REVISED OFFER DOCUMENT**

(a) If an offer is revised, a revised offer document, drawn up in accordance with Rules 24 and 27, must be sent to shareholders of the offeree company and persons with information rights. On the same day of publication, the offeror must: ~~put the revised offer document on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been published and where the document can be inspected~~

(i) publish the offer document on a website in accordance with Rule 30.4; and

(ii) announce via a RIS that the offer document has been so published.

(b) At the same time, both the offeror and the offeree company must make the revised offer document readily available to their employee representatives or, where there are no employee representatives, to the employees themselves. The offeree company must also inform its employee representatives or employees of the right of employee representatives under Rule 32.6 to have a separate opinion on the revised offer appended to any offeree board circular published in relation to the revised offer and of the offeree company’s responsibility for the costs reasonably incurred by the employee representatives in obtaining advice required for the verification of the information contained in that opinion.

(b̄c) ... acceptances.\*

...

*\*Rule 32.1(b)(c) and the first sentence of Note 3 on Rule 32.1 are disappplied in a scheme. See Section 7 of Appendix 7.*

## **32.2 NO INCREASE STATEMENTS**

...

### *NOTES ON RULE 32.2*

...

#### *3. Competitive situations*

...

*(For the purpose of this Note a competitive situation will normally arise following a public announcement of the existence of a new offeror or potential offeror whether ~~named~~ publicly identified or not. Other circumstances, however, may also constitute a competitive situation.)*

...

## **32.6 THE OFFEREE BOARD'S OPINION AND THE EMPLOYEE REPRESENTATIVES' OPINION**

**(a) The board of the offeree company must send to the company's shareholders and persons with information rights a circular containing its opinion on the revised offer under as required by Rule 25.1(a), drawn up in accordance with Rules 25 and 27 and, at the same time:**

**(i) publish the circular on a website in accordance with Rule 30.4;**

**(ii) announce via a RIS that the circular has been published; and**

**(iii) make it readily and promptly available to its employee representatives or, where there are no employee representatives, to the employees themselves.**

~~**On the day of publication, the offeree company must put the circular on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the document has been published and where the document can be inspected.**~~

**(b) The board of the offeree company must append to ~~the its~~ circular ~~containing its opinion on a revised offer~~ a separate opinion from ~~the its~~ employee representatives ~~of its employees~~ on the effects of the revised offer on employment, provided such opinion is received in good time**

**before publication of that circular. Where the opinion of the employee representatives is not received in good time before publication of the offeree board circular, the offeree company must promptly publish the employee representatives' opinion on a website and announce via a RIS that it has been so published, provided that it is received no later than 14 days after the date on which the offer becomes or is declared wholly unconditional.**

*NOTE ON RULE 32.6*

*Employee representatives' opinion: offeree company's responsibility for costs*

*See Note 1 on Rule 25.9.*

*[Rule 32.7 to be deleted]*

## **Rule 33.2**

### **33.2 SHUTTING OFF CASH UNDERWRITTEN ALTERNATIVES**

... (See also Rule 24.134.)

## **Rule 34**

### **RULE 34. RIGHT OF WITHDRAWAL\***

#### **34.1 WHEN THE RIGHT OF WITHDRAWAL MAY BE EXERCISED**

**(a)**—An ~~acceptor~~ accepting shareholder must be entitled ... until the earlier of:

**(a)** the time that ... ; and

**(b)** the final time ... in accordance with Rule 31.6.

#### **34.2 OFFEREE PROTECTION CONDITIONS**

**(b)**—An ~~acceptor~~ accepting shareholder must be entitled to withdraw his acceptance if so determined by the Panel in accordance with Rule 13.56.

#### **34.3 RETURN OF DOCUMENTS OF TITLE**

**(c)**—If a shareholder ...

**Rule 35****35.1 DELAY OF 12 MONTHS**

...

*NOTE ON RULES 35.1 and 35.2**When ~~dispensations consent may be given~~ granted**(a) The Panel will normally only grant ~~give its~~ consent under this Rule if ~~when~~:**(i) the new offer is recommended by the board of the offeree company. Such consent will not normally be ~~granted~~ given within ~~3~~ three months of the lapsing of an earlier offer in circumstances where the offeror was prevented from revising or extending its previous offer as a result of a no increase statement or a no extension statement; ~~or~~**(ii) the new offer follows the announcement by a third party of ~~an~~ a firm intention to make an offer by a third party for the offeree company; ~~or~~**(iii) the new offer follows the announcement by the offeree company of a "whitewash" proposal (see Note 1 of the Notes on Dispensations from Rule 9) or ~~of a reverse takeover (see Note 2 on Rule 3.2)~~ which has not failed or lapsed or been withdrawn; or**(iv) the Panel determines that there has been a material change of circumstances.**(b) The Panel may also ~~grant~~ give consent ...***Rule 38.3****38.3 ASSENTING SECURITIES AND DEALINGS IN ASSENTED SECURITIES**

...

