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THE TAKEOVER PANEL

**CONSULTATION PAPER ISSUED BY
THE CODE COMMITTEE OF THE PANEL**

PENSION SCHEME TRUSTEE ISSUES

The Code Committee of the Takeover Panel (the “Panel”) invites comments on this Public Consultation Paper (“PCP”). Comments should reach the Code Committee by 28 September 2012.

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All responses to formal consultation will be made available for public inspection and published on the Panel’s website at www.thetakeoverpanel.org.uk, unless the respondent explicitly requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure. Personal information, such as telephone numbers or e-mail addresses, will not be edited from responses.

Unless the context otherwise requires, words and expressions defined in the Takeover Code (the “Code”) have the same meanings when used in this Public Consultation Paper.

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1. Background

- 1.1 In paragraph 1.10 of Response Statement 2011/1 on the Code Committee's review of certain aspects of the regulation of takeover bids, published on 21 July 2011, the Code Committee noted that:

“A number of responses [to PCP 2011/1] were received from trustees of pension schemes and from advisers to, and representatives of, pension scheme trustees. In summary, these respondents considered that various provisions of the Code which relate to the employee representatives of the offeree company should be extended so as to apply also to the trustees of the offeree company's pension scheme. The Code Committee considers that the suggested amendments to the Code are outside the scope of the consultation on PCP 2011/1 and therefore intends to give separate consideration to those suggestions in due course.”

- 1.2 The Code Committee has now considered the matters raised by the respondents referred to above in relation to PCP 2011/1 and its conclusions are set out in this consultation paper.
- 1.3 The Code Committee has today also published PCP 2012/1 (“Profit forecasts, quantified financial benefits statements, material changes in information and other amendments to the Takeover Code”) and PCP 2012/3 (“Companies subject to the Takeover Code”). The amendments to the Code proposed in this PCP take into account the amendments to the Code proposed in PCP 2012/1. The amendments to the Code proposed in PCP 2012/3 do not affect the amendments proposed in this PCP.

2. Overview

- 2.1 As explained in paragraph 1.1 above, certain respondents to PCP 2011/1 proposed that the provisions of the Code which relate to the employee representatives of the offeree company should be extended so as to apply also to the trustees of the offeree company's pension scheme(s). The provisions of the Code which relate to employee representatives of the offeree company are:

- (a) requirements that an offeror should disclose in its offer document, among other things:
 - (i) its intentions with regard to the continued employment of the employees and management of the offeree company and its subsidiaries, including any material change in the conditions of employment (Rule 24.2(a)(i)); and
 - (ii) its strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business (Rule 24.2(a)(ii));

- (b) requirements that the board of the offeree company should include in its circular setting out its opinion on the offer its views on:
 - (i) the effects of implementation of the offer on all the company's interests, including, specifically, employment (Rule 25.2(a)(i)); 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 (Rule 25.2(a)(ii));

- (c) requirements that an offeror and the offeree company should make readily available to the offeree company's employee representatives certain documentation published by them in connection with an offer, including:
 - (i) the announcement which commences an offer period (Rule 2.12(a));

- (ii) the announcement of a firm intention to make an offer (Rule 2.12(b));
 - (iii) the offer document and any revised offer document (Rules 24.1(a) and 32.1(b) respectively); and
 - (iv) the offeree board circular in relation to the offer and any revised offer (Rules 25.1(a) and 32.6(a) respectively); and
- (d) requirements that:
- (i) 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 that such opinion is received in good time before publication of the circular (Rule 25.9); and
 - (ii) the offeree company must pay for the publication of the 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 (Note 1 on Rule 25.9).

Rule 32.6(b) and the Note on Rule 32.6 include similar requirements in relation to a circular sent by the board of the offeree company in response to any revised offer.

2.2 The following arguments have been made in favour of extending the provisions of the Code which apply to employee representatives so as to apply also to the trustees of the offeree company's pension scheme(s):

- (a) it was acknowledged in the course of the consultation on PCP 2011/1 that documentation published by an offeror and the offeree company in the

context of an offer is for the benefit of not only the offeree company's shareholders but also certain other constituents. Although the other constituents referred to were principally the offeree company's current employees, it is arguable that they should also include the beneficiaries of the offeree company's pension scheme(s), who comprise the current and former employees of the company and its subsidiaries; and

- (b) although, as noted below, the Pensions Regulator has significant powers, the Code Committee understands that the Pensions Regulator does not have the power to require an offeror to disclose publicly its intentions regarding the offeree company's pension scheme(s) or to require a party to an offer to take the other action referred to in this PCP.

