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THE TAKEOVER PANEL

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

**THE COMMUNICATION AND DISTRIBUTION OF
INFORMATION DURING AN OFFER**

The Code Committee of the Takeover Panel (the “**Panel**”) invites comments on this Public Consultation Paper. Comments should reach the Code Committee by Friday, 15 April 2016.

Comments may be sent by e-mail to:

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Alternatively, please send comments in writing to:

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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 have the same meanings when used in this Public Consultation Paper.

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1. Introduction and summary of proposals

(a) *Introduction*

- 1.1 In this Public Consultation Paper (“**PCP**”), the Code Committee of the Panel (the “**Code Committee**”) is proposing a number of amendments to the Takeover Code (the “**Code**”) with regard to the communication and distribution of information and opinions during an offer by, or on behalf of, an offeror or the offeree company.
- 1.2 General Principle 2 of the Code provides that the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on a bid. The proposals in this PCP focus on the means by which that information is communicated and distributed to offeree company shareholders and other relevant persons, bearing in mind, in particular, the requirement in General Principle 1 that all holders of the securities of an offeree company of the same class must be afforded equivalent treatment. The Code Committee considers that rules governing the communication and distribution of information are an essential part of the orderly framework for the conduct of takeovers which the Code is designed to provide and that it is important that those requirements are clear, appropriate and reflect technological changes made over time.
- 1.3 In 2009, various amendments were made to the Code in order to enable electronic forms of communication to be used to send documents and information to shareholders and certain other relevant persons and to facilitate and require a wider use of websites by parties to offers (see PCP 2008/3 and RS 2008/3: “Electronic communications, websites and information rights”). Since that time, there have been considerable advances in the use of the internet, social media and other forms of electronic communication and a number of the amendments proposed in this PCP seek to bring the Code up-to-date in that regard.

- 1.4 The requirement in General Principle 1 for equivalent treatment is reflected in Rule 20.1, which provides that information must be made equally available to all offeree company shareholders as nearly as possible at the same time and in the same manner. The Code Committee considers that the Code should provide greater clarity as to how the requirement for information to be made equally available to all offeree company shareholders should be satisfied. This will generally require an offeror or offeree company (as appropriate) to make an announcement via a regulatory information service (a “**RIS**”) and to publish the relevant information or document on a website. However, the Code Committee considers that the Panel should continue to have the ability to require a party to an offer also to send information to offeree company shareholders in hard copy form in appropriate circumstances.
- 1.5 In addition, the Code Committee has identified a number of instances in which the requirements of the Code in relation to the communication and distribution of information currently lack clarity or are inconsistently applied or interpreted. For example, the Code Committee understands that, although the requirement in Note 3 on Rule 20.1 for “meetings” to be supervised by a financial adviser or corporate broker is generally applied such that supervision is put in place not only for “physical” meetings but also for telephone calls and meetings held by electronic means, this is not universally the case. In addition, the Code Committee believes that it is not clearly understood that the requirements of Note 3 on Rule 20.1 apply not only to meetings between, on the one hand, representatives of an offeror or the offeree company and, on the other, a shareholder, investment analyst or other relevant third party, but also to meetings with a relevant third party attended only by an adviser (such as a public relations adviser) to the offeror or offeree company. The proposals in this PCP seek to ensure that there is clarity and consistency of approach in these areas.

(b) *Summary of proposals*

(i) *Equality of information to shareholders*

1.6 In Section 2 of the PCP, the Code Committee is proposing that, where any material new information or significant new opinions relating to an offer or a party to an offer are:

- (a) published by or on behalf of an offeror or the offeree company;
- (b) provided to any shareholder or other relevant person; or
- (c) provided to the media,

the requirement in Rule 20.1 for the information or opinions to be made equally available to all offeree company shareholders as nearly as possible at the same time and in the same manner should be satisfied by the offeror or offeree company (as appropriate) at the same time publishing the information or opinion in an announcement published via a RIS.

1.7 In addition, the Code Committee proposes to extend the requirements of Rule 20.1 to certain relevant materials, even if they do not contain any material new information or significant new opinion relating to the offer or a party to the offer, so that:

- (a) any presentation or other document relating to an offer or a party to an offer provided to, or used in any meeting with, any shareholder or other relevant person must be published on a website promptly after it is so provided or used; and

- (b) any article, letter or other written communication relating to an offer or a party to an offer provided to the media must be published on a website promptly following its publication by the media.

(ii) *Meetings and telephone calls with shareholders and others*

1.8 In Section 3 of the PCP, the Code Committee is proposing to introduce a new Rule 20.2 to replace the current Note 3 on Rule 20.1 which sets out certain safeguards which must be observed in relation to meetings between:

- (a) representatives of an offeror or the offeree company or their respective advisers; and
- (b) shareholders of, or persons interested in the securities of, either an offeror of the offeree company, or with analysts, brokers or others engaged in investment management or advice.

1.9 In summary, the Code Committee is proposing that:

- (a) it should be made clear that the requirements of the proposed new Rule 20.2 apply not only to meetings but also to telephone calls;
- (b) a financial adviser or corporate broker to the offeror or offeree company (as appropriate) should be required to supervise a meeting or telephone call to which the proposed new Rule 20.2 applies and subsequently to provide a written confirmation to the Panel that no material new information or significant new opinion was provided if the meeting or telephone call takes place during one of the following periods:

- (i) prior to the offer period (but only if the meeting or telephone call relates to a possible offer or would not be taking place but for the possible offer);
 - (ii) during the offer period but prior to the announcement of a firm offer;
or
 - (iii) following the announcement of a firm offer, but normally only if the offer is not recommended by the board of the offeree company or if there is a competitive situation;
- (c) subject to prior consultation with the Panel, there should normally be no requirement for a financial adviser or corporate broker to supervise a meeting or telephone call following the announcement of a firm offer which is recommended by the board of the offeree company and where there is no competitive situation. In such cases, a senior representative of the offeror or offeree company who attended the meeting or telephone call should normally be permitted to confirm in writing to the Panel that no material new information or significant new opinion was provided during the meeting or telephone call;
- (d) the requirement for a financial adviser or corporate broker to supervise a meeting or telephone call should not apply to meetings or telephone calls attended only by one or more advisers to the offeror or offeree company (other than a financial adviser or corporate broker) – for example, a public relations adviser – and one or more “sell-side” investment analysts. In such cases, a senior adviser who attended the meeting or telephone call should be permitted to confirm in writing to the Panel that no material new information or significant new opinion was provided during the meeting or telephone call;

- (e) in any case where a representative of or adviser to an offeror or the offeree company (other than a financial adviser or corporate broker) is to provide a written confirmation to the Panel, the financial adviser to that party should be required to provide an appropriate briefing to the representative(s) or adviser(s) who will attend the meeting or telephone call as to the requirements of the proposed new Rule 20.2 and as to the information and opinions which may and may not be provided during the meeting or telephone call; and
- (f) the requirement for a written confirmation to be provided to the Panel should not apply if the only persons who attended the meeting or telephone call on behalf of the offeror or offeree company were one or more financial advisers or corporate brokers.

(iii) *Videos, social media and websites*

1.10 In Section 4 of the PCP, the Code Committee is proposing:

- (a) the introduction of a new Rule 20.3 in relation to videos published by an offeror or the offeree company;
- (b) the introduction of a new Rule 20.4 in relation to the use of social media; and
- (c) minor amendments to Rule 26 in relation to the publication of documents on a website.

(iv) *Advertisements and telephone campaigns*

1.11 In Section 5 of the PCP, the Code Committee is proposing amendments to:

- (a) Rule 19.4, which provides that the publication of advertisements connected with an offer is prohibited unless the advertisement falls within one of the categories listed in the Rule; and
- (b) Rule 19.5, which regulates the use of telephone campaigns during the course of an offer.

The Code Committee does not intend that these proposed amendments should materially alter the way in which Rules 19.4 and 19.5 currently operate.

- 1.12 In addition, the Code Committee is proposing to amend Rule 19.2 so that advertisements would no longer be required to include a directors' responsibility statement.

(v) *Minor and consequential amendments*

- 1.13 In Section 6 of the PCP, the Code Committee is proposing certain minor and consequential amendments to the Code relating to the communication and distribution of information during an offer.

(c) *Invitation to comment*

- 1.14 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Friday, 15 April 2016 and should be sent in the manner set out at the beginning of this PCP.

- 1.15 The full text of the proposed amendments is set out in Appendix A. Where amendments are proposed, underlining indicates proposed new text and striking-through indicates text that is proposed to be deleted.

- 1.16 A table of origins for the proposed new provisions of the Code and a table of destinations for certain of the current provisions of the Code are set out in Appendix B.
- 1.17 For ease of reference, a list of the questions that are put for consultation is set out in Appendix C.
- 1.18 A table summarising the proposed new Rule 20.2 in relation to meetings and telephone calls with shareholders and others is set out in Appendix D.

2. Equality of information to shareholders

(a) *Introduction*

- 2.1 Rule 20.1 provides that information about parties to an offer must be made equally available to all offeree company shareholders* as nearly as possible at the same time and in the same manner. This requirement derives from General Principle 1, which provides that all holders of the securities of an offeree company of the same class must be afforded equivalent treatment.
- 2.2 In the case of information required to be included in an offer document or offeree board circular pursuant to Rules 24 and 25, the requirement for equality of information is satisfied by the sending of those documents to all shareholders in the offeree company in accordance with those Rules.
- 2.3 In addition, as a “continuing obligation”, Rule 27.1(a) provides that, following the publication of an initial offer document or offeree board circular (as appropriate) and until the end of the offer period, the offeror or the offeree company (as appropriate) must promptly announce:
- (a) any changes in information disclosed in any document or announcement published by it in connection with the offer which are material in the context of that document or announcement; and
 - (b) any material new information which would have been required to have been disclosed in any previous document or announcement published during the offer period, had it been known at the time.

* In this PCP, where the context so requires, the phrase “offeree company shareholders” should be taken to include “persons with information rights” (as defined in the Definitions Section of the Code).

Under Rule 27.1(b), where an announcement is required to be made under Rule 27.1(a), the Panel may, in addition, require a document setting out the relevant information to be sent to shareholders in the offeree company and made readily available to the offeree company's employee representatives and to the trustees of its pension scheme(s).

- 2.4 However, Rule 20.1 does not specify how an offeror or offeree company should satisfy the requirement that the more general category of information to which it applies "must be made equally available to offeree company shareholders ... as nearly as possible at the same time and in the same manner" (although Notes 2 and 3 on Rule 20.1 relate to some of the means by which information or opinions may be disseminated). The Code Committee considers that this should be specified more clearly in Rule 20.1.

(b) *Scope of Rule 20.1*

- 2.5 As mentioned above, Rule 20.1 is stated to apply to "information about parties to an offer". However, the Code Committee notes that, in practice, Rule 20.1 is applied more broadly so as to cover not only information about a party to an offer but also information relating to, and opinions on, the offer itself which is communicated to offeree company shareholders by, or on behalf of, an offeror or the offeree company.
- 2.6 The Code Committee considers that this broad application of Rule 20.1 is correct and proposes to amend Rule 20.1 so as to make clear that it applies to "information and opinions relating to an offer or a party to an offer". The amended provision would become a new Rule 20.1(a), as set out at the end of this Section 2.

Q1 Should the proposed new Rule 20.1(a) apply to information and opinions relating to an offer or a party to an offer?

(c) *Material new information and significant new opinions relating to an offer*

2.7 The Code Committee considers that, if any material new information or significant new opinion relating to an offer or a party to an offer is:

- (a) published by or on behalf of an offeror or the offeree company (other than in a document sent to offeree company shareholders);
- (b) provided by or on behalf of an offeror or the offeree company to any shareholder in, or other person interested in securities (including debt securities) of, an offeror or the offeree company, or to any investment manager, investment adviser or investment analyst; or
- (c) provided by or on behalf of an offeror or the offeree company to the media (whether in an interview or discussion or in an article, press release, letter or other document),

that material new information or significant new opinion should be required to be made available to all shareholders in the offeree company by means of the offeror or offeree company (as appropriate) at the same time publishing that information or opinion in an announcement published via a RIS.

2.8 The Code Committee notes that the publication of announcements via a RIS is the primary method by which regulatory information is communicated to market participants in the UK and considers that this is the most appropriate method for the publication by an offeror or the offeree company of material new information or significant new opinions relating to an offer or a party to an offer. The Code Committee also notes that, under Rule 26.1(a)(ii), subject to certain limited exceptions, any announcement published via a RIS by an offeror or the offeree company must also be published by that party on a website.

2.9 The Code Committee proposes to introduce a new Rule 20.1(b) to reflect the position described in paragraph 2.7 above, as set out at the end of this Section 2.

Q2 Should material new information or significant new opinions relating to an offer or a party to an offer which an offeror or the offeree company publishes, or which it provides to shareholders, other relevant persons or the media, be required to be published via a RIS at the same time?

(d) Other information relating to an offer

(i) Presentations and other documents

2.10 In order to ensure equality of information between all offeree company shareholders, the Code Committee considers that, in addition to the requirements in relation to material new information and significant new opinions set out in the proposed new Rule 20.1(b), if any presentation or other document relating to an offer is provided to, or used in any meeting with, any of the persons referred to in paragraph 2.7(b) above (acting in their capacity as such), the presentation or other document should be published on a website in accordance with Rule 26.1 promptly after it is so provided or used. The Code Committee considers that this requirement should apply regardless of:

- (a) whether the presentation or document contains any material new information or significant new opinion relating to the offer or a party to the offer; and
- (b) the manner in which the presentation or other document is transmitted or received, for example, whether it is provided in hard copy form, electronic form or by projecting it onto a screen or electronic device, and regardless of whether the person to whom it is provided retains a copy of the presentation or document.

- 2.11 The Code Committee proposes to introduce a new Rule 20.1(c)(i), as set out at the end of this Section 2, to reflect the position described above.
- 2.12 The Code Committee considers that a communication by an offeror or the offeree company with its employees, acting in their capacity as such, should not be required to be published on a website under the proposed new Rule 20.1(c)(i), even if certain employees are also shareholders in the offeree company, provided that the communication does not include any material new information or significant new opinion relating to the offer or a party to an offer. However, if the communication does include any material new information or significant new opinion relating to the offer or a party to the offer, the Code Committee considers that it should be published via a RIS at the same time in accordance with the proposed new Rule 20.1(b)(i). The Code Committee proposes to introduce a new Note 7 on Rule 20.1 to this effect, as set out in Appendix A.
- 2.13 The Code Committee notes that a presentation or other document relating to an offer or a party to an offer which was provided to, or used in any meeting with, a person interested in the debt securities of an offeror or the offeree company would fall within the proposed new Rule 20.1(c)(i). This is because the proposed new Rule 20.1(c)(i) cross-refers to the proposed new Rule 20.1(b)(ii), which covers a person who is “interested in securities (including debt securities) of an offeror or the offeree company”. However, the Code Committee notes that the proposed new Rule 20.2 referred to in Section 3 below applies only to meetings with persons interested in “relevant securities”, as defined in the Definitions Section of the Code (and that it is not proposed that the new Rule 20.2 should require meetings with persons who are interested only in non-convertible debt securities to be supervised by a financial adviser or corporate broker).
- 2.14 The Code Committee recognises that a presentation or other document which is provided or used in a meeting with a person referred to in paragraph 2.7(b) above will be updated from time to time and that different versions of the presentation or

document may be used in different meetings. The Code Committee does not consider that it would be necessary for every version of the presentation or document to continue to be published on a website or for an announcement to be published via a RIS every time an updated version is published on the website.

2.15 The Code Committee therefore proposes to introduce a new Note 8 on Rule 20.1, as set out in Appendix A. This would provide that:

- (a) if there are different versions of a presentation or other document, only the latest version need be published on a website, provided that it does not omit any relevant information or opinion which was included in a previous version; and
- (b) there would be no need to make an announcement when a presentation or document published on a website is replaced by a later version, unless the new version contained any material new information or significant new opinion relating to the offer or a party to the offer (in which case an announcement would be required to be made under the proposed new Rule 20.1(b)).

(ii) *Media communications*

2.16 The Code Committee considers that, if any article, letter or other written communication relating to an offer or a party to an offer is provided by or on behalf of an offeror or the offeree company to the media, it should be published on a website promptly following its publication by the media. The Code Committee considers that this requirement should apply regardless of whether the article, letter or other written communication contains any material new information or significant new opinion relating to the offer or a party to the offer. However, if any such material new information or significant new opinion is

- included, an announcement would be required to be made under the proposed new Rule 20.1(b).
- 2.17 The Code Committee proposes to introduce a new Rule 20.1(c)(ii) to reflect the position described above, as set out at the end of this Section 2.
- (iii) Requirement to publish an announcement via a RIS*
- 2.18 The Code Committee also considers that, at the same time as it publishes any presentation, document or media communication on a website, the offeror or the offeree company (as appropriate) should be required to publish an announcement via a RIS noting that it has been published on a website and including a link to the relevant webpage.
- 2.19 The Code Committee proposes to introduce a final paragraph to the new Rule 20.1(c) to reflect the position described above, as set out at the end of this Section 2.
- Q3 Should documents provided by an offeror or the offeree company to shareholders or other relevant persons, and written communications provided to and published by the media, be required to be published on a website?**
- Q4 Do you have any comments on the proposed new Note 7 on Rule 20.1 with regard to employee communications or the proposed new Note 8 on Rule 20.1 with regard to presentations and other documents?**
- (e) Provision of information prior to the commencement of an offer period or prior to the announcement of a firm or revised offer*
- 2.20 The Code Committee considers that there are certain circumstances in which it will be appropriate for information or opinions, including material new information or significant new opinions relating to an offer or a party to an offer,

to be provided in confidence by or on behalf of an offeror or the offeree company to one or more of the persons referred to in paragraph 2.7(b) above such that, for a limited period of time, certain offeree company shareholders may have different information and opinions available to them than is available to other shareholders.

2.21 For example, it is common for a potential offeror to meet with selected major shareholders in the offeree company in order to ascertain their views on a possible offer or to seek an irrevocable commitment to accept the offer. In the case of a meeting held prior to the commencement of an offer period, the fact of the possible offer will be confidential and it is therefore inevitable that material new information and/or significant new opinions will be provided at the meeting. The number of such meetings which may be held prior to the commencement of an offer period is, however, constrained by Rule 2.2(e), which provides that an announcement is required when negotiations or discussions relating to a possible offer are to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers). Such an announcement will have the effect of commencing an offer period. As explained in Practice Statement No 20 published by the Panel Executive (the “**Executive**”), the Executive interprets Rule 2.2(e) as meaning that a party to an offer will need to obtain the Panel’s consent prior to more than a total of six parties being approached about a possible offer (including not only shareholders but also, for example, potential providers of finance, customers and suppliers, and potential purchasers of assets).

2.22 In addition, the Code Committee notes that Practice Statement No 1 published by the Executive states that the Executive may agree to a meeting being held during an offer period at which material new information is forthcoming or significant new opinions are expressed, provided that the written confirmation given to the Executive in accordance with the current Note 3 on Rule 20.1 confirms that the information and/or opinions will be included in the firm offer announcement to be made under Rule 2.7.