*NOTES ON RULE 38.3**1. Withdrawal rights under Rule 13.56**If withdrawal rights are introduced under Rule 13.56, ...*

...

## Appendix 1

### APPENDIX 1

#### WHITEWASH GUIDANCE NOTE

(See Note 1 of the Notes on Dispensations from Rule 9.)

#### 1 INTRODUCTION

...

(c) Rules 19, 20 and 24.145, ...

...

#### 4 WHITEWASH CIRCULAR

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

...

(h) Rule 21.2 (inducement fees and other offer-related arrangements);

(i) Rules 23, 24.12, 24.23 and 25.23 (information which must include full details of the assets, if any, being injected);

(j) Rules 24.34 and 25.34 (disclosure of interests and dealings). Dealings in respect of Rule 24.34 should be covered for the 12 months prior to the publication of the circular but dealings in respect of Rule 25.34 need not be disclosed as there is no offer period;

(k) Rules 24.56 and 24.89 (arrangements in connection with the proposal);

(l) Rule 25.45 (service contracts of directors and proposed directors);

(m) Rule 25.67 (material contracts, irrevocable commitments and letters of intent, and list of documents on display);

...

## Appendix 6

### APPENDIX 6

#### BID DOCUMENTATION RULES FOR THE PURPOSES OF SECTION 953 OF THE COMPANIES ACT 2006

...

**“Offer document rules”**

<b>Article</b>	<b>Those parts of the Rule set out below which give effect to the Article</b>
<i>Article 6(3)(a)</i>	<b>Rule 24.23(d)(v)</b>
<i>Article 6(3)(b)</i>	<b>Rule 24.23(d)(ii)</b>
<i>Article 6(3)(c)</i>	<b>Rule 24.23(d)(iv)</b>
<i>Article 6(3)(d)</i>	<b>Rule 24.23(d)(v) and Note 45 on Rule 24.23</b>
<i>Article 6(3)(e)</i>	<b>Rule 24.23(d)(xivxv)</b>
<i>Article 6(3)(f)</i>	<b>Rule 24.23(d)(iv)</b>
<i>Article 6(3)(g)</i>	<b>Rule 24.34(a)(i), (ii)</b>
<i>Article 6(3)(h)</i>	<b>Rule 24.23(d)(vi)</b>
<i>Article 6(3)(i)</i>	<b>Rule 24.12</b>
<i>Article 6(3)(j)</i>	<b>Rule 24.67 (first phrase)</b>
<i>Article 6(3)(k)</i>	<b>Rule 24.23(d)(xi)</b>
<i>Article 6(3)(l)</i>	<b>Rule 24.23(f)</b>
<i>Article 6(3)(m)</i>	<b>Rule 24.23(d)(iii) and Note 34 on Rule 24.23</b>
<i>Article 6(3)(n)</i>	<b>Rule 24.23(d)(xiiixiv)</b>

**“Response document rules”**

<i>Article 9(5), first sentence</i>	<b>Rule 25.1 and Rule 25.12(a) and (b)</b>
-------------------------------------	--

**Appendix 7****APPENDIX 7****SCHEMES OF ARRANGEMENT****DEFINITIONS AND INTERPRETATION**

...

**Long-stop date**

The date stated in the scheme circular to be the latest date by which the scheme must become effective and included as such in the terms of the scheme.

...

**~~3 — DATE OF SHAREHOLDER MEETINGS~~**

~~The shareholder meetings must normally be convened for a date which is at least 21 days after the date of the scheme circular.~~

### 3 EXPECTED SCHEME TIMETABLE

(a) Where an offeror announces a firm intention to make an offer which is to be implemented by means of a scheme of arrangement and the board of the offeree company agrees to the inclusion of a statement of its intention to recommend the scheme in that announcement, then the offeree company must, except with the consent of the Panel, ensure that the scheme circular is sent to shareholders and persons with information rights within 28 days of that announcement. If the offeree company board subsequently withdraws its recommendation, this obligation will cease.

(b) The parties to the offer are permitted to include within the conditions to the scheme:

(i) a long-stop date by which the scheme must become effective (unless extended with the agreement of the parties to the offer);

(ii) 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; and

(iii) 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.

(c) Any condition referred to in paragraph (b) above:

(i) must be given prominent reference in the offeror's announcement of a firm intention to make an offer;

(ii) must not be capable of being invoked or waived after the date specified unless extended with the agreement of the parties to the offer; and

(iii) will not be subject to Rule 13.5(a).

(d) The offeree company must ensure that the scheme circular sets out the expected timetable for the scheme, including the expected dates and times for the following:

(i) the record date for any shareholder meeting;

(ii) the latest date and time for the lodging of forms of proxy or elections for any alternative form of consideration;

(iii) the date and time of any shareholder meetings, which must normally be convened for a date which is at least 21 days after the date of the scheme circular;

(iv) the date and time of any meetings of the shareholders of the offeror to be convened in connection with the offer;

(v) the date of the court sanction hearing;

(vi) the record date for the purposes of the scheme and/or any reduction of capital provided for by the scheme;

(vii) the date and time of any proposed suspension in trading of shares or other securities of the offeree company;

(viii) the date of any court hearing to confirm any reduction of capital provided for by the scheme;

(ix) the effective date;

(x) the date and time of the admission to trading of any offeror securities to be issued in connection with the scheme; and

(xi) the long-stop date.