2.3 However, the following arguments can be made against extending the Code in this manner:

- (a) the constituent which the Code is designed principally to protect is the shareholders in the offeree company, by ensuring that they are treated fairly and are not denied the opportunity to decide on the merits of a bid and that they are afforded equivalent treatment by an offeror. Furthermore, although there are certain provisions of the Code which apply for the benefit of an offeree company's employee representatives, as described in paragraph 2.1 above, these provisions derive substantially from requirements imposed by the Takeovers Directive. However, there is no requirement under the Takeovers Directive for Member States to introduce similar, or indeed any, provisions in relation to the offeree company's pension scheme(s) or for the benefit of its/their trustees; and
- (b) in view of the increase in recent years in the number of defined benefit schemes which are in deficit, and of the size of the deficits, legislation has been introduced during the last decade for the protection of beneficiaries

of defined schemes and their trustees, including the Pensions Acts of 2004 and 2011. Furthermore, the Pensions Act 2004 created a new regulator, the Pensions Regulator, with significant powers.

2.4 On balance, the Code Committee considers that the provisions of the Code which apply to employee representatives should be extended so as to apply also to the trustees of the offeree company's pension scheme(s). Accordingly, the Code Committee considers that the Code should be amended to implement the proposals set out in this PCP.

2.5 The Code Committee wishes to make clear that, if these proposals are implemented, it considers that their collective effect would be limited to creating a framework within which the effects of an offer on the offeree company's pension scheme(s), which could comprise either a defined benefit or a defined contribution scheme or both, could become a debating point during the course of the offer and a point on which each of the offeror, the board of the offeree company and the trustees of the pension scheme(s) could have an opportunity to express their views. This should help to ensure that the effects of the offer on the pension scheme(s) could be discussed by the relevant parties at an early stage, with the result that any issues which might arise as a consequence of the potential change of control of the company could then be considered by shareholders in the offeree company and others. The framework is not intended to, nor would it, ensure that offers would become or be declared unconditional only once an offeror and the trustees of the offeree company's pension scheme(s) had reached agreement on the future funding arrangements for the scheme(s).

3. Proposed amendments

3.1 The proposed amendments to the Code are described in paragraphs 3.2 to 3.18 below.

(a) *Disclosure by an offeror of its intentions with regard to the offeree company's pension scheme(s) and related matters*

3.2 The Code Committee considers that, in order to facilitate a debate on the effects of an offer on the offeree company's pension scheme(s) during the course of the offer, an offeror should be required to state in the offer document its intentions with regard to the offeree company's pension scheme(s) and the likely repercussions of its strategic plans for the offeree company on the scheme(s). In addition, the Code Committee believes that, if the offeror has no intention to make any changes in relation to the offeree company's pension scheme(s), or if it considers that its strategic plans for the offeree company will have no repercussions on the scheme(s), the offeror should be required to make a statement to that effect.

3.3 As a result, the Code Committee proposes to amend Rules 24.2(a) and (b) as set out below:

~~"24.2 INTENTIONS OF THE OFFEROR REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND THEIR EMPLOYEES~~

(a) 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:

...

(iii) its intentions with regard to the offeree company's pension scheme(s), and the likely repercussions of its strategic plans for the offeree company on the offeree company's pension scheme(s);

(iiiv) ... ; and

(ivv)

(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(i) to (iiiv) 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, or on the offeree company's pension scheme(s), it must make a statement to that effect."

Q1. Do you have any comments on the proposed amendments to Rules 24.2(a) and (b) relating to the requirement for an offeror to disclose, among other matters, its intentions with regard to the offeree company's pension scheme(s)?

3.4 If Rule 24.2 is amended as set out in paragraph 3.3 above, the Code Committee considers that Rule 25.2 should also be amended so as to require that the board of the offeree company should include in the offeree board circular its views on the effects of implementation of the offer on the offeree company's pension scheme(s) and on the likely repercussions of the offeror's strategic plans for the offeree company on the scheme(s).