2.23 The Code Committee considers that Rule 20.1 should provide for these circumstances in a proposed new Note 6 on Rule 20.1, as set out in Appendix A. This would provide that:

- (a) prior to the commencement of an offer period, material new information or significant new opinions relating to an offer or a party to an offer may be provided in confidence by or on behalf of an offeror or the offeree company to one or more of the persons referred to in paragraph 2.7(b) above, subject to the requirements of Rule 2.2(e);
- (b) during the offer period but prior to the announcement of a firm offer or of a revised offer, the Panel may consent to the provision of such information or opinions in confidence to one or more of the persons referred to in paragraph 2.7(b) above;
- (c) any such information or opinion which is so provided need not be published at that time in accordance with the proposed new Rule 20.1(b) but must be so published in, or by not later than the date of, either:
 - (i) the announcement of the firm or revised offer; or
 - (ii) where the information or opinion is provided by the offeree company and where the board of the offeree company is not recommending the offer, the first substantive announcement made by the board in response to the announcement of the offer; and
- (d) any presentation or other document provided to a person referred to in paragraph 2.7(b) above in such circumstances will not be required to be published on a website in accordance with Rule 20.1(c) at that time but must be so published promptly following:

- (i) the announcement of the firm or revised offer; or
- (ii) where the presentation or other document is provided by the offeree company and where the board of the offeree company is not recommending the offer, the first substantive announcement made by the board in response to the announcement of the offer.

Q5 Do you have any comments on the proposed new Note 6 on Rule 20.1 with regard to the provision of information prior to the commencement of an offer period or prior to the announcement of a firm or revised offer?

(f) Requirement to publish announcements via a RIS

2.24 Rule 2.9(a) provides that an announcement of an offer or possible offer, and certain other announcements made pursuant to the provisions of the Code which are specified in Note 1 on Rule 2.9, must be published via a RIS. If such an announcement is published outside normal business hours, Rule 2.9(b) requires that it must be submitted for release as soon as the relevant RIS re-opens and distributed to not less than two national newspapers and two newswire services in the UK.

2.25 The Code Committee considers that the requirements of Rule 2.9 should be extended so as to apply to all announcements which are required to be published under the Code. Given that Rule 30 is the principal Rule which governs the publication and distribution of announcements and documents relating to an offer, the Code Committee considers that Rule 2.9 should be deleted and that the requirements of Rules 2.9(a) and (b) should, in effect, be moved so as to become the proposed new Rules 30.1(a) and (b), as set out at the end of this Section 2.

2.26 In summary, the effect of the proposed amendments would be that any announcement required to be made under the Code, including under Rule 20.1 (as

proposed to be amended), would be required to be made in accordance with the proposed new Rule 30.1, which would provide that:

- (a) any announcement required to be published under the Code must be published via a RIS; and
- (b) if an announcement is published at a time when the relevant RIS is not open for business, it must be distributed to not less than two national newspapers in the UK and two newswire services operating in the UK and submitted for publication as soon as the relevant RIS re-opens.

Q6 Should all announcements required to be made under the Code be required to be published via a RIS and, if the relevant RIS is not open for business, be distributed to not less than two national newspapers in the UK and two newswire services operating in the UK?

(g) Ability for the Panel to require an announcement or document to be sent to offeree company shareholders

2.27 Whilst an announcement published via a RIS would normally be considered to be the most appropriate means of communicating material new information or significant new opinions to offeree company shareholders, the Code Committee considers that there may be circumstances in which, in addition, a document or a copy of the announcement should be sent to offeree company shareholders. For example, where an announcement is required to be made under Rule 27.1(a), Rule 27.1(b) includes an ability for the Panel also to require a document setting out the relevant information to be sent to offeree company shareholders.

2.28 The Code Committee considers that, in circumstances where an announcement is required to be published under the Code, the Panel should have the general ability, where appropriate, also to require a copy of the announcement (or a document which includes the contents of the announcement) to be sent to offeree

company shareholders, to the offeree company's employee representatives (or employees) and to the trustees of the offeree company's pension scheme(s). The Code Committee proposes to introduce a new Rule 30.1(c) to this effect, as set out at the end of this Section 2, and to include a cross-reference to the new Rule 30.1(c) in a proposed new Note 1 on Rule 20.1, as set out in Appendix A.

Q7 Should the Panel have the ability to require a copy of an announcement (or a document which includes the contents of the announcement) to be sent to the offeree company's shareholders, employee representatives and pension scheme trustees?

(h) Provision of information between the parties to an offer and to employee representatives and pension scheme trustees

2.29 The current Note 1 on Rule 20.1 confirms that Rule 20.1 does not prevent the furnishing of information in confidence by an offeree company to a bona fide potential offeror or vice versa. The Code Committee proposes to make certain minor amendments to this Note, as set out in Appendix A. Following the introduction of the proposed new Note 1 on Rule 20.1, as referred to above, the current Note 1 (as amended) would become the new Note 2 on Rule 20.1.

2.30 The first part of the current Note 6 on Rule 20.1 confirms that, subject to the secrecy requirements of Rule 2.1, the Code does not prevent the passing of information in confidence to employee representatives and pension scheme trustees acting in their capacity as such. The Code Committee proposes to make certain minor amendments to the first part of Note 6 on Rule 20.1 and to move it so as to become the new Note 3 on Rule 20.1, as set out in Appendix A. The final paragraph of the current Note 6 on Rule 20.1 confirms that meetings with employee representatives or pension scheme trustees acting in their capacity as such are not normally covered by the current Note 3 on Rule 20.1. The Code Committee proposes to move the final paragraph of Note 6 on Rule 20.1 so as to

become the new Note 5 on the proposed new Rule 20.2 (see Section 3 of this PCP).

(i) *Interviews and discussions with the media*

- 2.31 The current Note 2 on Rule 20.1 provides that parties to an offer must take particular care not to disclose new material in interviews or discussions with the media. The Note also provides that, if any new information is published as a result of such an interview or discussion, an announcement giving all relevant details must be made as soon as possible thereafter and that, where appropriate, the Panel may, in addition, require a document to be sent to offeree company shareholders.
- 2.32 The Code Committee proposes to delete Note 2 on Rule 20.1 on the basis that any material new information or significant new opinion relating to an offer or a party to an offer which is provided in an interview or discussion with the media will be covered by the proposed new Rule 20.1(b) and that the Panel's ability to require a party to an offer to send a document to offeree company shareholders in addition to making an announcement will be set out in the proposed new Rule 30.1(c). In addition, the cross-reference to Note 2 on Rule 20.1 in each of the current Note 1 on Rule 19.1 (Financial advisers' responsibilities for publication of information) and the current Rule 19.6 (Interviews and debates) would be amended so as to become a reference simply to Rule 20.1.
- 2.33 Separately, Note 1 on Rule 19.1 provides that advisers must warn their clients about the implications under the Code of interviews and discussions with the media and that, in appropriate circumstances, the Panel may require a "statement of retraction" of what was said. The Code Committee considers that, in certain circumstances, it may be appropriate for the Panel to require a statement of "clarification" rather than of retraction and proposes to amend Note 1 on

Rule 19.1, as set out in Appendix A, so as to provide that the Panel may require “a statement of clarification or retraction”.

(j) Investment analyst publications

2.34 Note 4 on Rule 20.1 sets out certain requirements in relation to circulars sent to a firm’s investment clients during an offer period where the firm is a connected adviser to, or is otherwise acting in concert with, the offeree company or an offeror. The Code Committee is proposing to make certain amendments to Note 4 on Rule 20.1. In particular, the Code Committee is proposing to make clear that the requirements of Note 4 on Rule 20.1 apply also to publications by an investment analyst which is remunerated by an offeror or the offeree company. Other than this, however, the proposed amendments to Note 4 on Rule 20.1, which are set out in Appendix A, are not intended to make any material alteration to the way in which the Note currently operates.

(k) Proposed amendments to the Code

2.35 The Code Committee proposes to:

(a) amend Rule 20.1, as follows:

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

(a) Except with the consent of the Panel or as provided in the Notes on Rule 20.1, information about parties and opinions relating to an offer or a party to an offer must be made 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.

(b) Subject to the Notes on Rule 20.1, if any material new information or significant new opinion relating to an offer or a party to an offer is:

(i) published by or on behalf of an offeror or the offeree company (other than in a document sent to offeree company shareholders and persons with information rights);

(ii) provided by or on behalf of an offeror or the offeree company to any shareholder in, or other person interested in any securities (including debt securities) of, an offeror or the offeree company, or to any investment manager, investment adviser or investment analyst; or

(iii) provided by or on behalf of an offeror or the offeree company to the media (whether in an interview or discussion or in an article, press release, letter or other document),

that information or opinion must, at the same time, be published in an announcement in accordance with Rule 30.1.

(c) In addition to the requirements of Rule 20.1(b), and regardless of whether the relevant material contains any material new information or significant new opinion:

(i) any presentation or other document relating to an offer or a party to an offer provided to, or used in any meeting (including any telephone call or meeting held by electronic means) with, any person referred to in paragraph (b)(ii) must be published on a website promptly after it is so provided or used; and

(ii) any article, letter or other written communication relating to an offer or a party to an offer provided to the media must be published on a website promptly following its publication by the media.

At the same time, the offeror or offeree company (as appropriate) must publish an announcement in accordance with Rule 30.1 noting that the relevant material has been published on a website and including a link to the relevant webpage.”;

(b) delete Rule 2.9 and introduce a new Rule 30.1, as follows:

“30.1 ANNOUNCEMENTS TO BE PUBLISHED VIA A RIS

(a) Any announcement required to be published under the Code must be published via a RIS.

(b) If an announcement is published at a time when the relevant RIS is not open for business, it must be distributed to not less than two national newspapers in the UK and two newswire services operating in the UK and submitted for publication as soon as the relevant RIS re-opens.

(c) Where appropriate, the Panel may also require a copy of any announcement (or a document which includes the contents of the announcement) to be sent to offeree company shareholders and persons with information rights, the offeree company's employee representatives (or employees) and the trustees of the offeree company's pension scheme(s) in accordance with the requirements of Rule 30.2."

- (c) introduce a new Note 1 on Rule 20.1, amend the current Note 1 on Rule 20.1 (and renumber it as Note 2), delete the current Note 2 on Rule 20.1, amend Notes 4 and 5 on Rule 20.1, make minor amendments to the first part of the current Note 6 on Rule 20.1 and renumber it as Note 3 on Rule 20.1, and introduce new Notes 6, 7 and 8 on Rule 20.1, all as set out in Appendix A; and
- (d) amend Note 1 on Rule 19.1, as set out in Appendix A.

Q8 Do you have any other comments on the amendments to the Code proposed in Section 2 of the PCP?

3. Meetings and telephone calls with shareholders and others

(a) *Background and introduction*

3.1 Note 3 on Rule 20.1 provides, in summary, that:

- (a) meetings between:
 - (i) representatives of the offeror or the offeree company or their respective advisers; and
 - (ii) shareholders of, or other persons interested in the securities of, either the offeror or the offeree company, analysts, brokers or others engaged in investment management or advice (“**relevant third parties**”)

may take place prior to or during an offer period, provided that no material new information is forthcoming and no significant new opinions are expressed;

- (b) if such meetings do take place, then, except with the consent of the Panel, they must be attended by an appropriate representative of the financial adviser or corporate broker to the offeror or the offeree company (a “**supervisor**”); and
- (c) that supervisor will be responsible for confirming in writing to the Panel, not later than 12 noon on the business day following the date of the meeting, that no material new information was forthcoming and no significant new opinions were expressed at the meeting.

- 3.2 The purpose of Note 3 on Rule 20.1 is to ensure that, to the extent that meetings take place between representatives of, or advisers to, an offeror or the offeree company and the relevant third parties described above, no material new information or significant new opinions about the offer or a party to the offer is provided selectively to those relevant third parties. Note 3 on Rule 20.1 therefore reflects the requirement in Rule 20.1 itself that information must be made equally available to all offeree company shareholders as nearly as possible at the same time and in the same manner. This is a fundamental requirement of the Code and, prior to the amendments made to the Code in 2006, it was a General Principle that “neither an offeror, nor the offeree company, nor any of their respective advisers may furnish information to some shareholders which is not made available to all shareholders”.
- 3.3 The principal safeguard provided in Note 3 on Rule 20.1 for ensuring that no material new information or significant new opinions are provided to relevant third parties is the requirement for the meeting to be supervised by a financial adviser or corporate broker. At the time when Note 3 on Rule 20.1 was introduced into the Code in its current form, in 1989, the Panel considered that the requirement for meetings to be supervised was justified given, in particular, the potential difficulty of remedying a breach of the requirement not to make information available to shareholders on a selective basis where the disclosure of the information in question to all shareholders would not be permitted under the Code. This would be the case if, for example, a profit forecast was provided at a meeting with selected shareholders but that profit forecast was not capable of being reported on in accordance with the requirements of Rule 28. The Code Committee considers that this reasoning continues to be correct.
- 3.4 Practice Statement No 1 published by the Executive sets out how the Executive normally interprets and applies certain provisions of Note 3 on Rule 20.1. The Practice Statement was originally published in February 2004 and was last amended in September 2013.

- 3.5 The Code Committee has reviewed Note 3 on Rule 20.1 as part of its review of the application of the Code to the communication and distribution of information during an offer. In the course of its review, the Code Committee instructed the Executive to undertake an informal pre-consultation with certain interested parties with regard to possible amendments which might be made to the Note.
- 3.6 Further to its review, the Code Committee has concluded that the requirements of Note 3 on Rule 20.1 continue to play an important function in ensuring that material new information and significant new opinions relating to an offer or a party to an offer are not made available to shareholders in the offeree company on a selective basis and, by extension, that all shareholders in the offeree company are afforded equivalent treatment in accordance with the requirements of General Principle 1. However, the Code Committee recognises that there are significant costs and practicalities associated with the requirement for meetings to be supervised by a financial adviser or corporate broker.
- 3.7 The Code Committee considers that the requirements of the Code which govern meetings between representatives of, or advisers to, an offeror or the offeree company and relevant third parties should be proportionate. In particular, the Code Committee considers that there may be circumstances where the reduced risks of a particular situation indicate that it may be appropriate to derogate from, or provide the Panel with the ability to grant a dispensation from, the requirements of the current Note 3 on Rule 20.1 without damaging the interests of shareholders in the offeree company and the market generally.
- 3.8 In summary, the Code Committee is proposing that the current Note 3 on Rule 20.1 should be deleted and that a new Rule 20.2, and Notes on the new Rule, should be introduced in its place. Broadly, the Code Committee considers that:

- (a) it should be made clear that the requirements of the proposed new Rule 20.2 apply not only to meetings but also to telephone calls;
- (b) a financial adviser or corporate broker to the offeror or offeree company (as appropriate) should be required to supervise a meeting or telephone call to which the proposed new Rule 20.2 applies and subsequently to provide a written confirmation to the Panel that no material new information or significant new opinion was provided if the meeting or telephone call takes place during one of the following periods:
 - (i) prior to the offer period (but only if the meeting or telephone call relates to a possible offer or would not be taking place but for the possible offer);
 - (ii) during the offer period but prior to the announcement of a firm offer;
or
 - (iii) following the announcement of a firm offer, but normally only if the offer is not recommended by the board of the offeree company or if there is a competitive situation;
- (c) subject to prior consultation with the Panel, there should normally be no requirement for a financial adviser or corporate broker to supervise a meeting or telephone call following the announcement of a firm offer which is recommended by the board of the offeree company and where there is no competitive situation. In such cases, a senior representative of the offeror or offeree company who attended the meeting or telephone call should normally be permitted to confirm in writing to the Panel that no material new information or significant new opinion was provided during the meeting or telephone call;

- (d) the requirement for a financial adviser or corporate broker to supervise a meeting or telephone call should not apply to meetings or telephone calls attended only by one or more advisers to the offeror or offeree company (other than a financial adviser or corporate broker) – for example, a public relations adviser – and one or more “sell-side” investment analysts. In such cases, a senior adviser who attended the meeting or telephone call should be permitted to confirm in writing to the Panel that no material new information or significant new opinion was provided during the meeting or telephone call;
 - (e) in any case where a representative of or adviser to an offeror or the offeree company (other than a financial adviser or corporate broker) is to provide a written confirmation to the Panel, the financial adviser to that party should be required to provide an appropriate briefing to the representative(s) or adviser(s) who will attend the meeting or telephone call as to the requirements of the proposed new Rule 20.2 and as to the information and opinions which may and may not be provided during the meeting or telephone call; and
 - (f) the requirement for a written confirmation to be provided to the Panel should not apply if the only persons who attended the meeting or telephone call on behalf of the offeror or the offeree company were one or more financial advisers or corporate brokers.
- 3.9 The elements of the proposed new Rule 20.2 are considered below and a summary table is set out in Appendix D.
- (b) ***Scope of the proposed new Rule 20.2***
 - (i) *“Meetings” includes telephone calls and meetings held by electronic means*

3.10 Note 3 on Rule 20.1 is currently expressed as applying to “meetings” between representatives of and advisers to an offeror or the offeree company and relevant third parties. The Code Committee considers that it should be made clear in the proposed new Rule 20.2 that it applies not only to meetings at which the participants are physically present but also to telephone calls and to meetings held by electronic means, such as video conferences. The Code Committee considers that it is not possible, for these purposes, to draw a meaningful distinction between meetings held in person, telephone calls and meetings held by electronic means, and that to do so would provide an obvious means of avoiding the requirements of the proposed new Rule 20.2.

3.11 The Code Committee therefore considers that it should be made clear in the proposed new Rule 20.2 that a reference to a meeting includes any telephone call or meeting held by electronic means.

Q9 Should a reference in the proposed new Rule 20.2 to a meeting include any telephone call or meeting held by electronic means?

3.12 References to “meetings” in the remainder of this Section 3 should be taken as references to physical meetings, telephone calls and meetings held by electronic means, unless the context requires otherwise.

(ii) Meetings to which the proposed new Rule 20.2 should apply: attendees

3.13 The Code Committee considers that, in terms of attendees, the meetings to which the proposed new Rule 20.2 should apply should be, in substance, the same as those to which the current Note 3 on Rule 20.1 applies.

3.14 However, although Note 3 on Rule 20.1 is currently expressed as applying to persons who are interested in the securities of either the offeror or the offeree company, the Code Committee understands that it is the practice of the Executive not to apply the Note to meetings with persons who are interested only in

securities, such as non-convertible bonds, which are not “relevant securities” for the purposes of the Code. The Code Committee agrees with this practice and considers that the application of the proposed new Rule 20.2 should be limited to meetings with persons who are interested in “relevant securities” of an offeror or the offeree company, as defined in the Definitions Section of the Code, i.e:

- “(a) securities of the offeree company which are being offered for or which carry voting rights;
- (b) equity share capital of the offeree company and an offeror;
- (c) securities of an offeror which carry substantially the same rights as any to be issued as consideration for the offer; and
- (d) securities of the offeree company and an offeror carrying conversion or subscription rights into any of the foregoing.”.

