

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2013/1

Amendments to reflect the restructuring of the UK's financial regulatory framework, miscellaneous amendments flowing from the consultation on PCP 2012/1 and other minor amendments

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

The Takeover Code is amended, with effect from 1 April 2013, in accordance with the Appendices to this instrument.

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

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

28 March 2013

APPENDIX A

Amendments to reflect the restructuring of the UK's financial regulatory framework

INTRODUCTION

11 DISCIPLINARY POWERS

...

(b) Sanctions or other remedies for breach of the Code

If the Hearings Committee finds a breach of the Code or of a ruling of the Panel, it may:

...

- (iv) report the offender's conduct to a United Kingdom or overseas regulatory authority or professional body (most notably the Financial Services ~~Conduct~~ Authority ("~~FS~~AFCA")) so that that authority or body can consider whether to take disciplinary or enforcement action (for example, the ~~FS~~FCA has power to take certain actions against an authorised person or an approved person who fails to observe proper standards of market conduct, including the power to fine); or
- (v) publish a Panel Statement indicating that the offender is someone who, in the Hearings Committee's opinion, is not likely to comply with the Code. The Panel Statement will normally indicate that this sanction will remain effective for only a specified period. The rules of the ~~FS~~FCA and certain professional bodies oblige their members, in certain circumstances, not to act for the person in question in a transaction subject to the Code, including a dealing in relevant securities requiring disclosure under Rule 8 (so called "cold-shouldering"). For example, the ~~FS~~A's FCA's rules require a person authorised under the Financial Services and Markets Act 2000 ("FSMA") not to act, or continue to act, for any person in connection with a transaction to which the Code applies if the firm has reasonable grounds for believing that the person in question, or his principal, is not complying or is not likely to comply with the Code.

12 CO-OPERATION AND INFORMATION SHARING

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Under section 950 of the Act, the Panel must, to the extent it has power to do so, take such steps as it considers appropriate to co-operate with:

(a) the FSA, the Prudential Regulation Authority and the Bank of England;

(b) other supervisory authorities designated for the purposes of the Directive; and

(c) regulators outside the United Kingdom having functions similar to the FSA or to the Panel, the FCA or the Prudential Regulation Authority, or similar to the regulatory functions of the Bank of England,

including by the sharing of information which the Panel is permitted to disclose (see below). It may also exercise its powers to require documents and information (see section 9(b) above) for this purpose.

...

The Panel works closely with the FSA-FCA in relation to insider dealing and market abuse.

DEFINITIONS

Official List

The list maintained by the FSA-FCA in accordance with section 74(1) of the FSMA for the purposes of Part VI-6 of the FSMA.

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UKLA

The FSA-FCA acting in its capacity as the competent authority for the purposes of Part VI-6 of the FSMA.

UKLA Rules

UKLA Rules include the Listing Rules, the Disclosure Rules and Transparency Rules and the Prospectus Rules of the FSA-FCA (or any of them as the context may require).

Rule 4

RULE 4

NB Notwithstanding the provisions of Rule 4, a person may be precluded from dealing or procuring others to deal by virtue of restrictions contained in the Criminal Justice Act 1993 regarding insider dealing and in the FSMA regarding market abuse. Where the Panel becomes aware of instances to which such restrictions may be relevant, it will inform the FCA-FSA.

Rule 19

19.1 STANDARDS OF CARE

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NOTES ON RULE 19.1

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8. FSMA and the Financial Services and Markets Act 2012-2000

Persons involved in offers should note that ~~Part VIII-8 (penalties for market abuse) and Section 397 (misleading statements and practices) of the FSMA and Part 7 (offences relating to financial services) of the Financial Services Act 2012~~ may be relevant.

...

19.5 TELEPHONE CAMPAIGNS

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NOTES ON RULE 19.5

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4. *Statutory and other regulatory provisions*

Those communicating information falling within this Rule must also take account of the provisions of Section 21 of the FSMA (restrictions on financial promotion) and, where relevant, the provisions of the ~~FSA's~~ FCA's conduct of business rules.

Any view expressed by the Panel in relation to the telephoning of shareholders or other persons interested in shares can only relate to the Code and must not be taken to extend to any other regulatory requirement, for example the provisions of the FSMA or the ~~FSA's~~ FCA's conduct of business rules.

Appendix 5

3 DETAILS OF TENDER OFFER ADVERTISEMENTS

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(e) The advertisement or circular must be restricted to the items above together with any information required under the FSMA, secondary legislation made under ~~that Act~~ the FSMA or any rule made by the FCA ~~FSA~~.

APPENDIX B

Miscellaneous amendments flowing from the consultation on PCP 2012/1

DEFINITIONS

Offer period

...