3.5 As a result, the Code Committee proposes to amend Rule 25.2(a) as set out below:

~~"25.2 VIEWS OF THE OFFEREE BOARD ON THE OFFER, INCLUDING THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES~~

(a) The offeree board circular must 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 its views on:

(i) the effects of implementation of the offer on all the company's interests, including, specifically, employment and its pension scheme(s); 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, and on the offeree company's pension scheme(s), as set out in the offer document pursuant to Rule 24.2."

Q2. Do you have any comments on the proposed amendments to Rule 25.2(a) relating to the requirement for the offeree board to include in the offeree

board circular its views on, among other matters, the effects of implementation of the offer on the offeree company's pension scheme(s)?

- 3.6 Any statements made by an offeror or by the board of the offeree company in relation to any action which it intends to take, or not take, with regard to the offeree company's pension scheme(s) would be subject to Note 3 on Rule 19.1 – that is to say that the party making the statement would 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 for such other period as is specified in the statement, unless there has been a material change of circumstances.
- 3.7 On the basis that, for example, any decision by an offeror to change its plans regarding the funding of the pension scheme(s) might be taken some time after the first anniversary of the offer period ending, the Code Committee considered whether a longer period should apply in relation to statements of intention regarding the offeree company's pension scheme(s). The Code Committee decided against this on the basis that:
- (a) as noted in paragraph 2.5 above, the Code Committee considers that the principal benefit which should be derived from introducing rules to implement the proposals suggested would be to create a framework within which the effect of the offer on the offeree company's pension scheme(s) could become a debating point during the course of the offer which could lead to any issues arising as a consequence of the potential change of control of the offeree company being considered at an early stage;
 - (b) in certain circumstances, this could lead to the relevant parties reaching agreement on the future funding of the pension scheme(s) or, where agreement cannot be reached, through one of the parties contacting the Pensions Regulator;

- (c) where an agreement is entered into between the offeror and the trustees of the pension scheme(s), the Code Committee considers that it should be this agreement (which can be as detailed and prescriptive as the parties consider necessary), as opposed to the statements made in the offer document (which may be more generic), which the parties should rely on to govern their conduct in the future and which the pension scheme trustees should rely on to protect the position of the beneficiaries of the scheme(s) (and which, if necessary, the trustees should be prepared to seek to enforce), particularly given that areas of dispute might only come to light many years later; and
- (d) in addition, whereas a breach of the terms of such an agreement could give rise to a claim in damages, a failure to adhere to the terms of a statement made in the offer document would not, albeit that it could lead to the Panel taking disciplinary action if it were to conclude that, when it was made, the statement was not prepared with the standards of care prescribed by the Code.

(b) *Provision of information*

3.8 The Code Committee considers that, in order to assist the trustees of the offeree company's pension scheme(s) to formulate their views on the effects of the offer on the scheme(s), an offeror and the offeree company should be required to make available to the trustees of the offeree company's pension scheme(s) all the documents that they are each required to make available to the offeree company's employee representatives, namely:

- (a) the announcement which commences the offer period (Rule 2.12(a));
- (b) the announcement of a firm intention to make an offer under Rule 2.7 (Rule 2.12(b));

- (c) the offer document (Rule 24.1(a));
- (d) the offeree board circular in response to the offer document (Rule 25.1(a));
- (e) any revised offer document (Rule 32.1(b));
- (f) the offeree board circular in response to any revised offer document (Rule 32.6(a)); and
- (g) any document required to be sent to shareholders in an offeree company and persons with information rights under the proposed new Rule 27.1(b) (see PCP 2012/1).

3.9 As a result, the Code Committee proposes to amend Rule 2.12(a), Rule 2.12(b), Note 1 on Rule 2.12, Rule 24.1, Rule 25.1, Rule 32.1, Rule 32.6(a), as set out in Appendix A, and to introduce Rule 27.1(b)(ii) as set out in PCP 2012/1. The Code Committee also proposes to make a consequential amendment to Note 6 on Rule 20.1, again as set out in Appendix A.

Q3. Do you have any comments on the proposed amendments to Rules 2.12(a), 2.12(b), 24.1, 25.1, 32.1, 32.6(a) and 27.1(b), and to Note 6 on Rule 20.1, in each case relating to the information to be disclosed to the trustees of an offeree company's pensions scheme(s)?