However, the Code Committee notes that the requirements of the new Rules 20.1(b) and (c) (as proposed in Section 2 of this PCP) would apply to information and opinions relating to an offer or a party to an offer which are provided to persons who are interested in any securities of an offeror or the offeree company (including debt securities).

3.15 The Code Committee therefore considers that the proposed new Rule 20.2 should apply to meetings attended by:

- (a) a representative of, or adviser to, an offeror or the offeree company; and
- (b) a shareholder in, or other person interested in relevant securities of, an offeror or the offeree company, or any investment manager, investment adviser or investment analyst.

Q10 Should the proposed new Rule 20.2 apply to meetings attended by (a) a representative of, or adviser to, an offeror or the offeree company and (b) a shareholder in, or other person interested in relevant securities of, an offeror

or the offeree company, or any investment manager, investment adviser or investment analyst?

(iii) *Meetings to which the proposed new Rule 20.2 should apply: relevant time periods*

3.16 As indicated above, Note 3 on Rule 20.1 currently applies to meetings which take place “prior to or during the offer period”.

3.17 As regards meetings which take place prior to the offer period, the Code Committee understands that it has been the recent practice of the Executive to regard Note 3 on Rule 20.1 as applying to all meetings between representatives of an offeror or the offeree company and a relevant third party which take place following the first active consideration of a possible offer (in the case of a potential offeror) or following the receipt of an approach regarding a possible offer (in the case of a potential offeree company). In the case of meetings which do not relate to the offer, and which would be taking place regardless of the possible offer, the Executive will normally grant a dispensation from the requirement for the meeting to be supervised by a financial adviser or corporate broker, and will agree that the written confirmation to the Panel required by Note 3 on Rule 20.1 may instead be given by a senior representative of the offeror or offeree company who attended the meeting. This is on the basis that the presence at the meeting of a financial adviser or corporate broker might amount to a “tipping off” of the relevant third party of the fact of the possible offer.

3.18 The Code Committee does not consider that it is necessary for the proposed new Rule 20.2 to apply to “ordinary course” meetings which take place prior to the commencement of an offer period, i.e. meetings at which the possible offer will not be discussed and which would have taken place regardless of the possible offer. The Code Committee considers that the risk of material new information or significant new opinions being provided at such meetings is low, recognises that such meetings will be subject to the legislation and regulations which govern the

passing of information outside of an offer period, and has concluded that there is no need for the Code to apply an additional level of regulation to such meetings.

3.19 The Code Committee therefore considers that the proposed new Rule 20.2 should apply to:

- (a) all meetings which take place during the offer period; and
- (b) meetings which take place prior to the commencement of the offer period, but only if the meeting relates to a possible offer or if it would not be taking place but for the possible offer.

Q11 Should the proposed new Rule 20.2 apply to (a) all meetings which take place during the offer period and (b) meetings which take place prior to the commencement of the offer period, but only if the meeting relates to a possible offer or if it would not be taking place but for the possible offer?

(iv) *Unscheduled meetings*

3.20 The current Note 3 on Rule 20.1 states that its provisions apply to all meetings described in the first paragraph of the Note “unless the meetings take place by chance”. The Code Committee considers that unscheduled meetings should not be excluded from the scope of the proposed new Rule 20.2 and does not therefore propose to carry this provision over into the proposed new Rule. The related issue of “incoming” telephone calls is discussed at paragraph 3.26 below.

(v) *Telephone campaigns and meetings regarding administrative matters*

3.21 The Code Committee considers that it should be made clear that the proposed new Rule 20.2 will not apply to telephone campaigns conducted in accordance with the requirements of the Code which regulate such campaigns. These requirements are currently to be found in Rule 19.5 and are proposed to be moved to a new

Rule 20.6 (see Section 5 of this PCP). In addition, the Code Committee considers that it should be made clear that the proposed new Rule 20.2 will not apply to “meetings” which relate solely to administrative matters, such as telephone calls in which retail shareholders raise administrative queries following the commencement of an offer period, telephone calls made for the purpose of scheduling an investment analysts’ conference call or telephone calls made for the purpose of establishing the number of shares held by a particular shareholder.

3.22 A new Note 4 on the proposed Rule 20.2 in relation to telephone campaigns and meetings regarding administrative matters is set out in Appendix A.

(vi) *Meetings with employee representatives or pension scheme trustees*

3.23 As mentioned in Section 2 above, the Code Committee proposes to move the final paragraph of the current Note 6 on Rule 20.1, which confirms that meetings with employee representatives or pension scheme trustees acting in their capacity as such are not normally covered by the current Note 3 on Rule 20.1, so as to become a new Note 5 on the proposed new Rule 20.2, as set out in Appendix A.

Q12 Do you have any other comments on the scope of the proposed new Rule 20.2?

(c) *Requirements of the proposed new Rule 20.2*

(i) *Supervision and prohibition on the provision of new information and opinions*

3.24 The Code Committee considers that the principal requirements of the proposed new Rule 20.2 should continue to be, in substance, the same as the principal requirements of the current Note 3 on Rule 20.1, namely that:

- (a) any meeting to which the Rule applies must be supervised by an appropriate financial adviser or corporate broker to the offeror or offeree company (as appropriate); and
- (b) no material new information or significant new opinion relating to the offer or a party to the offer may be provided during the meeting.

3.25 In the case of a physical meeting (as opposed to a telephone call or a meeting held by electronic means), the Code Committee considers that the supervisor should be present in person with the other attendees. This is on the basis that the Code Committee does not believe that it would be possible for such a meeting to be appropriately supervised by telephone or other electronic means. In the case of a telephone call or meeting held by electronic means, the Code Committee considers that it would be sufficient for the supervisor to be present by telephone or other electronic means, i.e. that it would not be necessary for the supervisor to be present in person with one or more of the other attendees.

3.26 The Code Committee recognises that, on occasion, a representative of, or adviser to, an offeror or the offeree company may receive an unscheduled incoming telephone call from a relevant third party during a period in which the proposed new Rule 20.2 will apply. In such circumstances, the Code Committee considers that the representative or adviser should either arrange for a supervisor immediately to join the call or should terminate the call and arrange for it to be reconvened with a supervisor in attendance.

Q13 Should the proposed new Rule 20.2 provide that (a) any meeting to which the Rule applies must be supervised by an appropriate financial adviser or corporate broker to the offeror or offeree company (as appropriate) and (b) no material new information or significant new opinion relating to the offer or a party to the offer may be provided during the meeting?

(ii) *Written confirmation to the Panel*

3.27 In addition, the Code Committee considers that, as under the current Note 3 on Rule 20.1, the proposed new Rule 20.2 should require a supervisor to provide a written confirmation to the Panel by not later than 12 noon on the business day following the meeting. The Code Committee proposes that the written confirmation should confirm:

- (a) the names and functions of the individuals who attended the meeting; and
- (b) that no material new information or significant new opinion relating to the offer or a party to the offer was provided at the meeting by any representative of, or adviser to, the offeror or offeree company (as appropriate).

Q14 Should a supervisor of a meeting to which the proposed new Rule 20.2 applies be required to confirm the names and functions of the individuals who attended the meeting in addition to the matters required to be confirmed under the current Note 3 on Rule 20.1?

(iii) *Responsibilities of a financial adviser*

3.28 Under the current Note 3 on Rule 20.1, the financial adviser to the offeror or offeree company (as appropriate) must ensure that no meetings to which the Note applies are arranged without its knowledge. The Code Committee does not propose to carry this requirement over into the proposed new Rule 20.2 as it considers that the responsibilities of financial advisers are clearly set out in section 3(f) of the Introduction to the Code, the relevant sentence of which provides as follows:

“Financial advisers to whom the Code applies have a particular responsibility to comply with the Code and to ensure, so far as they are reasonably able, that their client and its directors are aware of their

responsibilities under the Code and will comply with them and that the Panel is consulted whenever appropriate.”.

(d) Meetings which take place prior to the commencement of an offer period or prior to the announcement of a firm or revised offer

3.29 As mentioned in Section 2(e) of this PCP, certain meetings may take place prior to the commencement of an offer period or prior to the announcement of a firm or a revised offer. For example, an offeror may wish to meet with selected major shareholders in the offeree company in order to ascertain their views on a possible offer or revised offer or to seek an irrevocable commitment to accept it. In Section 2(e), the Code Committee has proposed the introduction of a new Note 6 on Rule 20.1, which would cover the provision of information at such meetings.

3.30 Given that the fact of the possible or revised offer will be confidential, it is inevitable that material new information and/or significant new opinions will be provided at a meeting at which the possible or revised offer is discussed. Note 3 on Rule 20.1 therefore provides that the financial adviser or corporate broker who supervises a meeting held prior to an offer period should confirm that no material new information was forthcoming and no significant new opinions were expressed “which will not be included in the announcement of the offer to be made under Rule 2.7, if and when such announcement is made”. Similarly, Practice Statement No 1 published by the Executive states that, in the case of a meeting being held during an offer period, the written confirmation given to the Executive should be that any information and/or opinions provided at the meeting will be included in the announcement to be made under Rule 2.7.

3.31 To reflect these arrangements, the Code Committee proposes to introduce a Note 1 on the proposed new Rule 20.2, as set out at the end of this Section 3. This would provide that, in the case of a meeting which takes place prior to the commencement of an offer period or prior to the announcement of a firm or revised offer and at which any material new information or significant new

opinion relating to an offer or a party to an offer is provided in accordance with the proposed new Note 6 on Rule 20.1, the financial adviser or corporate broker who supervises the meeting must, by not later than 12 noon on the following business day, confirm in writing to the Panel:

- (a) the names and functions of the individuals who attended the meeting; and
- (b) that any material new information or significant new opinion which was so provided (brief details of which must be included in the confirmation) will be published in, or by not later than the date of, the announcement of the firm or revised offer or, where the information or opinion is provided by the offeree company and where the board of the offeree company is not recommending the offer, the first substantive announcement made by the board in response to the announcement of the offer.

Q15 Do you have any comments on the proposed Note 1 on the new Rule 20.2 in relation to meetings which take place prior to the commencement of an offer period or prior to the announcement of a firm or revised offer?

(e) Meetings which take place following the announcement of a recommended firm offer

3.32 As indicated above, the Code Committee recognises that there are significant costs and practicalities associated with the requirement for meetings to be supervised by a financial adviser or corporate broker.

3.33 The Code Committee understands that, in recent years, the Executive has received requests on an increasingly frequent basis for dispensations from the requirements of Note 3 on Rule 20.1, particularly in the case of recommended offers which have long offer periods, owing to, for example, the requirement to obtain official authorisations and regulatory clearances. In such cases, it has been submitted, and often accepted by the Executive, that there is no need for meetings to be

supervised by a financial adviser or corporate broker and that a sufficient safeguard would be for a written confirmation to the Panel in the terms required by Note 3 on Rule 20.1 to be provided by an appropriately briefed senior representative of the offeror or the offeree company who attends the meeting. Such dispensations have been granted on the basis that, following the announcement of a firm offer which has been recommended by the board of the offeree company, there is a significant reduction in the risk of the requirement in Rule 20.1 that all shareholders should receive the same information as nearly as possible at the same time and in the same manner being breached.

- 3.34 The Code Committee agrees with the Executive's approach to the granting of dispensations from the requirements of Note 3 on Rule 20.1 in such circumstances and considers that the requirements of the Code which govern meetings between representatives of, or advisers to, an offeror or the offeree company and relevant third parties should be proportionate. The Code Committee considers that a meeting which takes place following the announcement of a recommended firm offer is an example of a circumstance where the reduced risks of the situation indicate that it may be appropriate to provide the Panel with the ability to grant a dispensation from the requirements of the current Note 3 on Rule 20.1 without damaging the interests of shareholders in the offeree company and the market generally.
- 3.35 In the light of the above, the Code Committee considers that the proposed new Rule 20.2 should provide that, in the case of meetings which take place following the announcement of a recommended firm offer and where there is no competitive situation, the Panel will normally, subject to prior consultation, grant a dispensation from the requirement for the meetings to be supervised by a financial adviser or corporate broker, provided that:
- (a) the financial adviser to the offeror or offeree company (as appropriate) must provide an appropriate briefing to the representative(s) of, or

adviser(s) to, the offeror or offeree company who will attend the meetings as to the requirements of Rule 20.2 and as to the information and opinions which may and may not be provided at the meetings; and

- (b) a senior representative of, or adviser to, the offeror or offeree company who attends any meeting must, by not later than 12 noon on the following business day, confirm in writing to the Panel the matters set out in paragraph 3.27 above.

3.36 The Code Committee considers that the proposed new Rule 20.2 should also make clear that the Panel may at any time withdraw any dispensation which it has granted and that it will normally do so if, for example, the board of the offeree company withdraws its recommendation, a competitive situation arises or some other material development occurs.

Q16 Do you have any comments on the proposal to give the Panel the ability to grant dispensations from the provisions of the proposed new Rule 20.2 in relation to meetings following the announcement of a recommended firm offer?

(f) Meetings attended by advisers only (and not also by a representative of the offeror or offeree company)

(i) Financial advisers and corporate brokers

3.37 The Code Committee has considered the question of whether, if a meeting is attended only by one or more financial advisers or corporate brokers to an offeror or the offeree company (and not by a representative of, or other adviser to, that party) and a relevant third party, the financial adviser or corporate broker should be required to provide a written confirmation to the Panel by not later than 12 noon on the business day following the meeting.

3.38 The Code Committee has concluded that, whilst a financial adviser or corporate broker should be restricted from providing material new information or significant new opinions at such a meeting, it would be unnecessary to require a financial adviser or corporate broker to confirm in writing to the Panel that this requirement was observed at the meeting. This is on the basis that it should not be necessary for a supervisor to confirm its own compliance with the relevant provisions of the Code.

Q17 Should the requirement for a confirmation in writing to be provided to the Panel by not later than 12 noon on the business day following a meeting be disapplied in the case of meetings attended only by one or more financial advisers or corporate brokers and one or more relevant third parties?

(ii) *Meetings between advisers (other than financial advisers and corporate brokers) and investment analysts*

3.39 The Code Committee considers that, consistent with the current Note 3 on Rule 20.1, the requirements of the proposed new Rule 20.2 should generally apply to a meeting between an adviser to an offeror or the offeree company and a relevant third party. However, during the informal pre-consultation undertaken by the Executive on the Code Committee's behalf, it was suggested that it should not be necessary to require a financial adviser or corporate broker to supervise a meeting or telephone call attended only by:

- (a) one or more advisers (other than a financial adviser or corporate broker) to an offeror or the offeree company, for example, a public relations adviser; and
- (b) one or more "sell-side" investment analysts, i.e. an investment analyst who is employed to undertake research on companies and whose reports are made available to the firm's clients (as opposed to a "buy-side" investment analyst who is employed or engaged by a shareholder, investment manager

or investment adviser to undertake research on companies for the benefit of the organisation by whom the analyst is employed or engaged).

3.40 As indicated above, the Code Committee considers that there may be circumstances where the reduced risks of a particular situation indicate that it may be appropriate to derogate from the requirements of the proposed new Rule 20.2 without damaging the interests of shareholders in the offeree company and the market generally. The Code Committee considers that a meeting attended only by one or more advisers (other than a financial adviser or corporate broker) to an offeror or the offeree company and one or more “sell-side” investment analysts would be such a circumstance. This is on the basis that the Code Committee has been informed that:

- (a) in practice, the purpose of such meetings (which will usually take the form of telephone calls) is usually to understand the views of such “sell-side” investment analysts or to discuss administrative matters, rather than for the adviser to provide information or opinions on the offer or a party to the offer to the “sell-side” investment analyst, or for the “sell-side” investment analyst to seek information or opinions from the adviser; and
- (b) moreover, “sell-side” investment analysts tend to place less reliance on information and opinions provided by an adviser than on information and opinions provided directly by a representative of an offeror or the offeree company.

3.41 Therefore, in the case of meetings attended only by one or more such advisers and one or more “sell-side” investment analysts, the Code Committee proposes to disapply the requirement for the meetings to be supervised by a financial adviser or corporate broker, provided that:

- (a) the financial adviser to the offeror or offeree company (as appropriate) provides an appropriate briefing to the adviser(s) who will attend the meetings as to the requirements of Rule 20.2 and as to the information and opinions which may and may not be provided at the meetings; and
- (b) a senior adviser who attends any meeting must confirm in writing to the Panel, by not later than 12 noon on the following business day, the matters described in paragraph 3.27 above.

3.42 If the Code Committee becomes aware that, during such meetings, advisers are seeking to provide information or opinions on the offer or a party to the offer to “sell-side” investment analysts, or such analysts are seeking such information or opinions from advisers, the Code Committee considers that it might no longer be appropriate to disapply the requirement under the proposed new Rule 20.2 for such meetings to be supervised by a financial adviser or corporate broker.

Q18 Do you have any comments on the proposed treatment of meetings attended only by one or more advisers to an offeror or the offeree company (other than a financial adviser or corporate broker) and one or more “sell-side” investment analysts (as described in paragraph 3.39(b) of this PCP)?

(g) *Proposed amendments to the Code*

3.43 The Code Committee proposes to delete the current Note 3 on Rule 20.1 and to introduce a new Rule 20.2, as follows:

**“20.2 MEETINGS AND TELEPHONE CALLS WITH
SHAREHOLDERS AND OTHERS”**

(a) This Rule 20.2 applies to meetings (including any telephone call or meeting held by electronic means) attended by:

(i) a representative of, or adviser to, an offeror or the offeree company; and

(ii) a shareholder in, or other person interested in relevant securities of, an offeror or the offeree company, or any investment manager, investment adviser or investment analyst,

which take place either during an offer period or prior to the commencement of an offer period (but, in the case of the latter, only if the meeting relates to a possible offer or would not be taking place but for the possible offer).

(b) Except with the consent of the Panel or as provided in the Notes on Rule 20.2:

(i) any meeting described in paragraph (a) must be attended by an appropriate financial adviser or corporate broker to the offeror or offeree company (as appropriate); and

(ii) no material new information or significant new opinion relating to the offer or a party to the offer may be provided during the meeting.

(c) A financial adviser or corporate broker who attends a meeting in accordance with Rule 20.2(b)(i) must, by not later than 12 noon on the following business day, confirm in writing to the Panel:

(i) the names and functions of the individuals who attended the meeting; and

(ii) that no material new information or significant new opinion relating to the offer or a party to the offer was provided at the meeting by any representative of, or adviser to, the offeror or offeree company (as appropriate).