Subject to Note 3, an offer period will end when an announcement is made that an offer has become or 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).

...

3. First closing date

Where an offer is unconditional from the outset, or becomes or is declared unconditional as to acceptances prior to the first closing date, the offer period will nevertheless continue until the first closing date.

Rule 2.11

2.11 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

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NOTES ON RULE 2.11

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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 published on a website-on display).

Rule 21.2

21.2 INDUCEMENT FEES AND OTHER OFFER-RELATED ARRANGEMENTS

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NOTES ON RULE 21.2

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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~~ published on a website in accordance with Rule 26.1.

Rule 24.4

24.4 INTERESTS AND DEALINGS

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NOTES ON RULE 24.4

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2. *Aggregation*

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Acquisitions and disposals should not be netted off, the highest and lowest prices should be stated and the disclosure should distinguish between the different categories of interests in relevant securities and short positions. A full list of all dealings, together with a draft of the proposed aggregated disclosure, should be sent to the Panel, for its approval, in advance of the publication of the offer documentation and the full list of dealings should be ~~put on display~~ published on a website in accordance with Rule 26.2.

Rule 25.7

25.7 MATERIAL CONTRACTS, IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT, AND DOCUMENTS PUBLISHED ON A WEBSITE ON DISPLAY

...

Rule 26

**RULE 26 DOCUMENTS TO BE PUBLISHED ON A WEBSITE
~~ON DISPLAY~~**

26.1 ~~DOCUMENTS TO BE ON DISPLAY~~ PUBLISHED ON A WEBSITE 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):

...

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

(d) ... ; **and**

(e) 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 pre-condition or a condition to its offer (Rule 2.7(c)(iv)).

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

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

...

(d) 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:

(i) described in the offer document or offeree board circular (as appropriate) in compliance with Rule 24.3(a), Rule 24.3(b) or Rule 25.7(a); or

(ii) entered into after the publication of the offer document or offeree board circular (as appropriate);

...

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

(h) ... ;

~~(i) 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 (Rule 24.3(d)(ix)).~~

NOTES ON RULE 26

1. Copies of documents

A copy of each document ~~on display~~ published on a website must, on request, promptly be made available by an offeror or the offeree company to the other party and to any competing offeror or potential offeror.

2. Website to be used for publication

A party to an offer should normally use its own website for publishing documents ~~to be on display~~. If a party to an offer does not have its own website, or intends to use a website maintained by a third party for this purpose, the Panel should be consulted.

3. "Read-only" format

Documents ~~on display~~ published on a website must be ~~published~~ in a "read-only" format so that they may not be amended or altered in any way.

...

5. Amendment etc. variation, updating or replacement of documents ~~on display~~ published on a website and entering into new documents required to be published on a website

If a document ~~on display~~ is amended, varied, updated or replaced during the period in which it is required to be ~~on display~~ published on a website under Rule 26, ~~then~~ the amended, varied or updated document, or the replacement document, ~~should~~ must also be put on display published on a website and a statement that this has been done should be included on the website an announcement made explaining that this has been done. Similarly, where a new document is entered into which is required to be published on a website under Rule 26, an announcement must be made explaining that the document has been entered into and that it has been so published.

Rule 29.5

29.5 OPINION AND CONSENT LETTERS

...

- (c) Valuation certificate to be published on a website ~~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~~ published on a website in accordance with Rule 26.2, together with an associated report or schedule containing details of the aggregate valuation. Where the Panel is satisfied that such disclosure may be commercially disadvantageous to the company concerned, it will allow the report or schedule to appear in a summarised form. In certain cases, the Panel may require any of these documents to be reproduced in full in a document sent to shareholders and persons with information rights.

Appendix 1

4 WHITEWASH CIRCULAR

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

...

- (m) Rule 25.7 (material contracts, irrevocable commitments and letters of intent, and ~~list of documents~~ published on a website ~~on display~~);
- (n) Rule 26 (documents to be published on a website ~~on display~~); and

...

APPENDIX C

Other minor amendments

DEFINITIONS

Multilateral trading facility

Multilateral trading facility 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(15)).

...

PLUS

The PLUS primary markets operated by PLUS Markets plc.

Rule 24

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

Except with the consent of the Panel:

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

...

Appendix 4

1 INTRODUCTION

~~This Code of Practice has been drawn up by the Panel in consultation with the Confederation of British Industry, the British Bankers' Association and the Registrars Group of the Institute of Chartered Secretaries and Administrators. It is reproduced with the agreement and support of these bodies. In relation to the additions and amendments necessitated by the introduction of CREST, the Panel also consulted CRESTCo Limited.~~

...