- (c) *Right for the trustees of the offeree company's pension scheme(s) to make known their views on the effects of the offer on the scheme(s)*

3.10 The Code Committee considers that the trustees of the offeree company's pension scheme(s) should be granted equivalent rights to those granted to the offeree company's employee representatives under Rule 25.9 (and Rule 32.6(b)):

- (a) to have appended to an offeree board circular a separate opinion from the trustees on the effects of the offer (and any revised offer) on the pension scheme(s), provided the opinion is received in good time before the publication of the circular; and
 - (b) where the opinion is not received in good time before the publication of the circular, to have the opinion published on a website and for the offeree company to be required to announce that this has been done.
- 3.11 Whilst the Code Committee considers that it is reasonable for the Code to require the offeree company to pay for the costs of publishing, in the manner described in paragraph 3.10 above, an opinion received from the trustees of the pension scheme(s) on the effects of the offer on the scheme(s), the Code Committee is not persuaded that the Code should require the offeree company to pay for the costs reasonably incurred in obtaining advice required for the verification of the information contained in such an opinion. This is on the basis that, whereas actuarial and valuation analysis is unlikely to be required in order for employee representatives to verify their opinion on the effects of an offer on employment, it could be argued that such analysis may be required in order for pension scheme trustees to verify their opinion on the effects of an offer on the scheme(s). The Code Committee considers that, in the event of such analysis being carried out, not only might the costs incurred become significant but there might also be considerable dispute as to whether they were incurred reasonably. In any event, the Code Committee understands that, in practice, a sponsoring company will normally be responsible for paying costs reasonably incurred by the trustees of the scheme(s), such that there may often be no need for the Code to require this.
- 3.12 In the light of the above, the Code Committee proposes to amend Rule 25.9 (and Note 1 on that Rule) and Rule 32.6(b), as set out below:

“25.9 THE EMPLOYEE REPRESENTATIVES’ OPINION AND THE PENSION SCHEME TRUSTEES’ OPINION

The board of the offeree company must append to its circular a separate opinion from:

(a) its employee representatives on the effects of the offer on employment; and

(b) the trustees of its pension scheme(s) on the effects of the offer on the pension scheme(s).

provided such opinion is received in good time before publication of that circular. Where ~~the~~ an 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’ and/or the pension scheme trustees’ opinion and, in the case of the employee representatives’ opinion, 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).)”; and

“32.6 THE OFFEREE BOARD’S OPINION AND THE OPINIONS OF THE EMPLOYEE REPRESENTATIVES’ OPINION AND THE PENSION SCHEME TRUSTEES

...

(b) The board of the offeree company must append to its circular a separate opinion from its employee representatives on the effects of the revised offer on employment and from the trustees of its pension scheme(s) on the effects of the revised offer on the pension scheme(s), provided such opinion is received in good time before publication of that circular. Where ~~the~~ an 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."

Q4. Do you have any comments on the proposed amendments to Rule 25.9 (and Note 1 on that Rule) and to Rule 32.6 regarding the rights of the trustees of an offeree company's pension scheme(s) to make known their views on the effects of the offer on the scheme(s)?

3.13 In addition, the Code Committee considers that the trustees of the offeree company's pension scheme(s) should be informed of the rights referred to in paragraph 3.10 above at the time that a copy of an announcement which commences an offer period or an announcement of a firm intention to make an offer is made available to them (see paragraphs 3.8(a) and (b) above).

3.14 In the light of the above, the Code Committee proposes to amend Rule 2.12(d) as follows:

"(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) and to the trustees of its pension scheme(s), it must at the same time inform them of the right of employee representatives and pension scheme trustees (as the case may be) 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 ~~In addition, the offeree company must inform its employee representatives (or employees) 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 their opinion.~~"

3.15 The Code Committee also proposes to make a similar amendment to Rule 32.1(b) in relation to revised offers, as set out in Appendix A.

3.16 The Code Committee also proposes to make a minor consequential amendment to Rule 19.2, relating to directors' responsibility statements, as set out in Appendix A.