NOTES ON RULE 20.2

1. Meetings prior to the commencement of an offer period or prior to the announcement of a firm or revised offer

In the case of a meeting which takes place prior to the commencement of an offer period or prior to the announcement of a firm or revised offer and at which material new information or significant new opinions relating to an offer or a party to an offer is provided in accordance with Note 6 on Rule 20.1, the financial adviser or corporate broker who attends the meeting must, by not later than 12 noon on the following business day, confirm in writing to the Panel:

(a) the names and functions of the individuals who attended the meeting; and

(b) that any material new information or significant new opinion which was so provided (brief details of which must be included in the confirmation) will be published in, or by not later than the date of, the announcement of the firm or revised offer or, where the information or opinion is provided by the offeree company and where the board of the offeree company is not recommending the offer, the first substantive announcement made by the board in response to the announcement of the offer.

2. Meetings following the announcement of a recommended firm offer

(a) In the case of meetings which take place following the announcement of a recommended firm offer and where there is no competitive situation, the Panel will normally, subject to prior consultation, grant a dispensation from the requirement for the meetings to be attended by a financial adviser or corporate broker in accordance with Rule 20.2(b)(i), provided that:

(i) the financial adviser to the offeror or offeree company (as appropriate) provides an appropriate briefing to the representative(s) of, or adviser(s) to, the offeror or offeree company who will attend the meetings as to the requirements of Rule 20.2 and as to the information and opinions which may and may not be provided at the meetings; and

(ii) a senior representative of, or adviser to, the offeror or offeree company who attends any meeting must, by not later than 12 noon on the following business day, confirm in writing to the Panel the matters set out in paragraphs (i) and (ii) of Rule 20.2(c).

(b) The Panel may withdraw a dispensation granted under paragraph (a) at any time and will normally do so if, for example, the board of the offeree company withdraws its recommendation, a competitive situation arises or some other material development occurs. The Panel should be consulted in the case of any doubt as to whether a dispensation should continue to apply.

3. Meetings attended by advisers only (and not also by a representative of the offeror or offeree company)

(a) In the case of meetings attended only by:

(i) one or more financial advisers and/or corporate brokers to an offeror or the offeree company; and

(ii) one or more of the persons referred to in paragraph (ii) of Rule 20.2(a),

the requirement in Rule 20.2(c) for a confirmation in writing to be provided to the Panel by not later than 12 noon on the following business day will not apply.

(b) In the case of a meeting attended only by:

(i) one or more advisers (other than a financial adviser or corporate broker) to an offeror or the offeree company; and

(ii) one or more “sell-side” investment analysts,

the requirement in Rule 20.2(b)(i) for the meeting to be attended by a financial adviser or corporate broker will not apply, provided that:

(iii) the financial adviser to the offeror or offeree company (as appropriate) provides an appropriate briefing to the adviser(s) who will attend the meeting as to the requirements of Rule 20.2 and as to the information and opinions which may and may not be provided at the meeting; and

(iv) a senior adviser who attends the meeting must confirm in writing to the Panel, by not later than 12 noon on the following business day, the matters set out in paragraphs (i) and (ii) of Rule 20.2(c).”.

3.44 In addition, the proposed new Notes 4 and 5 on Rule 20.2 are set out in Appendix A.

Q19 Do you have any comments on the proposed new Rule 20.2?

4. Videos, social media and websites

(a) Videos published by a party to an offer

- 4.1 The Code Committee notes that videos may be used by an offeror or the offeree company as a means of communicating information or opinions relating to an offer or to the party itself. However, the Code does not currently contain any specific provisions in relation to the use of videos.
- 4.2 The Code Committee considers that, if an offeror or the offeree company publishes such a video, it should comprise only a director or senior executive reading from a script or participating in a scripted interview. The Code Committee considers that it is appropriate to include such limitations on the way in which a video published by an offeror or the offeree company is presented and considers that a video which did not comply with these limitations would be likely to be regarded as an advertisement subject to Rule 19.4 (see further Section 5 of this PCP).
- 4.3 Given the concerns associated with videos which include information or opinions relating to an offer or a party to an offer, the Code Committee considers that an offeror or offeree company which wishes to publish such a video should be required to obtain the Panel's prior consent. In addition, the Code Committee considers that the video should be published on a website at the time of publication and that the offeror or offeree company should publish an announcement via a RIS noting that the video has been published and including a link to the relevant webpage.
- 4.4 The Code Committee proposes to introduce a new Rule 20.3 in relation to the use of videos, as set out at the end of this Section 4.

Q20 Should the new Rule 20.3 in relation to the use of videos be introduced as proposed?

(b) *Social media*

4.5 The Code Committee recognises that an offeror or offeree company may wish to communicate information or opinions relating to an offer or to the party itself via social media, such as Twitter or Facebook. The Code Committee notes that, as with any other information published, or statement made, during the course of an offer, information or opinions published via social media will need to comply with the standards of care and presentation set out in Rule 19.1.

4.6 The Code Committee considers that the information or opinions relating to an offer or a party to an offer which are published by an offeror or offeree company via social media should be limited to the information and opinions which are published by the offeror or offeree company via a RIS or via its website. The Code Committee considers that the Code should provide that social media should not be used by or on behalf of an offeror or offeree company to publish information relating to an offer or a party to an offer, other than for the publication of:

- (a) the full text of an announcement which has been published via a RIS;
- (b) the full text of a document which has been published on a website in accordance with the relevant provisions of the Code; or
- (c) a notification of a link to the webpage on which such an announcement or document has been published, which notification must comply with the requirements of (what will become) paragraph (b) of the Note on the definition of “website notification” in the Definitions Section of the Code, i.e. that:

- (i) the information in the notification must be confined to non-controversial information about the offer or a party to the offer and should not include any argument or opinion; and
- (ii) the notification should not include a recommendation to take or not to take any action in relation to, or contain any view on the merits of, the offer except for a factual statement as to whether or not the offer is proceeding with the recommendation of the offeree company board.

4.7 The Code Committee proposes to introduce a new Rule 20.4 in relation to the use of social media, as set out at the end of this Section 4, and to make certain minor and formatting amendments to the definition of “website notification”, as set out in Appendix A.

Q21 Should the new Rule 20.4 in relation to the use of social media be introduced as proposed?

(c) Documents to be published on a website

4.8 Rule 26 sets out the documents, announcements and information which must be published on a website by an offeror or the offeree company. Rule 26.1 provides that the following documents, announcements and information must be published on a website by the offeror or offeree company:

- (a) any document or information in relation to an offer sent to offeree company shareholders or other relevant persons in accordance with the current Rule 30.1; and
- (b) any announcement (other than an announcement referred to in the current Note 8 on Rule 26) published via a RIS (whether related to the offer or not).

- 4.9 In order that all documents, announcements and information required by the Code to be published on a website are included in Rule 26, the Code Committee proposes to amend Rule 26.1(a) so as also to provide that an offeror or the offeree company must publish on its website any document or information required to be published on a website under Rule 20.1 or any other provision of the Code (other than Rules 26.2 or 26.3), as set out at the end of this Section 4.
- 4.10 The Code Committee notes that Rule 26.1 requires the relevant documents, announcements and information to be published on a website by no later than 12 noon on the business day following the date of the relevant document, announcement or information and that Rule 26.2 requires the relevant documents to be published on a website by no later than 12 noon on the business day following the announcement of a firm intention to make an offer. The Code Committee considers that it is now possible to publish documents, announcements and information on a website significantly more quickly than was the case when the requirement for website publication was initially introduced into the Code. The Code Committee therefore proposes to amend Rule 26.1 so as to require the relevant documents, announcements and information to be published on a website promptly following the publication of the relevant document, announcement or information and also to amend Rule 26.2 so as to require the relevant documents to be published on a website promptly following the publication of the announcement of a firm intention to make an offer, as set out at the end of this Section 4.
- 4.11 The Code Committee recognises that the length of time that it will take for documents, announcements and information to be published on a website will vary from case to case and will depend on factors such as the stage which the offer has reached at the relevant time and the time of day at which the document, announcement or information is initially published. The Code Committee considers that the requirement for documents, announcements and information to

be published on a website promptly should be regarded as a requirement to publish the documents, announcements and information as soon as practicable, taking into account what is reasonable in all the circumstances.

4.12 In addition, in view of the proposed introduction of the new Rule 20.1(c), the Code Committee proposes to delete Note 7 on Rule 26, which currently provides that the publication of documents, announcements and information on a website will not satisfy the obligation in Rule 20.1 to make information equally available to all offeree company shareholders.

4.13 Further, in view of the proposed introduction of the new Note 8 on Rule 20.1 in relation to presentations and other information, and the fact that there will normally be no need to make an announcement when an updated version of a presentation is made available on a website, the Code Committee is proposing to introduce an exception to the requirement for an announcement to be made under Note 5 on Rule 26, as set out in Appendix A.

Q22 Should the amendments to Rule 26 in relation to the publication of documents on a website be made as proposed?

(d) Proposed amendments to the Code

4.14 The Code Committee proposes to:

(a) introduce a new Rule 20.3, as follows:

“20.3 VIDEOS

(a) A video published by an offeror or the offeree company which includes any information or opinions relating to an offer or a party to an offer must comprise only a director or senior executive reading from a script or participating in a scripted interview. Any such video may be published only with the prior consent of the Panel.

(b) A video to which paragraph (a) applies must be published on a website. At the same time, the offeror or offeree company must publish an announcement in accordance with Rule 30.1 noting that the video has been published on a website and including a link to the relevant webpage.”;

- (b) introduce a new Rule 20.4, as follows:

“20.4 SOCIAL MEDIA

Social media must not be used by or on behalf of an offeror or the offeree company to publish information relating to an offer or a party to an offer, other than for the publication of:

(a) the full text of an announcement which has been published in accordance with Rule 30.1(a);

(b) the full text of a document which has been published on a website in accordance with the relevant provisions of the Code; or

(c) a notification of a link to the webpage on which such an announcement or document has been published, which notification must comply with the requirements of paragraph (b) of the Note on the definition of website notification.”;

- (c) amend the Note on the definition of “website notification”, as set out in Appendix A;
- (d) amend Rules 26.1 and 26.2, as follows:

“26.1 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO BE PUBLISHED ON A WEBSITE DURING AN OFFER

(a) The following documents, announcements and information must be published on a website by the offeror or offeree company, as relevant, ~~by no later than 12 noon on the business day following the date of the~~ promptly following the publication of the relevant document, announcement or information:

- (i) any document or information in relation to an offer sent to offeree company shareholders, persons with information**

rights or other relevant persons in accordance with Rule 30.12;
~~or~~

(ii) any announcement (other than an announcement referred to in Note 87 below) published via a RIS (whether related to the offer or not); and

(iii) any document or information required to be published on a website under Rule 20.1 or any other provision of the Code (other than Rules 26.2 or 26.3).

...

26.2 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE ANNOUNCEMENT OF A FIRM OFFER

The following documents must be published on a website ~~by no later than 12 noon on the business day following~~ promptly following the publication of the announcement of a firm intention to make an offer (or, if later, the date of the relevant document):”; and

- (e) amend Note 5 on Rule 26 and delete Note 7 on Rule 26, as set out in Appendix A.

5. Advertisements and telephone campaigns

(a) *Advertisements*

(i) *Review of Rule 19.4*

5.1 Rule 19.4 provides that the publication of advertisements connected with an offer is prohibited unless the advertisement falls within one of the categories listed in paragraphs (i) to (ix) of Rule 19.4. In addition, Rule 19.4 provides that, except where the advertisement falls within category (i) (product advertisements not bearing on an offer or potential offer) or category (viii) (advertisements which are notices relating to a scheme of arrangement), it must be cleared with the Panel in advance.

5.2 Certain of the categories set out in Rule 19.4 relate to advertisements that expressly refer to an offer, for example, category (iii) (advertisements confined to non-controversial information about an offer, such as reminders as to closing times or the value of an offer) and category (viii) (as described above).

5.3 Certain of the other categories relate to advertisements which do not expressly refer to the offer but which may be “connected with an offer”. For example, categories (i) and (ii) permit, respectively, product and corporate image advertisements “not bearing on an offer or potential offer”, category (iv) permits advertisements comprising preliminary or interim results and their accompanying statement (provided the latter is not used for argument or invective concerning the offer) and category (v) permits advertisements giving information, the publication of which by advertisement is required or specifically permitted by the UKLA Rules.

5.4 The Code Committee considers that certain of the categories set out in Rule 19.4 are unnecessary. For example, the Code Committee does not believe that

- category (vii) (advertisements comprising a tender offer under Appendix 5 of the Code) is necessary as advertisements published in connection with a tender offer are regulated by the provisions of Appendix 5 itself. The Code Committee also believes that it is unnecessary for there to be a specific category for advertisements published with the specific prior consent of the Panel (category (ix)) and notes that, under section 2(c) of the Introduction to the Code, the Panel may grant a derogation from the application of a rule if it would operate in an unnecessarily restrictive or burdensome or otherwise inappropriate manner.
- 5.5 In addition, the Code Committee has been advised that category (viii) (advertisements which are notices relating to a scheme of arrangement) is no longer necessary. This is because such notices relate to schemes of arrangement which involve a reduction of capital, which is no longer permitted in the context of a scheme of arrangement to effect a takeover (see section 641 of the Companies Act 2006, as amended by the Companies Act (Amendment of Part 17) Regulations 2015).
- 5.6 Further, the Code Committee notes that bearer shares are no longer permitted in the UK following the coming into effect of the relevant provisions of the Small Business, Enterprise and Employment Act 2015. Bearer debt securities will continue to exist and the Code Committee considers that the Panel would be likely to consent to the publication of an advertisement communicating information to the holders of those securities but considers that it is not necessary to retain a specific category of exception (currently category (vi)) for such advertisements in the proposed new Rule 20.5.
- 5.7 Otherwise, the Code Committee considers that the prohibition on the publication of advertisements in Rule 19.4 should continue to apply. However, the Code Committee proposes to amend Rule 19.4 in certain respects, including by:

- (a) broadening the scope of the prohibition from advertisements “connected with an offer” to advertisements published “during the course of an offer”. This is intended to avoid potential confusion arising from the Rule prohibiting advertisements which are “connected with an offer” and then providing exceptions for advertisements “not bearing on an offer”. However, given that the exceptions to the prohibition will remain broadly the same, including product advertisements and corporate image advertisements which do not relate to the offer, the Code Committee does not believe that this will affect the way that the Rule operates in practice;
 - (b) replacing the references to an “offer or potential offer” with references simply to an “offer”, on the basis that the definition of “offer” in the Definitions Section of the Code already covers both firm offers and possible offers;
 - (c) deleting certain categories of exception to the prohibition, namely categories (vi), (vii), (viii) and (ix) (as described above); and
 - (d) making certain minor and clarificatory amendments to the remaining exceptions to the prohibition.
- 5.8 As indicated above, the Code Committee does not intend that the proposed amendments should alter the current operation of Rule 19.4 in any material way.
- 5.9 In addition, the Code Committee proposes to delete Notes 2, 3, 4 and 5 on Rule 19.4, on the basis that they are either unnecessary or will be superseded by new provisions proposed elsewhere in this PCP.
- 5.10 Further, the Code Committee considers that Rule 19.4, as proposed to be amended, should be included within Rule 20, as a new Rule 20.5, on the basis that it should logically follow the provisions relating to the methods of communication

of information and opinions relating to an offer or a party to an offer in Rules 20.1 to 20.4 (as proposed to be amended and introduced).

- 5.11 The proposed new Rule 20.5 is set out at the end of this Section 5, marked to show amendments to the current Rule 19.4. In Appendix A, Rule 19.4 is shown as being deleted and the proposed Rule 20.5 is shown as a new Rule.

Q23 Should Rule 19.4 (Advertisements) be amended (and renumbered as Rule 20.5) as proposed?

(ii) *Advertisements and responsibility statements*

- 5.12 Rule 19.1 provides that each document, announcement or other information published, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy. In addition, under Rule 19.2(a), each document or advertisement published in connection with an offer by, or on behalf of, the offeror or the offeree company must include a statement (a “**responsibility statement**”) by the directors of the offeror or the offeree company (as appropriate) that they:

“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 requirement does not apply to advertisements which contain only information already published in a circular which included an appropriate responsibility statement (Rule 19.2(a)(ii)) or to advertisements falling within certain of the paragraphs of Rule 19.4, i.e. product advertisements, corporate image advertisements and notices relating to a scheme of arrangement (Rule 19.2(a)(i)).

5.13 The Code Committee considers that it is unnecessary for Rule 19.2 to require a responsibility statement to be included in any advertisement published in connection with an offer, particularly given that the requirements of Rule 19.1 will in any event apply to the advertisement, and considers that it would be sufficient for the requirements of Rule 19.2 to apply only to documents published in connection with an offer. The Code Committee has been informed by the Executive that it is not aware of any recent cases in which there has been an issue with an advertisement complying with the requirements of Rule 19.1. The Code Committee therefore proposes to amend Rule 19.2 accordingly, as set out at the end of this Section 5, and to delete the references to advertisements in the Notes on Rule 19.2, as set out in Appendix A. The reference to advertisements in Note 1 on Rule 3.2 would also be deleted.

5.14 Separately, the Code Committee proposes to make clear in Rule 19.2 itself that the information referred to in Rule 19.2 includes any expressions of opinion included in a document published in connection with an offer. The fact that the Panel regards responsibility statements as applying also to expressions of opinion is currently to be found in Note 2 on Rule 19.2, which would be deleted.

(iii) Application of Rule 19.1 to advertisements and to the use of other media

5.15 Note 5 on Rule 19.1 provides that if media other than the documents and announcements referred to in Rule 19.1 are to be used, even when they do not constitute advertisements, the Panel must be consulted in advance.

5.16 The Code Committee considers that, assuming that the other amendments proposed in this PCP are adopted, it will no longer be necessary to retain Note 5 on Rule 19.1 in the Code and therefore proposes to delete it.

Q24 Should Rule 19.2 (Responsibility) and Note 1 on Rule 3.2 be amended, and Note 5 on Rule 19.1 (Use of other media) be deleted, as proposed?

(b) *Telephone campaigns*

5.17 Rule 19.5 relates to campaigns conducted on behalf of an offeror or the offeree company in which shareholders or other persons interested in shares are contacted by telephone. The Code Committee proposes to make certain minor amendments to Rule 19.5, and to Note 1 on Rule 19.5, as set out below. In addition, the Code Committee proposes to:

- (a) delete Note 2 on Rule 19.5 (New information) on the basis that it will be unnecessary, assuming that the amendments to Rule 20.1 proposed in this PCP are adopted; and
- (b) delete Note 3 on Rule 19.5 (Gathering of irrevocable commitments) on the basis that it is no longer appropriate.

5.18 The Code Committee considers that Rule 19.5, as proposed to be amended, should be included within Rule 20, as a new Rule 20.6, on the basis that it concerns equality of information relating to an offer as between offeree company shareholders.

5.19 The proposed new Rule 20.6 is set out below, marked to show amendments to the current Rule 19.5. In Appendix A, Rule 19.5 is shown as being deleted and the proposed Rule 20.6 is shown as a new Rule.

Q25 Should Rule 19.5 (Telephone campaigns) be amended (and renumbered as Rule 20.6) as proposed?