2 QUALIFICATIONS FOR ACTING AS A RECEIVING AGENT

A receiving agent to an offer must either:

~~(a) be a member of the Registrars' and Receiving Bankers' Committee of the British Bankers' Association;~~

(ba) be a member of the Registrars Group of the Institute of Chartered Secretaries and Administrators and:

(i) (1) ...; or

(2) be responsible for the share registers of not less than 25 public companies which are admitted to trading on a UK regulated market or multilateral trading facility ~~the Official List or to trading on AIM~~; and

...

(eb) ...

3 THE PROVISION OF THE OFFEREE COMPANY'S REGISTER

...

(b) The offeree company's registrar should also be instructed to keep the register as up-to-date as the register maintenance system will allow. CREST imposes certain obligations on registrars in this respect but for certificated holdings outside CREST the registrar should ensure that maintenance is such that it can comply with (c) below. The updating procedures should include, in addition to the registration of transfers, the registration of all changes affecting the register (eg grants of representation, marriage certificates, changes of address, court orders etc.). The receiving agent should also be informed on a daily basis by the offeree company's registrar of any adjustment to holdings in CREST not advised by the CREST operator through register update requests ("RURs").

(c) From the date ... offeree company.

As far as certificated holdings are concerned, the registrar must provide updates, on a daily basis, to the register within two business days after notification of the transfer and, in addition, copies of all documents, including CREST stock deposits, which would lead to a change in the last copy register provided to the offeror must be provided as rapidly. On the final register day* any such information received by the offeree company's registrar but not yet provided to the offeror's receiving agent must be made available electronically, where possible, or for collection by

the offeror's receiving agent, at the latest, by noon on the day preceding the final closing date† of the offer.

From the final register day* until the time that the offer becomes or is declared unconditional as to acceptances or lapses, the offeree company's registrar should continue to update the register on a daily basis so that all transfers and other documents which have been received by the offeree company's registrar by 1.00 pm on the final closing date† of the offer are processed by 5.00 pm that day at the latest. In addition, copies of these documents should be sent immediately and electronically, where possible, to the offeror's receiving agent insofar as not previously notified.

...

8 DISCLAIMERS IN RECEIVING AGENTS' CERTIFICATES

Certificates issued by the offeror's receiving agent should be unqualified, save for a disclaimer (if necessary) as to limitations on the responsibility of the receiving agent for the errors of third parties which are not evident from the documents available to the receiving agent. A disclaimer in the following form would normally be acceptable; any variation should be specifically agreed by the Panel in advance:

"In issuing this certificate we have, where necessary, relied on the following matters:

- (i) certifications of acceptance forms by the offeree company's registrar;
- (ii) certifications by the offeree company's registrar that a transfer of shares has been executed by or on behalf of the registered holder in favour of the offeror company or its nominees;
- (iii) confirmation from the offeror of the validity of shares recorded as registered holdings and purchases in the context of Note 8 on Rule 10.

As the offeror company's receiving agent and escrow agent, we have examined with due care and attention the information provided to us, and, as appropriate, made due and careful enquiry of relevant persons, in order that we may issue this certificate and have no reason to believe that the information contained in it cannot be relied upon but, subject thereto, we accept no responsibility or liability whatsoever in respect of any error of Euroclear UK & Ireland Limited, the offeree company's registrar or the offeror company's buying broker for the matters set out above to the extent that we have relied upon them in issuing this certificate."

Appendix 5

1 PANEL'S CONSENT REQUIRED

...

Where a tender offer to which this Appendix applies is made on a UK regulated market or multilateral trading facility ~~the Stock Exchange or on PLUS~~, this Appendix takes precedence over any requirements of ~~the Stock Exchange and PLUS~~ the relevant market or facility for the conduct of tender offers. However, the resulting transactions will be subject to the relevant trade and transaction reporting rules and requests for delivery and settlement.

...

2 PROCEDURE AND CLEARANCE

(a) A person publishing a tender offer for the shares of a company which are admitted to ~~listing on the Official List or to trading on AIM or on PLUS~~ trading on a UK regulated market or multilateral trading facility must do so by paid advertisement in two national newspapers and must notify the company concerned of the information specified in Section 3 at least 7 days before the day on which the tender offer closes. The offeror may also send copies of the advertisement to shareholders of the company and persons with information rights, subject to compliance with the FSMA.

...

(f) In every case the UKLA, the relevant regulated market or multilateral trading facility ~~the Stock Exchange or PLUS~~, as appropriate, and the Panel must be sent a copy of the final text of the advertisements or circulars in hard copy form and electronic form at the same time as they are sent to the newspapers or are published.