Q5. Do you have any comments on the proposed amendments to Rule 2.12(d) and to Rule 32.1 regarding the requirement for the trustees of the offeree company's pension scheme(s) to be informed of their rights under the Code to make known the effects of the offer on the scheme(s)? Do you have any comments on the proposed amendment to Rule 19.2 relating to directors' responsibility statements?

(d) Agreements entered into between an offeror and the trustees of the offeree company's pension scheme(s)

3.17 The Code Committee considers that the Code should require that, in the event of an offeror entering into an agreement with the trustees of the offeree company's pension scheme(s) in relation to the future funding arrangements for the scheme as referred to in paragraph 3.7 above, a summary of that agreement should be included in the offer document and a copy of the agreement put on display. This is in order that the agreement can be reviewed by the beneficiaries of the pension scheme and other interested parties.

3.18 Accordingly, the Code Committee proposes to introduce a new Rule 24.3(d)(xvi) and to amend Rule 26.2, in each case as set out below (which provisions would apply also to any agreement entered into by an offeror with the offeree company's employee representatives or, where there are no employee representatives, the employees themselves, in relation to employment matters):

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

Except with the consent of the Panel:

...

(d) the offer document ... must include:

(xvi) a summary of any agreement entered into with the offeree company's employee representatives (or, where there are no employee representatives, the employees themselves) or the trustees of the offeree company's pension scheme(s) in relation to any of the matters referred to in Rule 24.2; and

“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 published on a website from the time the offer document or the offeree board circular, as appropriate, is published ... :

...

(i) any agreement entered into between the offeror and the offeree company's employee representatives (or, where there are no employee representatives, the employees themselves) or the trustees of the offeree company's pension scheme(s) in relation to any of the matters described in Rule 24.2 (Rule 24.3(d)(xvi)).”

Q6. Do you have any comments on the proposed new Rule 24.3(d)(xvi) and new Rule 26.2(i) relating to the requirement for the offer document to include a summary of any agreement between the offeror and the offeree company's employee representatives or the trustees of the offeree company's pension scheme(s) in relation to any of the matters described in Rule 24.2 and to the requirement for any such agreement(s) to be put on display?

3.19 Rule 21.2(a) provides that, except with the consent of the Panel, neither the offeree company nor any person acting in concert with it may enter into an 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. An offer-related arrangement means any agreement, arrangement or commitment in connection with an offer and would include an agreement in relation to the future funding of the offeree company's pension scheme(s), as described above. Therefore such an agreement would be prohibited by Rule 21.2(a) if either the

offeree company was a party to the agreement or the trustees of the pension scheme were acting in concert with the offeree company.

3.20 On the basis that the Code Committee understands that the offeree company would not normally be a party to such an agreement and that pension scheme trustees are normally independent of the sponsoring company, the Code Committee has decided not to amend Rule 21.2 in order to address this point. However, if any party to such an agreement has any concerns as to whether it or another party is prohibited by Rule 21.2(a) from entering into the agreement, it should consult the Panel.

(e) Requirement for the Panel to refer a transaction to the Pensions Regulator

3.21 Certain respondents to PCP 2011/1 suggested that the Code should impose a requirement that, by a specified date in the offer timetable (say, Day 43), an offeror should be required to have reached a definitive position on its funding commitments regarding the offeree company's pension scheme(s), which has been agreed to by the trustees of the scheme(s), failing which the Panel should be required to refer the matter to the Pensions Regulator. The Code Committee is not in favour of this proposal on the basis that, as noted in paragraph 2.3(a) above, the Code is designed principally to protect the shareholders in the offeree company by ensuring that they are treated fairly and are not denied the opportunity to decide on the merits of a takeover, and that shareholders are afforded equivalent treatment by an offeror. Accordingly, the Code Committee considers that:

- (a) any decision as to whether clearance from the Pensions Regulator should be sought in relation to a particular takeover should be a matter for either an offeror or for the trustees of the pension scheme, but not for the Panel; and

- (b) any framework introduced for the benefit of the trustees of the offeree company's pension scheme(s) should go no further than the framework currently provided in the Code for the benefit of the company's employee representatives. The framework introduced for the benefit of the offeree company's employee representatives is intended to ensure that they are informed about the offer and are given an opportunity to make known their views of the effects of the offer on employment, but employee representatives have no rights to direct the outcome of an offer.