(c) *Proposed amendments to the Code*

5.20 The Code Committee proposes to:

- (a) amend Rule 19.4 and Note 1 on Rule 19.4, which would become the new Rule 20.5 and the Note on Rule 20.5, as follows:

19.420.5 ADVERTISEMENTS

The publication of advertisements ~~connected with~~ during the course of an offer or potential offer by or on behalf of an offeror or the offeree company is prohibited unless the advertisement falls within one of the categories listed below. In addition, except where the advertisement falls within categories ~~category (i) or (viii)~~, the Panel's prior consent to the publication of a permitted advertisement must be obtained ~~it must be cleared with the Panel in advance.~~

The categories are as follows:

(i) **product advertisements published by the offeror or offeree company in the ordinary course of its business which do not relate to the offer, not bearing on an offer or potential offer (w Where there could be is any doubt, the Panel must be consulted);**

(ii) **corporate image advertisements published by the offeror or offeree company in the ordinary course of its business which do not relate to the offer not bearing on an offer or potential offer;**

(iii) **advertisements ~~confined to non-controversial~~ which contain only factual information about in relation to an offer (eg for example, reminders as to closing dates and times or the value of an offer). Such advertisements must avoid and not any argument or invective opinion in relation to an offer;**

(iv) **advertisements comprising preliminary results or interim results financial information and their accompanying statement, provided the latter is not used for statement does not include any argument or invective concerning an opinion in relation to the offer; and**

(v) **advertisements giving information, the publication of which by advertisement is required or specifically permitted by the UKLA Rules;**

(vi) **advertisements communicating information relevant to holders of bearer securities;**

(vii) **advertisements comprising a tender offer under Appendix 5;**

~~(viii) advertisements which are notices relating to a scheme of arrangement; or~~

~~(ix) advertisements published with the specific prior consent of the Panel. (As examples, this might be given if it were necessary to publish a document, announcement or information during a postal strike or in the circumstances referred to in Note 3 on Rule 20.1.)~~

NOTES ON RULE ~~19.4~~20.5

1. — ~~Clearance~~Panel consent

When ~~the Panel's consent to the publication~~ clearance—of ~~an advertisement~~s is being sought, the Panel should be given at least 24 hours to consider a proof. Such proofs must have been approved by the financial adviser.”;

- (b) amend Rule 19.5 and Note 1 on Rule 19.5, which would become the new Rule 20.6 and the Note on Rule 20.6, as follows:

“~~19.5~~20.6 TELEPHONE CAMPAIGNS

Except with the consent of the Panel, campaigns in which shareholders or other persons interested in shares are contacted by telephone may be conducted only by staff of the financial adviser to the offeror or offeree company (as appropriate) who are fully conversant with have a thorough understanding of the requirements of, and their responsibilities under, the Code. Only previously published information which remains accurate, and is not misleading at the time it is quoted, may be used in telephone campaigns. Shareholders and other persons interested in shares must not be put under pressure to take action or not to take action in connection with an offer and must be encouraged to consult their professional advisers.

NOTES ON RULE ~~19.5~~20.6

1. — ~~Consent to use other callers~~

If it is impossible to use staff of the type mentioned in this Rule, ~~the~~Panel may consent to the use of other ~~people~~callers subject to:

- (a) an appropriate script for callers being approved by the Panel;

(b) *the financial adviser ~~carefully~~ briefing the callers prior to the start of the ~~operation~~ campaign and, in particular, ~~stressing~~ emphasising:*

(i) that callers must not depart from the script;

(ii) that callers must decline to answer questions the answers to which fall outside the information given in the script; and

(iii) ~~the callers' responsibilities under the requirements of~~ General Principle 1 and Rule 20.1; and

(c) ~~the operation~~ campaign being supervised by the financial adviser.”;

(c) delete Notes 2 to 5 on Rule 19.5;

(d) amend Rule 19.2 (including by deleting the references to advertisements in the Notes on Rule 19.2 and by introducing a new Note 4 on Rule 19.2 in place of the current Rule 19.2(a)(iii)), delete Note 2 on Rule 19.2 and amend Note 1 on Rule 3.2, as set out in Appendix A; and

(e) delete Note 5 on Rule 19.1.

6. Minor and consequential amendments

(a) *Introduction*

6.1 In addition to updating cross-references, the Code Committee proposes to make certain minor and consequential amendments to the Code as a result of, or which are related to, the changes proposed in this PCP, as summarised below.

(b) *Definition of “Regulatory Information Service”*

6.2 The Code currently defines a RIS as being any of the services set out in Appendix 3 of the Listing Rules of the Financial Conduct Authority. The Code Committee understands that Appendix 3 of the Listing Rules has been deleted.

6.3 The Code Committee therefore proposes to amend the definition of “Regulatory Information Service” in the Definitions Section of the Code, as follows:

“Regulatory Information Service or RIS

~~A Regulatory Information Service (“RIS”) is any of the services set out in Appendix 3 to the Listing Rules.~~ Regulatory information service or RIS has the same meaning as in the UKLA Rules.”.

(c) *Announcements to be published via a RIS*

6.4 Following the proposed deletion of Rule 2.9 and its replacement by Rule 30.1, the references to Rule 2.9 in the relevant provisions of the Code will be deleted and minor drafting amendments made to certain provisions of the Code. The provisions which will be affected (and which are set out in Appendix A) are as follows:

(a) Notes 6(a), 6(c) and 12(a) on Rule 8;

- (b) Note 4 on Rule 17.1;
 - (c) Rules 19.7(g) and 19.8(b);
 - (d) Rule 31.6(b), Note 2 on Rule 31.7 and the Note on Rule 31.8;
 - (e) Section 6(a) of Appendix 1;
 - (f) Section 5 of Appendix 5; and
 - (g) Sections 3(e), 6(a), 6(b) and 8(c) of Appendix 7.
- 6.5 In addition, the references to Rule 2.9 in Note 2 on Rule 2.11 and Rule 19.7(h)(iv) will become references to the new Rule 30.1.
- 6.6 In Rule 2.11 (and the Notes thereon) and in Rules 24.16(c) and (d), the Code Committee proposes to change the requirement for a party to an offer to “publicly disclose” or to make a “public disclosure” so as to become a requirement to “announce” such details, in order to make clear that the disclosure must be in the form of an announcement published via a RIS in accordance with the requirements of the proposed new Rule 30.1.
- (d) *Cross-references to statutory and regulatory provisions***
- 6.7 Certain provisions of the Code include cross-references to other statutory or regulatory provisions, such as to financial services legislation or to the UKLA Rules. For example, Note 6 on Rule 19.1 (which relates to standards of care) provides as follows:

“6. FSMA and the Financial Services Act 2012

Persons involved in offers should note that Part 8 (penalties for market abuse) of the FSMA and Part 7 (offences relating to financial services) of the Financial Services Act 2012 may be relevant.”.

- 6.8 As part of its review of the provisions which relate to the communication and distribution of information during an offer, the Code Committee has reviewed the relevant provisions of the Code. The Code Committee notes that certain of these provisions are included in the Code for information only and that they have no operative effect. The Code Committee appreciates that, in the context of an offer, persons to whom the Code applies may be required to comply with other regulations in addition to those set out in the Code. However, the Code Committee considers that it is not necessary for the Code to refer to other regulations, particularly as such references would not be exhaustive.
- 6.9 The Code Committee therefore proposes to delete the following such references (as set out in Appendix A):
- (a) the introductory paragraph to Rule 4;
 - (b) Note 13 on Rule 8;
 - (c) Note 6 on Rule 19.1, the final sentence of the second paragraph of Note 1 on Rule 19.2, the final sentence of Note 3 on Rule 19.2, Note 4 on Rule 19.2 and Note 4 on Rule 19.5;
 - (d) the final sentence of Note 4 on Rule 25.2; and
 - (e) the words “subject to compliance with the FSMA” in the second sentence of Section 2(a) of Appendix 5.

6.10 Similarly, the Code Committee proposes to delete the final sentence of the Note on Rule 4.3 (Irrevocable commitments), which states that a financial adviser “will be responsible for ensuring compliance with all relevant legislation and other regulatory requirements”. In doing so, however, the Code Committee does not intend to remove any responsibility which financial advisers may have under section 3(f) of the Introduction to the Code to ensure, so far as they are reasonably able, that their client and its directors are aware of their responsibilities under the Code and will comply with them.

(e) Rules 20.2 and 20.3

6.11 As part of its review of the relevant provisions of the Code, the Code Committee has decided that the current Rule 20.2 (Equality of information to competing offerors) and Rule 20.3 (Information to independent directors in management buy-outs) would sit more appropriately in Rule 21 (Restrictions on frustrating action) than in the amended Rule 20 (Equality of information). This is because the Code Committee considers that the purpose of Rule 20.2, in particular, is to ensure that a competing offer is not frustrated as a result of the board of the offeree company giving additional information to the preferred offeror with a view to assisting that offeror to succeed and that the Rule is therefore more closely aligned with the principles which underpin Rules 21.1 and 21.2 than with those which underpin Rule 20.1.

6.12 The Code Committee therefore proposes to re-number Rules 20.2 and 20.3 as, respectively, Rules 21.3 and 21.4, as set out in Appendix A.

(f) Rule 23.2

6.13 The Code Committee considers that Rule 23.2 (Making documents, announcements and information available to shareholders, persons with

information rights and employee representatives (or employees)) would sit more appropriately in Rule 30, as a new Rule 30.4, as set out in Appendix A.

(g) *Rules 24.1(b), 25.1(b), 32.1(a) and 32.6(a)*

6.14 Rule 24.1(b) provides that, on the day of publication, the offeror must publish the offer document on a website in accordance with Rule 26.1 and announce via a RIS that the offer document has been so published. Rule 25.1(b) imposes a similar requirement on the offeree company with regard to the offeree board circular. Rules 32.1(a) and 32.6(a) include similar requirements in relation to a revised offer document and the related offeree board circular.

6.15 The Code Committee proposes to amend the words “On the day of publication” in each of Rules 24.1(b) and 25.1(b) to “Promptly following its publication”, and to make equivalent amendments to Rule 32.1(a) and Rule 32.6(a), in order to make those Rules consistent with Rule 26.1 (as proposed to be amended). In addition, the Code Committee proposes to delete the words “in accordance with Rule 26.1” from Rule 24.1(b)(i), Rule 25.1(b)(i), Rule 32.1(a) and Rule 32.6(a). The proposed amendments are set out in Appendix A.

(h) *Providing contact information to shareholders*

6.16 Rule 2.12 provides that, promptly after the commencement of an offer period, a copy of the announcement that commenced the offer period must be sent by the offeree company to its shareholders, persons with information rights and the Panel. To comply with the requirements of Rule 2.12, the announcement is usually sent attached to a circular from the offeree company in the form of a covering letter. Frequently, the offeree company does not include a telephone number for shareholders to call in this letter. In these situations, shareholders with queries regarding administrative matters often call the Market Surveillance Unit of the Panel because its telephone number is included in the summary of the

provisions of Rule 8 which must be included in a circular published under Rule 2.12.

6.17 The Code Committee believes that it would be of benefit to shareholders if the offeree company was required to include a telephone number for shareholders with administrative queries in the circular published under Rule 2.12.

6.18 The Code Committee expects that in many instances the offeree company would conclude that the appropriate telephone number to include in the circular published under Rule 2.12 would be that for the offeree company's registrar. The Code Committee would expect the offeree company to ensure that persons answering the telephone number understand that they may only provide answers to administrative questions from shareholders and also that they should only provide previously published information which remains accurate and is not misleading.

6.19 In the light of the above, the Code Committee proposes the amendment of the last sentence of Rule 2.12(c) (which will become Rule 2.11(c)), as follows:

“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) and a telephone number for use by shareholders, persons with information rights and other relevant persons who wish to contact the offeree company regarding administrative matters.”

(i) ***Rule 2.12(d)***

6.20 The Code Committee understands that the words “when published in accordance with Rule 25.1” after the words “the offeree board’s circular” in Rule 2.12(d) have caused confusion in relation to a situation where the offeree board circular was combined with the offer document. In order to remove any potential for

confusion, the Code Committee proposes to delete those words from Rule 2.12(d), as set out in Appendix A.

(j) The provision of public disclosures under Rule 8 to the Panel

6.21 Note 3(a) on Rule 8 provides that public disclosures under Rule 8 must be made to a RIS. In addition, a copy must also be sent to the Panel in electronic form.

6.22 The Code Committee considers that the requirement to send a disclosure required under Rule 8 to two places is unduly onerous. In addition, persons making a disclosure may misread the requirement and believe that they only have to send the disclosure to either a RIS or the Panel. Furthermore, the development of electronic storage and search facilities for RIS announcements means that the Panel can now access both current and historical Rule 8 disclosures via these services.

6.23 The Code Committee therefore believes that the benefit of requiring a copy of a public disclosure under Rule 8 to be sent to the Panel no longer outweighs the cost of this requirement. Therefore, the Code Committee proposes to delete the second sentence of Note 3(a) on Rule 8, as set out in Appendix A.

Q26 Do you have any comments on the minor and consequential amendments to the Code proposed in Section 6 of this PCP?

7. Assessment of the impact of the proposals

- 7.1 The Code Committee believes that clarifying, codifying and updating the application of the Code with regard to the communication and distribution of information and opinions during an offer by, or on behalf of, offerors and offeree companies will be beneficial to parties to offers, shareholders and other stakeholders, market participants and practitioners.
- 7.2 The Code Committee does not believe that the proposed amendments will result in significant costs being imposed, given that many of them are a clarification of or extrapolation from the existing provisions of the Code, a codification of existing practice, or an application of the principles underlying the Code to means of communication other than documents and announcements, such as videos or social media. Although the parties to an offer may incur incremental additional costs by virtue of the requirement to make available more information and opinions relating to an offer or a party to an offer than is currently the case, the Code Committee believes that these costs will be offset by the benefit to offeree company shareholders, market participants and other stakeholders of receiving that information, and that the proposed amendments are therefore proportionate.
- 7.3 In relation to the requirements of the Code which apply to meetings and telephone calls between representatives and advisers to an offeror or the offeree company and relevant third parties, the Code Committee has concluded that the requirement for such meetings and telephone calls to be supervised by a financial adviser or corporate broker is justifiable but that there are certain circumstances in which the reduced risks of a particular situation indicate that it would be appropriate to derogate from, or provide the Panel with the ability to grant a dispensation from, that requirement, without damaging the interests of shareholders in the offeree company and the market generally. The Code Committee considers that the proposed new Rule 20.2 strikes an appropriate balance and represents a proportionate approach to such meetings and telephone calls.

- 7.4 The Code Committee has also taken the opportunity, where possible, to make incremental improvements to the structure of the Code and to delete provisions of the Code which it considers to be unnecessary or inappropriate.

APPENDIX A

Proposed amendments to the Code

DEFINITIONS

Acting in concert

...

NOTES ON ACTING IN CONCERT

...

11. Indemnity and other dealing arrangements

...

(c) Note 11(b) does not apply to irrevocable commitments or letters of intent, which are subject to Rule 2.7(c)(vi) and Rule 2.410.

...

Regulatory Information Service or RIS

~~A Regulatory Information Service (“RIS”) is any of the services set out in Appendix 3 to the Listing Rules.~~ Regulatory information service or RIS has the same meaning as in the UKLA Rules.

...

Website notification

...

NOTE ON WEBSITE NOTIFICATION

(a) A website notification must be prepared with the highest standards of care and accuracy in accordance with Rule 19.1 and must contain a directors’ responsibility statement in accordance with Rule 19.2. A website notification must contain a summary of the provisions of Rule 8 (see the Panel’s website at www.thetakeoverpanel.org.uk) and must also comply with the other relevant requirements of the Code in relation to the publication of documents, announcements and information.

(b) The information in a website notification must be confined to non-controversial information about an offer or a party to an offer and should not be used for include any argument or opinion-inveective. A website notification should not include a recommendation to take or not to take any action in relation to, or contain any view on the merits of, an offer except for a factual statement as to whether or not the offer is proceeding with the recommendation of the offeree company board.

(c) A party to an offer should not include anything other than acceptance forms, withdrawal forms, proxy cards and other forms connected with an offer in the same envelope as a website notification without the consent of the Panel.

(d) In addition, a website notification must include the following information in relation to the document, announcement or information to which it relates:

(~~ai~~) details of the website on which the document, announcement or information is published;

(~~aii~~) a statement setting out the right of persons to whom the document, announcement or information is sent to receive a copy of the document, announcement or information (and any information incorporated into it by reference to another source) in hard copy form and drawing attention to the fact that such persons will not receive a hard copy unless they so request;

(~~aiii~~) details of how a hard copy may be obtained (including an address in the United Kingdom and a telephone number to which requests for hard copies may be made); and

(~~aiiv~~) a statement that the website notification is not a summary of the document, announcement or other information to which it relates and should not be regarded as a substitute for reading the document, announcement or information in full.

Rule 2

2.7 THE ANNOUNCEMENT OF A FIRM INTENTION TO MAKE AN OFFER

...

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

...

(vi) details of any irrevocable commitment or letter of intent procured by the offeror or any person acting in concert with it (see Note 3 on Rule ~~2.11~~10);

...

~~2.9~~ ANNOUNCEMENT OF AN OFFER OR POSSIBLE OFFER TO BE PUBLISHED VIA A RIS

~~(a) — When an offer or possible offer is announced, the announcement must be published in typed format and sent to a RIS by fax or electronic delivery.~~

~~(b) — If the announcement is published outside normal business hours, it must be submitted as required, for release as soon as the relevant RIS re-opens; it must also be distributed to not less than two national newspapers and two newswire services in the UK.~~

~~(c) — The requirements under (a) and (b) above are in addition to any other announcement obligation to which the offeror may be subject.~~

NOTES ON RULE 2.9

1. — Distribution of announcements

See Rule 30.3.

2. — 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, 27.1(a), 31.2, 31.6(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 Rule 2.9.

~~2.10~~9 ANNOUNCEMENT OF NUMBERS OF RELEVANT SECURITIES IN ISSUE

...

~~2.11~~10 IRREVOCABLE COMMITMENTS AND LETTERS OF INTENT

(a) During an offer period, if any party to the offer or any person acting in concert with it procures an irrevocable commitment or a letter of intent, the relevant party to the offer must publicly ~~disclose~~ announce the details in

accordance with the Notes on this Rule ~~2.1110~~ by no later than 12 noon on the following business day.

(b) If any party to an offer or any person acting in concert with it has procured an irrevocable commitment or a letter of intent prior to the commencement of the offer period, it must ~~publicly disclose~~ announce the details in accordance with the Notes on this Rule ~~2.1110~~ by no later than 12 noon on the business day following either the commencement of the offer period or (in the case of an offeror) the date of the announcement that first identifies the offeror as such (as appropriate).

...

NOTES ON RULE ~~2.1110~~

1. Disclosure in firm offer announcement

Where the details required to be ~~disclosed~~ announced under Note 3 on Rule ~~2.1110~~ are, pursuant to Rule 2.7(c)(vi), included in an announcement of a firm intention to make an offer 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, no separate ~~disclosure~~ announcement is required under Rule ~~2.1110~~(a) or (b).

