

# THE TAKEOVER PANEL

## CODE COMMITTEE

**Instrument 2014/1**

**Replacement of the Office of Fair Trading and the Competition Commission by  
the Competition and Markets Authority**

**Change of name of the Association of Private Client Investment Managers and  
Stockbrokers to the Wealth Management Association**

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, Articles 2, 3 and 4 of the Companies (Takeovers and Mergers Panel) (Jersey) Law 2009 and sections 340A, 340B and 340C of the Companies (Guernsey) Law, 2008, and in exercise of the functions conferred on it by the Takeover 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 2014, in accordance with the Appendix to this instrument.

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

**Guy Elliott**  
**Chairman of the Code Committee**  
**for and on behalf of the Code Committee**

**4 March 2014**

## APPENDIX

### INTRODUCTION

#### 4 THE PANEL AND ITS COMMITTEES

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##### (a) The Panel

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The Panel comprises up to 35 members:

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##### (iv) individuals appointed by each of the following bodies:

The Association for Financial Markets in Europe (with separate representation also for its Corporate Finance Committee and Securities Trading Committee)

The Association of British Insurers

The Association of Investment Companies

~~The Association of Private Client Investment Managers and Stockbrokers~~

The British Bankers' Association

The Confederation of British Industry

The Institute of Chartered Accountants in England and Wales

~~The Investment Management Association~~

The National Association of Pension Funds

The Wealth Management Association.

### DEFINITIONS

#### CMA

The Competition and Markets Authority

#### **Competition reference period**

Competition reference period means the period from the time when an announcement is made of ~~the referral of an offer or possible offer to the Competition Commission~~ a Phase 2 CMA reference or of the initiation of Phase 2 European Commission proceedings by the European Commission under Article 6(1)(c) of Council Regulation 139/2004/EC, until the time of:

- (a) an announcement of clearance (including clearance subject to conditions) or prohibition by the ~~Competition Commission~~ CMA or the Secretary of State, (as appropriate); or

(b) the issuance of a decision under Article 8(1), Article 8(2) or Article 8(3) of ~~the said~~ Council Regulation 139/2004/EC; or

(c) the expiry of the time limits set out in Article 10(3) of ~~the said~~ Council Regulation 139/2004/EC with no decision having been issued by the European Commission and the offer thereby being deemed compatible with the ~~common~~ internal market under Article 10(6) of the Regulation.

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### **Phase 2 CMA reference**

A reference of an offer or possible offer to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

### **Phase 2 European Commission proceedings**

Proceedings initiated by the European Commission under Article 6(1)(c) of Council Regulation 139/2004/EC in respect of an offer or possible offer.

## **Rule 9**

### **9.3 CONDITIONS AND CONSENTS**

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#### ***NOTES ON RULE 9.3***

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#### **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:*

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*(b) when any official authorisation or regulatory clearance is required before the offer document is published. If authorisation or clearance is obtained, the offer document must be published immediately. If authorisation or clearance is not obtained, the same consequences will follow as if the merger were prohibited following a Phase 2 CMA reference ~~to the Competition Commission or Phase 2 European Commission proceedings~~ the initiation of proceedings by the European Commission (see Rule 9.4).*

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## 9.4 THE ~~COMPETITION COMMISSION~~ CMA AND THE EUROPEAN COMMISSION

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### NOTES ON RULE 9.4

#### 1. *If an offer lapses pursuant to Rule 12.1(a) or (b)*

*If an offer under Rule 9 lapses pursuant to Rule 12.1(a) or (b), the obligation under the Rule does not lapse and, accordingly, if thereafter the merger is allowed, the offer must be reinstated on the same terms and at not less than the same price as soon as practicable. If the merger is prohibited, the offer cannot be made and the Panel will consider whether, if there is no order to such effect, to require the offeror to reduce the percentage of shares carrying voting rights in which it and persons acting in concert with it are interested to below 30% or to its original level before the obligation to offer was incurred, if this was 30% or more. The Panel would normally expect an offeror whose offer has lapsed pursuant to Rule 12.1(a) or (b) to proceed with all due diligence before the ~~Competition Commission~~ CMA or the European Commission. (See also Rule 9.7.) However, if, with the consent of the Panel and within a limited period, an offeror reduces the percentage of shares carrying voting rights in which it and persons acting in concert with it are interested to below 30%, or to its original level before the obligation to offer was incurred if that was 30% or more, the Panel will regard the obligation as having lapsed.*

#### 2. *Further acquisitions*

*While the ~~Competition Commission~~ CMA or the European Commission is considering the case (following a Phase 2 CMA reference or the initiation of Phase 2 European Commission proceedings) where an obligation to make an offer under this Rule has been incurred, the offeror or persons acting in concert with it may not acquire any interest in further shares in the offeree company.*

## Rule 12

### RULE 12. THE ~~COMPETITION COMMISSION~~ CMA AND THE EUROPEAN COMMISSION

#### 12.1 REQUIREMENT FOR APPROPRIATE TERM IN OFFER

(a) Where an offer comes within the statutory provisions for a possible Phase 2 CMA reference ~~to the Competition Commission~~, it must be a term of the offer that:

(i) in the case of a contractual offer, the offer will lapse if there is a Phase 2 CMA reference before the first closing date or the date

when the offer becomes or is declared unconditional as to acceptances, whichever is the later; or

(ii) in the case of an offer being implemented by way of a scheme of arrangement, the offer will lapse and the scheme will not become effective if there is a Phase 2 CMA reference before the shareholder meetings (as defined in Appendix 7).