4. Assessment of the impact of the proposals

- 4.1 The Code Committee believes that the proposals set out in this PCP should result in better quality disclosure of an offeror's intentions regarding the offeree company's pension scheme(s) and of the offeree board's opinion on those intentions. The Code Committee does not believe that any material additional costs should flow from the proposed amendments.
- 4.2 The Code Committee also believes that the proposals set out in this PCP should facilitate the ability for the trustees of the offeree company's pension scheme(s) to make known their views on the effects of an offer on the scheme(s). Although the proposal that the board of the offeree company should be required to append to its circular a separate opinion on the effects of the offer on the scheme, and to pay for the costs of doing so, would inevitably lead to an offeree company incurring some additional cost, the Code Committee does not consider that this would be material.

APPENDIX A

Proposed amendments to the Code

Rule 2.12

2.12 ~~OBLIGATION TO SEND DISTRIBUTION OF ANNOUNCEMENTS TO SHAREHOLDERS, AND MAKE THEM AVAILABLE TO EMPLOYEE REPRESENTATIVES (OR EMPLOYEES) AND PENSION SCHEME TRUSTEES~~

(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:

(i) sent by the offeree company to its shareholders, persons with information rights and the Panel; ~~and must be~~

(ii) made readily available to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).

(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 must make that announcement or circular readily available to the trustees of its pension scheme(s); 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).

...

(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) and to the trustees of its pension scheme(s), it must at the same time inform them of the right of employee representatives and pension scheme trustees (as the case may be) 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~~ In

addition, the offeree company must inform its employee representatives (or employees) 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~~ their 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 (or employees) or pension scheme trustees, 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).

Rule 19.2

19.2 RESPONSIBILITY

(a) Each document or advertisement published in connection with an offer by, or on behalf of, the offeror or the offeree company, must state that the directors of the offeror and/or, where appropriate, the offeree company accept responsibility for the information contained in the document or advertisement and that, to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in the document or advertisement is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information. This Rule does not apply to:

...

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

Rule 20.1

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

...

NOTES ON RULE 20.1

...

6. *Sharing information with employee representatives (or employees) or pension scheme trustees*

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 to the trustees of their pension scheme(s); or*

(b) *an offeror to the employee representatives (or employees) of the offeree company or to the trustees of the offeree company's pension scheme(s),*

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

Meetings with employee representatives (or employees) or pension scheme trustees 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 or pension scheme trustee ~~are~~ is interested in a significant number of shares.

Rule 23.2

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:

...

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

...

NOTE ON RULE 23.2

Shareholders, persons with information rights, ~~employees and~~ employee representatives (or employees) outside the EEA

...

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.

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~~ in the offeree company and persons with information rights, in accordance with Rule 30.1 and must make the document readily available to the trustees of the offeree company's pension scheme(s). 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.**

...

24.2 ~~INTENTIONS OF THE OFFEROR REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND THEIR EMPLOYEES~~

(a) **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:**

...

(iii) its intentions with regard to the offeree company's pension scheme(s), and the likely repercussions of its strategic plans for the offeree company on the offeree company's pension scheme(s);

(~~iii~~iv) ... ; and

(~~iv~~v)

(b) If the offeror has no intention to make any changes in relation to the matters described under (a)(i) to (~~iii~~iv) 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, or on the offeree company's pension scheme(s), it must make a statement to that effect.

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

Except with the consent of the Panel:

...

(d) the offer document ... must include:

...

(xv) ...; and

(xvi) a summary of any agreement entered into with the offeree company's employee representatives (or, where there are no employee representatives, the employees themselves) or the trustees of the offeree company's pension scheme(s) in relation to any of the matters referred to in Rule 24.2;

(xvii) ...; and

...

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 shareholders in the offeree company's ~~shareholders~~ and persons with information rights, in accordance with Rule 30.1 and must make the document readily available to the trustees of its pension scheme(s). ~~and must, a~~ At the same time, the offeree company must make it ~~the circular~~ 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 offeree board circular on a website in accordance with Rule 30.4; and
 - (ii) announce via a RIS that ~~it~~ the offeree board circular 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.