Similarly, where the details required to be ~~disclosed~~ announced under Note 3 on Rule ~~2.1110~~ are included in an announcement of a possible offer 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, no separate ~~disclosure~~ announcement is required under Rule ~~2.1110~~(b).

2. Method of disclosure

Disclosure under this Rule ~~2.1110~~ should be made in accordance with the requirements of Rule ~~2.930.1~~. See also Rule 26 (documents to be published on a website).

3. Contents of announcement ~~disclosure~~

~~A disclosure~~ An announcement of the procuring of an irrevocable commitment or a letter of intent must provide full details of the nature of the commitment or letter including:

...

4. Letters of intent procured prior to the commencement of the offer period

Where a party to the offer has procured a letter of intent prior to the commencement of the offer period, it must be verified that the letter of intent continues to represent the intentions of the shareholder or other person concerned at the time that the relevant details are ~~publicly disclosed~~ announced. This will normally include the shareholder or other person concerned providing an up-to-date written confirmation to the relevant party to the offer or its adviser.

...

2.1211 DISTRIBUTION OF ANNOUNCEMENTS TO SHAREHOLDERS, EMPLOYEE REPRESENTATIVES (OR EMPLOYEES) AND PENSION SCHEME TRUSTEES

...

(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) and a telephone number for use by shareholders, persons with information rights and other relevant persons who wish to contact the offeree company regarding administrative matters.

(d) When, under (a) or (b) 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.~~ ...

NOTES ON RULE 2.1211

...

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

See the Note on Rule ~~23.2~~30.4.

3. Holders of convertible securities, options or subscription rights

Copies of announcements sent to offeree company shareholders and persons with information rights under Rule ~~2.42~~11 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 3.2

3.2 BOARD OF AN OFFEROR COMPANY

...

NOTES ON RULE 3.2

1. General

When the board of an offeror is required to obtain competent independent advice, it should do so before announcing an offer or any revised offer: such advice should be as to whether or not the making of the offer is in the interests of the company's shareholders. Shareholders must have sufficient time to consider advice given to them prior to any general meeting held to implement the proposed offer. Any documents ~~or advertisements~~ published by the board in such cases must include a responsibility statement by the directors as set out in Rule 19.2.

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.~~

...

4.3 GATHERING OF IRREVOCABLE COMMITMENTS

...

NOTE ON RULE 4.3

Irrevocable commitments

Where irrevocable commitments are to be sought, the Panel will wish to be satisfied that the proposed arrangements will provide adequate information as to the nature of the commitment sought; and a realistic opportunity to consider whether or not that commitment should be given and to obtain independent advice if required. ~~The financial adviser concerned will be responsible for ensuring compliance with all relevant legislation and other regulatory requirements.~~

Rule 8

RULE 8. DISCLOSURE OF DEALINGS AND POSITIONS

...

NOTES ON RULE 8

...

3. *Method of disclosure*

(a) *Public disclosures*

Public disclosures under Rule 8 must be made to a RIS in typed format by fax or electronic delivery and may be made by the person concerned or by an agent acting on its behalf. ~~A copy must also be sent to the Panel in electronic form.~~

...

(d) *Redemptions and purchases of own securities*

If the offeree company or an offeror redeems or purchases its own relevant securities, no separate disclosure will be required under Rule 8 if the information required by Note 5 on Rule 8 is included in an announcement made under Rule 2.100.

...

5. *Details to be included in the disclosure*

...

(h) *Percentage calculations and subscription for new securities*

Percentages should be calculated by reference to the numbers of relevant securities given in a party's latest announcement required by Rule 2.109. In the case of a disclosure relating to a right to subscribe, or subscription, for new securities, the Panel should be consulted regarding the appropriate number of relevant securities to be used in calculating the relevant percentage.

...

6. *Indemnity and other dealing arrangements*

(a) *Where a dealing arrangement of the kind referred to in Note 11 on the definition of acting in concert is entered into during the offer period by an offeror, the offeree company or a person acting in concert with an offeror or the offeree company, that person must make an immediate announcement, giving all relevant details of the dealing arrangement, ~~in accordance with Rule 2.9.~~*

...

(c) *Where a person acting in concert with the offeree company has entered into such a dealing arrangement before the start of the offer period or a person acting in concert with an offeror has entered into such a dealing arrangement before the announcement that first identifies the offeror, that person must make an announcement, giving all relevant details of the dealing arrangement, ~~in accordance with Rule 2.9~~ as soon as possible after the commencement of the offer period or the announcement that first identifies the offeror (as the case may be).*

...

12. *Potential offerors*

(a) ...

At the same time as or before any such Dealing Disclosure, the offeror must also make an announcement that it is considering making an offer, or that it is a participant in the formal sale process, ~~in accordance with Rule 2.9~~ (see also the Note on Rule 7.1 for when an immediate announcement will be required). The announcement must include a summary of the provisions of Rule 8 (see www.thetakeoverpanel.org.uk).

...

~~13. Other statutory or regulatory provisions~~

~~In addition to the requirements to disclose under Rule 8, the requirements of other statutory or regulatory provisions, in particular the UKLA Rules, may be relevant.~~

143. Amendments

...

154. Irrevocable commitments and letters of intent

See Rule 2.7(c)(vi) and Rule 2.~~11~~10.

Rule 12.2

12.2 COMPETITION REFERENCE PERIODS

...

NOTES ON RULE 12.2

...

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 19.97 and the Notes on Rules 6.1, 11.1, 11.2, 20.1, ~~20.2~~21.3 and 38.2).

Rule 17.1

17.1 TIMING AND CONTENTS

By 8.00 am at the latest on the business day following the day on which an offer is due to expire, or becomes or is declared unconditional as to acceptances, or is revised or extended, an offeror must make an appropriate announcement. The announcement must state:

...

(c) details of any relevant securities of the offeree company in respect of which the offeror or any person acting in concert with it has an outstanding irrevocable commitment or letter of intent (see Note 3 on Rule 2.110); and

...

NOTES ON RULE 17.1

...

4. Publication of announcements-Unlisted companies

An announcement under this Rule must be published in accordance with the requirements of Rule 2.9. However, ~~in~~ In the case of companies whose securities are not admitted to listing or admitted to trading, it ~~would~~ will normally be permissible to send a notification to all shareholders and persons with information rights instead of making an announcement.

Rule 19

19.1 STANDARDS OF CARE

...

NOTES ON RULE 19.1

1. *Financial advisers' responsibility for publication of information*

...

Advisers must ensure at an early stage that directors and officials of companies are warned that they must consider carefully the ~~Code~~ implications under the Code of what they say, particularly when giving interviews to, or taking part in discussions with, the media. It is very difficult after publication to alter an impression given or a view or remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed. In appropriate circumstances, the Panel will require a statement of clarification or retraction. Particular areas of sensitivity on which comment must be avoided include future profits and prospects, asset values and the likelihood of the revision of an offer (see also ~~Note 2 on~~ Rule 20.1).

...

5. — ~~Use of other media~~

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

6. — ~~FSMA and the Financial Services Act 2012~~

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

19.2 RESPONSIBILITY

(a) ~~Each document or advertisement published in connection with an offer by, or on behalf of, the an 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 (including any expressions of opinion) 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 the information. This Rule does not apply to:~~

~~(i) — advertisements falling within paragraphs (i), (ii) or (viii) of Rule 19.4;~~

~~(ii) — advertisements which only contain information already published in a circular which included the statement required by this Rule; and~~

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

(b) ~~The Panel's consent is required if it is proposed that to exclude any director should from such a responsibility statement, the Panel's consent is required. Such consent is will be given only in exceptional circumstances and in such any cases where the Panel's consent is given the omission-exclusion and the reasons for it must be stated in the document or advertisement.~~

NOTES ON RULE 19.2

1. Delegation of responsibility

Offeror and offeree company boards must have regard to section 3(f) of the Introduction and to Section 1 of Appendix 3.

If detailed supervision of any document ~~or advertisement~~ has been delegated to a committee of the board, each of the remaining directors of the company must reasonably believe that the persons to whom supervision has been delegated are competent to carry it out and must have disclosed to the committee all relevant facts directly relating to himself (including his close relatives and his and their related trusts) and all other relevant facts known to him and relevant opinions held by him which, to the best of his knowledge and belief, either are not known to any member of the committee or, in the absence of his specifically drawing attention thereto, are unlikely to be considered by the committee during the preparation of the document ~~or advertisement~~. This does not, however, override the requirements of the UKLA Rules relating to the acceptance of responsibility for a prospectus or equivalent document where applicable.

2. — Expressions of opinion

The responsibility statement is regarded by the Panel as embracing expressions of opinion in the document ~~or advertisement~~.

3.2. Quoting information about another party

Where a party publishes a document ~~or advertisement~~ containing information about another party which makes it clear that such information has been compiled from previously published sources, the directors of the party publishing the document ~~or advertisement~~ need, as regards the information so compiled, only take responsibility for the correctness and fairness of its reproduction or presentation and the responsibility statement may be amended accordingly. Where statements of opinion or conclusions concerning another party or unpublished information originating from another party are included, these must normally be covered by a responsibility statement by the directors of the party publishing the document ~~or advertisement~~ or by the directors of the other party; the qualified form of responsibility statement provided for in this Note is not acceptable in such instances. However, where a responsibility statement relates to a prospectus or an equivalent document, the provisions of the UKLA Rules may affect the form of responsibility statement required.

4. — Exclusion of directors

Although the Panel may be willing to consider the exclusion of a director from the responsibility statement in appropriate circumstances, where that statement

~~relates to a prospectus or an equivalent document the provisions of the UKLA Rules may affect the position.~~

53. When an offeror is controlled

If the offeror is controlled, directly or indirectly, by another person or group, the Panel will normally require that, in addition to the directors of the offeror, other persons (eg directors of an ultimate parent) take responsibility for documents ~~or advertisements~~ published by or on behalf of the offeror. In such circumstances, the Panel must be consulted.

4. Employee representatives' opinions and pension scheme trustees' opinions

The requirements of Rule 19.2(a) do not apply to any separate opinion of the employee representatives of the offeree company or the trustees of its pension scheme(s) appended to an offeree board circular in accordance with Rule 25.9 or Rule 32.6.

19.3 UNACCEPTABLE STATEMENTS

...

NOTE ON RULE 19.3

Statements of support

An offeror or the offeree company must not make statements about the level of support from shareholders or other persons unless their up-to-date intentions have been clearly stated to the offeror or the offeree company (as appropriate) or to their respective advisers. The Panel will require any such statement to be verified to its satisfaction. This will normally include the shareholder or other person confirming its support in writing to the relevant party to the offer or its adviser and that confirmation being provided to the Panel. Such confirmation will then be treated as a letter of intent. The Panel will not require separate verification by an offeror where the information required by Note 3 on Rule 2.410 is included in an announcement of an offer or possible offer 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~~

~~The publication of advertisements connected with an offer or potential offer is prohibited unless the advertisement falls within one of the categories listed below. In addition, except where the advertisement falls within categories (i) or (viii), it must be cleared with the Panel in advance.~~

The categories are as follows:

- ~~(i) — product advertisements not bearing on an offer or potential offer (where there could be any doubt, the Panel must be consulted);~~
- ~~(ii) — corporate image advertisements not bearing on an offer or potential offer;~~
- ~~(iii) — advertisements confined to non-controversial information about an offer (eg reminders as to closing times or the value of an offer). Such advertisements must avoid argument or invective;~~
- ~~(iv) — advertisements comprising preliminary or interim results and their accompanying statement, provided the latter is not used for argument or invective concerning an offer;~~
- ~~(v) — advertisements giving information, the publication of which by advertisement is required or specifically permitted by the UKLA Rules;~~
- ~~(vi) — advertisements communicating information relevant to holders of bearer securities;~~
- ~~(vii) — advertisements comprising a tender offer under Appendix 5;~~
- ~~(viii) — advertisements which are notices relating to a scheme of arrangement; or~~
- ~~(ix) — advertisements published with the specific prior consent of the Panel. (As examples, this might be given if it were necessary to publish a document, announcement or information during a postal strike or in the circumstances referred to in Note 3 on Rule 20.1.)~~

NOTES ON RULE 19.4

1. — Clearance

When clearance of advertisements is being sought, the Panel should be given at least 24 hours to consider a proof. Such proofs must have been approved by the financial adviser.

2. — Verification

The Panel will not verify the accuracy of statements made in advertisements submitted for clearance. If, subsequently, it becomes apparent that any statement was incorrect, the Panel may, at the least, require an immediate correction.

~~3. — Source~~

~~Each advertisement connected with an offer or potential offer must clearly and prominently identify the party on whose behalf it is being published.~~

~~4. — Use of other media~~

~~For the purpose of this Rule, advertisements include not only press advertisements but also advertisements in any other media.~~

~~5. — Forms~~

~~Acceptance forms, withdrawal forms, proxy cards or any other forms connected with an offer must not be published in newspapers.~~

~~19.5 — TELEPHONE CAMPAIGNS~~

~~Except with the consent of the Panel, campaigns in which shareholders or other persons interested in shares are contacted by telephone may be conducted only by staff of the financial adviser who are fully conversant with the requirements of, and their responsibilities under, the Code. Only previously published information which remains accurate, and is not misleading at the time it is quoted, may be used in telephone campaigns. Shareholders and other persons interested in shares must not be put under pressure and must be encouraged to consult their professional advisers.~~

~~NOTES ON RULE 19.5~~

~~1. — Consent to use other callers~~

~~If it is impossible to use staff of the type mentioned in this Rule, the Panel may consent to the use of other people subject to:~~

~~(a) — an appropriate script for callers being approved by the Panel;~~

~~(b) — the financial adviser carefully briefing the callers prior to the start of the operation and, in particular, stressing:~~

~~(i) — that callers must not depart from the script;~~

~~(ii) — that callers must decline to answer questions the answers to which fall outside the information given in the script; and~~

~~(iii) — the callers' responsibilities under General Principle 1 and Rule 20.1; and~~

~~(c) — the operation being supervised by the financial adviser.~~

~~2. — **New information**~~

~~If, in spite of this Rule, new information is given to some shareholders or other persons interested in shares, such information must immediately be made generally available in the manner described in Note 3 on Rule 20.1.~~

~~3. — **Gathering of irrevocable commitments**~~

~~In accordance with Rule 4.3, the Panel must be consulted before a telephone campaign is conducted with a view to gathering irrevocable commitments in connection with an offer. Rule 19.5 applies to such campaigns although, in appropriate circumstances, the Panel may permit those called to be informed of details of a proposed offer which has not been publicly announced. Attention is, however, drawn to General Principles 1 and 2.~~

~~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 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 FCA's conduct of business rules.~~

19.64 INTERVIEWS AND DEBATES

Parties to an offer should, if interviewed on radio, television or any other media, seek to ensure that the sequence of the interview is not broken by the insertion of comments or observations by others not made in the course of the interview. Further, joint interviews or public confrontation between representatives of the offeror and the offeree company, or between competing offerors, should be avoided (see also ~~Note 2 on Rule 20.1~~).

19.75 POST-OFFER UNDERTAKINGS

...

(g) Except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate) with the Panel's consent, the party must promptly make an announcement ~~in accordance with the requirements of~~

Rule 2.9 describing the course of action it has taken, or not taken, and explaining how and why the relevant qualification or condition applies.

(h) A party to an offer which has made a post-offer undertaking must submit written reports to the Panel after the end of the offer period at such intervals and in such form as the Panel may require. Such reports must, as appropriate:

...

(iv) if so required by the Panel, be published, in whole or in part, in accordance with the requirements of Rule 2.930.1.

...

NOTES ON RULE 19.75

...

(b) A party to an offer which proposes to make a commitment to take, or not take, any particular course of action after the end of the offer period other than by means of a post-offer undertaking must consult the Panel in advance. The Panel will then consider whether the proposed commitment would more appropriately be made as a post-offer undertaking. If, with the agreement of the Panel, the party to the offer makes that commitment by the proposed means, the Panel will normally require any reference to the commitment in any document, announcement or other information published by it in relation to the offer to make clear that the commitment has not been made as a post-offer undertaking in accordance with the requirements of Rule 19.75 and that the commitment will therefore not be enforceable by the Panel as a post-offer undertaking.

...

3. Responsibility for written reports

Any written report submitted to the Panel in accordance with Rule 19.75(h) must state that the report has been approved by the board of directors (or equivalent body) of the party to the offer concerned and must be signed on its behalf by a duly authorised director (or equivalent person).

4. Appointment of supervisor

A supervisor appointed under Rule 19.75(i) must be independent of the party to the offer concerned, and any person acting in concert with it, and must have the skills and resources necessary to perform the functions of a supervisor. The identity of the supervisor and the terms of appointment must be agreed by the

Panel. The costs of the supervisor will be met by the party to the offer which has made the post-offer undertaking.

19.86 POST-OFFER INTENTION STATEMENTS

...

(b) ...

... Except with the consent of the Panel, if such a course of action is then taken or not taken (as appropriate), the party must promptly make an announcement ~~in accordance with the requirements of Rule 2.9~~ describing the course of action it has taken, or not taken, and explaining its reasons for taking, or not taking, that course of action (as appropriate).

19.97 INFORMATION PUBLISHED FOLLOWING THE ENDING OF AN OFFER PERIOD PURSUANT TO RULE 12.2

...

Rule 20

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS AND PERSONS WITH INFORMATION RIGHTS

(a) Except with the consent of the Panel or as provided in the Notes on Rule 20.1, information about parties and opinions relating to an offer or a party to an offer must be made 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.

(b) Subject to the Notes on Rule 20.1, if any material new information or significant new opinion relating to an offer or a party to an offer is:

(i) published by or on behalf of an offeror or the offeree company (other than in a document sent to offeree company shareholders and persons with information rights);

(ii) provided by or on behalf of an offeror or the offeree company to any shareholder in, or other person interested in any securities (including debt securities) of, an offeror or the offeree company, or to any investment manager, investment adviser or investment analyst; or

(iii) provided by or on behalf of an offeror or the offeree company to the media (whether in an interview or discussion or in an article, press release, letter or other document),

that information or opinion must, at the same time, be published in an announcement in accordance with Rule 30.1.

(c) In addition to the requirements of Rule 20.1(b), and regardless of whether the relevant material contains any material new information or significant new opinion:

(i) any presentation or other document relating to an offer or a party to an offer provided to, or used in any meeting (including any telephone call or meeting held by electronic means) with, any person referred to in paragraph (b)(ii) must be published on a website promptly after it is so provided or used; and

(ii) any article, letter or other written communication relating to an offer or a party to an offer provided to the media must be published on a website promptly following its publication by the media.

At the same time, the offeror or offeree company (as appropriate) must publish an announcement in accordance with Rule 30.1 noting that the relevant material has been published on a website and including a link to the relevant webpage.

NOTES ON RULE 20.1

1. Requirement to send announcement or document to shareholders etc. where appropriate

See Rule 30.1(c).