(e) Upon publication of the scheme circular, the offeree company must announce in accordance with Rule 2.9 that the scheme circular has been published and include in that announcement the expected timetable, including the expected dates and times referred to in paragraph (d) above.

(f) The offeree company must implement the scheme in accordance with the expected timetable, as published (subject to any change to the expected timetable announced in accordance with Section 6 below), unless:

(i) the board of the offeree company withdraws its recommendation of the scheme;

(ii) the board of the offeree company announces its decision to propose an adjournment of a shareholder meeting or the court sanction hearing;

(iii) a shareholder meeting or the court sanction hearing is adjourned; or

(iv) any condition to the scheme is invoked by the offeror in accordance with the Code.

See also Note 2 on Section 8 below.

#### 4 HOLDING STATEMENTS

(a) ~~If a statement an announcement of the kind described in Rule 2.6(d) or (e) Note 1 on Rule 19.3 is made during an offer period involving a scheme of arrangement, the Panel will normally require the statement to be clarified potential offeror to clarify its position by a date, to be specified by the Panel, in advance of the date of the shareholder meetings, to be announced by the Panel.~~

...

#### NOTE ON SECTION 4

##### Date by which announcement required

For the purposes of Section 4(a), the date by which a clarifying announcement will be required to be made will normally be a date which is on or around 10 days prior to the date of the shareholder meetings.

#### 5 ANNOUNCEMENTS FOLLOWING KEY EVENTS IN A SCHEME

(a) If the parties to the offer include any condition to the scheme in accordance with Section 3(b) above and any such condition is not capable of being satisfied by the date specified in that condition, the offeror must make an announcement as soon as practicable and, in any event, by no later than 8.00 am on the business day following the date so specified, stating whether the offeror has invoked that condition, waived that condition or, with the agreement of the offeree company, specified a new date by which that condition must be satisfied.

~~(ab)~~ ...

~~(bc)~~ ...

~~(ed)~~ ...

...

#### 8 SWITCHING

...

(c) ...

(ii) details of any material changes to the other details originally announced pursuant to Rule ~~2.5(b)~~2.7(c);

...

## NOTES ON SECTION 8

### 1. Determination of the offer timetable following a switch

...

(b) *the time which has elapsed since the switching offeror's original announcement under Rule 2.57 and the extent to which it is reasonable for the offeree board to be hindered in the conduct of its affairs;*

...

### 2. Consequences of a withdrawal of recommendation etc.

Where:

(a) the board of the offeree company withdraws its recommendation of the scheme;

(b) the board of the offeree company announces its decision to propose an adjournment to a shareholder meeting or the court sanction hearing;

(c) any shareholder meeting or the court sanction hearing is adjourned;  
or

(d) the Panel considers that the offeree company has not implemented the scheme in accordance with the published timetable,

the Panel will normally consent to a request from the offeror to switch to a contractual offer with an acceptance condition set at up to 90% of the shares to which the offer relates.

...

## **14 INCORPORATION OF OBLIGATIONS AND RIGHTS**

**In addition to the relevant requirements of Rules 24 and 25, the scheme circular must incorporate language which appropriately reflects those parts of Rule 13.5(a) and 13.6 (if applicable) and of this Appendix 7 which impose timing obligations or confer rights or impose restrictions on offerors, offeree companies or shareholders of offeree companies.**

## **15 ADMISSION TO LISTING AND ADMISSION TO TRADING CONDITIONS**

**Where securities are offered as consideration and it is intended that they should be admitted to listing on the Official List or to trading on AIM, the relevant admission to listing or admission to trading condition should, except with the consent of the Panel, be in terms which ensure that it is**

**capable of being satisfied only when all steps required for the admission to listing or trading have been completed other than the UKLA and/or the Stock Exchange, as applicable, having announced their respective decisions to admit the securities to listing or trading. Where securities are offered as consideration and it is intended that they should be admitted to listing or to trading on any other investment exchange or market, the Panel should be consulted.**

#### **1614 PROVISIONS DISAPPLIED IN A SCHEME**

...

(e) Note 2 on Rule 13.56 (availability of withdrawal rights);

...

(h) Rule 24.67 (incorporation of obligations and rights) and Rule 24.134 (cash underwritten alternatives which may be shut off);

**(i) Rule 24.10 (admission to listing and admission to trading conditions);**

**(ij)** ...

**(jk)** Rule 32.1(~~bc~~), ...

**(kl)** ...

**(lm)** ...

#### **DOCUMENT CHARGES**

##### **2 VALUATION OF OFFER FOR DOCUMENT CHARGES**

When the charge ... in accordance with Rule 24.101.

...