25.2 ~~VIEWS OF THE OFFEREE BOARD ON THE OFFER, INCLUDING THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES~~

- (a) The offeree board circular must 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 its views on:
- (i) the effects of implementation of the offer on all the company's interests, including, specifically, employment and its pension scheme(s); 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, and on the offeree company's pension scheme(s), as set out in the offer document pursuant to Rule 24.2.
- (b) In addition, the offeree board circular must include the substance of the advice given to the board of the offeree company by the independent financial adviser appointed under Rule 3.1.

...

25.9 THE EMPLOYEE REPRESENTATIVES' OPINION AND THE PENSION SCHEME TRUSTEES' OPINION

The board of the offeree company must append to its circular a separate opinion from:

(a) its employee representatives on the effects of the offer on employment; and

(b) the trustees of its pension scheme(s) on the effects of the offer on the pension scheme(s),

provided such opinion is received in good time before publication of that circular. Where ~~the an 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' and/or the pension scheme trustees' opinion and, in the case of the employee representatives' opinion, 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 and pension scheme trustees under Rule 25.9*

See Rule 2.12(d).

Rule 26

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 published on a website from the time the offer document or the offeree board circular, as appropriate, is published ... :

...

(i) any agreement entered into between the offeror and the offeree company's employee representatives (or, where there are no employee representatives, the employees themselves) or the trustees of the offeree company's pension scheme(s) in relation to any of the matters described in Rule 24.2 (Rule 24.3(d)(xvi)).

Rule 32

32.1 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, the offeror must:

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

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

(b) At the same time;

(i) 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);

(ii) the offeror must make the revised offer document readily available to the trustees of the offeree company's pension scheme(s); and

(iii) the offeree company must inform its employee representatives (or employees) and the trustees of its pension scheme(s) of the right of employee representatives and pension scheme trustees 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~~ In addition, the offeree company must inform its employee representatives (or employees) 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~~ their opinion.

...

32.6 THE OFFEREE BOARD'S OPINION AND THE OPINIONS OF THE EMPLOYEE REPRESENTATIVES' OPINION AND THE PENSION SCHEME TRUSTEES

(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 as required by Rule 25.1, drawn up in accordance with Rules 25 and 27 and, at the same time:

...

(iii) make ~~it~~ the circular readily and promptly available to its employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of its pension scheme(s).

(b) The board of the offeree company must append to its circular a separate opinion from its employee representatives on the effects of the revised offer on employment and from the trustees of its pension scheme(s) on the effects of the revised offer on the pension scheme(s), provided such opinion is received in good time before publication of that circular. Where ~~the an~~ an 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.

APPENDIX B**List of questions**

- Q1. Do you have any comments on the proposed amendments to Rules 24.2(a) and (b) relating to the requirement for an offeror to disclose, among other matters, its intentions with regard to the offeree company's pension scheme(s)?**
- Q2. Do you have any comments on the proposed amendments to Rule 25.2(a) relating to the requirement for the offeree board to include in the offeree board circular its views on, among other matters, the effects of implementation of the offer on the offeree company's pension scheme(s)?**
- Q3. Do you have any comments on the proposed amendments to Rules 2.12(a), 2.12(b), 24.1, 25.1, 32.1, 32.6(a) and 27.1(b), and to Note 6 on Rule 20.1, in each case relating to the information to be disclosed to the trustees of an offeree company's pensions scheme(s)?**
- Q4. Do you have any comments on the proposed amendments to Rule 25.9 (and Note 1 on that Rule) and to Rule 32.6 regarding the rights of the trustees of an offeree company's pension scheme(s) to make known their views on the effects of the offer on the scheme(s)?**
- Q5. Do you have any comments on the proposed amendments to Rule 2.12(d) and to Rule 32.1 regarding the requirement for the trustees of the offeree company's pension scheme(s) to be informed of their rights under the Code to make known the effects of the offer on the scheme(s)? Do you have any comments on the proposed amendment to Rule 19.2 relating to directors' responsibility statements?**
- Q6. Do you have any comments on the proposed new Rule 24.3(d)(xvi) and new Rule 26.2(i) relating to the requirement for the offer document to include a summary of any agreement between the offeror and the offeree company's employee representatives or the trustees of the offeree company's pension scheme(s) in relation to any of the matters described in Rule 24.2 and to the requirement for any such agreement(s) to be put on display?**