2. ~~Furnishing Provision of information to offerors~~ between the parties to an offer

~~This Rule 20.1 does not prevent the furnishing provision of information in confidence by the offeree company to an offeror or a bona fide potential offeror, or by an offeror or a bona fide potential offeror to the offeree company vice versa.~~

2. ~~Media interviews~~

Parties to an offer must take particular care not to disclose new material in interviews or discussions with the media. If, notwithstanding this Note, any new

~~information is published as a result of such an interview or discussion, an announcement giving all relevant details must be made as soon as possible thereafter (see also Note 1 on Rule 19.1). Where appropriate, the Panel may, in addition, require a document to be sent to shareholders and persons with information rights and made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s).~~

~~3. — Meetings~~

~~Meetings of representatives of the offeror or the offeree company or their respective advisers with shareholders of, or other persons interested in the securities of, either the offeror or the offeree company or with analysts, brokers or others engaged in investment management or advice may take place prior to or during the offer period, provided that no material new information is forthcoming, no significant new opinions are expressed and the following provisions are observed. Except with the consent of the Panel, an appropriate representative of the financial adviser or corporate broker to the offeror or the offeree company must be present. That representative will be responsible for confirming in writing to the Panel, not later than 12 noon on the business day following the date of the meeting, that no material new information was forthcoming and no significant new opinions were expressed at the meeting.~~

~~If, notwithstanding the above, any material new information or significant new opinion does emerge at the meeting, an announcement giving all relevant details must be made as soon as possible thereafter. Where appropriate, the Panel may, in addition, require a document to be sent to shareholders and persons with information rights and made readily available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves) and to the trustees of the offeree company's pension scheme(s). If such new information or opinion is not capable of being substantiated as required by the Code (for example, a profit forecast), this must be made clear and it must be formally withdrawn.~~

~~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 2.7, if and when such announcement is made.~~

~~Should there be any dispute as to whether the provisions of this Note have been complied with, the relevant financial adviser or corporate broker will be expected to satisfy the Panel that they have been. Financial advisers or corporate brokers may, therefore, find it useful to record the proceedings of meetings, although this~~

~~is not a requirement. The financial adviser must ensure that no meetings are arranged without its knowledge.~~

~~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.~~

3. Provision of information to employee representatives (or employees) and pension scheme trustees

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

(a) an offeror or the offeree company to its employee representatives (or employees) or to the trustees of its 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 the trustees of the pension scheme(s) are acting in their capacity as such (rather than in their capacity as shareholders).

4. ~~Circulars published by connected advisers etc.~~Investment analyst publications

~~Rule 20.1 does not prevent connected advisers to, or other persons acting in concert with, the offeree company or an offeror from sending circulars during the offer period to their own investment clients provided their publication has been approved by the Panel in advance. A draft must be sent to the Panel as early as possible and the final version must be sent to the Panel at the time of publication.~~

~~Circulars must not include any statements of fact or opinion derived from information not generally available. Profit forecasts, quantified financial benefits statements, asset valuations and estimates of other figures key to the offer must be avoided (unless, and then only to the extent that, the offer document or the offeree board circular contains such forecasts, statements, valuations or estimates). The status of the person issuing the circular as a person acting in concert with the offeree company or an offeror must be clearly disclosed.~~

(a) During an offer period, a firm which publishes investment research which is:

(i) acting in concert with an offeror or the offeree company;

(ii) under the same control# as a connected adviser to an offeror or the offeree company; or

(iii) remunerated by an offeror or the offeree company

may only publish information relating to an offer or a party to an offer with the prior consent of the Panel. A draft must be sent to the Panel for review as early as possible prior to publication.

(b) Any such publication:

(i) must not include any statements of fact or opinion derived from information not generally available;

(ii) must not include any profit forecast, quantified financial benefits statement, asset valuation or estimate of other figures key to the offer, except to the extent that such forecasts, statements, valuations or estimates have previously been published by an offeror or the offeree company (as appropriate) in accordance with the requirements of the Code;

(iii) must clearly disclose the status of the firm under paragraph (a); and

(iv) must be sent to the Panel in final form at the time of publication.

(c) When a Phase 2 CMA reference is made or Phase 2 European Commission 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~~ Firms to which this Note applies must, however, consult the Panel about the publication of ~~circul~~ars as described in this Note ~~information~~ 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.

#See Note at end of Definitions Section.

5. Shareholders and persons with information rights outside the EEA

See the Note on Rule ~~23.230.4~~.

6. ~~Sharing information with employee representatives (or employees) and 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 the trustees of the pension scheme(s) 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 employee or pension scheme trustee is interested in a significant number of shares.~~

6. Provision of information prior to the commencement of an offer period or prior to the announcement of a firm or revised offer

(a) Subject to the requirements of Rule 2.2(e), prior to the commencement of an offer period, material new information or significant new opinions relating to an offer or a party to an offer may be provided in confidence by or on behalf of an offeror or the offeree company to one or more persons referred to in Rule 20.1(b)(ii) (for example, in the context of a meeting in order to ascertain a shareholder's view on a possible offer or to seek an irrevocable commitment).

(b) In addition, during the offer period but prior to the announcement of a firm offer or of a revised offer, the Panel may consent to the provision of such information or opinions in confidence to one or more persons referred to in Rule 20.1(b)(ii).

(c) In either case, any such information or opinion which is so provided need not be published at that time in accordance with Rule 20.1(b) but must be so published in, or by not later than the date of, either:

(i) the announcement of the firm or revised offer; or

(ii) where the information or opinion is provided by the offeree company and where the board of the offeree company is not recommending the offer, the first substantive announcement made by the board in response to the announcement of the offer.

(d) Any presentation or other document provided to a person referred to in Rule 20.1(b)(ii) in such circumstances will not be required to be published on a website in accordance with Rule 20.1(c) at that time but must be so published promptly following:

(i) the announcement of the firm or revised offer; or

(ii) where the presentation or other document is provided by the offeree company and where the board of the offeree company is not recommending the offer, the first substantive announcement made by the board in response to the announcement of the offer.

7. Employee communications

A communication by an offeror or the offeree company with its employees in their capacity as such which does not include any material new information or significant new opinion relating to an offer or a party to an offer is not required to be published on a website under Rule 20.1(c)(i), even if certain employees are also shareholders in the offeree company. However, if an employee communication does include any material new information or significant new opinion relating to an offer or a party to an offer, Rule 20.1(b)(i) will apply.

8. Presentations and other documents

If there are different versions of a presentation or other document referred to in Rule 20.1(c)(i), only the latest version need be published on a website, provided that it does not omit any relevant information or opinion which was included in a previous version. There is no need to make an announcement when a presentation or document published on a website in accordance with Rule 20.1(c)(i) is replaced by a later version, provided that the new version does not contain any material new information or significant new opinion relating to the offer or a party to the offer.

[the current Rule 20.2 to be renumbered as Rule 21.3: see below]

20.2 MEETINGS AND TELEPHONE CALLS WITH SHAREHOLDERS AND OTHERS

(a) This Rule 20.2 applies to meetings (including any telephone call or meeting held by electronic means) attended by:

(i) a representative of, or adviser to, an offeror or the offeree company; and

(ii) a shareholder in, or other person interested in relevant securities of, an offeror or the offeree company, or any investment manager, investment adviser or investment analyst,

which take place either during an offer period or prior to the commencement of an offer period (but, in the case of the latter, only if the meeting relates to a possible offer or would not be taking place but for the possible offer).

(b) Except with the consent of the Panel or as provided in the Notes on Rule 20.2:

(i) any meeting described in paragraph (a) must be attended by an appropriate financial adviser or corporate broker to the offeror or offeree company (as appropriate); and

(ii) no material new information or significant new opinion relating to the offer or a party to the offer may be provided during the meeting.

(c) A financial adviser or corporate broker who attends a meeting in accordance with Rule 20.2(b)(i) must, by not later than 12 noon on the following business day, confirm in writing to the Panel:

(i) the names and functions of the individuals who attended the meeting; and

(ii) that no material new information or significant new opinion relating to the offer or a party to the offer was provided at the meeting by any representative of, or adviser to, the offeror or the offeree company (as appropriate).

NOTES ON RULE 20.2

1. Meetings prior to the commencement of an offer period or prior to the announcement of a firm or revised offer

In the case of a meeting which takes place prior to the commencement of an offer period or prior to the announcement of a firm or revised offer and at which material new information or significant new opinions relating to an offer or a party to an offer is provided in accordance with Note 6 on Rule 20.1, the financial adviser or corporate broker who attends the meeting must, by not later than 12 noon on the following business day, confirm in writing to the Panel:

(a) the names and functions of the individuals who attended the meeting; and

(b) that any material new information or significant new opinion which was so provided (brief details of which must be included in the confirmation) will be published in, or by not later than the date of, the announcement of the firm or revised offer or, where the information or opinion is provided by the offeree company and where the board of the offeree company is not recommending the

offer, the first substantive announcement made by the board in response to the announcement of the offer.

2. Meetings following the announcement of a recommended firm offer

(a) In the case of meetings which take place following the announcement of a recommended firm offer and where there is no competitive situation, the Panel will normally, subject to prior consultation, grant a dispensation from the requirement for the meetings to be attended by a financial adviser or corporate broker in accordance with Rule 20.2(b)(i), provided that:

(i) the financial adviser to the offeror or offeree company (as appropriate) provides an appropriate briefing to the representative(s) of, or adviser(s) to, the offeror or offeree company who will attend the meetings as to the requirements of Rule 20.2 and as to the information and opinions which may and may not be provided at the meetings; and

(ii) a senior representative of, or adviser to, the offeror or offeree company who attends any meeting must, by not later than 12 noon on the following business day, confirm in writing to the Panel the matters set out in paragraphs (i) and (ii) of Rule 20.2(c).

(b) The Panel may withdraw a dispensation granted under paragraph (a) at any time and will normally do so if, for example, the board of the offeree company withdraws its recommendation, a competitive situation arises or some other material development occurs. The Panel should be consulted in the case of any doubt as to whether a dispensation should continue to apply.

3. Meetings attended by advisers only (and not also by a representative of the offeror or offeree company)

(a) In the case of meetings attended only by:

(i) one or more financial advisers and/or corporate brokers to an offeror or the offeree company; and

(ii) one or more of the persons referred to in paragraph (ii) of Rule 20.2(a),

the requirement in Rule 20.2(c) for a confirmation in writing to be provided to the Panel by not later than 12 noon on the following business day will not apply.

(b) In the case of a meeting attended only by:

(i) one or more advisers (other than a financial adviser or corporate broker) to an offeror or the offeree company; and

(ii) one or more “sell-side” investment analysts,

the requirement in Rule 20.2(b)(i) for the meeting to be attended by a financial adviser or corporate broker will not apply, provided that:

(iii) the financial adviser to the offeror or offeree company (as appropriate) provides an appropriate briefing to the adviser(s) who will attend the meeting as to the requirements of Rule 20.2 and as to the information and opinions which may and may not be provided at the meeting; and

(iv) a senior adviser who attends the meeting must confirm in writing to the Panel, by not later than 12 noon on the following business day, the matters set out in paragraphs (i) and (ii) of Rule 20.2(c).

4. Telephone campaigns and meetings regarding administrative matters

Rule 20.2 does not apply to telephone campaigns conducted in accordance with Rule 20.6 or to meetings which relate solely to administrative matters.

5. Meetings with employee representatives (or employees) or pension scheme trustees

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 Rule 20.2. However, the Panel should be consulted if any employee or pension scheme trustee is interested in a significant number of relevant securities.

[the current Rule 20.3 to be renumbered as Rule 21.4: see below]

20.3 VIDEOS

(a) A video published by an offeror or the offeree company which includes any information or opinions relating to an offer or a party to an offer must comprise only a director or senior executive reading from a script or participating in a scripted interview. Any such video may be published only with the prior consent of the Panel.

(b) A video to which paragraph (a) applies must be published on a website. At the same time, the offeror or offeree company must publish an announcement in accordance with Rule 30.1 noting that the video has been published on a website and including a link to the relevant webpage.

20.4 SOCIAL MEDIA

Social media must not be used by or on behalf of an offeror or the offeree company to publish information relating to an offer or a party to an offer, other than for the publication of:

(a) the full text of an announcement which has been published in accordance with Rule 30.1(a);

(b) the full text of a document which has been published on a website in accordance with the relevant provisions of the Code; or

(c) a notification of a link to the webpage on which such an announcement or document has been published, which notification must comply with the requirements of paragraph (b) of the Note on the definition of website notification.

20.5 ADVERTISEMENTS

The publication of advertisements during the course of an offer by or on behalf of an offeror or the offeree company is prohibited unless the advertisement falls within one of the categories listed below. In addition, except where the advertisement falls within category (i), the Panel's prior consent to the publication of a permitted advertisement must be obtained.

The categories are as follows:

(i) product advertisements published by the offeror or offeree company in the ordinary course of its business which do not relate to the offer. Where there is any doubt, the Panel must be consulted;

(ii) corporate image advertisements published by the offeror or offeree company in the ordinary course of its business which do not relate to the offer;

(iii) advertisements which contain only factual information in relation to an offer (for example, reminders as to closing dates and times or the value of an offer) and not any argument or opinion in relation to an offer;

(iv) advertisements comprising preliminary results or interim financial information and their accompanying statement, provided the statement does not include any argument or opinion in relation to the offer; and

(v) advertisements giving information, the publication of which by advertisement is required or specifically permitted by the UKLA Rules.

NOTE ON RULE 20.5**Panel consent**

When the Panel's consent to the publication of an advertisement is being sought, the Panel should be given at least 24 hours to consider a proof. Such proofs must have been approved by the financial adviser.

20.6 TELEPHONE CAMPAIGNS

Except with the consent of the Panel, campaigns in which shareholders or other persons interested in shares are contacted by telephone may be conducted only by staff of the financial adviser to the offeror or offeree company (as appropriate) who have a thorough understanding of the requirements of, and their responsibilities under, the Code. Only previously published information which remains accurate, and is not misleading at the time it is quoted, may be used in telephone campaigns. Shareholders and other persons interested in shares must not be put under pressure to take action or not to take action in connection with an offer and must be encouraged to consult their professional advisers.

NOTE ON RULE 20.6**Consent to use other callers**

The Panel may consent to the use of other callers subject to:

- (a) an appropriate script for callers being approved by the Panel;
- (b) the financial adviser briefing the callers prior to the start of the campaign and, in particular, emphasising:
 - (i) that callers must not depart from the script;
 - (ii) that callers must decline to answer questions the answers to which fall outside the information given in the script; and
 - (iii) the requirements of General Principle 1 and Rule 20.1; and
- (c) the campaign being supervised by the financial adviser.

Rule 21

[the current Rule 20.2 to be renumbered as Rule 21.3 and the following amendments made]

20.221.3 EQUALITY OF INFORMATION TO COMPETING OFFERORS

...

NOTES ON RULE 20.221.3

1. *General enquiries*

...

2. *Conditions attached to the passing of information*

...

3. *Management buy-outs*

If the offer or ~~potential~~possible offer is a management buy-out or similar transaction, ...

4. *Mergers and reverse takeovers*

...

5. *The CMA and the European Commission*

When a Phase 2 CMA reference is made or Phase 2 European Commission proceedings are initiated, the offer period may end in accordance with Rule 12.2(a). The Panel will, however, continue to apply Rule 20.221.3 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.

[the current Rule 20.3 to be renumbered as Rule 21.4 and the following amendments made]

20.321.4 INFORMATION TO INDEPENDENT DIRECTORS IN MANAGEMENT BUY-OUTS

If the offer or ~~potential~~possible offer is a management buy-out or similar transaction, the offeror or potential offeror must, on request, promptly ~~furnish~~provide the independent directors of the offeree company or its

advisers with all information which has been ~~furnished~~ provided by the offeror or potential offeror to external providers or potential providers of finance (whether equity or debt) for the buy-out.

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 2.1211*

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 2.1211, there is no requirement to send that person a separate explanation of their disclosure obligations under Rule 8 in accordance with Rule 22(a) or (b).

Rule 23

~~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, 26.1, 30.2, 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 23.2

Shareholders, persons with information rights and employee representatives (or employees) 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.

23.32 CONSENT TO INCLUSION OF ADVICE, OPINIONS AND REPORTS

...

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 in the offeree company and persons with information rights, in accordance with ~~Rule 30.12~~ 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.

(b) ~~On the day of~~ Promptly following its publication, the offeror must:

(i) publish the offer document on a website ~~in accordance with Rule 26.1~~; and

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

...

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

...

(x) details of any irrevocable commitment or letter of intent which the offeror or any person acting in concert with it has procured in relation to relevant securities of the offeree company (or, if appropriate, the offeror) (see Note 3 on ~~Rule 2.4110~~);

...

(xv) any post-offer undertaking made by the offeror (see ~~Rule 19.75~~);

...

24.16 FEES AND EXPENSES

...

(c) ... The Panel may require ~~the public disclosure of~~ such revised estimates to be announced where it considers this to be appropriate.

(d) ... The Panel may require ~~the public disclosure of~~ such final amount to be announced where it considers this to be appropriate.

NOTES ON RULE 24.16

...

3. Fees payable to supervisors appointed under Rule 19.75(i)

There is no requirement to disclose an estimate of any fees and expenses expected to be incurred in relation to a supervisor appointed under Rule 19.75(i).

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 and persons with information rights, in accordance with Rule 30.12 and must make the document readily available to the trustees of its pension scheme(s). At the same time, the offeree company must make the circular readily available to its employee representatives (or, where there are no employee representatives, to the employees themselves).

(b) ~~On the day of~~ Promptly following its publication, the offeree company must:

(i) publish the offeree board circular on a website ~~in accordance with Rule 26.1;~~ and

(ii) announce ~~via a RIS~~ that the offeree board circular has been so published.

...

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

...

NOTES ON RULE 25.2

...

4. Conflicts of interest

Where a director has a conflict of interest, he should not normally be joined with the remainder of the board in the expression of its views on the offer and the nature of the conflict should be clearly explained. Depending on the circumstances, such a director may have to make the responsibility statement required by Rule 19.2, appropriately amended to make it clear that he does not accept responsibility for the views of the board on the offer. ~~Where the statement relates to a prospectus or an equivalent document, the provisions of the UKLA Rules may affect the position.~~

25.7 OTHER INFORMATION

The offeree board circular must contain:

...

(b) details of any irrevocable commitment or letter of intent which the offeree company or any person acting in concert with it has procured in relation to relevant securities of the offeree company (or, if appropriate, the offeror) (see Note 3 on Rule 2.1110);

(c) any post-offer undertaking or post-offer intention statement made by the offeree company (see Rules 19.75 and 19.86);

...

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

...

NOTES ON RULE 25.9

...

2. *Notification of the rights of employee representatives and pension scheme trustees under Rule 25.9*

See Rule 2.1211(d).