(b) Where an offer would give rise to a concentration with a ~~Community~~ an EU dimension within the scope of Council Regulation 139/2004/EC, it must be a term of the offer that if ~~the Phase 2 European Commission initiates proceedings~~ are initiated under Article 6(1)(e), or there is a Phase 2 CMA reference ~~to the Competition Commission~~ following a referral by the European Commission under Article ~~9.1~~ 9(1) to a competent authority in the United Kingdom:

(i) in the case of a contractual offer, the offer will lapse if this occurs before the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, whichever is the later; or

(ii) in the case of an offer being implemented by way of a scheme of arrangement, the offer will lapse and the scheme will not become effective if this occurs before the shareholder meetings (as defined in Appendix 7).

(c) Except in the case of an offer under Rule 9, the offeror may, in addition, make the offer conditional on a decision being made that there will be no Phase 2 CMA reference, initiation of Phase 2 European Commission proceedings or referral by the European Commission under Article 9(1) of Council Regulation 139/2004/EC. In such a case, the condition ~~It may state, if desired,~~ that the decision must be on terms satisfactory to the offeror ~~it~~.

## 12.2 COMPETITION REFERENCE PERIODS

(a) When ~~there is a Phase 2 CMA reference an offer or possible offer is referred to the Competition Commission or the Phase 2 European Commission initiates proceedings~~ are initiated, the offer period will end except in the following circumstances:

(i) when the offer was announced subject to a pre-condition as permitted under Rule 13.3(b); or

(ii) in the case of an offer being implemented by way of a scheme of arrangement, where the Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings ~~in relation to the offer~~ does not cause the offer ~~it~~ to lapse as a result of a term included pursuant to Rule 12.1(a) or (b) or upon a condition included pursuant to Rule 12.1(c) being invoked.

- (b) If the offer period ends in accordance with Rule 12.2(a):

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(iii) where the competition reference period ends when either the ~~Competition Commission~~ CMA or the Secretary of State has issued a prohibition decision or when the European Commission has issued a decision under Article 8(3) of Council Regulation 139/2004/EC, no new offer period will begin. The offeror or potential offeror whose offer is prohibited, together with any person acting in concert with it, will, except with the consent of the Panel, be subject to the restrictions in Rule 2.8 for six months from the date on which the relevant decision is issued.

#### NOTES ON RULE 12.2

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#### 2. *After a reference or initiation of proceedings*

*Following the ending of an offer period on a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings, General Principle 3 and Rule 21.1 will normally continue to apply (see also Rule 19.7 and the Notes on Rules 6.1, 11.1, 11.2, 20.1, 20.2 and 38.2).*

#### 3. *Offers announced subject to a pre-condition as permitted under Rule 13.3(b)*

*When an offer ~~which~~ was announced subject to a pre-condition as permitted under Rule 13.3(b) ~~is and either a Phase 2 CMA reference is made referred to the Competition Commission or the Phase 2 European Commission initiates proceedings are initiated~~, the offer period will not end. However, during the competition reference period, the Panel may grant a dispensation from a particular Rule if it would be proportionate in the circumstances to do so.*

### Rule 13

#### 13.2 ~~THE COMPETITION COMMISSION~~ CMA AND THE EUROPEAN COMMISSION

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#### 13.3 ACCEPTABILITY OF PRE-CONDITIONS

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**Except with the consent of the Panel, an offer must not be announced subject to a pre-condition unless the pre-condition:**

(a) relates to a decision that there will be no Phase 2 CMA reference ~~to the Competition Commission~~ or initiation of Phase 2 European Commission proceedings ~~by the European Commission~~;

(b) relates to a decision that there will be no Phase 2 CMA reference ~~to the Competition Commission~~ or initiation of Phase 2 European Commission proceedings ~~by the European Commission~~ or, if there is such a reference or initiation of proceedings, a decision by the relevant authority to allow the offer to proceed (the decision may, in each case, be stated to be on terms satisfactory to the offeror); or

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## Rule 20

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

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#### *NOTES ON RULE 20.1*

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#### *4. Information published by concert parties (eg brokers)*

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*When a Phase 2 CMA reference is made ~~an offer or possible offer is referred to the Competition Commission or the Phase 2 European Commission initiates proceedings are initiated~~, the offer period may end in accordance with Rule 12.2(a). Persons acting in concert with an offeror or the offeree company must, however, consult the Panel about the publication of circulars as described in this Note during the reference or proceedings. The Panel will normally apply the restrictions in this Note in the period of one month before the relevant authority is expected to make its recommendation or issue its decision as the case may be.*

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### 20.2 EQUALITY OF INFORMATION TO COMPETING OFFERORS

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#### *NOTES ON RULE 20.2*

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**5. ~~The Competition Commission-CMA and the European Commission~~**

*When a Phase 2 CMA reference is made ~~an offer or possible offer is referred to the Competition Commission or the Phase 2 European Commission initiates proceedings~~ are initiated, the offer period may end in accordance with Rule 12.2(a). The Panel will, however, continue to apply Rule 20.2 during the reference or proceedings and, therefore, for the purposes of this Rule alone, will normally deem the referred offeror to be a bona fide potential offeror.*

**Rule 21.1**

**21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED**

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**NOTES ON RULE 21.1**

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**4. ~~The Competition Commission-CMA and the European Commission~~**

*When a Phase 2 CMA reference is made ~~an offer or possible offer is referred to the Competition Commission or the Phase 2 European Commission initiates proceedings~~ are initiated, the offer period may end in accordance with Rule 12.2(a). The Panel will, however, normally consider that General Principle 3 and Rule 21.1 apply during the competition reference period, but on a more flexible basis. ...*

**Rule 31.6**

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

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**NOTES ON RULE 31.6**

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**3. ~~The Competition Commission-CMA and the European Commission~~**

*If there is a significant delay in the decision on whether or not there is to be a Phase 2 CMA reference or initiation of Phase 2 European Commission 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(c)) and "Day 60".*