Rule 26

RULE 26. DOCUMENTS TO BE PUBLISHED ON A WEBSITE

26.1 DOCUMENTS, ANNOUNCEMENTS AND INFORMATION TO BE PUBLISHED ON A WEBSITE DURING AN OFFER

(a) The following documents, announcements and information must be published on a website by the offeror or offeree company, as relevant, ~~by no later than 12 noon on the business day following the date of the~~ promptly following the publication of the relevant document, announcement or information:

(i) any document or information in relation to an offer sent to offeree company shareholders, persons with information rights or other relevant persons in accordance with Rule 30.12; ~~or~~

(ii) any announcement (other than an announcement referred to in Note 87 below) published via a RIS (whether related to the offer or not); and

(iii) any document or information required to be published on a website under Rule 20.1 or any other provision of the Code (other than Rules 26.2 or 26.3).

...

26.2 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE ANNOUNCEMENT OF A FIRM OFFER

The following documents must be published on a website ~~by no later than 12 noon on the business day following~~ promptly following the publication of the announcement of a firm intention to make an offer (or, if later, the date of the relevant document):

...

26.3 DOCUMENTS TO BE PUBLISHED ON A WEBSITE FOLLOWING THE MAKING OF AN OFFER

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):

...

(c) any written consents of an independent financial adviser to the inclusion of its advice in the relevant document in the form and context in which it is included (Rule 23.32(a));

...

(e) where a profit forecast or quantified financial benefits statement has been published:

...

(ii) the written consents of the reporting accountants and of the financial advisers to the inclusion of their reports in the relevant document in the form and context in which they are included (Rule 23.32(b)) and, if appropriate, the confirmations that their reports continue to apply (Rule 27.2(d));

(f) where an asset valuation has been published:

...

(ii) the written consent of the independent valuer to the inclusion of its opinion on value in the relevant document in the form and context in which it is included (Rule 23.32(c)) and, if appropriate, the confirmation that its report continues to apply (Rule 27.2(d));

...

NOTES ON RULE 26

...

4. 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 23.230.4.

...

5. *Amendment etc. of documents published on a website and entering into new documents required to be published on a website*

If a document is amended, varied, updated or replaced during the period in which it is required to be published on a website under Rule 26, the amended, varied or updated document, or the replacement document, must also be published on a website and, except as provided in Note 8 on Rule 20.1, 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.

...

~~7. *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.*~~

87. *Announcements not required to be published on a website*

The following announcements do not need to be published on a website:

...

(b) announcements of the number of relevant securities in issue under Rule 2.109.

Rule 30

30.1 ANNOUNCEMENTS TO BE PUBLISHED VIA A RIS

(a) Any announcement required to be published under the Code must be published via a RIS.

(b) If an announcement is published at a time when the relevant RIS is not open for business, it must be distributed to not less than two national newspapers in the UK and two newswire services operating in the UK and submitted for publication as soon as the relevant RIS re-opens.

(c) Where appropriate, the Panel may also require a copy of any announcement (or a document which includes the contents of the announcement) to be sent to offeree company shareholders and persons with information rights, the offeree company's employee representatives (or employees) and the trustees of the offeree company's pension scheme(s) in accordance with the requirements of Rule 30.2.

30.12 METHOD OF 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 30.12

Forms

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

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

...

30.4 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,

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 30.4

Shareholders, persons with information rights and employee representatives (or employees) 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.

30.35 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 30.35

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 30.5.

Rule 31**31.6 FINAL DAY RULE (FULFILMENT OF ACCEPTANCE
CONDITION, TIMING AND ANNOUNCEMENT)**

...

(b) Any extension to which the Panel consents must be announced by the offeror ~~in accordance with Rule 2.9~~. The Panel should be consulted as to whether a notification in respect of the extension should also be sent to offeree company shareholders and persons with information rights.

31.7 TIME FOR FULFILMENT OF ALL OTHER CONDITIONS

...

NOTES ON RULE 31.7

...

2. Extensions

Any extension to which the Panel consents must be announced by the offeror ~~in accordance with Rule 2.9~~. The Panel should be consulted as to whether a notification in respect of the extension should also be sent to offeree company shareholders and persons with information rights.

31.8 SETTLEMENT OF CONSIDERATION

...

NOTE ON RULE 31.8**Extensions**

Any extension to which the Panel consents must be announced by the offeror ~~in accordance with Rule 2.9~~. The Panel should be consulted as to whether a notification in respect of the extension should also be sent to offeree company shareholders.

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~~Promptly following its publication, the offeror must:

(i) publish the revised offer document on a website ~~in accordance with Rule 26.1~~; and

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

...

32.6 THE OFFEREE BOARD'S OPINION AND THE OPINIONS OF THE EMPLOYEE REPRESENTATIVES 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. Promptly following its publication, the offeree company must and, at the same time:

(i) publish the circular on a website ~~in accordance with Rule 26.1~~;

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

(iii) make 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).

Appendix 1

1 INTRODUCTION

...

(c) Rules 19, 20, 21.3, 24.15, 26, and 30, where relevant, apply equally to documents, announcements and information published in connection with a transaction which is the subject of the whitewash procedure.

...

6 ANNOUNCEMENTS FOLLOWING SHAREHOLDERS' APPROVAL

(a) Following the meeting at which the proposals are considered by shareholders, an announcement must be made by the offeree company giving the result of the meeting and the number and percentage of offeree company shares in which the potential controllers are, or are entitled to be, interested as a result. ~~The announcement must be published in accordance with the requirements of Rule 2.9.~~

Appendix 5

2 PROCEDURE AND CLEARANCE

(a) ... 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.~~

...

5 ANNOUNCEMENT OF THE RESULT OF A TENDER OFFER

The result of a tender offer must be announced by 8.00 am on the business day following the close of the tender. ~~The announcement must be published in accordance with the requirements of Rule 2.9.~~

Appendix 7

3 EXPECTED SCHEME TIMETABLE

...

(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.

...

6 CHANGES TO THE EXPECTED SCHEME TIMETABLE

(a) Any adjournment of a shareholder meeting or court sanction hearing, or a decision by the offeree board to propose such an adjournment, must be announced promptly by the offeree company ~~in accordance with the~~

~~requirements of Rule 2.9.~~ If the meeting or hearing is adjourned to a specified date, the announcement should set out the relevant details. If the meeting or hearing is adjourned without at the same time specifying a date for the adjourned meeting, a further announcement should be made ~~in accordance with the requirements of Rule 2.9~~ once the new date has been set.

(b) Similarly, except with the consent of the Panel, any other change to the expected timetable of events set out in the scheme circular must be announced promptly by the offeror or offeree company (as appropriate) ~~in accordance with the requirements of Rule 2.9.~~

...

8 SWITCHING

...

(c) ~~The offeror must announce a switch in accordance with the requirements of Rule 2.9.~~ The announcement of a switch must include:

...

APPENDIX B

Tables of origins and destinations

TABLE OF ORIGINS

Proposed new provision	Heading	Origin
Rule 2.9	Announcement of numbers of relevant securities in issue	Rule 2.10
Rule 2.10	Irrevocable commitments and letters of intent	Rule 2.11 (minor amendments)
Rule 2.11	Distribution of announcements to shareholders, employee representatives (or employees) and pension scheme trustees)	Rule 2.12
Rule 8 – Note 13	Amendments	Rule 8 – Note 14
Rule 8 – Note 14	Irrevocable commitments and letters of intent	Rule 8 – Note 15
Rule 19.2(a)	Responsibility	Incorporates Note 2 on Rule 19.2
Rule 19.2 – Note 2	Quoting information about another party	Rule 19.2 – Note 3
Rule 19.2 – Note 3	When an offeror is controlled	Rule 19.2 – Note 5
Rule 19.2 – Note 4	Employee representatives' opinions and pension scheme trustees' opinions	Rule 19.2(a)(iii)
Rule 19.4	Interviews and debates	Rule 19.6 (minor consequential amendments)
Rule 19.5	Post-offer undertakings	Rule 19.7 (minor consequential amendments)
Rule 19.6	Post-offer intention statements	Rule 19.8 (minor consequential amendments)
Rule 19.7	Information published following the ending of an offer period pursuant to Rule 12.2	Rule 19.9
Rules 20.1(a), (b) and (c)	Equality of information to shareholders and persons with information rights	Rule 20.1(a) incorporates Rule 20.1 (amended). Rules 20.1(b) and (c) are new

Proposed new provision	Heading	Origin
Rule 20.1 – Note 1	Requirement to send announcement or document to shareholders etc. where appropriate	New
Rule 20.1 – Note 2	Provision of information between the parties to an offer	Rule 20.1 – Note 1
Rule 20.1 – Note 3	Provision of information to employee representatives (or employees) and pension scheme trustees	Rule 20.1 – Note 6
Rule 20.1 – Note 6	Provision of information prior to the commencement of an offer period or prior to the announcement of a firm or revised offer	New
Rule 20.1 – Note 7	Employee communications	New
Rule 20.1 – Note 8	Presentations and other documents	New
Rule 20.2	Meetings and telephone calls with shareholders and others	Replaces previous Rule 20.1 – Note 3
Rule 20.3	Videos	New
Rule 20.4	Social media	New
Rule 20.5	Advertisements	Rule 19.4 (amended)
Rule 20.6	Telephone campaigns	Rule 19.5 (minor amendments)
Rule 21.3	Equality of information to competing offerors	Rule 20.2
Rule 21.4	Information to independent directors in management buy-outs	Rule 20.3
Rule 23.2	Consent to inclusion of advice, opinions and reports	Rule 23.3
Rule 26 – Note 7	Announcements not required to be published on a website	Rule 26 – Note 8
Rule 30.1	Announcements to be published via a RIS	Rule 2.9 (amended)
Rule 30.2	Method of publication of documents, announcements and information	Rule 30.1 (heading amended)

Proposed new provision	Heading	Origin
Rule 30.3	Right to receive copies of documents, announcements and information in hard copy form	Rule 30.2
Rule 30.4	Making documents, announcements and information available to shareholders, persons with information rights and employee representatives (or employees)	Rule 23.2 (minor amendments)
Rule 30.5	Distribution of documents, announcements and information to the panel and other parties to an offer	Rule 30.3 (minor amendments)

TABLE OF DESTINATIONS

Current provision	Heading	Destination
Rule 2.9	Announcement of an offer or possible offer to be published via a RIS	Rule 30.1 (amended)
Rule 2.10	Announcement of numbers of relevant securities in issue	Rule 2.9
Rule 2.11	Irrevocable commitments and letters of intent	Rule 2.10 (minor amendments)
Rule 2.12	Distribution of announcements to shareholders, employee representatives (or employees) and pension scheme trustees)	Rule 2.11
Rule 8 – Note 13	Other statutory or regulatory provisions	Deleted
Rule 8 – Note 14	Amendments	Rule 8 – Note 13
Rule 8 – Note 15	Irrevocable commitments and letters of intent	Rule 8 – Note 14
Rule 19.1 – Note 5	Use of other media	Deleted. See new Rules 20.3 and 20.4.
Rule 19.1 – Note 6	FSMA and the Financial Services Act 2012	Deleted
Rule 19.2(a) – paragraphs (i), (ii) and (iii)	Responsibility	Paragraphs (i) and (ii) deleted. Paragraph (iii) becomes Rule 19.2 – Note 4
Rule 19.2 – Note 2	Expressions of opinion	Incorporated into Rule 19.2(a)
Rule 19.2 – Note 3	Quoting information about another party	Rule 19.2 – Note 2
Rule 19.2 – Note 4	Exclusion of directors	Deleted
Rule 19.2 – Note 5	When an offeror is controlled	Rule 19.2 – Note 3
Rule 19.4	Advertisements	Rule 20.5 (amended)
Rule 19.5	Telephone campaigns	Rule 20.6 (minor amendments)
Rule 19.6	Interviews and debates	Rule 19.4 (minor consequential amendments)
Rule 19.7	Post-offer undertakings	Rule 19.5 (minor consequential amendments)

Current provision	Heading	Destination
Rule 19.8	Post-offer intention statements	Rule 19.6 (minor consequential amendments)
Rule 19.9	Information published following the ending of an offer period pursuant to Rule 12.2	Rule 19.7
Rule 20.1 – Note 1	Furnishing of information to offerors	Rule 20.1 – Note 2 (amended)
Rule 20.1 – Note 2	Media interviews	Deleted, but see existing Note 1 on Rule 19.1 and proposed new Rule 20.2(b)(iii)
Rule 20.1 – Note 3	Meetings	Deleted and replaced with new Rule 20.2
Rule 20.1 – Note 6	Sharing information with employee representatives (or employees) and pension scheme trustees	Note 3 on Rule 20.1
Rule 20.2	Equality of information to competing offerors	Rule 21.3
Rule 20.3	Information to independent directors in management buy-outs	Rule 21.4
Rule 23.2	Making documents, announcements and information available to shareholders, persons with information rights and employee representatives (or employees)	Rule 30.4 (minor amendments)
Rule 23.3	Consent to inclusion of advice, opinions and reports	Rule 23.2
Rule 26 – Note 7	Equality of information to shareholders	Deleted
Rule 26 – Note 8	Announcements not required to be published on a website	Rule 26 – Note 7
Rule 30.1	Publication of documents, announcements and information	Rule 30.2 (heading amended)
Rule 30.2	Right to receive copies of documents, announcements and information in hard copy form	Rule 30.3

Current provision	Heading	Destination
Rule 30.3	Distribution of documents, announcements and information to the panel and other parties to an offer	Rule 30.5 (minor amendments)

APPENDIX C**List of questions**

- Q1** Should the proposed new Rule 20.1(a) apply to information and opinions relating to an offer or a party to an offer?
- Q2** Should material new information or significant new opinions relating to an offer or a party to an offer which an offeror or the offeree company publishes, or which it provides to shareholders, other relevant persons or the media, be required to be published via a RIS at the same time?
- Q3** Should documents provided by an offeror or the offeree company to shareholders or other relevant persons, and written communications provided to and published by the media, be required to be published on a website?
- Q4** Do you have any comments on the proposed new Note 7 on Rule 20.1 with regard to employee communications or the proposed new Note 8 on Rule 20.1 with regard to presentations and other documents?
- Q5** Do you have any comments on the proposed new Note 6 on Rule 20.1 with regard to the provision of information prior to the commencement of an offer period or prior to the announcement of a firm or revised offer?
- Q6** Should all announcements required to be made under the Code be required to be published via a RIS and, if the relevant RIS is not open for business, be distributed to not less than two national newspapers in the UK and two newswire services operating in the UK?
- Q7** Should the Panel have the ability to require a copy of an announcement (or a document which includes the contents of the announcement) to be sent to the offeree company's shareholders, employee representatives and pension scheme trustees?
- Q8** Do you have any other comments on the amendments to the Code proposed in Section 2 of the PCP?
- Q9** Should a reference in the proposed new Rule 20.2 to a meeting include any telephone call or meeting held by electronic means?
- Q10** Should the proposed new Rule 20.2 apply to meetings attended by (a) a representative of, or adviser to, an offeror or the offeree company and (b) a shareholder in, or other person interested in relevant securities of, an offeror

- or the offeree company, or any investment manager, investment adviser or investment analyst?
- Q11** Should the proposed new Rule 20.2 apply to (a) all meetings which take place during the offer period and (b) meetings which take place prior to the commencement of the offer period, but only if the meeting relates to a possible offer or if it would not be taking place but for the possible offer?
- Q12** Do you have any other comments on the scope of the proposed new Rule 20.2?
- Q13** Should the proposed new Rule 20.2 provide that (a) any meeting to which the Rule applies must be supervised by an appropriate financial adviser or corporate broker to the offeror or offeree company (as appropriate) and (b) no material new information or significant new opinion relating to the offer or a party to the offer may be provided during the meeting?
- Q14** Should a supervisor of a meeting to which the proposed new Rule 20.2 applies be required to confirm the names and functions of the individuals who attended the meeting in addition to the matters required to be confirmed under the current Note 3 on Rule 20.1?
- Q15** Do you have any comments on the proposed Note 1 on the new Rule 20.2 in relation to meetings which take place prior to the commencement of an offer period or prior to the announcement of a firm or revised offer?
- Q16** Do you have any comments on the proposal to give the Panel the ability to grant dispensations from the provisions of the proposed new Rule 20.2 in relation to meetings following the announcement of a recommended firm offer?
- Q17** Should the requirement for a confirmation in writing to be provided to the Panel by not later than 12 noon on the business day following a meeting be disapplied in the case of meetings attended only by one or more financial advisers or corporate brokers and one or more relevant third parties?
- Q18** Do you have any comments on the proposed treatment of meetings attended only by one or more advisers to an offeror or the offeree company (other than a financial adviser or corporate broker) and one or more “sell-side” investment analysts (as described in paragraph 3.39(b) of this PCP)?
- Q19** Do you have any comments on the proposed new Rule 20.2?
- Q20** Should the new Rule 20.3 in relation to the use of videos be introduced as proposed?

- Q21** Should the new Rule 20.4 in relation to the use of social media be introduced as proposed?
- Q22** Should the amendments to Rule 26 in relation to the publication of documents on a website be made as proposed?
- Q23** Should Rule 19.4 (Advertisements) be amended (and renumbered as Rule 20.5) as proposed?
- Q24** Should Rule 19.2 (Responsibility) and Note 1 on Rule 3.2 be amended, and Note 5 on Rule 19.1 (Use of other media) be deleted, as proposed?
- Q25** Should Rule 19.5 (Telephone campaigns) be amended (and renumbered as Rule 20.6) as proposed?
- Q26** Do you have any comments on the minor and consequential amendments to the Code proposed in Section 6 of this PCP?

APPENDIX D

Proposed new Rule 20.2: summary table

	Meeting* between: (a) representative of, or adviser [†] to, offeror or offeree company; and (b) shareholder, investment manager, investment adviser or “sell-side” investment analyst		Meeting* between: (a) financial adviser (“FA”) or corporate broker (“CB”) to offeror or offeree company; and (b) shareholder, investment manager, investment adviser or “sell-side” investment analyst		Meeting* between: (a) adviser to offeror or offeree company (other than FA/CB); and (b) “sell-side” investment analyst	
TIME PERIOD:	<i>FA/CB to attend?</i>	<i>Written confirmation</i>	<i>FC/CB to attend?</i>	<i>Written confirmation</i>	<i>FA/CB to attend?</i>	<i>Written confirmation</i>
Prior to commencement of offer period (but only if meeting* relates to a possible offer)	YES	FA/CB	N/A	NO	NO	Senior adviser, appropriately briefed
During offer period but prior to announcement of firm or revised offer	YES	FA/CB	N/A	NO	NO	Senior adviser, appropriately briefed
Following announcement of firm offer which is not recommended, or when there is a competitive situation or a material development has occurred	YES	FA/CB	N/A	NO	NO	Senior adviser, appropriately briefed
Following announcement of a recommended firm offer (and dispensation granted and not withdrawn)	NO	Senior representative/adviser, appropriately briefed	N/A	NO	NO	Senior adviser, appropriately briefed

* “Meeting” includes any telephone call or meeting held by electronic means

[†] Subject to columns 2 and 3